

TERMS AND CONDITIONS OF DELIVERY AND PAYMENT

Rohde AG

- "I. The following arrangements are valid as long as the contractual parties are businesses units as understood by § 14 code of civil law.

Section 1 General

1. These terms and conditions of delivery and payment are a part of all offers and contracts for deliveries and performance of the seller, including continuing and future business relations.
2. Varying agreements and conditions are only binding when they are confirmed in writing by signature.

Section 2 Prices

1. The existing conditions and price lists of the seller as of the time of the order are controlling.
2. Sales prices are only firm when the order is confirmed in writing by the seller. Added to the price is the existing value added tax if any. So long as nothing else is agreed upon, the prices shall be free of packing from factory (ex-works).
3. In case of mail order the costs of packing are added to the prices.

Section 3 Delivery and Transfer of Risk

1.
 - a) Delivery of the goods occurs at the location of the seller's business or from its warehouse (ex works), unless otherwise agreed. If the goods are transported, the buyer retains the risk ex works. This applies also when delivery occurs through transport arranged by the seller. Transport shall be to the agreed upon place; in the case of change of destination the buyer bears the additional costs.
 - b) The vendor is not obliged to load goods into a vehicle of a buyer or third-party. If the buyer instructs a carrier to collect the goods from the buyer, the carrier will be responsible for loading the goods, contrary to the statutory provisions of the German Commercial Code and German Freight Forwarders' Standard Terms and Conditions (HGB/AdSP).
2. The buyer takes over the costs of disposal of the packing materials.
3. The passage of delivery dates and periods by the seller entitles the buyer to make use of the rights he has only when the buyer has given the seller an appropriate notice period, at least 8 workdays.

4. In the event of acts of violence, labour strike, official measures as well as business interference not due to seller's fault, which events last longer than a week or which seem likely to last longer than a week, the delivery or pickup period will be appropriately delayed for the period of the interference. In this case the other party is entitled –after allowance of a suitable extension, to a withdrawal from the contract within the framework of the legal arrangements. Damage compensation claims are excluded in this case.
5. The seller is not liable for damages arising of force majeure including war, civil unrest, labour strife, governmental regulations or compulsion.
6.
 - a) In the case of a performance default (non-performance) or an performance inability, for which the seller has responsibility, the buyer may, on allowance of an appropriate extension, withdraw from the contract according to no. 3 and 4.
 - b) A damage compensation claim of the buyer is limited in this case to replacement of the provable additional costs (costs of cover). At least three offers must be obtained. The amount of the damages is limited to 50% of the value according to the purchase price of the contractual goods. Further damage compensation is excluded.
 - c) The regulation no.6 a. does not affect the liability of the seller for damages on injury to life, body or health, which are caused by a negligent breach of duty by the seller or by an intentional or negligent breach of duty by a legal representative or operational assistant of the seller.
 - d) Likewise the regulation no.6 a. does not affect the liability for all other damages, which is based on a grossly negligent breach of duty by the seller or by an intentional and grossly negligent breach of duty of a legal representative or operational aid of the seller.
 - e) For simple negligence of the seller or of the legal representative or operational assistant of the seller, the seller is only liable in the case of a breach of so-called “cardinal duties“; then however within the range of typical and foreseeable damages listed under no. 6. a. to c.
7. When delivery does not take place by fault of the buyer, the seller has the choice, after setting a period of 10 days, whether to demand payment, rescind the contract or claim damages.
8. Recession rights of the buyer on account of a deterioration in assets of the seller after conclusion of the contract are excluded.

Section 4 Payment

1. For each delivery a bill will be separately issued with the date of mailing. This also applies for agreed upon partial deliveries.
2. Agreed upon payment periods start with the date of invoice. Previous payments will be pro rata applied to individual partial deliveries in the absence of another agreement.
3. The billed amount is payable 30 days net as no other means of payment are agreed upon.

4. Arrangements for payment by check or bill of exchange require the consent of the seller; discount points, check fees and costs are borne by the buyer unless otherwise agreed.
5. The agreed upon payment dates are to be respected when a claim of defect to be insignificant in scope. Otherwise the buyer may, in the case of a justifiable complaint on faulty goods, as understood by § 434 section 1 to 3 Code of Civil law, which has been raised within the prescribed period, only temporarily withhold that part of the purchase price, which corresponds to the invoice amount for the part of the delivery that has been duly found to be faulty.
6. In the event of late payment, interest payments due by reason of late payment, rejection of check or bill of exchange or any other significant deterioration of assets of the buyer after conclusion of the contract, the seller is entitled to make deliveries only against prepayment, to demand immediate payment of all outstanding billed amounts and to demand against return of accepted bills of exchange payment by cash or security.
7. Interest on arrears will be calculated at 8 percentage points above the obtaining basic rate of interest according to § 247 Code of civil law.
8. For the second and every further demand of payment the seller itself is entitled to a fee of 8 EUR. Costs of collection including legal fees and court costs shall be borne by the buyer.
9. Set-off of claims is permitted only for undisputed and claims that have been reduced to a final judgement. Withholding of billed amounts is not permitted; this does not apply to payments halted by the seller.

