

## **Terms and Conditions of Sale and Delivery for PENDIX® towards the dealers**

(Version of May 2018)

### **1. Contracting parties, contract conclusion**

1. These conditions of sale and delivery apply to all deliveries and services of Pendix GmbH, Innere Schneeberger Strasse 20, 08056 Zwickau ("Pendix") with regard to the electric bicycle drive PENDIX® - including components and spare parts - ("drive") to persons, who act as an entrepreneur when entering into the contract in the course of their commercial or self-employed activity ("dealer").
2. The dealer is a bicycle dealer and has the appropriate qualifications and the necessary tools for mounting the drive to end-user bicycles (in accordance with the assembly instructions). The dealer confirms the fulfilment of the above requirements by concluding the contract.
3. Upon conclusion of the contract, the dealer confirms that he is acting solely in his capacity as entrepreneur.
4. All offers of Pendix are non-binding, unless they are expressly marked as binding or contain a specific acceptance period. Orders or assignments can be accepted by Pendix within 14 days after receipt by order confirmation.

### **2. Generalities**

1. All deliveries and services of Pendix with regard to the drive are based on these conditions as well as any separate contractual agreements. Differing conditions of purchase of the dealer are not included in the contract even if the order is accepted.
2. A contract is concluded - in the absence of any special agreement - with the written order confirmation of Pendix.
3. Pendix reserves the right to change these terms and conditions at any time, as far as this is due to a change in the legal situation or supreme jurisdiction, technical changes or developments, new organizational requirements of mass traffic, regulatory gaps in the terms and conditions, changing the market conditions or other equivalent reasons required to maintain the equivalence relationship between the parties and does not disadvantage the customer contrary to the principle of good faith.
4. Changes to the terms and conditions will be communicated to the customer in writing or by e-mail at least six weeks before their entry into force. The changes take effect if the customer does not object in writing or by e-mail within this period of six weeks (starting after receipt of the written change notification) and Pendix has informed the customer of this legal consequence in the change notification.
5. A sale of the drive to the United States of America is not permitted.

### **3. Obligations of the dealer in the sales**

1. A resale of the drive to end customers (consumers) without mounting is not permitted. The drive may only be sold by mounting it on the end customer's bicycle.
2. In case of unlawful resale of the drive without mounting by the dealer, the dealer releases Pendix from any liability towards the end customer. The release does not apply if and to the extent that the liability is due to a defect in the drive itself.
3. The dealer must hand over to the end user all documentation for the drive - in particular the mounting instructions and the user manual together with the EC Declaration of Conformity - and obtain a corresponding confirmation.

4. After mounting the drive, the dealer must fill in the appropriate installation protocol and confirm that the CE test has been carried out in the EC declaration of conformity and he must keep the documents in a permanent copy, so that they can be issued to Pendix immediately upon request.
5. The dealer is prohibited from removing labels, labels or other information from the drive or from the documentation.
6. The dealer must ensure that the bicycle on which the drive is to be mounted complies with the technical requirements in accordance with the installation instructions.

### **4. Intellectual property**

1. PENDIX® is a registered trademark. The drive and all rights in this respect belong only to Pendix.
2. Pendix also reserves ownership and copyrights to samples, cost estimates, drawings and similar information of physical and intangible nature, including in electronic form; they may not be made available by the dealer to third parties. Pendix undertakes to make information and documents designated as confidential by the dealer available to third parties only with his consent.
3. The dealer is entitled to use the word/figurative mark "PENDIX" as part of its distribution of drives to end customers for advertising purposes. Pendix grants the dealer a simple, revocable right to use the word/figurative mark "PENDIX" at any time and provides the retailer with corresponding print data by downloading it at [www.pendix.de](http://www.pendix.de). Any actual use requires the prior consent of Pendix.
4. The use of trademarks and signs of the Pendix for unfair and/or criminal and/or offensive purposes or in a related context (especially on the Internet or on print media) is strictly prohibited.
5. The merchant is prohibited from changing, altering or altering any information, documents and representations of Pendix.
6. The software contained in the drive grants the trader a simple, non-exclusive right to use the software supplied, including its documentation. The software is solely provided to be used in the drive. Any other use of the software is prohibited. The right of use is transferable to the same extent, and in particular also in compliance with the restrictions of section 4.7, by selling the drive to the end customer.
7. The dealer may not duplicate, revise or translate the software or convert it from the object code to the source code. The dealer undertakes not to remove the manufacturer's information - in particular the copyright notices - or to modify it without the prior express consent of Pendix. The dealer is obliged to inform the end customer about this restriction.
8. All other rights to the software and documentation, including copies, remain with Pendix. The granting of sub-licenses is not permitted.

