

PANTHRONICS AG
GENERAL TERMS AND CONDITIONS FOR SALE OF PRODUCTS AND SERVICES
(B2B)

1. APPLICATION

1.1 These General Terms and Conditions (the "**Terms**"), as amended from time to time, shall apply to all deliveries of goods ("**Products**") and, *mutatis mutandis*, to the provision of services ("**Services**") by Panthronics AG to its contracting party ("**Buyer**"), provided that the Buyer is not a consumer but conducts business activities. These Terms are made available and provided to the Buyer on Panthronics AG's website:

[http://www.panthronics.com/Panthronics General Terms and Conditions.pdf](http://www.panthronics.com/Panthronics%20General%20Terms%20and%20Conditions.pdf)

1.2 All purchase orders issued to Panthronics AG by the Buyer or offers made by Panthronics AG to the Buyer shall be subject exclusively to these Terms. General terms and conditions of the Buyer shall not become part of the contract between Panthronics AG and the Buyer, even if Panthronics AG does not expressly object to such terms and conditions. Notice of objection to any additional or different terms and conditions is hereby given. The Buyer acknowledges that these terms and conditions shall therefore supersede all other terms and conditions provided by the Buyer and these Terms shall apply to the exclusion of any trade custom or practice.

1.3 Information provided by Panthronics AG relating to its Products and Services, on its website, in catalogues or other documents as well as any other written or oral statements shall only form part of the contract between Panthronics AG and the Buyer to the extent they are expressly acknowledged or referred to by Panthronics AG.

2. PRICES AND OFFERS

2.1 All prices communicated by Panthronics AG shall be subject to adjustment until conclusion of the contract between Panthronics AG and the Buyer. Unless otherwise agreed, prices are in U.S. Dollars and payment shall be made in U.S. Dollars.

2.2 Except as may otherwise be agreed, the prices communicated by Panthronics AG shall be EXW in accordance with INCOTERMS 2010 including standard packaging and exclusive of VAT and other taxes, if any. The Buyer shall pay all applicable taxes.

3. DELIVERY

3.1 Products shall be delivered EXW in accordance with INCOTERMS 2010, except as may otherwise be agreed in writing. Benefit and risk shall pass to the Buyer upon dispatch of the Products EXW. In the event of a delay in the acceptance of the Products by the Buyer, risk shall pass to the Buyer upon the agreed dispatch date or, if later, as of the date Panthronics AG was ready to dispatch the products.

- 3.2 Panthronics AG shall use reasonable efforts to deliver its Products to a mutually agreed delivery date. Unless agreed otherwise in writing, delivery dates are approximate only.
- 3.3 For a delay from an agreed delivery date of at least 4 weeks, Buyer shall be entitled to a maximum contractual penalty of 1% of the net purchase price (excluding VAT and other taxes as well as costs of shipment) for the initial delay and a further 1% for each additional week of delay, however only up to a maximum contractual penalty of 10%. Panthronics AG shall not be liable for any other or additional damages or costs, including loss of profit, related to a delayed delivery.
- 3.4 Panthronics AG may make partial or advance deliveries. Claims for shortages shall be made within 30 days of the delivery, in case of partial deliveries, 30 days from the delivery of the final instalment. Buyer shall be barred from making any claims for shortages thereafter.
- 3.5 Unless Buyer contests the delivery within ninety days of receiving Panthronics AG's invoice and demands a proof of delivery from Panthronics AG, the delivery shall be deemed completed.
- 3.6 The place of performance for Services shall be Panthronic AG's seat.

4. PAYMENT TERMS / RESERVATION OF TITLE

- 4.1 Payments shall be due 30 days from the date of the invoice, whether a final or partial invoice.
- 4.2 Buyer shall not be entitled to retain amounts payable or make set-offs against payment obligations, whether for alleged warranty claims or on any other grounds.
- 4.3 In the event of late payment by the Buyer, Panthronics AG is, at its sole discretion and without prejudice, entitled to:
- (a) demand immediate payment and charge default interest of 12% p.a.; and
 - (b) suspend its own obligations and rescind the contract after lapse of an adequate grace period in accordance with clause (9).
- 4.4 Panthronics AG shall retain the title to all products until Buyer has fully paid all amounts invoiced, including interest, if applicable. Buyer hereby assigns as collateral to Panthronics AG all of its claims related to the resale of Products, for which Panthronics AG has retained the title, including sale proceeds, purchase price claims and amounts payable pursuant to insurance policies. Buyer shall make available to Panthronics AG all of books and records to the extent required to collect the claims assigned to Panthronics AG.

