

# **GENERAL TERMS AND CONDITIONS for Distance Selling Transactions in the Online Shop**

of PEZ International GmbH, Eduard-Haas-Strasse 25, 4050 Traun, Austria, phone: +43/732/38999-0, fax: +43/732/38999-1264, e-mail: [shop@pez.at](mailto:shop@pez.at) Website: <http://shop.pez.at>, UID ATU63753968.  
Company seat: Traun, comm. reg. no. 297904 w / Regional Court of Linz

## **1. General provisions**

These General Terms and Conditions (GTCs) for distance selling as amended and the Terms for Delivery and Shipping Costs constituting an integral part of these Terms and Conditions, which are updated daily and found on the PEZ website ([shop.pez.at](http://shop.pez.at)) under "Shipping Costs", shall exclusively govern online orders from our web shop at [shop.pez.at](http://shop.pez.at) transacted between the online shop operated by PEZ International GmbH (hereinafter: "we" or "PEZ") and purchaser/s of goods (hereinafter: "Customer/s"), as well as all current and future contractual relationships between us and our customers (orderers of goods from the online shop <http://shop.pez.at>). Deviating agreements applicable in a specific case, irrespective of awareness of such, shall only be binding if we have expressly confirmed such in writing. Deviating terms and conditions of our contractual partners shall not be binding, even if we do not expressly reject such in a given case. By placing an order the customer accepts our GTCs.

Customers may be either consumers or businesses for the purposes of the Consumer Protection Act (KSchG). Businesses are natural or legal persons or formally organized partnerships which transact the contract in question as part of their business operations. Any organisation formed on a non-temporary basis for the purpose of engaging in commercial activity is considered a business, irrespective of profit motive.

*For any questions or complaints please contact: [shop@pez.at](mailto:shop@pez.at)*

## **2. Contract conclusion**

2.1. Our website and the solicitation to submit purchase offers contained therein are directed at customers in the countries listed in the web shop. The contract languages are German and English.

2.2. Offers, price lists, cost estimates and delivery dates we state are non-binding, as are descriptions of the goods or services we are to deliver, including particularly technical information. We are entitled to make partial deliveries if doing so is reasonable for the customer, in which case we bear additional shipping costs accruing.

2.3. The customer's order, irrespective of placement via the internet, e-mail, phone, fax or other means of distance communication, is a binding offer to conclude a purchase contract applying the latest updated prices and terms published on our website PEZ.at.

2.4. A contract that is binding upon us only arises when we provide written notice of acceptance or actually fulfil the order by shipping the ordered goods. Sending confirmation of order receipt does not constitute a declaration of acceptance, as such is only provided for the customer's information.

2.5. Sales are only made in normal household quantities.

2.6. Passwords required for ordering may not be disclosed to third parties. The customer shall be liable for orders placed by third parties as a result of such disclosure. The customer shall pay for any orders placed using the customer's password and for further resulting claims.

2.7. We are entitled to withdraw from the contract for cause at any time. This applies in particular if the customer violates our General Terms and Conditions, if products are not deliverable and in case of price changes by our suppliers.

## **3. Price, payment terms**

3.1. The prices stated on the day of order placement in our online shop apply plus shipping costs and VAT at the rate officially applicable in Austria. When the Mini One Stop Shop (MOSS) provisions enter into force in 2021, one of the possible changes is that the applicable tax rate is that of the ordering customer's country.

For companies with seat in the European Union, prices may be charged without VAT if a valid VAT number is stated when ordering. For businesses from third countries, tax-free export delivery is possible, stating the valid UID number.

Payment is to be made based on the payment method selected in the ordering process, such as credit card, PayPal or Sofortüberweisung, for example eps. The customer undertakes, in the event no other payment method is agreed (such as purchase on account), to pay the purchase price in full upon contract conclusion. Invoices are then due immediately in full, without deducting expenses or any other amounts. Goods are only delivered upon receipt of payment. Payment shall only be deemed rendered when we have final, unrestricted disposal over the amount.

