

General Terms and Conditions of Payment and Delivery

I. Validity of the Terms

1. Our deliveries, services and offers are provided solely on the basis of these General Terms and Conditions of Payment and Delivery. If they have not been accepted already, these Terms and Conditions shall be deemed accepted – even for future business relations – upon receipt of the goods or services. Any conflicting terms and conditions of purchase and counter-acknowledgments thereof by the customer are expressly rejected. These shall become an integral part of the contract only if expressly approved by us in writing in the individual case. Our Terms and Conditions shall apply even if we render performance to the customer without reservation knowing of the customer's terms and conditions that conflict with or differ from our own Terms and Conditions.
2. Amendments or supplements to these Terms and Conditions are required to be in writing. This shall also apply to any cancellation of the foregoing written form requirement.

II. Offers

1. Our offers are entirely non-binding and subject to change. Orders are accepted by shipping the goods or by our written confirmation, which is also required for supplements, modifications or side agreements.
2. We reserve the right to make design changes during the period of delivery, provided that the delivery item is not materially changed thereby and provided that the changes are reasonable for the customer.
3. Change requests by the customer of any kind with respect to our order confirmation shall become an integral component of the contract, but only if expressly confirmed in writing by us.
4. We are entitled to use subcontractors to render the contractual performance.

III. Prices

1. The prices specified in our order confirmations are binding. The prices are FCA from the agreed location of the Rosenberger Group (Incoterms 2020), plus the applicable statutory value-added tax in each case.
2. If an increase in cost factors (in particular raw material prices or wages) occurs after conclusion of the contract which was not foreseeable prior to conclusion of the contract, and which impacts the rendering of the performance owed by us, we are entitled to adjust the price according to the impact thereof.
3. We reserve the right to recalculate VAT, e.g. due to tax audits. If in consequence we have to pay VAT due to missing or wrong information by the customer, the customer will in addition pay all incurred expenses (interest) to the supplier.

IV. Delivery and Delivery Times

1. Delivery is made, if not otherwise agreed, FCA from the respective agreed location of the Rosenberger Group (Incoterms 2020). This applies even if the transport is carried out by us using our own means of transportation.
2. If a delivery is delayed by more than three weeks after the promised date, then the customer may set a grace period of three weeks. If delivery is not made before the end of this period, the customer may rescind the contract.
3. Compliance with deadlines for deliveries is subject to timely receipt of all documentation, required permits and approvals (particularly of plans) to be supplied by the customer, and is subject to the customer's compliance with the agreed payment terms and other obligations. If these requirements are not met in a timely manner, the deadlines will be extended reasonably; the foregoing will not apply if we are responsible for the delay.
4. In the event of
 - a) *force majeure*, e.g. war, acts of terrorism, insurrection or similar events (e.g., strikes, lockouts),
 - b) virus attacks and other third-party attacks against our IT system, provided this occurs in spite of our having taken protective measures necessary to meet the standard of ordinary care,
 - c) impediments due to German, American or other applicable national, EU or international rules under foreign trade and payments law,
 - d) late or incorrect supply to us, or
 - e) other circumstances, for which we are not responsible,the deadlines will be extended reasonably. Rights of rescission shall remain unaffected thereby.
5. If the customer defaults on acceptance of the goods, or if the delivery of our goods is delayed for reasons for which the customer is responsible and the delay lasts for more than one week from notification of readiness for shipment to the customer, we may store the goods as we in our discretion deem appropriate, at the customer's expense and risk.
6. The customer may not refuse to take receipt of deliveries for reason of minor defects (*unerhebliche Mängel*).
7. A transfer of the power of disposition to a third party for an item of an intracommunity or export delivery can only take place, if the delivered item has physically left the country of dispatch. If this is either not the case or judged differently by the

German tax authorities, the buyer is liable for the VAT to the seller including interest.

V. Packaging

Packaging is invoiced at cost

VI. Payment

1. The invoice amounts are payable as agreed. We reserve the right to accept or not accept bills of exchange on a case-by-case basis. Discounting and other bills of exchange charges shall be at the expense of the customer.
2. We are entitled to demand partial payments/ installment payments for partial performance rendered.
3. If the customer is in default of payment, we are entitled to charge default interest at 9 percentage points above the base rate of interest; we reserve the right to claim any further damages or losses.
4. If justified doubt arises about the customer's ability to pay, we shall have the right to withhold outstanding performance, unless the customer provides security.
5. All our receivables shall become time-barred 5 years after the due date, unless a longer prescription (limitation) period is required by law.
6. The customer is entitled to set-off only if the counterclaim is undisputed or has become *res judicata*, unless the counterclaim is synallagmatically linked to the off-set main claim.

