

General Terms and Conditions

§ 1

Application of terms

- (1) Our deliveries and services are subject to the following Terms and Conditions. We do not accept opposing terms and conditions on the part of our customer or terms and conditions deviating from our own Terms and Conditions unless such agreement is given expressly and in writing.
- (2) Our Terms and Conditions shall also apply if we are aware of conditions of the customer that conflict with or are different to our Terms and Conditions yet carry out an order without raising an objection. We expressly oppose any reference or counter-acknowledgement by the customer asserting his conditions of purchase.
- (3) Our Terms and Conditions shall also apply to all future business transactions with the customer.

§ 2

Offers and conclusion of a contract

- (1) Unless agreed upon otherwise, we are bound to our orders for 28 days starting with the date of the offer. After these 28 days, we can revoke them, i.e. with a delayed acceptance from the customer.
- (2) As we are under obligation to procure delivery items from the manufacturer, the customer is bound to his order for 28 days. Our acceptance is given in writing unless we deliver or invoice immediately.

The same applies in the event of amendments, modifications and collateral agreements.

§ 3

Scope of deliveries and services

- (1) The scope of deliveries and services shall be determined by the agreements between the parties. Information regarding the scope of deliveries and services do not constitute any warranty on our part to assume the risk of availability. We reserve the right to claim that our suppliers did not supply parts correctly or on time.

Any guarantee or any warranty as to the availability of the products or their components requires a written agreement between the parties, in which the terms "guarantee" or "risk of availability" are expressly used.

- (2) The details given in our offer/order conformation shall determine which products are owed by us. In case of discrepancies between the offer and the order conformation, the order conformation shall prevail.

Specifications contained in catalogues, brochures, circulars, advertisements, illustrations and price lists are not binding unless they have been expressly included into the contract. This applies especially to measurements, performance data, physical qualities and consumption values.

Even after conclusion of the contract, we are entitled to deliver a comparable product instead of the product agreed upon, provided that this product complies with all functions stipulated by the contract. This applies particularly to additional functions, which were not included in the delivery item originally agreed upon.

- (3) The scope of deliveries and services does not include training of the customer's employees.
- (4) We only assume responsibility for installation/assembly if expressly agreed between the parties at least in written form.

§ 4

Prices

- (1) Unless agreed upon otherwise, our prices are ex works or from our warehouse, plus the VAT applicable in the Federal Republic of Germany at the respective time. Unless agreed upon otherwise, all other costs shall be born by the customer, for example costs of packaging, transport, insurance, customs etc.
- (2) The prices mentioned in our offer are based on our calculations at the time when our offer is made. Should, in contracts with an obligation for one of the parties which last for more than 4 months, the prices required for the delivery items increase by at least 5% after the offer was made or the contract was concluded, we are entitled to increase the stipulated prices by the proportional extra costs. This regulation also applies if the prices for technical components are reduced by at least 5%.
- (3) Invoices are made out in the agreed currency to the proviso that the exchange rate (parity price) of the Euro valid on the date of delivery shall serve as the basis for calculation.

§ 5

Conditions of payment

- (1) Payments shall become due on the agreed date for payment. If no date for payment has been fixed, payments will become due upon receipt of the invoice or an equivalent statement of account. Should the date of receipt of the invoice or the statement of account be uncertain, payments will become due upon receipt of our deliveries or services.
We allow a 2% discount for payments within 8 days after the invoice date insofar as the customer has no other outstanding invoices with us at the time of payment.
- (2) If an invoice is still outstanding, payments made by the customers will be used to settle the longest outstanding invoice.
- (3) Payments by draft or cheque are not considered as payment in cash.
- (4) If the customer does not meet his payment obligations, particularly if he stops payments, we are entitled to claim the entire outstanding debt at once, even if we have already accepted cheques or drafts. In this event, we are also entitled to refuse to carry out the performance of our outstanding obligations, until the customer effects payment or provides sufficient collateral securities for the outstanding deliveries and services.
- (5) The customer is not entitled to set off his claims against ours, or to a right of retention, unless his counter claims have been either acknowledged by us or finally established by a Court of Law.