3.2. In case of late payment, we are entitled to charge interest at the statutory or customary bank rate subject to a minimum of 12% p.a. In addition, we are entitled to reimbursement for any necessary dunning and collection expenses incurred to legally pursue claims in amounts reasonable relative to the claim amount. If we hire a collection firm, the costs thereby accruing to us are entitled to reimbursement up to the maximum fee rates chargeable by collection firms under BMWA regulations (the Austrian Federal Ministry for Digital and Economic Affairs). If we carry out the dunning process ourselves, we charge € 12.00 per reminder we issue and € 5.00 semi-annually for tracking the debt in our in-house dunning system. We are furthermore entitled to compensation for any further damages suffered due to late payment of amounts due, and in particular may claim compensation for higher interest rates we have to pay on our credit accounts, as documented.

3.3. We are entitled to at any time set off existing claims and accruing to us in future, even if these claims are not yet due. This applies in particular, but not exclusively, in case of late payment by the customer.

3.4. If the customer has multiple outstanding payments due, we are entitled to partially or fully apply payments received to settle specific debts.

3.5. The customer does not have the right to set off or withhold payment unless we are insolvent or the claim is contractually related to our claim, or if we have recognised the claim or the claim has been upheld by final court judgement. The customer is not entitled to assign claims against us to third parties without our express written consent.

#### **4. Retention of title, rights of withholding**

4.1. Delivered goods remain our property until all of our claims connected with the transaction have been paid (invoice amount plus any interest and expenses), and until all claims arising from the business relationship with the customer have been paid. It is hereby agreed that if we replace goods under warranty, the goods replaced become our property, without restriction.

4.2. Our customer is permitted to resell and/or further process the delivered goods in the ordinary course of business. The customer hereby assigns to us his claims against third parties arising from the resale or further processing of our goods until all of our claims against the customer have been settled. The customer undertakes to record a corresponding note in his accounting books and to provide us with all related data upon our request. The customer shall furthermore notify us without delay of any impairment of rights to items that are our property.

4.3. If the customer is in arrears with payment obligations towards us or breaches any obligation under the contractual retention of title provisions, the outstanding claim shall be due in full immediately. In such case we shall be entitled to demand handover of items which are our property, without having to declare withdrawal from the contract, which we will collect from the premises of the customer or of a third party. The customer, in such case, waives the right to assert any rights of withholding on any grounds. The customer is obliged to bear costs for repossession of goods subject to retention of title or reimburse us accordingly. The assertion of retention of title does not in itself constitute withdrawal from the contract.

#### **5. Delivery periods and minor changes in performance elements**

5.1. Delivery dates we specify or agree to do not represent fixed dates. Dates designated as "expected" are only estimated dates which are not binding. If we are unable to deliver within 30 days of the order date, the customer is entitled to withdraw from the contract. In the event of withdrawal, payments already made will be refunded within 30 days, but not before we have disposal over the payment amount.

5.2. Changes to and deviations from the contractual performance elements which are minor in nature and objectively justified shall be deemed reasonable for the customer. This applies in particular to deviations in item characteristics (dimensions, colours, structure, etc.).

**5.3. Please note:** PEZ utilises special packaging which is designed for our technical production requirements and to protect and present PEZ products: PEZ dispensers are packed together with the PEZ candies in blister packs consisting of the cardboard shelf box and blister cover made of thermoformed plastic, which are sealed together: *If, for example, the blister cover is dented in, this does not constitute grounds for complaint, because the cover is a packaging element. If both the PEZ dispenser and the PEZ candies are in proper condition, product refunds are not possible.*

## 6. Fulfilment, shipping and acceptance

6.1. We perform shipping exclusively at the cost and risk of our customers. Delivery is made to the countries listed in the web shop, applying the shipping costs stated on the PEZ.at website under "Shipping Costs". Risk passes to our customer upon delivery of the goods to the haulier or freight forwarder, and in the event of delayed acceptance by our customer, upon segregation of the goods for separate storage. This applies as well to partial deliveries, even if we initiated them or assumed the shipping costs.

