

# Terms and conditions of sale, delivery and payment

## I. General

- The following terms and conditions shall apply to all quotations and conclusions of purchase contracts, also for subsequent transactions, to the extent that they have not been effectively superseded by new ones. They shall be deemed acknowledged upon placement of an order. The purchase contract shall only become binding for us in accordance with the provisos of our terms and conditions of sale, delivery and payment with our order confirmation.
- Provisions in general terms of conditions of business of the customer shall be ineffective should these breach statutory regulations, in particular if these (i), unreasonably impair the supplier in breach of the principle of trust and good faith, (ii) are not clear and understandable, (iii) are not compatible with the basic intent of the statutory provisions from which they deviate or (iv) restrict key rights or obligations of the supplier which arise under the nature of the contract in such a way that the attainment of the contractual purpose is endangered (hereinafter jointly referred to as the "ineffective general terms and conditions of business of the contracting partner").  
In relation to the supplier, the customer shall be obliged in relation to the supplier, the customer shall be obliged (i) not to provide the supplier with ineffective general terms and conditions of business of the contracting partner, (ii) not to include ineffective general terms and conditions of business of the contracting partner in contracts with the supplier or (iii) to claim or assert rights or entitlements under the ineffective general terms and conditions of business of the contracting partner against the supplier.
- Only the listed articles in this catalogue are available, no further modifications can be made.

## II. Prices

- Prices in € exclusive of VAT.
- The prices stated in our order confirmation shall be deemed agreed. If the costs underlying our calculation increase between the order confirmation and acceptance, to the extent that the latter is more than 4 months after the order confirmation, we shall be entitled to correct the prices stated in our order confirmation until final completion of the order placed with us, portraying the increases in the salary, material and general business costs occurring from the time of the order confirmation.
- Our prices shall be understood franco domicile within Germany (mainland border).
- Dispatch shall be by truck. In the event of rail dispatch, packaging shall be charged separately.

## III. Payment terms, assignment of claims, factoring

- The purchase price shall be due for payment within 30 days after date of invoice. Granting of discount shall be stated on our order confirmation and invoice.
- In arrears of payment for more than 14 days, all claims from further deliveries not yet paid shall become due for payment immediately. This shall also apply to bills not yet honoured. We shall be entitled to demand immediate payment against return of the bill.
- In arrears of payment, we shall charge default interest according to statutory directives and the additional costs incurred by us as a result of arrears. The right to claim further damages shall be expressly reserved.
- We shall be entitled to withdraw from the contract if any essential deterioration in customer's economic situation occurs after conclusion of the contract, as a result of which the claim to consideration is jeopardised or if such a situation of customer already in existence at the time of the conclusion of the contract only becomes known later. If no delivery has yet been made, we shall be entitled to demand advance payment in lieu of withdrawal.
- Offsetting against counterclaims by Customer shall be ruled out unless they are undisputed or legally effective.
- We are entitled to assign claims against our customers from deliveries and services to third parties to the extent which exists under the law (for example to a bank or a factor). The customer hereby agrees to the disclosure to the third party of the data which is necessary to collect the claims.

## IV. Reservation of contractual penalty

- Any contractual penalty agreed between ourselves and the customer in an individual case requires a declaration of reservation by the customer in text form at the time of acceptance of the goods in order to be enforceable.
- A contractual penalty reservation must be addressed to us directly. Our employees, drivers or other third parties are not authorized to take receipt of a contractual penalty reservation.

## V. Delivery Period

- We deliver the goods by loading these on to the applicable means of transport and making these available to the customer at the named unloading location in the ramping or commissioning area.
- Statements on the delivery period shall be non-binding and subject to change without notice. Delivery periods shall be calculated in such a way that we can comply with them according to our experience.
- Agreements on binding delivery periods shall require our express confirmation in text form. Subsection shall apply accordingly. The start of the delivery period stated by us shall additionally presuppose clarification of all technical questions.
- If call orders are not called within three months, we shall be entitled either to insist on immediate acceptance or to withdraw from the contract if no call has taken place despite the setting of a period of grace.
- We shall be liable according to statutory directives to the extent that the underlying purchase of contract is a fixed-date purchase within the meaning of §286 sub-section 2 no. 4 German Civil Code of §376 German Commercial Code. We shall also be liable according to statutory directives insofar as Customer is entitled to claim that its interest in the further performance of the contract has been forfeited as a result in arrears in delivery for which we are answerable.
- We shall further be liable according to statutory directives insofar as the arrears in delivery are based on a deliberate or grossly negligent breach of contract for which we are answerable; culpability of our representatives or vicarious agents shall be ascribed to us. Insofar as the arrears in delivery are not based on a deliberate or grossly negligent breach of contract for which we are answerable, our liability for damages shall be limited to the foreseeable damage typically occurring. Insofar as the arrears in delivery are based on the negligence of a carrier instructed by us to carry out the delivery, our liability for the amount of damage caused by the delay shall be limited to the statutory regulations of the law of public transportation, i.e. according to §431 III HGB (German Commercial Code), respectively Article 23 V CMR.
- We shall also be liable according to statutory directives insofar as the arrears in delivery for which we are answerable are based on a culpable breach of cardinal contractual duty; however, in such a case, the liability for damages shall be limited to the foreseeable damage typically occurring.

