

# General Terms of Sale and Delivery

## § 1 Offer, conclusion of contract and contractual contents

1. Our Terms of Sale shall apply exclusively; we do not recognise contradictory terms and conditions or terms and conditions which deviate from our Terms of Sale unless we have explicitly approved their validity in writing. Our Terms of Sale shall also apply if we carry out the delivery to the buyer without reservation in the knowledge of contradictory terms and conditions of the buyer or terms and conditions which deviate from our Terms of Sale.
2. Our Terms of Sale shall only apply towards an entrepreneur within the meaning of Section 14 BGB [German Civil Code].
3. Our General Service Terms shall apply with precedence over these Terms of Sale in the respective valid version in cases, which comprise the service offer of RÖHM GmbH.
4. Our offers are always to be understood as invitatio ad offerendum and are therefore without obligation insofar as they have not explicitly been described as binding. The contract shall only be concluded with our written confirmation and in line with its contents and – if a written confirmation is missing – by the service/delivery. If a delivery/service is carried out immediately without a confirmation then the invoice shall at the same time be deemed as an order confirmation.
5. Costs for the production of drawings for special constructions are to be borne by the orderer insofar as the offer does not lead to an order for reasons, for which we are not responsible.
6. All details concerning weights, dimensions, services and technical data, which are contained in our printed material, catalogues, price lists or in other contractual documents, merely serve for purposes of information and are only binding insofar as they are explicitly described as binding.
7. We reserve the right to make construction and form changes to the object of contract insofar as no changes are made hereto, which are deemed unreasonable for the orderer.
8. The documentation consists of the compilation drawing, the BOM with marking of the parts subject to wear and tear and spare parts as well as assembly instructions upon request. Respectively in German and/or, upon request, in English. This free documentation will be supplied in a digital form. The PDF format shall apply to drawings, BOMs and texts. Any scope of documentation beyond this is liable to costs respectively requires a special agreement. The documents may not be reproduced in full or in part, not made accessible to third parties or used for any other purpose apart from that for which they were handed over to the customer without our prior written authorization.
9. The corresponding measurement methods for tests, with which certain temperatures, times and other measured or control values should apply, must be stipulated before start of delivery and recognised by both parties. If no stipulation is made the measurement methods usually applied by RÖHM shall apply, we shall provide the details thereof upon request.
10. Samples will only be supplied against payment and owing to a separately placed order.
11. Assurances, collateral agreements and amendments to the contract require a written form in order to be valid. This requirement cannot be waived orally.
12. Placed orders are irrevocable unless the supplier has approved the revocation in writing.
13. In case of export business the delivery is carried out at the conditions agreed on the order confirmation, the international regulations for the interpretation of customary contractual forms shall apply in addition (incoterms 2010 of the International Chamber of Commerce, respective valid status).
14. Our General Business Terms shall apply to the RÖHM online shop with the following supplementations:
  - a) The offer on the part of the customer is submitted binding as soon as the customer orders the products in the shopping basket by using the function „binding order“.
  - b) A purchase in the online shop is only possible if the customer actively agrees to our General Business Terms.
  - c) Mistakes and errors with regard to the goods availability, prices and other details and data excepted. Diagrams in the online shop are merely for the purpose of illustration respectively as visual aids; the description is binding.
  - d) We will inform the customer if the product ordered by the customer is temporarily or permanently not available.
15. Our „product information“, technical information leaflets as well as other product-specific publications shall apply in addition to the General Business Terms. These are always to be compiled with in their current version.