§ 6

Terms of delivery, delay in delivery and non-performance

- (1) Terms and dates indicated by us are not binding unless they have been expressly confirmed in writing in our order confirmation. Delivery time or conclusion of performance is the date fixed in writing in the order confirmation. Should all documents, necessary approvals, cooperation etc. to be supplied by the customer not be produced at least one month before the date of delivery, the said date of delivery shall be extended by one month, starting with the date on which all the

above-mentioned documents, necessary approvals, cooperation etc. have been completed and received.

- (2) The date of delivery shall be considered as having been met if the goods have left our factory within the agreed time of delivery, or, in the event of collection by the customer, the customer has been informed that we are ready for shipment.
- (3) If we can prove that we have not been supplied with the necessary goods on time by one of our suppliers, despite careful selection of our suppliers and despite the conclusion of the necessary contracts under reasonable conditions, the term of delivery shall be extended by the delay which has been caused by our supplier's failure to supply us on time. Should the above-mentioned hindrance last for more than one month, the customer shall be entitled to cancel the contract with respect to the part of the contract not yet fulfilled. Claims for compensation are excluded in this event.

We shall only be entitled to avail ourselves of the above-mentioned circumstances if we inform the customer about them immediately, i.e. within 5 working days after we have obtained knowledge.

- (4) We are under no obligation to represent cases of force majeure. In the event of force majeure, the delivery date will be reasonably extended. Should performance of delivery become impossible due to the circumstances caused by the force majeure, we shall be released from our obligation to deliver. If the above-mentioned circumstances concerning the force majeure persist for more than one month, both parties shall be entitled to cancel the contract. The customer is not entitled to claim damages from us in these cases of force majeure.
This provision applies accordingly in the event of lockouts or strikes.
- (5) In the event of delay in accepting performance, the customer has to indemnify us for the loss caused by this breach of contract, in particular for expenses incurred as a result of the storage of the goods. This does not apply if this breach of contract is not attributable to the customer. In this case, the customer's obligation to reimburse costs is limited to the expenses incurred by us due to the storage of the goods. The customer is obliged to effect payments by the agreed date for payment even if he is in default of acceptance.

§ 7

Passing of the risk/shipment

- (1) If the delivery item is shipped to the customer upon his request, or if the handing over is done – as it normally is – ex works, the risk of accidental destruction or accidental deterioration of the merchandise passes to the customer together with the handing over to the person entrusted by us with the dispatch, but no later than when the merchandise leaves our works or warehouse; this risk passes irrespective of whether the dispatch took place from the place of performance or who bears the freight costs. If the merchandise is ready for shipment and the shipment or accepting delivery of the merchandise is delayed due to circumstances beyond our responsibility, the risk passes on to the customer upon his receiving our notice of readiness for shipment. We arrange for an insurance of the delivery items only on the customer's explicit request.
- (2) Unless otherwise determined by the customer, the mode of shipment is left to our discretion. We are under no obligation to use the cheapest mode of shipment. The packaging will be invoiced and not be taken back, unless stipulated otherwise by legal provisions, e.g. "Verpackungsverordnung" (packaging regulations), or unless otherwise agreed between the customer and us in a particular case.
If we are under obligation to take back the packaging in compliance with the packaging regulations, we will then remain owners of the packaging.