Section 5 Product Conformity and Guaranty

1. Apparent defects are to be notified in each case without delay and at the latest within 10 days. This period begins with the day the goods arrive at the buyer's business or storage depot.
2. Faults not plainly visible, including those that come to light on or after working use, should be reported back without delay after their discovery, in this case at the latest within 10 days. A later notice is ineffective. The duty to investigate under the Commercial Code section 377 remains.
3. Deviations that are normal in the trade, insignificant and technically unavoidable are to be considered as being compliant with the contract and do not represent a breach of duty (or fault) which would give grounds for rejection.
4. a) In the case of justifiable rejections the seller has the right to attempt redelivery within 10 days after the return of the faulty goods. Thereafter the statutory provisions apply under observance of the rules set forth in this § 5.

- b) Before the redelivery the seller is entitled to require from the buyer a down payment to the amount of 25% of the purchase price, to a maximum however of the value of the faulty item.
 - c) The entitlement of the buyer to reduction, withdrawal from the contract or damages after the failure to redeliver, the impracticability or impossibility of redelivery for the seller or the refusal to redeliver by the seller – according to the statutory arrangement – remains unaffected by this regulation.
5. In completion it is laid down that warranties of quality and durability, as understood by § 443 section 1 code of civil law, are to be expressly marked as warranties. A reference to DIN-standards signifies in principle only the compliance of the product to standards and does not give entitlement to a warranty from the seller unless such a warranty has been expressly agreed on.
- 6.
- a) Damages claims on account of unsatisfactory delivery or other contract breaches by the seller, which are not covered by § 3 no. 6, are ruled out in the case of slight negligence as long as the so-called “cardinal obligations” were not breached. In this case any possible damages claims are limited to foreseeable, typical damages and then only to the amount of the purchase price.
 - b) The regulation no. 6 a. does not affect the liability of the seller for damages on injury to life, body or health, which are based on a negligent breach of duty by the seller or an intentional and negligent breach of duty by the legal representative or operational assistant of the seller.
 - c) Likewise the regulation no.6 a. does not affect the liability for all other damages, which is based on a grossly negligent breach of duty by the seller or by an intentional and grossly negligent breach of duty by a legal representative or operational assistant of the seller.
 - d) For simple negligence by the legal representative or operational assistant of the seller, the seller is only liable in the case of a breach of so-called “cardinal duties“ within the range mentioned in 6. a. and b.
7. Claims on account of damages referred to in paragraph 3 (5) are excluded.
8. All warranty claims of the buyer run out within 1 year after delivery.
9. In reference to business indemnification according to §§ 478, 479 code of civil law the following is valid:
- a) The liability of the seller in the case of a claim for indemnification of the buyer according to §§ 478, 479 code of civil law is limited to a claim on the basis of the faultiness of the purchase. A claim, for example, by reason of a cancellation is excluded.
 - b) Further excluded is the liability for particular agreements on quality between the buyer and the end-user (consumer) if the item was objected to as faulty precisely because of the lack of this particular quality and a legal case was won on that basis.
 - c) In the case of a court ordered replacement by the buyer to the end-user (consumer), in the framework of § 478 section 2 code of civil law, only those outlays which prove to be necessary will be replaced. Expenditure, which was entered into by the buyer on a basis of a supplementary offer, is not reclaimable.

- d) If the end-user (consumer) justifiably claims subsequent delivery from the buyer, then the seller likewise has, without prejudice regarding the buyer, first of all the right to a second delivery (subsequent delivery). The claim of a third supplier – without concession of this possibility - or a similar case, does not represent a necessary, reclaimable expenditure as understood by § 478 section 2 code of civil law.
- e) Otherwise the liability of the seller within the framework of a claim, according to § 478 section 1 code of civil law, is excluded with the provision, that instead of the right mentioned in § 437 code of civil law, either a general discount scale for all purchase prices or an extensive delay is agreed on between the contractual parties.

