

ROWASOL GmbH

General Terms and Conditions of Sales and Delivery for Business Dealings with Companies

1. General – Scope

1.1 All sales contract conclusions and deliveries are made exclusively on the basis of the following terms and conditions. These terms and conditions shall also be deemed accepted for all subsequent business dealings even if we do not refer explicitly to them in other contracts or during the course of orders by telephone. Should any other terms or conditions apply in an exceptional case - in particular the buyer's terms and conditions of purchase - this requires our explicit written confirmation. If we supply goods, this does not mean that we acknowledge the buyer's terms and conditions; in contrast, the buyer is deemed to have accepted our Terms and Conditions by accepting the goods.

1.2 Our Terms and Conditions of Sales and Delivery only apply to transactions with entrepreneurs, legal entities of public law, and special funds under public law.

2. Conclusion of Contract

2.1 Our offers are non-binding in terms of price, quantity, delivery periods and availability and shall merely be regarded as an invitation for the buyer to submit a binding order. Oral or written orders shall constitute a firm offer which is binding for the buyer for 14 days. The contract becomes effective by our order confirmation (including by email) or by our delivery of the goods ordered.

2.2 Documentation belonging to our non-binding offer such as technical data sheets, weight and dimension specifications, etc., is stated as accurately as possible but only represents approximations and do not constitute binding property information unless it is expressly designated as binding. Contracts shall only be concluded by our order confirmation. The same shall apply if we carry out the order implicitly.

2.3 The object of the contract is solely the sold product with the respectively guaranteed characteristics and features. The goods also are to be seen as free of quality defects subject to § 434 German Civil Code (BGB) especially if they are not appropriate for the customary use and/or show a condition which remains behind customary condition. Public statements, recommendations or advertising do not represent a contractual quality of the goods. The only decisive factor for defect-free goods is the quality agreed upon between the parties. Excess or short deliveries customary in the industry of up to plus/minus 10% are permissible.

3. Prices

3.1 Should we generally reduce or increase our prices in the time between confirming an order and delivery, the price valid on the date of delivery shall apply.

3.2 Price increases in accordance with section 3.1 are permissible if they are based on changes in price-forming factors which occurred unforeseeably after conclusion of the contract and for which we are not responsible; the amount of the price increase must be justified by the change in the price-forming factors and notified to the buyer within a reasonable period.

3.3 In the case of a price increase in accordance with section 3.1, the buyer has the right to rescind the purchase contract. Neither party can derive any rights, in particular claims for damages, therefrom.

3.4 Any changes to customs duties, to other fees pertaining to the goods, and to freight charges occurring after the conclusion of the sales contract shall be credited or charged to the buyer, if the buyer is under a contractual obligation to bear these costs.

4. Payment terms

4.1 Unless otherwise confirmed in writing, invoices are to be paid without deduction within 30 days of the date of invoice. Bills of exchange or cheques will only be accepted for the sake of fulfilment following explicit prior agreement. The buyer shall bear all bank fees.

4.2 In case of delay of payment, the buyer shall pay default interest in the amount of 9 percentage points above the base interest rate. We explicitly reserve the right to claim further damages caused by the delay in payment.

4.3 In the event of a significant deterioration in the financial circumstances of the buyer occurring after the conclusion of a purchase contract jeopardizing the seller's claims, the existence of bill and cheque protests, an application has been made for the opening of insolvency proceedings against the buyer's assets or the buyer becomes insolvent, we are entitled to make further deliveries only against advance payment or securities, irrespective of any payment terms granted. In addition, without prejudice to further rights, we shall be entitled to rescind the contract after expiry of a reasonable grace period for payment or provision of security under threat of refusal. All outstanding invoices shall become due immediately.

4.4 Offsetting against our claims with disputed counterclaims and/or counterclaims, which have not been legally established and/or are not ready for decision is not permitted. The same applies to the exercise of rights to refuse performance and rights of retention. The buyer's rights arising out of this contract may not be assigned to third parties unless otherwise agreed in writing.

5. Delivery time

5.1 Periods and dates for deliveries and services promised by the seller are always only approximate, unless a fixed term or fixed deadline is explicitly confirmed or agreed upon.