## VI. Sale to destination by buyer's instructions, unloading standards, additional and reduced deliveries

- To the extent not otherwise agreed, the goods shall be dispatched from the place of performance to the place of residence or the location of the business branch offices of Customer (§447 German Civil Code). Risk shall pass to Customer as soon as the sold commodities have been supplied or handed over to the haulage contractor, the freight forwarder or any other person or institution commissioned with the dispatch. This shall apply to all dispatch possibilities to be considered, also in franco, franco domicile, delivery of for dispatch by own means of transport. In the latter case, liability pursuant to §278, German Civil Code, shall be ruled out.

- We will draw up loading standards and notify the customer of these, which ensure the mutual interests of the parties in an efficient and rationalized supply to the customer.
- We are entitled to carry out additional or reduced deliveries which are customary in the trade. To the extent stated above, the customer is not entitled to refuse acceptance.
- Customer shall be obligated to examination of the goods for transport damage immediately upon delivery and to have it confirmed immediately by the freight forwarder and to notify us of it within three days.
- Rejection of acceptance on account of transport damage shall be inadmissible. All and any warehouse and freight costs due shall be charged to Customer.

## VII. Liability for defects, complaint obligations

- Defect complaints of the customer are subject to the customer having complied with its statutory inspection and complaint obligations (§§ 377, 381 of the German Commercial Code-HGB).
- The customer must raise an immediate complaint in relation to open defects, at the latest within 2 working days. The timely sending of the defect complaint suffices in order to comply with the deadline for sending it. All defect complaints require written form to be valid.
- The customer shall be deemed to have fulfilled its inspection obligation if it checks the goods for externally recognizable quantitative or qualitative defects without opening the packaging and using suitable methods (hereinafter the "suitable inspection methods"). In particular, but not conclusively, suitable inspection methods are (i) checking the quantity of goods delivered, (ii) a visual inspection of the packaging and (iii) checking the goods for externally recognisable damage during transportation or other damage.
- No liability shall be assumed for defects not notified in good time, unless they are defects which cannot be recognised immediately and occur within the period of barring by limitation of 12 months after delivery. If defects which cannot be recognized from the outset occur within the period of barring by limitation, the notification of defects must likewise be made without delay, albeit no later than one week after discovery.
- Liability for defects shall be ruled out for slight deviations in the dimensions and the finish and also in colours, especially for subsequent orders.
- If a notification of defects is acknowledged by us or judicially deemed substantiated, we shall be obligated to warrant by after-working or replacement delivery to start with, at our choice, to the extent that no case of §478 German Civil Code exists. Customer shall not be entitled to return defective goods to us without our prior approval.
- If subsequent performance fails, Customer can, as a matter of principle, demand a reduction of the remuneration or cancellation of the contract (withdrawal) at his choice. In the event of only a slight breach of contract, in a particular only insignificant defects, no right of withdrawal shall accrue to Customer. In the event that Customer chooses withdrawal, he shall not be entitled to any additional claim for damages.
- Rauch does not assume liability in case of any colour deviation.
- If Customer selects damages following failed subsequent performance, the goods shall remain with Customer if this can reasonably be expected of him. Damage shall be limited to the difference between the purchase price and value of the defective object. This shall not apply if we have caused the breach of contract deliberately or grossly negligently.
- Only our product description shall be deemed agreed as properties of the goods as a matter of principle. Public comments, offers for sale or advertising shall not represent a contractual assurance of properties of the goods.