6.2. Except as otherwise agreed, delivery will be made to the customer address stated. If a precise delivery address is not given, the customer's address is the valid delivery address. The customer shall bear all costs resulting from incorrect, incomplete or unclear information provided by the customer.

6.3. If the customer is in delay of acceptance, we are entitled to warehouse the goods and bill actual storage costs incurred. We remain entitled however to insist on performance of contract. We are also entitled, however, to withdraw from the contract after the setting and unfulfilled elapse of a 14-day grace period, and/or to claim damages for non-fulfilment. In any case in which we should withdraw from the contract due to circumstances within the customer's sphere of control, we are entitled to either claim 30% of the contractual order value without providing documentation of actual damages incurred or the amount of damages actually incurred. Any purchase price amounts already transferred shall be refunded less costs and damages we have incurred.

## 7. Right of withdrawal and purchase cancellation rights of consumers in distance selling transactions

7.1. **Purchase contract cancellation advisory and form:** Consumers have purchase cancellation rights as outlined below. A consumer is any natural person who concludes a transaction for purposes which are not primarily associated with their commercial or self-employed activity:

### Advisory of purchase cancellation rights

**Right of purchase cancellation:** The customer may cancel a contractual purchase within a period of 14 days without stating reasons by providing notification thereof in text form (letter, fax, e-mail, etc.) or by returning the goods if goods were delivered prior to elapse of that period. This period begins upon receipt of such notification in text form, but not before receipt of the goods by the recipient.

The purchase cancellation period is fourteen days from the date on which you or a third party designated by you who is not the shipping/delivery provider have/has taken possession of the last portion of the goods. Sending notice of cancellation or sending the goods off for return by the applicable deadline suffices to constitute adherence with the purchase cancellation period. To exercise your right of purchase cancellation you must send us, PEZ International GmbH, Eduard-Haas Strasse 25, 4050 Traun, Austria, phone +43/732/38999-0, fax: +43/732/38999-1264, e-mail: [shop@pez.at](mailto:shop@pez.at), clearly worded notice (via postal letter, fax or e-mail, for example) of your decision to cancel this purchase contract. You may utilise the attached purchase cancellation form for this, but the form is not required (**see: Purchase contract cancellation advisory and form**). To meet the revocation deadline it suffices to send notification of exercise of revocation rights before elapse of the revocation deadline.

**Consequences of purchase cancellation**

If you cancel this purchase contract, we are required to refund to you immediately, no later than fourteen days from the date upon which we receive notification of your cancellation of this purchase contract, all payments we have received from you including delivery costs (with the exception of additional costs accruing through your choice of a delivery method other than the standard, low-cost delivery option we offer). In making such refunds we utilise the same payment mode which you used in the original transaction unless explicitly agreed with you otherwise; in no case will we charge fees for such refunding. We may refuse refunding until we have received the returned merchandise or until you have provided proof of having returned the merchandise, whichever is earlier. You must return goods promptly within fourteen days of the date on which you inform us of cancellation of this purchase contract, either by delivery carrier or in person. The return deadline is deemed met if you send the merchandise off before elapse of the 14-day period. You do not bear any costs for returning the goods. You are only responsible for paying for any loss of merchandise value resulting from handling of the merchandise other than as necessary to inspect the characteristics, features and functions of the merchandise. If you are unable to return the goods/services received or can only return such in a deteriorated condition, wholly or in part, the customer is required to compensate us accordingly. This does not apply to delivered goods if deterioration of the goods is due solely to their inspection – as would have been possible in a retail shop, for example. The customer can avoid being required to pay compensation for deterioration occurring in the course of proper usage of the goods by not using the goods as if they were the customer's own property, and by refraining from doing anything that could impair their value.