5.2 We shall not be liable for the impossibility of delivery, for non-deliveries or for delays in delivery, if these are caused by force majeure or other events not foreseeable at the time the contract was concluded (e.g. epidemics, pandemics, all forms of disruptions in operations, fire, floods, earthquakes, tsunamis, volcanic eruptions, war, difficulties in procuring materials, energy, packaging or transport space, transport delays, strikes, vandalism, lawful lockouts, lack of manpower, energy or raw materials, difficulties in procuring the necessary official permits, measures by public authorities or wrong or delayed delivery by suppliers), for which we are not responsible.

5.3 Due to such circumstances mentioned in section 5.2 affecting the execution of the purchase contract, we are entitled to postpone the delivery by the corresponding time. Both contractual parties are entitled to withdraw from the contract, if circumstances as mentioned in section 5.2 lead to a delivery delay of more than four months. In case the delivery becomes impossible or unreasonable as a result of the circumstances mentioned in section 5.2 for which we are not responsible, we reserve the right to withdraw from the contract in full or in part because of the non-performed part. In this case, the buyer shall not be entitled to any claims for damages resulting from non-delivery against us. Any statutory rights of withdrawal shall remain unaffected by this.

5.4 Section 10 applies to the buyer's damage compensation claims due to delay or impossibility.

6. Assumption of risk

Goods are delivered exclusively at buyer's risk, irrespective of who bears the cost of freight. The risk passes to the buyer at the latest when the goods are handed over (the start of the loading process is the decisive point in time) to the forwarding agent, freight carrier or a third party appointed to carry out the shipment. This shall also apply, if partial deliveries are made or if the seller has taken over other services (e.g., dispatch or installation). If delivery or transfer is delayed due to circumstances caused by the buyer, the risk shall pass to the buyer from the day on which the goods are ready for dispatch and the seller has notified the buyer accordingly.

7. Retention of title

7.1 All goods delivered by us shall remain our property until complete payment of all claims, including future claims, arising from all business relations, including settlement of a current account balance.

7.2 The goods subject to retention of title may not be pledged to third parties nor assigned as security until the secured claims have been paid in full. The buyer must inform us immediately in writing if an application is made to open insolvency proceedings or if the goods belonging to us are seized by third parties (e.g. by way of attachment).

7.3 Further processing shall be carried out for us as manufacturer within the meaning of § 950 German Civil Code (BGB) without any obligation on our part. If, in the case of §§ 947 para.2 and 948 of the German Civil Code (BGB), one of the buyer's items is the main component, the buyer hereby transfers his co-ownership at a ratio of the invoice value of the goods processed in each case by us to the total value of the main component. If processing is carried out together with third party materials, we acquire co-ownership at a ratio of the invoice value of our goods to that of the other materials. The co-ownership thus acquired shall be deemed reserved goods, which the buyer shall store for us free of charge.

7.4 Reselling goods subject to retention of title is only permitted in the course of normal business and may be prohibited by us in the event of section 4.3. The buyer shall inform us without delay, if third parties gain access to goods and claims belonging to us. Claims from resale are hereby assigned to us in the sum of the outstanding amount until all our invoices have been settled. We hereby accept this assignment. The obligations of the buyer stated in section 7.2 shall also apply in respect of the assigned claims. Should the value of existing collaterals exceed the claims by more than 10% in total, we shall be obliged to release collaterals of our choice at the buyer's request.

8. Intellectual Property

8.1 All knowledge, documents and objects originating from us, such as e.g. formulas and processing information, drawings, samples or models, which we provide to the buyer in connection with our offers and our technical application advice, shall remain in our ownership. We reserve all property rights and related rights in terms of the Copyright Act (Urheberrechtsgesetz) concerning this knowledge, documents and objects. Without our prior written consent, the buyer is not allowed to disclose knowledge, documents or objects to third parties.

8.2 The buyer undertakes not to file an application for property rights relating to the intellectual property rights and related rights mentioned in section 8.1 and not to grant any licences relating to these intellectual property and related rights to third parties or affiliated companies.