§ 8

Retention of title

- (1) Delivered goods shall remain our property until all outstanding debts resulting from the business relationship between us and the customer have been paid in full. The customer is entitled to resell the goods within his normal business.
- (2) In the event of processing or combination of the delivered goods, the retention of title also applies to the new goods and we shall be considered as their manufacturer. If our merchandise is processed or connected with goods or equipment of third parties, we do not own, we will own the share of the joint property in the new item which is determined by the ratio of the invoice value between our merchandise and the other processed merchandise.
- (3) If the delivery item is inseparably connected with other items, we do not own, we will own the share of the joint property in the new item which is determined by the ratio of the value between the delivery item and the other combined goods at the time of their combination.
- (4) The outstanding claims of the customer resulting from resale of the goods to a third party shall be considered to have already been assigned by the customer to us at this time in total or to the amount of our share of the joint property as security (cf. § 8 Para. (2)); we hereby accept the assignment. The customer is entitled to collect these claims until we revoke this authorization or he stops payments. The customer is not entitled to assign these claims, not either in order to collect these debts by way of factoring unless the factor is obliged to transfer the collected amounts directly to us insofar as we still have outstanding claims against the customer.
Upon our request the customer shall give us the information necessary for collecting the assigned claims, including a copy of the contract with his customer, the invoice and a list of the payments received from his customer.
- (5) The customer will advise us immediately of any compulsory execution measures levied by third parties against merchandise sold by us under retention of title, or against claims assigned to us in advance, and will forward to us the documents required for an intervention from our side.
- (6) If the customer is in default of payments twice within six months, or if the customer is insolvent or objective criteria indicates his insolvency, the customer is obliged to return the delivery items and, in the case of resale of the goods, we are obliged to collect the assigned outstanding amounts directly from the customer's customer. Our right to cancel the contract remains unaffected.
- (7) At the request of the customer, we are obliged to release the security to which we are entitled at our own discretion, should the value of such security exceed the claims to be secured by more than 10 %.

§ 9

Product control and product warning obligations

- (1) The customer shall be informed that we do not manufacture the delivery goods ourselves.
- (2) In order to protect third parties against dangers, which may emanate from our products, the customer is obliged to monitor the product continuously with regard to its safety (product control obligation). The customer will advise us of dangers emanating from the product immediately in writing as soon as such dangers become apparent (product warning obligation).

- (3) If claims based on violation of the product control obligation and/or the product warning obligation should be asserted against us by third parties, such liability will be passed on to the customer, if our liability has been caused by a violation of the product control obligation and/or the product warning obligation attributable to the customer.

**§ 10
Notice of defects**

- (1) The customer's obligation to examine the goods and to make a complaint in respect of a defect immediately on receipt is determined by § 377 German Commercial Code.
- (2) A series defect is only accepted if determined by a recognized sampling procedure.

**§ 11
Material defects/limitation period**

- (1) If the delivered goods and/or the installation and/or the documentation are defective or if certain conditions of the goods do not comply with a guarantee given by us, we have the choice of either repairing the defective goods or replacing them by goods free of defects.

- (2) Should two efforts to remedy a defect fail, the customer shall be entitled to choose whether to cancel the contract or to reduce the purchase price. If the defect has been caused by gross negligence or wilful intent on our part, the part of our vicarious agents or persons employed by us in the performance of our obligations and/ or if the defect leads to a breach of essential contractual obligations (cardinal obligations) attributable to us, and/or to attributable personal injury, injury to life or to health, or if we have given a guarantee for certain conditions of the goods, the customer may also claim damages instead of cancelling the order or accepting a reduction in the purchase price.

Should our breach of cardinal obligations have been caused by slight negligence and result in financial damage or damage to the customer's property, the claim for damages is limited to typically foreseeable losses.

In these cases there shall be no liability for production stoppages and/or lost profit. This limitation on liability applies accordingly to our vicarious agents and persons employed by us in the performance of our obligations.

- (3) Should we choose to repair the defect, we shall bear the expenses incurred. This does not include costs resulting from the fact, that the customer has moved the delivered goods from the customer's headquarters or from the delivery location.

