

General Terms and Conditions of RMG Metallfachhandel GmbH

§ 1 General – Scope of Application

(1)
Our terms of sale apply exclusively; they also apply if, for the duration of a business relation, we do not continuously and explicitly invoke them. Contradictory terms or terms by customer which diverge from our terms of sale shall not be accepted, except if we agreed to them explicitly and in writing. Our terms of sale shall also apply if we conduct a delivery to customer without reservation with the knowledge of customer's diverging terms of sale.

(2)
All agreements which shall be made between customer and us catering to the execution of this contract shall be put down in writing in this contract.

(3)
Our terms of sale only apply to companies as defined in § 310 para. 1 German Civil Code.

§ 2 Offer – offer documents

(1)
If the order is an offer and to be qualified according to § 145 German Civil Code, we can accept it within 2 weeks.

(2)
We reserve all property rights and copyrights to illustrations, drawings, calculations, and other documents. This is also valid for written documents designated as "confidential". Before they can be handed over to third parties, customer needs our explicit and written agreement.

§ 3 Prices – conditions of payment

(1)
If not otherwise indicated in the confirmation of order, our prices are quoted "ex works" or "ex stock packing excluded"; charge for packing will be extra if packing is desired or if the preliminary supplier deems it necessary.

(2)
VAT is not included in our prices; it shall be indicated separately in the invoice at the legal amount valid on the day of the invoicing.

(3)
A cash discount requires a special written agreement.

(4)
If the terms of delivery, according to agreement, are to be executed more than four months after the closing of the contract, or if the terms are executed with a delay of more than four months for which customer is responsible, we reserve the right to increase the agreed upon prices accordingly if there has been an increase in costs after the closing of the contract, especially due to cost increases in material or tariff agreements.

(5)
If goods are stored with us, any generated costs are at customer's expense.

(6)
If not otherwise indicated in the confirmation of order, the invoice is payable net without deduction within thirty days from the date of the invoice. The legal regulations apply for consequences resulting from delay of payment. If customer has more open accounts with us and if one payment by customer does not suffice to pay for all open accounts, the amortization shall be executed according to legal regulations (§ 366 para. 2

German Civil Code) even if customer explicitly wants to pay for one distinct invoice.

(7)
Customer is only entitled to set-off rights if customer's counterclaim has been legally ascertained, is undisputed, or accepted by us. Further, customer may make use of customer's right of retention insofar as customer's counterclaim is based on the same contractual relationship.

§ 4 Time of Delivery

(1)
With debit orders, customer can call off the goods within a time limit of two weeks after the notification to deliver, or our readiness to deliver respectively. If, in case of call-off orders, goods are called off beyond the amount ordered, we are entitled to deliver the ordered amount only or to charge for the surplus quantity at the daily price.

(2)
The beginning of the delivery time indicated by us requires the clarification of all technical questions.

(3)
The meeting of our obligations for delivery requires the timely and proper performance of duty by customer. We reserve the right to defense of non-performance of the contract.

(4)
In case of vis major, we are entitled to postpone the delivery by the duration of the interference and an adequate start-up time. This also applies if such cases occur during a delay. Among vis major are events of war, terrorism and the such, monetary, commercial, or other mandatory regulations, strikes, lockouts, business disruptions not caused by us (e.g. fire, machinery breakage, blockage of traffic routes, delay due to customs duty), as well as all other circumstances, no matter which, that are not caused by us, that complicate the delivery significantly or make it impossible. In any case it is negligible whether these circumstances occur with us, a supplier, or a preliminary supplier. If, due to any of the cases mentioned above, the execution of the contract becomes unbearable for one of the contractual parties, especially if the execution of a fundamental portion of the contract is delayed by more than 6 months, this party may declare its rescission of the contract.

(5)
If customer comes into default of acceptance or culpably breaches any duties to co-operate, we are entitled to claim a replacement of any occurring loss, including any contingent additional expenditure. The right to claim additional claims remains reserved.

(6)
If the conditions specified in para. (5) apply, the risk of an accidental damage of theft of the delivery item is transferred to customer in case customer has come into default of acceptance or payment.