## VIII. Retention of title

- Delivery shall be subject to retention of title pursuant to §449 German Civil Code with the following extensions:
- The goods shall remain our property until complete payment of all claims originating from the business relationship, be they from earlier or from later deliveries. Open bills shall not be deemed payment made.
  - Retention of title shall also extend to products manufactured as result of working, further processing or blending of our goods. Accordingly, it shall be deemed agreed that the products manufactured in this way shall be assigned to us by way of security and the hand-over is replaced by conclusion of a lease relationship.
  - Customer shall be entitled to resale of the goods in the course of its customary business operations. Assignment by way of security of the goods under our retention of title to third parties shall then only be within the framework of ordinary course of business if Customer reserves title pursuant to §449 German Civil Code until complete payment of our claims. To secure all our claims against our customer, the right and claims from said conditional ownership and from the resale are here and now assigned to us. If the goods supplied by us are sold in combination with other goods supplied by us, assignment of the contractual claims from the resale shall only be to the amount of the goods supplied by us under retention of title and sold in this context. The assignment shall act to secure our open claims from goods, regardless of whether they have been included in a current account or not. Notwithstanding the assignment, Customer shall be entitled to collect the claims against the final customers. We shall not make the claims assigned to us as long as Customer properly complies with its payments obligations. Upon our request, Customer shall notify the debtors, disclose the assignment and notify us of the terms and conditions of the contracts and the payments made. We shall be entitled at any time to demand from Customer that it keeps the yield of the goods resold under our retention of title separately and pays it to the amount of our claims from goods without delay. If Customer fails to comply with its payment obligations, its economic situation deteriorates or if a deterioration is to be feared, we can, also for deliveries already made, demand in lieu of the aforementioned general provisions concerning prolonged and extended retention of title that the resale of the conditional commodities supplied by us may only take place according to the provisions of our approval to be granted specifically for the individual case. In such a case, simple written notification by us shall suffice.
  - If the goods supplied by us have passed into total ownership of Customer, but are not yet in store with it, and if new goods are supplied, the following shall here and now be deemed agreed as securing of our rights and in the interest of a clarification of the situation of ownership to the goods supplied: Customer shall assign the goods which have been passed into its ownership back to us. Hand-over shall be replaced by the agreement of a lease-relationship. We shall re-assign the commodities assigned back to us to Customer under the suspensive condition of complete payment of all debts for goods. The provisions under sub-section 3 shall apply accordingly to said retention of title.
  - If the value of the collateral provided to us exceeds our claim from delivery by a total of more than 25%, we shall, upon request by Customer, be obliged to reassignment to his extent. In this context, Customer shall make the request for each individual case and designate the existing collaterals individually in detail.

## IX. Catalogues, brochures and similar

Catalogues, illustrations, price lists etc. provided to Customer shall remain our property. They may not be provided or made accessible to other suppliers in any other way. Upon request, they shall be returned to us without delay.

## X. General Limitation of Liability, Limitation Period

- We are liable in accordance with legal statutory to the extent that the Customer asserts damage compensation claims based on wilful intent or gross negligence, including wilful intent and gross negligence of our representatives or vicarious agents, or if we are accountable for the culpable breach of a major contractual obligation. In all other cases, our liability for damage compensation is limited to the foreseeable loss or damage, typically occurring for the transaction and occurring to the merchandise itself. The above provision also applies to Customer's claims for compensation of loss or damage in lieu of performance.

2. This provision does not limitate our liability for culpable injury to life, body or health, nor does it limit compulsory liability in accordance with the Product Liability Act or other liability elements mandated by law.
3. Unless otherwise regulated in the above provisions, our liability is excluded in all other cases. Any and all claims by the Customer owing to a defect are subject to a limitation period of one year from the point in time of delivery of the merchandise expect in cases falling under the provisions of Sections 478, 438 (1) number 2 or 634a (1) number 2 BGB (German Civil Code) or unless, in individual cases, we have granted a longer period in the contract.  
The above limitation period also applies to damage compensation claims, regardless of their nature, unless we are culpable of gross negligence or it is a case of loss or damage for which we are accountable owing to injury to the Customer's life, body or health or pursuant to product liability.

#### **XI. Applicable law, place of performance and place of jurisdiction**

1. The legal relationships to our customers and the interpretation of the above directives shall be governed by German law, excluding the United Nations Convention on International Sale of Goods (CISG).
2. Place of performance for our deliveries and services and all liabilities originating from the delivery business for both parties shall be Freudenberg/Main in commercial dealings.
3. Place of jurisdiction in commercial dealings shall be our registered office. We shall however be entitled to sue our contracting partners at their registered office.

#### **XII. Miscellaneous**

1. If one of the aforementioned provisions is cancelled by a written agreement or is legally ineffective for any other reason, the validity of all other directives shall remain unaffected.
2. The present terms and conditions of sale and delivery hereby supersede previous valid terms.
3. We hereby grant our consent to our supplier submitting data regarding the commencement, the termination and the payment experience of this business relationship to information agencies in accordance with Section 29 BDSG (German Federal Data Protection Act). We can obtain information about the stored data related to our company in accordance with Section 34 BDSG.