5. LIMITED WARRANTY

- 5.1 Panthronics AG warrants to Buyer for a period of 12 months upon delivery that the Products conform with the specifications published by Panthronics AG for such Product and the Products will be free from defects in material and workmanship.
- 5.2 This warranty shall not apply to

- (a) defects caused by neglect or mistreatment of the Products by the Buyer or any third party;
- (b) defects resulting from the Buyer's design specification or instructions
- (c) prototypes, samples and other non-production products.
- (d) defects for which the Buyer fails to demonstrate that they have existed prior to the passing of the risk and benefit to the Buyer in accordance with Section 3.

5.3 Buyer shall notify Panthronics AG in writing of any warranty claims within 14 business days upon delivery, of any hidden defects within 14 days from the day the defect has been discovered. The Buyer's warranty claims are void if Buyer fails to notify Panthronics AG of these claims within the time-periods mentioned in this Section 5.3.

5.4 Buyer shall at Panthronics AG's request provide evidence of the defect and provide samples of the defect Products without undue delay to Panthronics AG.

5.5 Panthronics may, in its sole discretion, chose to comply with any warranty claim fulfilling the requirements of this Section 5. by either (i) repair of the Products, (ii) exchange of the Products, (iii) crediting an appropriate amount of the purchase price to the Buyer in the event the Product remains functional and is of use to the Buyer or (iv) crediting the net purchase price to the Buyer, in the event the Product does not remain functional or is of no use to the Buyer.

5.6 Prior to returning any Products to Panthronics AG, the Buyer shall obtain return approval by Panthronics AG in writing. Buyer bears all costs of return shipping. Panthronics AG does not accept any returns by persons other than the Buyer, including the Buyers customers.

5.7 The Buyer shall bear all ancillary costs in connection with remedying defects (such as, e.g., costs for assembly and disassembly, transport, disposal and travelling expenses).

5.8 Panthronics AG shall not be obliged to fulfill any warranty claims by Buyer's customers, this warranty only extends to the Buyer, who may make warranty claims on behalf of its customers. The Buyer's warranty claims may not be assigned to any third party.

5.9 Other than explicitly provided in this Section 5. Panthronics AG shall not be liable for any indirect, consequential, punitive or exemplary damages or loss of profit resulting from a defect in a Product.

6. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY

6.1 All Products sold and Services provided by Panthronics AG, which were identified by Panthronics to contain confidential information or which one would reasonably consider to contain confidential information, must be held in confidence by the Buyer and shall not be disclosed to any third party by the Buyer. Buyer shall treat such confidential information with no less care than it treats its own confidential information.

- 6.2 All intellectual property rights contained in or arising out of Products sold or Services provided to the Buyer shall belong to Panthronics AG. Neither the sale of any Products or provision of Services by Panthronics AG shall be construed as to conferring a license or an intellectual property right to the Buyer. The provision of services by Panthronics AG shall not be construed to constitute work for hire. Buyer shall not be entitled to use the Products or Services for any other purposes as explicitly permitted by Panthronics AG or reasonably to be expected to be used for.
- 6.3 The Buyer shall not use Panthronics AG's trademarks, trade names or other corporate design without Panthronics AG's explicit, written consent.
- 6.4 Buyer shall not reverse engineer, decompile, disassemble or otherwise attempt to derive any intellectual property from the Products sold or Services provided by Panthronics AG. Buyer shall assign all rights related to any modification of Products or software of Panthronics AG to Panthronics AG.
- 6.5 If any Product of Panthronics AG becomes the subject of a claim of infringement of any copyright or patent, Panthronics AG shall, at its option and expense, either: (a) modify it to make it non-infringing; (b) settle such claim by procuring for Customer the right to continue using the Product; or (c) defend Customer against such claim provided that the Customer gives Panthronics AG prompt written notice of all facts and circumstances necessary or desirable for a proper defense of the claim. Panthronics AG will not be responsible for any settlement made without its written consent. Any indemnification will be limited to patent claims that are infringed or asserted to be infringed by features realized within Product of Panthronics AG.