(7)
We are liable according to legal regulations if the underlying contract of purchase is a business to be settled on a fixed date according to § 286 para. 2 # 4 German Civil Code or § 376 German Commercial Code. We are also liable according to legal regulations if, due to a delivery delay caused by us, customer is entitled to claim that customer's interest in a further execution of the contract is discontinued.

(8)
We are also liable according to legal regulations if a delay of delivery is due to intentional or grossly negligent breach of contract we have to answer for; a default of our representatives or any of our vicarious agents is to be attributed to us. If the delay of delivery is not due to an intentional breach of contract we have to answer for, our liability for damages is limited to predictable, typically occurring damages.

(9)
We are also liable according to legal regulations if the delay of delivery caused by us is based on a culpable breach of a substantial contractual obligation; in this case, however, the liability for damages is limited to predictable, typically occurring damages.

(10)
Our liability in case of a delay of delivery adds up to a compensation of 2% of the value of the delivery per full week, but no more than 15% of the value of the delivery.

(11)
Any further legal claims by customer shall remain unaffected.

§ 5 Weight, number of items, measurements

(1)
A discrepancy in weight, number of items, or specifications of the delivered goods as specified in the delivery receipt or invoice is to be proven by customer.

(2)
Depending on the kind of good we are allowed a surplus- or short delivery of the agreed upon weight or number of items of up to 10%. For quality and measurements, the DIN/EN norms, and the official material descriptions and verification certificates respectively, apply. Other details about quality, measurements, weights and applicability are no warranties. Neither are declarations of conformity, declarations by manufacturer and according CE and GS marks.

(3)
For delivery ex works, the weights which appear on the invoice we received by the works shall also apply for our customers. Objections shall be considered only insofar as the works approve their validity. In case of deliveries ex works the weights are determined as accurately as possible at our choice – either by individual or total weighing or by a theoretical calculation and determination of the allowed surplus tolerances for the relevant DIN-EN.

§ 6 Transfer of risks

(1)
If not otherwise indicated in the confirmation of order, the agreement is "delivery ex works". These works can also be the works or store-houses of third parties. If there is no explicit order by customer, we are entitled to choose an adequate person to conduct the transport. Every risk is transferred to our customer as soon as the transport vehicle has left the shipping point, also in case of transportation with one of our trucks or carriage-free delivery by a carrier or collection by customer.

(2)
Customer is not entitled to reject partial deliveries.

(3) For the shipping we determine carrier and dispatch route.
(4) For return consignments of boxes and crates in good conditions which are carriage-free and exempt from charges, if it is not disposable packaging, two-thirds of the charged value is repaid.

(5) If customer demands it, we will insure the delivery with transport insurance. Customer shall bear the arising expenses.

(6) If the shipping or the delivery is delayed due to customer's demand or for reasons customer has to answer for, the risk is transferred to customer for the duration of the delay. In this case, however, we are obliged to effectuate the insurance customer is demanding at customer's costs and demand.

(7) For the adjustment of claims caused during transportation it is necessary for customer to immediately effectuate an immediate recording of the facts together with a representative of the hired carrier company to assess the damages. Customer must inform him- or herself about the appropriate regulations of the carrier company.

§ 7 Tools

(1) If tools are produced or supplied by us for deliveries to customer, these shall remain our property even if the costs for the tools have been paid in part or total by customer.

(2) The tools are exclusively used for the delivery to customer if customer fulfils all contractual obligations toward us. If 24 months (twenty-four months) have passed since the delivery or if the costs for the supply of the tool have been amortized, we are entitled to a further use of the tool or the destruction thereof.

§ 8 Liability for defects

(1) Claims for defects by customer require that customer has met all obligations regarding inspection and notice of defect according to § 377 German Commercial Code.

(2) If damage has been ascertained on the sales item, customer is entitled at his choice to a supplementary performance in the form of a removal of the defect or to the delivery of a new sales item free of defects. In the case of a removal of the defect, we are obliged to bear all costs arising from the process of the removal of the defect, especially costs for transportation, travel, work force, and material, but only if costs are not heightened because the sales item has been brought to a location other than the place of delivery.

(3) If the supplementary performance fails, customer is entitled to claim rescission or a reduction of costs at customer's choice.