**General advisories:** Please be sure to avoid damaging and dirtying of the goods. If possible, return the goods to us in their original packaging along with all accessories and packaging components. Make use of any protective outer packaging if provided. If you no longer have the original packaging, please use packaging suitable to ensure adequate protection against damage during transport. Please do not return the goods to us freight collect. Please note that the two paragraphs above do not outline prerequisite conditions for effectively exercising purchase cancellation rights.

7.2. This right of withdrawal does not apply to goods and services as per § 5f KSchG, and therefore does not apply in particular to

- services, the performance of which for the consumer commenced within the contractual withdrawal period
- goods which have been produced according to customer specifications, are clearly tailored to personal needs, are not suitable for return due to their nature or can rapidly spoil, or which have an expiration date that would expire
- audio or video recordings or software, if the delivered items have been unsealed by the consumer
- newspapers, journals or magazines, with the exception of subscription contracts to periodical print publications.

## **8. Liability in consumer transactions**

8.1. All advisories/instructions appearing on packaging and inserts must be followed. No liability is assumed for usage and/or handling in any other manner.

Liability on our part for slight negligence is excluded. This does not apply in cases of personal injury. The consumer, as customer, has statutory warranty rights pursuant to § 923 et seq. of General Civil Code (ABGB). The warranty period is 24 months from the time of goods acceptance, or in case of services, the time of service completion. If there is no prospect for replacement or remedy (not possible, excessive effort required, unreasonable, missed deadline, etc.), the customer is entitled to a price reduction, or to rescission of the contract (reversal) if the defect is not minor in nature. Warranty rights do not apply to minor changes in performance elements as per point 5.2, or in the case per point 5.3.

8.2. Any recourse claims within the scope of § 12 of the Product Liability Act are excluded unless the person entitled to recourse demonstrates that the defect arose within our sphere of responsibility and therefore occurred through gross negligence.

8.3. We may only be liable for data loss if the customer has demonstrably backed up the data at least daily, if not more frequently. Liability is otherwise excluded, except in cases of intent and gross negligence.

8.4. Any goods shipment or data transfer we initiate is executed at the customer's risk and expense. Accordingly, we have fulfilled our performance obligations when the goods have been handed over to be freight forwarder or made the data available for download.

## **9. Data protection, address changes, copyright**

**9.1. Information on the handling of personal data is provided in our Data Protection Policy.** We reserve the right to periodically update this data protection policy to reflect current legal requirements and change our performance elements per the data protection declaration, such as when introducing new services. Upon updating, the revised data protection policy applies to your next visit.

Contact us by e-mail at [datenschutz@pez.at](mailto:datenschutz@pez.at) for any data protection-related questions you may have.

9.2. The customer grants consent to his/her **personal data** stated in the purchase contract (first and last name, academic degree title, date of birth, company name, address, e-mail address, phone and fax numbers, business relationship data) being **stored and processed** by us in fulfilment of this contract **and for marketing purposes**, utilising automation. The customer is obliged to **notify us of changes in his/her home and/or business address** until the transaction concerned in the contract has been completely fulfilled by both parties. If such **notification is not provided**, declarations shall be deemed **received which are sent to the last address provided**. All logos, samples, catalogues, brochures, images and similar items remain our intellectual property at all time. The customer receives no rights of use or exploitation whatsoever except as provided under a separate agreement. Nor is the customer entitled to use the content, graphics, source texts, offers, price information, logos, corporate designs, trademarks, intellectual property rights or any other page content of the website PEZ.at.

Usage of the PEZ website is at the visitor's own risk.

## **10. Choice of law, place of jurisdiction, place of performance**

10.1. The contractual relationship shall be exclusively governed by Austrian law. Conflict of laws conventions and the UN Convention on the International Sale of Goods (CISG) are disappplied.

10.2. Any legal disputes arising directly or indirectly between us and a business customer shall be adjudicated by the competent court for the place of jurisdiction Eduard-Haas-Strasse 25, A-4020 Linz.