7. LIABILITY

- 7.1 These terms exhaustively list all remedies and claims available to the Buyer in relation to the purchase of Panthronic AG's Products or provision or Services by Panthronics AG. All other claims or remedies based on any grounds shall be excluded to the widest extent permitted by law.
- 7.2 In any event, Panthronic AG's liability shall be limited to an amount equal to three times the net purchase price of each order, respectively the net service fee of each Service.
- 7.3 Compensation for claims for damages shall be time-barred 6 months after their discovery, the latest however two years after passing of the legal and commercial risk pursuant to Section 3.1.

8. COMPLIANCE WITH LAWS

- 8.1 Panthronics AG and Buyer, each of them individually, shall comply with all applicable laws and regulations, including but not limited to U.S. Export Administration laws and any export or import control restrictions in the applicable jurisdictions.
- 8.2 Panthronics AG may suspend its obligations under these Terms if the delivery of Products is subject to any import restriction and Buyer has failed to obtain a permit or delivery is illegal.

- 8.3 Panthronics AG does not warrant that its Products will comply with any government or public entity acquisition statutes, regulations or laws or may be used as a component in any critical medical device, including life support systems or any devices intended for implantation in the human body.
- 8.4 Each party shall maintain secrecy about any personal data received from the other party and establish appropriate safeguards for such data in accordance with the General Data Protection Regulation, to the extent applicable.

9. RESCISSION AND TERMINATION

9.1 Without prejudice to any of its rights, Panthronics AG may rescind the contract concluded with the Buyer pursuant to these Terms if:

9.1.1 Buyer fails to make payment when due, after Panthronics AG has sent at least one payment reminder to the Buyer,

9.1.2 Buyer fails to accept Products it has purchased from Panthronics AG, after Panthronics AG has sent at least one demand to accept Products to the Buyer

9.1.3 if Panthronics AG may have reasonable doubts regarding the Buyer's solvency and Buyer fails to make an advance payment;

9.1.4 insolvency, bankruptcy or any other restructuring proceedings are opened over the Buyer or the Buyer's assets

9.1.5 Buyer violates any provisions under these Terms.

9.2 Sections 6 and 10 of these Terms shall in any event survive the rescission of the contract concluded between Panthronics AG and the Buyer.

10. GOVERNING LAW AND JURISDICTION

10.1 These Terms shall be interpreted, construed and governed in all respects in accordance with the laws of Austria, without regard to its conflict of law provisions. The CISG shall not apply.

10.2 All disputes in relations to these Terms, including disputes relating to their validity, breach, termination or nullity, or in general all disputes related to the sale of Products or provision of Services by Panthronics AG, shall be exclusively submitted to:

10.2.1 the competent courts at the seat of Panthronics AG, provided that the Buyer has its seat or habitual abode in case of a natural person, at the time the dispute arises, within the European Union; or

10.2.2 arbitration pursuant to the Rules of Arbitration (Vienna Rules) of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber by one arbitrator appointed in accordance with the said Rules, if Section 10.2.1. above is not applicable. The seat of arbitration shall be Graz, the language to be used shall be English. The provisions on expedited proceedings (Article 45 Vienna Rules) shall apply.

11. MISCELLANEOUS

11.1 This document constitutes the entire and final agreement between Panthronics AG and Buyer and supersedes all other communications.

- 11.2 Any notice hereunder shall be deemed to have been duly given if sent by e-mail or in writing to Panthronics AG's registered address or office@panthronics.at or to any (e-mail) address used by the Buyer in its communication with Panthronics AG.
- 11.3 Panthronics AG shall be entitled to transfer its rights and obligations under these Terms and the contract concluded with the Buyer to any subsidiary. Buyer hereby waives any rights to terminate its contract with Panthronics AG or a subsidiary of Panthronics AG as a result of such transfer.
- 11.4 The Buyer shall not be entitled to assign its contractual rights and obligations under these Terms to any third party.
- 11.5 Should any of the provisions of these Terms be held invalid or unenforceable, any other provisions of these Terms shall remain valid and enforceable. Any invalid provisions shall be replaced by effective, valid and enforceable provisions, which come as close as possible to the intended business purpose.