- (4) The customer is not entitled to warranty claims

– with regard to defects which have been caused by unreasonable treatment or excess wear by himself or his own customers,

– in the event of operating errors or application errors,

– if the delivery item has been tampered with by a third person or altered by incorporating parts not originating from us, except where the defect has not been caused by such changes, If the defect has been caused by a circumstance, which does not oblige us to warranty, the customer will reimburse us for all expenses caused by this claim.

- (5) The regular limitation period for claims based on defects of the delivered goods, which are usually not used for buildings, is 1 year from the time the goods are delivered to the customer and, in cases of installation due by us, from the performance of the installation.

Insofar as we are liable for damages, the shortening of the limitation period does not apply to claims for damages based on defects caused by gross negligence or wilful intent, attributable breach of essential contractual obligations (cardinal obligations), as well as personal injury, injury to life or to health attributable to us, or if we have given a guarantee as to a certain quality of goods.

If we have expressly given a guarantee as to a certain quality of the product, the limitation period for claims resulting from this guarantee expires after 2 years from delivery of the sales item, to which the guarantee relates. If we have given a guarantee as to the durability, the limitation period for claims resulting from this guarantee expires when the term, for which the guarantee as to the durability was given, ends. This limitation period also starts from the delivery of the goods, to which the guarantee relates.

If the duration of guarantee is less than one year, the limitation period is defined by § 11 Para. (5) Item (1) of these General Terms and Conditions.

- (6) This reduction of the statute limitation applies accordingly to our vicarious agents and persons employed by us in the performance of our obligations.

- (7) A statutory application of the Product Liability Act according to § 14 ProdHaftG remains unaffected.

**§ 12
Claims for compensation resulting from breaches of duties to protect default and non-performance**

- (1) Our liability for defects as to quality and defects of title are not affected by this section (§ 12). The provisions of §§ 11 and 13 of these General Terms and Conditions apply to this kind of liability.

- (2) Claims for compensation resulting from other breaches of duties on our part, particularly duties to protect interests warranting protection and/or obligations arising out of quasi-contractual relationships are excluded unless they are based on gross negligence or wilful intent, attributable breach of essential contractual obligations (cardinal obligations), or personal injury, injury to life or health caused by us, or by our vicarious agents or persons employed by us in the performance of our obligations.

If we are liable for breach of contractual obligations based on slight negligence, the claim for compensation of financial damages and damage to property is limited to typically foreseeable losses.

In these cases there shall be no liability for production stoppages or lost profit.

- (3) This limitation on liability provided under § 12 Para. (2) applies accordingly to claims in tort. This limitation on liability provided under § 12 Para. (2) applies accordingly to our vicarious agents or persons employed by us in the performance of our obligations.

- (4) Claims for compensation resulting from delay in delivery or from failure to perform cannot be asserted against us unless they are based on wilful intent or gross negligence on our part, on the part of our vicarious agents or persons employed by us in the performance of our obligations.

This limitation on liability does not apply in the event of breach of essential contractual obligations (cardinal obligations) attributable to us.

If we are liable for damages based on slight negligence (breach of cardinal obligations), the claim for damages is limited to typically foreseeable losses. In these cases of slight negligence there shall be no liability for production stoppages and/or lost profit. Any possible right to cancellation of the contract, which the customer may have in the event of delay in delivery or failure to perform, remains unaffected by this limitation on liability.

- (5) Claims for compensation resulting from other breaches of duties, default or non-performance under this section, which are not claims for defects as to quality and/or defects of title, are sub-

ject to a limitation period of one year as of the end of the year during which the claim arose and the customer obtained knowledge of the circumstances justifying the claim or his lack of such knowledge was due to gross negligence. The maximum time periods for limitation of actions provided under § 199 Para. (2) and (3) German Civil Code remain unaffected by this provision.

This restriction in accordance with § 11 Para. (5) Item (1), does not apply to claims for damages based on gross negligence or wilful intent, attributable breach of essential contractual obligations (cardinal obligations), as well as personal injury, injury to life or health, caused by us, our vicarious agents or persons employed by us in the performance of our obligations.