10.3. Any invalid or incomplete provision of these General Terms and Conditions shall be replaced with a valid provision which fulfils the original business intent to the closest possible extent. The invalidity or incompleteness of a provision shall not affect the validity of other provisions or of the contract as a whole.

10.4. The customer agrees that we may, at our discretion, serve documents, including legally relevant declarations and invoices, by electronic means (e.g. via our website or e-mail). Accordingly, the customer expressly waives the right to have these sent in paper form. The provision above remains unaffected if documents are sent in paper form in a given case (once or multiple times). We only attach electronic signature to such documents as expressly required by law.

10.5. We may in any case send legally significant declarations to the customer to the address last provided by the customer, which shall be deemed received by the customer unless the customer has informed us of a change of address. This also applies in particular to e-mail addresses provided.

## **11. Supplemental provisions for customers who are not consumers within the meaning of the Consumer Protection Act (KSchG):**

11.1. The customer does not have rights of withdrawal or purchase contract cancellation per point 7 of these Terms and Conditions.

11.2. The customer is obliged to carefully inspect the goods without delay upon handover, checking random samples as necessary. A claim must be filed in writing without delay for any kind of defect or obvious discrepancies in the goods or quantities delivered versus the order, no later than three (3) days after the date of receipt. The customer is obliged to accept, unload and properly store the goods at his own expense, irrespective of whether there may be a complaint. In case of defects which are not identifiable at first despite detailed inspection, a claim must be filed in the same manner immediately upon their discovery, regardless of whether quantity or quality may be affected. If such a complaint is properly filed by the applicable deadline, the goods shall be deemed approved in full, so that any claims against us in respect of quantity or quality are excluded.

11.3. Our warranty obligations are as provided by law and outlined in the provisions below, except as otherwise specifically agreed. Warranty claims expire unless asserted in court within a period of six months from the date of performance. The defect presumption provision per § 924 ABGB is excluded. The customer exclusively bears the burden of proof to establish at delivery or handover that a defect for which we are responsible is in evidence. The remedying of defects does not extend the warranty period. Until the customer has properly fulfilled his contractual obligation, we shall not be obliged to remedy a defect, including in particular by way performing follow-up work or making follow-up delivery. Warranty is extinguished if the customer alters, improperly handles or refines delivered goods. We only have obligation

to pay for costs accruing through the customer's own efforts to remedy a defect if we have issued written approval of such. The customer must ensure that the delivered goods are used as intended and exclusively in accordance with any accompanying instructions. Only characteristics which we have expressly guaranteed in writing are warranted. Technical production-related deviations and other deviations typical in commerce, such as dimensions, features, materials, colouration and other similar properties, do not constitute grounds for complaint.

11.4. We decide at our discretion in case of warranty obligations to our customer whether to perform follow-up work or make replacement delivery as remedy. Our customer may claim a price reduction if this does not result in proper performance of contract within a reasonable period of time, particularly if remedy is not possible without disproportionate cost, or at all. Warranty claims are limited in amount, without exception, to the value of the defective product supplied by us. We shall not be liable for consequential damages occurring in connection with a warranty claim.

11.5. Special recourse claims against us as per § 933b ABGB are excluded in all cases.

11.6. Liability on our part is excluded unless the customer demonstrates that intent or gross negligence on our part, or on the part of our vicarious agents. Liability for unusability, other defect-related consequential damages and for lost profits is excluded in all cases. Damage claims shall expire six months after the date of awareness of the damage, or earlier as applicable, and in no case later than two years from the delivery date.

## **12. Deviation from international standards:**

**Please note** that any regulations governing products shipped internationally may not apply, that usage instructions, safety warnings and product declarations may not be printed in the language of the country of destination and that the products (plus accessories) have not been designed to meet the applicable standards, specifications or labelling requirements in the country of destination.

The customer is solely responsible for ensuring that the product can be legally imported into the country of destination. The order recipient is the importer, who must ensure compliance with all laws and regulations of the country of destination.

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