Section 6 Reservation of Title

1. The delivered goods remain property of the seller until payment of the purchase price and satisfaction of all existing claims from the business relationship including the particular sale. The adjustment of individual claims in a continuing bill or the issuance of an account balance and its recognition do not remove this reservation of title. If a exchange related liability of the seller is established in connection with the payment of the purchase price by the buyer, the reservation of title does not become extinguished until the bill of exchange is redeemed by the buyer as drawee. In the case of payment delay by the buyer, the seller is entitled to take back the reserved goods after declaration of withdrawal from the contract – without notice and independently of the provisions of § 323 section 2 code of civil law – and the buyer is obliged to restore the goods. This is also the case with an instalment payment agreement if the buyer falls behind in two payments or by an amount corresponding to the sum of two payments Reservation of title also extends to securing claims against affiliated companies of the buyer including but not limited to subsidiaries and parent companies.
2. If the buyer, alone or jointly, transfers goods on which reserved title exists together with other goods that do not belong to the seller, the buyer hereby assigns to the seller all of the claims arising from such transfer in the amount of the value of the goods on which reserved title exists. The seller accepts the assignment. If the transferred goods on which reserved title exists are in the joint property of the seller, the assignment of the claim extends to the amount corresponding to the interest of the seller in the joint property. Paragraph 1, second sentence of this section also applies for the extended reservation of title; the assignment of future claim under paragraph 2, sentences 1 and 3, also extends to an account balance claim.
3. The buyer is entitled and authorized to transfer, use or incorporate goods underlying reserved title only in the ordinary and proper scope of business and to the extent that the claim in the meaning of paragraph 2 of this section actually is conveyed to the seller. The buyer is not authorized to dispose of the goods underlying reserved title in other ways, in particular by pledge or transfer as security.
4. The seller authorizes the buyer, reserving the right to rescind such authorization, to collect the claims assigned under paragraph 2. The seller will make no use of its own collection right so long as the buyer complies with his payment obligations, including obligations towards third parties. On demand of the seller the buyer is

required to provide the names of the debtors of the assigned claims and to notify them of the assignment; the seller is also entitled to notify the debtors itself of the assignment.

5. The buyer is required to notify the seller without delay of judicial enforcement measures of third parties concerning the goods on which reserved title exists or on which claims have been assigned. This includes the delivery of the documents necessary to contest such judicial enforcement measures.
6. With any halt in payments, the application for or opening of a bankruptcy proceeding or an offer for a general agreement with creditors the buyer's right to further transfer, use or incorporate the goods on which reserved title exists, is extinguished. The buyer's right to collect on the assigned claims is likewise extinguished in such cases as is the buyer's right to collect proceeds in the event of a rejection of payment of the buyer's check or exchange draft.
7. If the value of the above-mentioned security exceeds the seller's claims by more than 20%, the seller is obligated at its choice to return that portion of the assignment or release its claim to that extent. With satisfaction of all claims of the seller arising from the business relationship the goods underlying reserved title and the assigned claims are transferred to the property of the buyer.

Section 7 Product Protection

The buyer obligates itself not to copy items from the delivery program of the seller or allow them to be copied and distributed. In case of violation the seller is entitled to a contract penalty. The amount of the claim for each copied article shall be 100% of the price for the corresponding article of the seller plus costs and attorneys fees. The seller's prices in effect at the time of the violation shall be the controlling measure. In place of contract penalty the seller can obtain compensatory damages from the buyer and any other remedies permitted by law.

Section 8 Place of Performance and Choice of Forum

1. Place of performance for payment of the purchase price as well as for the other obligations of the buyer is the seat of the seller. Performance place for the obligations of the seller is the seat of the seller.
2. Location of jurisdiction: Göttingen.

Section 9 Foreign Business

The following additional conditions apply to foreign business:

1. All transactions, including bills of exchange and check transactions, are governed by German civil and commercial law. The rules of international private law and the UN-sales law are expressly excluded.

2. In the case of foreign delivery the seller can demand payment in advance or by letter of credit. Insofar as nothing else is agreed the delivery occurs under the condition payment against documents (P/D). Insofar as nothing else is agreed the payment shall be made in EUR.
3. Customs duties, fees, charges and any taxes arising out of performance of the sales contracts and deliveries are paid by the buyer except for taxes that are imposed from the country where the seller has its seat.
4. The seller has the right to sue the buyer at any of its places of business. If the competent court rejects the application of German law, the contract relation shall be governed by the provisions of the United Nations Treaty on the International Sale of Goods in accordance with these General Terms and Conditions.
5. The seller is further entitled to bring claims against the buyer in an arbitration proceeding in place of suing in court. The proceeding is to be conducted by the Industrie- und Handelskammer in Hannover according to the current UNCITRAL international commercial arbitration rules.

Section 10 Severance Clause

1. Should particular provisions of this contract be invalid or should the conditions not be complete, the remaining provisions of the contract shall remain in effect. In place of the invalid provision there shall be effective that provision which best meets the invalid provision's intended economic purpose. The same applies in the case of incomplete provisions.
 2. In place of the invalid or unenforceable term or to fill in the gap, that rule will apply which the parties would have agreed on had they thought of the of the point in entering into the contract. This applies also when the invalidity of a term rests on a standard of performance or a time (period or date) determined in this contract: in such cases that legal standard of performances or time (period or date) shall apply that is closest to that intended by the parties in place of the invalid term.
 3. If the validity of a provision in the above described sense is only attainable by agreement in accordance with particular formatives, the participants are obligated to undertake the required acts and give the required declarations.
- II. The above-mentioned conditions are also valid for the case where one of two contractual parties is a consumer as understood by § 13 code of civil law. This is not valid in so far as individual regulations go against the guidelines of the code of civil law in the constitution from the 01.01.2002 – especially the §§ 305 - 310, §§ 474 - 477 code of civil law – to the disadvantage of the consumer. In this case the legal arrangements are valid in addition to the regulation concerned."

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