- (6) A statutory application of the Product Liability Act according to § 14 ProdHaftG remains unaffected.

**§ 13
Intellectual property rights**

- (1) Claims for compensation resulting from the infringement of trademarks, patents, patent applications, utility models, registered designs or copyrights of third parties against us, our vicarious agents or persons employed by us in the performance of our obligations are excluded unless they are based on gross negligence or wilful intent of ourselves, our vicarious agents or persons employed by us in the performance of our obligations or we have guaranteed that the above-mentioned intellectual property rights will not be infringed. This limitation on liability does not apply in cases of breach of essential contractual obligations (cardinal obligations) attributable to us, our vicarious agents or persons employed by us in the performance of our obligations.

If we, our vicarious agents or persons employed by us in the performance of our obligations are liable for damages based on slight negligence (breach of cardinal obligations), the claim for damages is limited to typically foreseeable losses.

In these cases of liability based on slight negligence there shall be no liability for production stoppages or lost profit. This limitation on liability applies accordingly to our vicarious agents and persons employed by us in the performance of our obligations.

- (2) The customer's rights to cancel the contract due to the infringement of the above-mentioned intellectual property rights remain unaffected.

- (3) Where claims based on the infringement of third party rights are asserted against us, the customer may prove this defect of title only by having a final judgement of a Court of Law entered against him. This does not affect the customer's right to make us a third party defendant in the infringement lawsuit.

**§ 14
Suspension of the limitation period due to negotiations**

Negotiations concerning liability for defects or other claims for damages shall only be considered to exist, if the parties have stated in writing, that they are negotiating such claims. Should the reference to this requirement in writing constitute an abuse of legal rights, neither party may plead the observance of the same.

**§ 15
Business secrets/data protection**

- (1) Plans, drawings and technical details, which we hand over to the customer, remain our property. The handing over of the documents mentioned does not create any rights of the customer in these documents, particularly no license. The customer may not use these documents, particularly not copy them, reproduce them or hand them over, make them accessible to or disclose them to third parties without our written consent. This applies even if the documents are not marked as confidential information.

- (2) The customer ensures that his employees, consultants, shareholders and others, who will become privy to these trade secrets, will be obliged in writing to safeguard our trade secrets to the extent described above.

- (3) These obligations continue to apply after the termination of contractual relations.

- (4) We are entitled to process data concerning the customer, which we obtain regarding the contractual relationships or in connection with them, irrespective of whether they come from the customer himself or from third parties, in observance of the Data Protection Act.

**§ 16
Place of delivery, applicable law, place of jurisdiction, partial invalidity**

- (1) Place of performance with regard to deliveries and payments is Stuttgart, Germany.
- (2) The law applicable in the Federal Republic of Germany shall apply to these General Terms and Conditions and the entire legal relationship between us and the customer. The application of the agreement of the UN Convention on Contracts concerning the International Sales of Goods (CISG) is excluded.
- (3) The exclusive place of jurisdiction for all disputes arising directly or indirectly from this agreement shall be Stuttgart and, if selected by us, the place of jurisdiction of the customer.
- (4) Collateral agreements, reservations, changes or amendments must be made in writing.
- (5) Should one provision of these General Terms and Conditions be or become invalid, the validity of all other provisions or agreements shall not be affected. Should other provisions agreed upon in connection with the cooperation with the customer be or become invalid, the validity of all remaining provisions or agreements shall remain unaffected. In this event the parties shall be under obligation to construe or to amend the invalid clause, so that the economic purpose of the invalid clause will be best achieved in a legally valid manner.

valid: since 01.10.2003



Rögelein GmbH
Motorstraße 47
D-70499 Stuttgart
Tel.: +49 - 711 - 1 87 79 - 0
Fax: +49 - 711 - 1 87 79 - 10
Internet: www.roegelein.de