### **5. Delivery, transfer of risk, verification**

1. The delivery time results from the order confirmation.
2. The observance of the delivery time is subject to the correct and timely self-delivery. Any potential delays shall be reported to Pendix as soon as possible. The delivery time is met if the delivery item has left Pendix's plant or is ready for dispatch by the end of its term.
3. If the dispatch of the drive is delayed for reasons for which the dealer is responsible, the costs incurred due to the delay will be charged to him,

starting one month after notification of readiness for dispatch.

4. If the non-compliance with the delivery time is due to force majeure, labour disputes or other events beyond the control of Pendix, the delivery time shall be extended accordingly. Pendix shall notify the dealer of the beginning and end of such circumstances as soon as possible.
5. The risk passes to the dealer when the drive has left the factory, even if partial deliveries are made or Pendix has taken on other services, such as shipping costs or delivery.
6. The dealer must check the drive immediately after receipt for completeness (drive and documentation according to the order form) and confirm this accordingly on the delivery note.
7. The dealer may not refuse to accept the drive due to insignificant defects.

#### **6. Delivery delay**

1. If the shipment is delayed or omitted due to circumstances beyond the control of Pendix, the risk shall pass to the dealer from the day of notification of readiness for shipment. Pendix agrees to take out the insurance required by the dealer at the expense of the dealer.
2. If Pendix is in default and causes damage to the dealer from this, he is entitled to demand a lump-sum compensation for delay. This compensation for delay amounts to 0.5% for each full week of the delay, but in total no more than 3% of the order value of the affected drive, which cannot be mounted on time or according to the contract due to the delay. A further claim for damages is excluded. The right to withdraw from the contract remains unaffected. Pendix is at liberty to prove a lesser damage than was claimed by the dealer.
3. If the dealer - taking into account the legal exceptions - sets a reasonable deadline for Pendix after the due date and if the deadline is not met, the dealer is entitled to withdraw within the scope of the statutory provisions. He agrees to declare, at the request of Pendix, within a reasonable time, whether he makes use of his right of withdrawal or not.

#### **7. Price and payment**

1. Unless otherwise agreed, prices are ex works (seat of Pendix) including packaging but excluding shipping.
2. All prices are net prices and apply in each case plus statutory VAT.
3. Unless otherwise stated in the order form and confirmed by Pendix, payments are to be made without any deductions.
4. Payments to Pendix are due within the term of payment stated on the invoice. If no payment period is specified, the payment is due no later than 7 days after receipt of the invoice. All payments must be made to the account specified in the invoice.
5. If payments are made to Pendix under the SEPA direct debit procedure by issuing a direct debit authorisation, the pre-notification period of the SEPA direct debit is one day, different from the SEPA Business to Business Direct Debit Scheme Rulebook (Version 7.2), section 4.3.4.
6. The right to offset payments or counterclaims from other legal relationships, the merchant is only to the extent that his counterclaims are undisputed or legally established.
7. The trader will be in arrears without further notice if he does not pay at maturity. Decisive is the receipt of the invoice amount on the account of Pendix. If the merchant defaults on payment, he has to pay interest at the rate of 9% p.a. above the statutory base rate, but at least 10% p.a. to Pendix. Pendix reserves the right to assert a higher damage caused by delay as well as the proof of the dealer that Pendix suffered no or less delay damage.

#### **8. Retention of title**

1. Pendix reserves ownership of the drive and all items supplied until the receipt of all payments - also for any additional payments owed - from the delivery contract.
2. Pendix is entitled to insure the drive at the expense of the dealer against theft, breakage, fire, water and other damages, unless the dealer itself has demonstrably concluded the insurance.
3. The dealer may not sell, pledge or transfer the drive until the transfer of ownership. In the event of seizure, confiscation or other disposition by a third party, the dealer must notify Pendix immediately.
4. In case of breach of contract by the dealer, in particular in the case of late payment, Pendix is entitled to take back the drive after a warning and the dealer is obliged to surrender it.
5. The application for insolvency proceedings entitles Pendix to withdraw from the contract and demand the immediate return of the delivery item.

#### **9. Claims for defects, disclaimer**

1. For defects of quality and title, Pendix shall be liable according to this clause 9.
2. Material defects
  - a) The drive must be inspected carefully immediately after delivery. The delivery and the drive are considered as approved if the dealer does not complain to Pendix of obvious defects or other defects immediately after delivery, or if it complains to Pendix - in the case of hidden defects - immediately after the discovery of the defect, or after the time when the defect was detectable to the dealer in normal use of the drive without further investigation.
  - b) At the request of Pendix, the drive for which the complaint was filed, must be returned carriage paid to Pendix. In the case of a legitimate complaint, Pendix shall pay the most cost-efficient shipping route.
  - c) In the case of defects occurred before the risk transfer, Pendix shall at its own discretion repair or re-deliver.
  - d) The dealer shall give Pendix sufficient time to carry out the necessary rework and replacement after appropriate agreement.
  - e) The dealer must take all necessary measures to limit the damage and in so far follow the instructions of Pendix.
  - f) Claims for defects are prescribed within 12 months from the day of delivery.
  - g) Further claims are exclusively based on clause 9 of these conditions.
  - h) Pendix is only liable for such defects that occur under the operating conditions stipulated in the contract and when the drive is used properly. No liability is assumed in particular if and insofar as the defect
    - occurred due to a mounting or commissioning effected by the dealer, which was not performed according to the mounting instructions or other instructions of Pendix,