## § 2 Prices

1. In the absence of special written agreements the prices in the Federal Republic of Germany shall apply „carriage paid“ recipient plus the statutory value added tax. With export business the object of delivery shall be deemed as sold „ex works“ if nothing is determined in the contract concerning the type of sale. A processing fee of EUR 15.00 will be charged for individual orders with a goods value of less than EUR 150.00 net, a processing fee of EUR 30.00 for orders with a goods value of less than EUR 50.00 net respectively plus the applicable rate of value added tax. This shall apply to deliveries within the domestic country and overseas. At the customer's request the goods can be delivered to an alternative shipping address against a logistics fee in the amount of EUR 10.00.
2. We would like to point out that we will only carry out the shipment at the customer's request. This shall have no effect on the regulations according to Section 5.
3. We shall charge the prices valid upon conclusion of the contract, which are based on the cost factors which are valid at this time. Should these cost factors (in particular material, wages, energy, etc.) change between conclusion of the contract and the agreed delivery time then we are entitled to make a corresponding change to the prices. In case of export business the supplier is entitled to terminate the contract extraordinarily with regard to the part of the order that has not yet been completed or to adjust the prices for this accordingly in the event of a substantial devaluation in the currency, in which the order is concluded.
4. In case of conclusion ex works the goods will be conveyed at the costs and risk of the orderer. With all other consignments the provisions stipulated in the incoterms 2010, respective valid status, will apply with regard to insurance and the assumption of risks.
5. We will inform the buyer of our production quantity for parts/products, which are produced especially according to the buyer's requests. The buyer undertakes to purchase the quantities confirmed to him.
6. Excess and shortfalls in deliveries of up to 5 %, with special tools up to 10 %, at least however 2 pieces, are permitted and do not substantiate any quality defects. The respective delivery will be charged.

## § 3 Terms of payment

1. In the absence of a special agreement the payment is to be made without any deduction free paying agent within 10 days after the invoice date – also with partial deliveries.
2. In case of default of payment interest will be charged in the amount of the credit costs charged by banks, at least however interest in the amount of 9 % above the respective base lending rate of the ECB.
3. In case of export business the payments are to be made in line with the agreed terms of payment.
4. Costs of the payment transactions, in particular bank charges for overseas transfers to us, shall principally be for the expense of the customer.

## § 4 Delivery time

1. The start of the delivery deadline stated by us presumes the clarification of all technical questions. Delivery dates stated by us are – insofar as not explicitly agreed or described as binding – non-binding and shall merely represent an expected delivery date.
2. The compliance with our delivery obligation further presumes the timely and proper fulfilment of the buyer's obligations, in particular the compliance with the agreed terms of payment. The right is reserved to the plea of the unfulfilled contract. This right shall also consist of obligations from previous deliveries which have not been satisfied in full.
3. The delivery deadline shall begin with the sending of the order confirmation, however not before the provision of the documents, permit, releases, etc., which are to be procured by the orderer, as well as not before the receipt of the agreed down payment.
4. If a binding delivery date has been agreed then the supplier also has to deliver within the deadline. The delivery deadline shall have been adhered to if the object of delivery has left the plant by the time it expires or notification has been given that the object is ready for delivery, the right is reserved to the timely and correct self-delivery. If the orderer changes his order with regard to parts of the delivery then the delivery deadline shall only begin to apply new again with the confirmation of the change.
5. Force majeure, war, civil commotion, strike, lock-out or measures of authorities, no matter for what reason, which oppose a delivery, as well as deficiencies of raw materials, of transport means as well as theft – also at the sub-suppliers – shall release the supplier from the obligation to deliver within the agreed deadline. The orderer is to be notified immediately of the occurrence of the event and of the expected implications.
6. Deliveries before expiry of the delivery time and in reasonable parts are permitted.
7. The adherence to the delivery time presumes the fulfilment of the orderer's contractual obligations.
8. The regulations of Subclause 10 shall apply in the event of the delay in delivery or impossibility.

## § 5 Passing of risk and acceptance

1. The risk shall pass to the orderer by no later than with the despatch of the delivered parts also if partial deliveries are made or we have taken over other services e.g. the shipping costs or delivery to the location and installation.
2. At the orderer's request the shipment shall be insured by us against theft, damages caused by breakage, transport, fire and water and other insurable risks at his costs.
3. If the shipment is delayed as a result of circumstances, for which the orderer is responsible, then the risk shall pass to the orderer from the day upon which the goods are ready for shipment; however we are obliged to procure the insurances, which he requests, at the request and costs of the orderer.
4. Delivered objects are, even if they feature insignificant features, to be accepted by the orderer irrespective of the rights from Section 8.