9. Warranty

9.1 The buyer is obliged to carefully inspect the goods purchased for defects immediately upon arrival at their destination. Should the buyer discover a defect, he must notify the seller of this immediately, at the latest within 10 working days after receipt of the goods at the place of destination, giving a precise description of the defect. Otherwise, the goods are deemed to have been approved. If the defect was not recognizable upon delivery despite careful inspection of the goods, the defect should be reported immediately, at the latest within 10 days of its discovery.

9.2 The notification of defects as mentioned in section 9.1 has to be submitted in written form.

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9.3 We do not assume any liability after processing of the sold goods and for consequences caused by improper use of the sold goods.

9.4 In case of material defects, we shall, at our discretion, either remedy any defect or deliver defect-free goods (subsequent performance). Our right to refuse subsequent performance under the statutory conditions shall remain unaffected. In case of failure, i.e. impossibility, unreasonableness, refusal or unreasonable delay of subsequent improvement or replacement delivery, the buyer may withdraw from the contract or reduce the purchase price adequately. In the case of an insignificant defect, however, there is no right of withdrawal. If the defect is based on the fault of the seller, the buyer can claim damages under the conditions specified in section 9.1.

9.5 All warranty claims for defects shall be void if the buyer does not give us the opportunity to inspect the identity of the goods complained about and the defects presented on site and does not provide us with samples or specimens immediately upon request. Claims shall also be void if goods processing is not stopped immediately after discovering the defect(s) or our goods are mixed or combined with goods of other origin.

9.6 The buyer's claims shall expire within one year, starting from the transfer of the purchased goods to the buyer. This does not apply to defects fraudulently concealed by us and claims for compensation by the buyer because of injury of life, limb or health or due to grossly negligent or intentionally caused damages. In such cases, the statutory limitation period shall apply.

9.7 Our oral and written advice on technical application is non-binding – also in terms of any third party property rights – and does not release the buyer from inspecting the products we supply for their suitability for the intended processes and purposes as well as their conformity with third party property rights.

10. Compensation for damages

10.1. We shall be liable only in case of intent or gross negligence for claims for damages resulting from culpable acts, irrespective of their legal reason, such as delay, defective or wrong delivery, infringement of duties arising from contractual obligations or infringement of duties during contract negotiations, unlawful act, product liability (excluding liability under the Product Liability Act - Produkthaftungsgesetz). The liability for slight negligence is excluded, unless it constitutes a violation of essential contractual obligations (cardinal duty). The concept of cardinal duties abstractly defines duties, whose proper fulfilment allows the contract performance in the first place and the compliance of which the contractual partner regularly may rely on. In case of a violation of a cardinal duty, the liability is limited to the damage that is typically to be expected upon conclusion of the contract. In case our liability is limited or excluded, this shall also apply to our employees, representatives and agents. The limitations of this section 10 do not apply to our liability for gross negligence or intentional conduct, for guaranteed qualities, injuries to life, body or health or liability pursuant to the Product Liability Act.

10.2. We are not liable for any agreements between the buyer and its buyers which go beyond the statutory warranty claims or any costs arising therefrom.

10.3. We expressly exclude any liability going beyond and above the aforementioned liability provisions.

11. Final provisions

11.1 The contracting parties follow the applicable legal data protection provisions.

11.2 Insofar as the buyer is a merchant, the place of jurisdiction for all disputes arising in connection with this contract is, at our choice, Hamburg or the buyer's registered office. The place of jurisdiction for lawsuits brought by the buyer shall be Hamburg exclusively. Statutory provisions on exclusive competences remain unaffected.

11.3 The relations between us and the buyer are governed by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) as well as other, including future, inter-state or international agreements shall not apply, even after their adoption into German law.

11.4 Should any of the above provisions be invalid, this shall not affect the validity of the remaining provisions. Insofar as the contract or these General Terms and Conditions of Sales and Delivery contain any loopholes, those legally effective regulations that would have been concluded if the parties had been aware of the loopholes before conclusion, shall be deemed to have been agreed upon on the basis of the economic objectives of the contract and the purpose of these General Terms and Conditions of Sales and Delivery.