(4) Liability due to negligent injury of life, body, or health shall remain unaffected. This also applies to the mandatory liability according to the Product Liability Act.

(5) If not otherwise agreed upon above, liability is excluded.

(6) The statute of limitations is 12 months beginning with transfer of risks.

(7) In the event of a delivery recourse in accordance with §§ 478, 479 German Civil Code, the statute of limitation applies. Its duration is five years beginning with delivery of the defective sales item.

§ 9 Joint liability

(1) A liability for claims for damages going further than provided for in § 8 is excluded regardless the legal form of the pleaded claim. This especially applies to claims for damages due to default at conclusion of contract, other neglects of duties, or tort claims for damages of items according to § 823 German Civil Code.

(2) The limitations in para. (1) also apply if customer claims compensation for futile expenditures instead of compensation for the damage.

(3) If the liability for damages is excluded or limited, this shall also apply to the personal liability of our employees, staff, representatives and hired vicarious agents.

§ 10 Reservation of proprietary rights

(1) We reserve the proprietary right to the sales item until all accounts stemming from the contract for delivery are closed. In case of customer's behavior contrary to contract, especially in case of default of payment, we are entitled to withdraw the sales item. With the withdrawal of the sales item a rescission from the contract is at hand. After withdrawing the sales item, we are entitled to its recycling. The proceeds of recycling are to be credited against customer's liabilities – less the recycling costs.

(2) Customer is obliged to handle the sales item with care. Customer is especially obliged to insure it at customer's own expenses and sufficiently at replacement value against fire, water, and theft. If maintenance and inspection work is necessary, customer must have these conducted timely and at own expenses.

(3) In case of distraints or other interferences by third parties, customer has to inform us immediately and in writing, so that we can file suit according to § 771 German Code of Civil Procedure. If the third party cannot reimburse us for the judicial and extrajudicial costs of a suit according to § 771 ZPO (German Code of Civil Procedure), customer is liable for our arisen deficit.

(4) Customer is entitled to sell the sales item in the sense of a proper sales procedure. However, customer assigns all claims at the amount of the final amount of our invoice at this point already (incl. VAT) which might arise from the resale to customer's buyer or third parties. This is irrespective of whether or not the sales item is sold without or after treatment. Customer remains entitled to these claims even after transfer. Our entitlement to claim these claims ourselves shall remain unaffected. However, we are obliged not to claim any claims as long as customer meets all obligations to payment arising from the collection of proceeds, does not become guilty of default of payment, and especially if no files for reorganization or insolvency have been filed or a cessation of payment is at hand. If, however, any of these are the case, we may claim that customer discloses assigned account and customer's debtor, discloses all information necessary for collection, hands over all corresponding documents, and

informs customer's debtor (third parties) about the transfer.

(5) The treatment or alteration of the sales items by customer is always done for us. If the sales item is converted with other objects not belonging to us, we acquire the co-ownership of the new item at the ratio of the value of the sales item (total amount of invoice, incl. VAT) to the other processed objects at the time of processing. For the rest, the same regulations apply for the item created by processing as for the sales item delivered under reserve.

(6) If the sales item is inseparably mingled with other objects not owned by us, we acquire the co-ownership of the new item at the ratio of the value of the sales item (total amount of invoice, incl. VAT) to the other mingled objects at the time of mingling. If the mingling is conducted in a way that the item of customer is to be seen as the main item, the agreement applies that customer transfers a partial co-ownership to us. Customer thus keeps our sole or joint ownership in safe custody.

(7) Customer also makes assignments to us to the securing of our assignments against customer which arise from connecting the sales item with an estate against a third party.

(8) We are obliged to waive our right to our security at customer's demand insofar as the realizable value of our security exceeds the claims to be secured by more than 10%; the selection of the security to be waived is incumbent on us.

§ 11 Court of jurisdiction – place of delivery

(1) If customer is a merchant, court of jurisdiction is our place of business in Ladenburg. However, we have the right to file a suit against customer at court of customer's residence.

(2) All legal relations are governed by the substantive law of the Federal Republic of Germany; applicability of the laws of the Convention on the International Sale of Goods shall be excluded.

(3) If not otherwise indicated in the confirmation of order, the place of delivery is our place of business.