## § 6 Delay in acceptance, order on call

1. If the orderer does not accept the object of contract within the deadline we are entitled to set him a reasonable final deadline, to dispose otherwise over the object after its expiry and to supply the orderer with a reasonably extended deadline. Our rights to cancel the contract under the pre-requisites of Section 326 BGB and to request damages owing to the non-fulfilment shall remain unaffected hereby. If we request damages owing to non-fulfilment we can request 40 % of the agreed price plus value added tax as compensation unless the orderer proves less damages. We reserve the right to assert higher actual damages.
2. Orders, which are confirmed by us on call, must – insofar as nothing special has been agreed – be accepted by no later than within one year from the order date. The same shall apply in case of date reservations or sustainable „on call position“. Subclause 6.1 shall apply accordingly in case the goods are not called within the stated deadline.

## § 7 Reservation of title

1. The objects of the deliveries (reserved goods) shall remain our property until the fulfilment of all claims to which we are entitled against the buyer from the business relationship. Insofar as the value of all security rights, to which we are entitled against the buyer, exceed the amount of all secured claims by more than 10 %, we will release a corresponding part of the security rights at the buyer's request.
2. During the existence of the reservation of title the buyer is prohibited from a pledge or assignment as collateral and the resale only permitted for resellers in the customary course of business and only under the condition that the reseller receives a payment from his customer or stipulates the reservation that the property shall only pass to the customer when he has satisfied his payment obligations.
3. In case of attachments, seizures or other disposals or interventions of third parties the buyer has to inform us immediately so that we can file an action according to Section 771 ZPO [German Code of Civil Procedure]. Insofar as the third party is not in the position to reimburse us the court and out-of-court costs of an action according to Section 771 ZPO, the buyer will be liable for the loss incurred to us.
4. The buyer undertakes to treat the object of purchase with due care and attention; he is in particular obliged to sufficiently insure these at the value as new at his own costs against damages caused by fire, water and theft. Insofar as maintenance and inspection work is necessary the buyer must carry this out in time at his own costs.

# General Terms of Sale and Delivery

5. In case of breaches of duty by the buyer, in particular with default of payment we are entitled to cancellation and to take the goods back; the buyer is obliged to hand the goods over. The taking back of goods respectively the assertion of the reservation of title does not require any cancellation of the supplier; these acts or an attachment of the reserved goods by us shall not represent a cancellation of the contract unless we had explicitly declared this.

6. If the buyer has resold the object of purchase in the ordinary course of business then he shall hereby now already assign all claims to us in the amount of the final invoice amount (including value added tax) of our claim, to which he is entitled from the resale against his buyers or third parties, irrespective of whether the object of purchase has been resold without or after processing. The buyer shall also remain authorized to collect this claim after the assignment. Our authorization to collect the claim ourselves shall remain unaffected hereby. However, we undertake not to collect the claim as long as the buyer satisfies his payment obligations from the collected proceedings, is not in default of payment and in particular no application has been filed for the opening of insolvency proceedings or payments have been suspended. If this is however the case we can request that the buyer announces the assigned claims and their debtors to us, provides us all details which are necessary for the collection, hands over the associated documents and informs the debtors (third parties) of the assignment.

7. The processing or conversion of the object of purchase by the buyer is always carried out on our behalf. If the object of purchase is processed with other objects, which do not belong to us, then we shall acquire the co-ownership to the new object in the ratio of the value of the object of purchase (end invoice amount, including value added tax) to the other processed objects at the time of the processing. Incidentally, the same shall apply to the object produced by processing as to the object of purchase delivered under reservation.

8. If the object of purchase is inseparably mixed with other objects that do not belong to us then we shall acquire the co-ownership to the new object in the ratio of the value of the object of purchase (end invoice amount, including value added tax) to the other mixed objects at the time of the mixing. If the mixing is carried out to the extent that the object of the buyer is to be seen as the main object then it shall be deemed as agreed that the buyer assigns us the pro rata co-ownership. The buyer shall store the thus produced sole ownership or co-ownership on our behalf.