- is attributable to circumstances occurring after the transfer of risk, such as defects due to natural wear and tear, faulty or negligent handling, improper maintenance, unsuitable equipment, electrochemical or electrical influences, unless they are the responsibility of Pendix,
- is caused by an improper repair by the dealer or a third party,
- is caused by an unauthorized intervention in the drive by the dealer or third parties.

i) Replaced defective parts must be provided to Pendix and they shall be transferred to the property of Pendix.

### 3. Defects in title

a) In the case of infringement of intellectual property rights or copyrights of third parties through the distribution or use of the drive, Pendix will, at its own expense, give the dealer the right to further use or he will modify the drive in a way that is reasonable for the dealer so that the infringement of property rights no longer exists.

If this is not possible on economically reasonable terms or within a reasonable period, the dealer is entitled to withdraw from the contract. Under the above conditions, Pendix is also entitled to withdraw from the contract.

b) The obligations of Pendix referred to in lit. a) are final, subject to clauses 9.4 and 9.5, in the event of infringement of intellectual property rights or copyrights of third parties.

c) The obligations of Pendix referred to in lit. a) shall exist only if:

- the dealer immediately notifies Pendix of the alleged infringement of any intellectual property rights or copyright of third parties,
- the dealer supports Pendix adequately to assist in defending claims or making modifications to the drive,
- the defect of title is not due to a non-contractual behaviour of the dealer, in particular in the case of changes to the drive or distribution outside the distribution restrictions.

4. Beyond the provisions of this clause 9, Pendix is not liable for defects or other damages. This applies to any damage caused by a defect or other breach of duty, such as loss of production, lost profits and other indirect damages. The limitation of liability does not apply in case of intent or gross negligence or culpable injury to life, body or health. The limitation of liability also does not apply in case of culpable violation of essential contractual obligations. Significant contractual obligations are those obligations the fulfilment of which enables the proper execution of the contract in the first place and on the compliance of which the dealer regularly trusts and may rely. In case of slight negligence, Pendix is only liable for the contractually typical, reasonably foreseeable damage.

5. Furthermore, the limitation of liability does not apply in cases where liability for personal injury or property damage to privately used objects is assumed under product liability law. It also does

not apply to defects that Pendix has fraudulently concealed, or whose absence Pendix has guaranteed.

### 10. Force majeure

1. In cases of force majeure, each party shall be entitled to terminate its contractual obligations to the extent that it renders the fulfilment impossible or unreasonably difficult, this includes, in particular, labour disputes and all party-independent circumstances such as fire, war, confiscation, embargo, restrictions on energy consumption, foreign exchange and export restrictions, epidemics, natural disasters, extreme natural events, acts of terrorism and defective or delayed deliveries by subcontractors due to the circumstances set out in this clause 10.1. This does not apply if the restriction was foreseeable at the time the contract was concluded.

2. The party claiming force majeure shall notify the other party immediately and in writing of the occurrence and the end of such circumstance.

3. Notwithstanding any established effects of these Terms, each Party shall have the right to terminate the contract by written notice to the other party if the restriction of performance under clause 10.1 lasts for more than six months.

### 11. Guarantee handling

1. Pendix provides private end users with a manufacturer's guarantee of 2 years from the date of purchase for new drives. The corresponding guarantee terms are part of the user manual.

2. Before the drive is delivered, the dealer is obliged to fill in the mandatory mounting instructions in the user manual.

3. If the end customer has a guarantee claim, the dealer has to take over the removal and reinstallation of the drive once at his own expense. All further guarantee work must be provided by the dealer at a maximum hourly rate (net) of EUR 40.00. The net hourly rate applies including all material and tool costs.

4. Disassembled components must be returned to Pendix by the dealer for guarantee testing. Pendix refunds the shipping costs retroactively after deciding whether a guarantee claim exists.

5. The execution of guarantee work by third parties on behalf of the dealer is only permitted after approval by Pendix.

### 12. Applicable law, jurisdiction

1. The legal relationship between Pendix and the dealer is exclusively subject to the law of the Federal Republic of Germany, excluding the UN Sales Convention (CISG) and the conflict of laws.

2. The exclusive place of jurisdiction for all disputes arising out of and in connection with the delivery of the drive is - as far as legally permissible - the court competent for the seat of Pendix. However, Pendix is entitled to file suit at the dealer's headquarters.

We hereby confirm that the above translation corresponds to the original text. It has been produced to the best of our knowledge and belief.

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