## § 8 Quality defects

We shall be liable for quality defects as follows:

1. All those parts or services are to be subsequently improved free of charge at our choice, delivered or provided new, which – irrespective of the operating duration – feature a quality defect if this cause existed already at the time when the risk was passed.
2. Claims for quality defects shall become statute-barred in 12 months. The deadline will begin with the passing of the risk (Subclause 6).
3. The buyer has to report quality defects to us immediately in writing.
4. In case of reports of defects payments of the buyer may be withheld in a scope, which is in reasonable relation to the occurred quality defects. If the defect is unjustifiably reported we are entitled to request reimbursement of the expenses incurred to us by the buyer.
5. We are first of all always to be granted the opportunity for the subsequent fulfilment within a reasonable period of time.
6. If the subsequent fulfilment fails the buyer can – irrespective of possible claims for damages – cancel the contract or reduce the remuneration. The buyer can only request reimbursement for fruitless expenses if we are responsible for the defect owing to wilful intent or gross negligence.
7. Defects shall not exist with an only insignificant deviation from the agreed conditions, with an only insignificant impairment to the usability, with natural wear and tear or damages, which are caused after the risk has passed as a result of faulty or negligent treatment, excessive use, unsuitable operating equipment or owing to special external influences, which are not presumed according to the contract, as well as with software faults that cannot be reproduced. If improper changes or repair work is carried out by the buyer or by third parties then this and the thus incurred consequences shall not substantiate any defects either. The same shall apply if our stipulations concerning the handling and other instructions are not complied with and a proper maintenance is not carried out.
8. Claims of the buyer owing to the expenses, which are necessary for the purpose of the subsequent fulfilment, in particular transport, route, labour and material costs, are excluded if the expenses increase, because the object of the delivery has subsequently been taken to another location than the buyer's branch unless the transportation corresponds with its use as intended.
9. Statutory claims for recourse of the buyer against us shall only exist to the extent that the buyer has not reached any agreements with its buyer that go beyond the statutory claims for defects.
10. Subclause 9 shall apply to claims for damages. Further or other than claims regulated in this Subclause or in Subclause 9 owing to a quality defect are excluded.

## § 9 Industrial property rights and copyrights, defects of title

Insofar as not otherwise agreed, we are obliged to merely provide the delivery in the country of the place of delivery free of industrial property rights and copyrights of third parties (hereinafter property rights). Insofar as a third party asserts justified claims owing to the infringement of property rights due to deliveries provided by us and used as per contract against the buyer, we shall be liable towards the buyer as follows within the deadline determined in Subclause 8.2:

1. We will, at our choice and at our costs, either obtain a right of use for the deliveries concerned, change these so that the property right is not infringed, or exchange these. If this is not possible for us at reasonable conditions, the buyer shall be entitled to the statutory rights to cancellation or reduction. The buyer can only request reimbursement for fruitless expenses if we are responsible for wilful intent or gross negligence. Our obligation to pay compensation is oriented to Subclause 10.
2. The afore-mentioned obligations shall only exist if the buyer informs us immediately in writing about the claims asserted by third parties, does not recognise an infringement and we reserve the right to all defence measures and settlement negotiations. If the buyer discontinues the use of the delivery for reasons to minimise damages or for other important reasons he undertakes to inform the third party that the discontinuation of the use is not associated with a recognition of an infringement of a property right.
3. Claims of the buyer are excluded insofar as he is responsible for the infringement of property right.

4. Claims of the buyer are further excluded insofar as the infringement of property right is caused by special stipulations of the buyer, due to an application that is not foreseeable for us or by the fact that the delivery is changed by the buyer or is used together with products not delivered by us.

5. In the event of infringements of property rights the provisions of Subclauses 8.4, 8.5 and 8.9 shall apply accordingly to the claims of the buyer regulated in Subclause 13.

6. Further or other claims of the buyer against us or our vicarious agents owing to a defect of title than those regulated in this Subclause 9 are excluded.

## § 10 Joint and several liability

1. Claims of the buyer for damages – irrespective of the legal nature of the asserted claim – are excluded.
2. Excluded from this are:
  - a) Damages owing to the breach of essential contractual obligations. Deemed as essential are such contractual obligations, the fulfilment of which makes the proper execution of the contract possible at all and on the compliance with which the contractual partner may as a rule rely and depend on.
  - b) Damages from the injury to life, the body or the health if we are responsible for the breach of obligation.
  - c) For other damages, which are due to a wilful or grossly negligent breach of duty, whereby our breach of duty is deemed equivalent to that of our legal representatives or vicarious agents.
  - d) Liability according to the ProdHaftG [German Product Liability Act]
3. A change to the burden of proof for the disadvantage of the buyer is not associated with the afore-mentioned regulations.
4. Insofar as the liability for damages is excluded or limited against us, this shall also apply with regard to the personal liability for damages of our employees, our commercial agents and our vicarious agents.

## § 11 Obligations of the buyer to provide assistance

1. Assistance services of the buyer, which are explicitly or tacitly agreed within the framework of the contract, shall be carried out without a special remuneration unless explicitly otherwise agreed.
2. The buyer is obliged to inform us about all facts in time, from which it can be derived that goods and products in stock in our company, which we have made available with regard to the production capacities reported to us, cannot be used or not used in full. If residual stocks remain the buyer shall take over the stocks and the, if applicable incurred destruction costs in the event of a premature change to its material scheduling. This shall also apply to products, with which we had to order minimum quantities on the part of our suppliers if we have informed the customer hereof in advance.
3. The buyer guarantees that the products supplied by him for processing are suitable for this purpose. We are not obliged to examine the products supplied by the buyer for the condition and the suitability for the further processing. Within the framework of ongoing business relationships as well as if an object for processing has initially been inspected, tested and released, the buyer undertakes to inform us of each product change without request in writing. In the case of regular processing of objects the buyer is further obliged to examine the object that is to be processed by us for deviations and changes for each change to the production conditions and in his company, in particular with the exchange of tools, machines or with the introduction of new production processes and to notify us of such changes and modifications in writing.
4. We do not have to examine the instructions of our buyers, the material selection or other regulations, which are made by our buyer, for their accuracy.
5. Therefore, the buyer has to examine all instructions, which he issues as well as the quality of the materials stipulated or made available to us for the compliance with the statutory and technical regulations.
6. If the buyer is in default with regard to his obligation for provision or to provide assistance after a written warning we are entitled to the statutory rights.
7. Goods may only be returned with the supplier's express permission. Any returned goods must be delivered free in their original packaging and must be accompanied by the return receipt provided by the supplier. The goods must be in their original state, i.e. undamaged and fully functional. Returned goods will no longer be accepted when six months have lapsed from the date of delivery. Returns of specially designed or custom-made items, as well as used goods will not be accepted. We will charge a handling fee of 20 % - 40 % of the value of the goods, however, at least EUR 100 per item plus statutory VAT. Following presentation of appropriate evidence, the supplier reserves the right to charge a higher amount to the purchaser in individual cases; the purchaser is free to prove that the damage was lower.

## § 12 Place of performance and place of jurisdiction/miscellaneous

1. The place of performance and place of payment is the registered seat of our company in Sontheim/Brenz.
2. The law of the Federal Republic of Germany is to be exclusively applied to the contractual relationship. The application of the Convention of the United Nations of 11 April 1980 concerning Contracts for the International Sale of Goods (CISG „Law governing the sale of goods of Vienna“) is excluded.
3. With all disputes ensuing from the contractual relationship, if the orderer is a merchant, a legal entity under public law or a special fund under public law, the action is to be filed at the court that has jurisdiction for our headquarters. We are also entitled to file action at the headquarters of the orderer.
4. We store your data according to Section 23 Federal Data Protection Act.

RÖHM GmbH

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