VII. Delivery Quantities, Minimum value

1. With respect to the order amount, a delivery shortfall or surplus of up to 10% is permissible. For the calculation of the price, the actual delivery amounts or quantities are binding. We are entitled to provide partial performance within the delivery period, provided that such action is reasonable for the customer. Partial performance is reasonable for the customer if
 - a) the partial delivery can be used by the customer in accordance with the contractually intended use,
 - b) the delivery of the other ordered goods is guaranteed, and
 - c) the customer does not thereby incur any significant additional effort or greater cost (unless we state that we are prepared to assume the additional cost).
2. The minimum order value (per order or item) is based on the respective information in the valid price list or the valid offer.

VIII. Retention of Title

1. The delivery items (secured goods) shall remain our property until all claims arising to us against the customer under the business relationship have been fulfilled. If the value of all security interests in our favor exceeds the value of all secured claims by more than 20%, then at the customer's request, we shall release a corresponding portion of the security interests; we shall be entitled to select which of the various security interests to release.
2. While the retention of title exists, the customer is prohibited from any pledging or transferring by way of security; and any resale to buyers of the customer is permitted only in the ordinary course of business and only on condition that the customer receives payment from its buyer or makes the resale subject to the provision that ownership will not pass to the customer until the customer has fulfilled its payment obligations.
3. If the customer resells the secured goods, then it here and now assigns to us by way of security its future claims (receivables) from the resale against its buyer along with all ancillary rights (including any outstanding balances), without requiring any further special declarations. If the secured goods are resold again together with other items, then the customer shall assign to us the portion of the total price claim that corresponds to the price of the secured goods invoiced by us.
4.
 - a) The customer is permitted to process the secured goods in the ordinary course of business or to mix or combine them with other items.
 - b) We and the customer are here and now in agreement that, when combining or mixing with other items that do not belong to us, we shall always be entitled to co-ownership of the new item in the amount equal to the ratio of the value of the combined or mixed goods to the value of the other goods at the time of the combining or mixing. The new item shall be deemed secured goods.
 - c) The provision on the assignment of claims (receivables) pursuant to subsection 3 hereof shall apply also to the new item. However, the assignment shall apply only with respect to the amount of the value, as invoiced by us, of the processed, combined or mixed secured goods.
 - d) If the customer physically connects (or combines) the secured goods with real property or moveable objects, then the customer shall also assign to us by way of security, without the need for any further special declarations, the claim to which it is entitled as compensation for the physical connection, with all ancillary rights, in the amount equal to the ratio of the value of the connected secured goods to the other combined or connected goods at the time of the connection.

5. The customer is authorized to collect assigned receivables from the resale, unless this authorization is revoked. If good cause exists, particularly in case of a default of payment, cessation of payment, institution of insolvency proceedings, bill protest or justified indications of over-indebtedness or imminent insolvency of the customer, we shall be entitled to revoke the customer's collection authorization. In addition, after a prior warning and after compliance with a reasonable deadline, we may disclose the assignment by way of security, realize the assigned receivables and demand disclosure of the security assignment by our customer to the customer's buyer.
6. In the event of attachments, seizures or other dispositions or third-party interventions, the customer shall advise us without undue delay and notify the third party of our ownership. If evidence of a justified interest is provided, the customer shall provide us without undue delay with the information and documentation necessary to assert its rights against the customer.
7. In the event of breaches of duty by the customer, particularly in the event of default of payment, we shall be entitled, after the unsuccessful expiration of a reasonable period for performance granted to the customer, to retrieve the goods and rescind the contract; the statutory provisions concerning the dispensability of setting a deadline shall remain unaffected. The customer is obligated to return the goods. The retrieval of the goods or the assertion of the retention of title or the pledging of the secured goods by us does not constitute a rescission from the contract unless we expressly declare this.

IX. Warranty

1. If the delivered items are defective at the time the risk passes, we shall provide – at our discretion – free replacement or repair.
2. Warranty claims shall become time-barred after 12 months from the date of delivery. This shall not apply in cases of Section X.4 of these Terms and Conditions.
3. The customer's warranty rights are subject to the requirement that the customer has duly complied with its obligations to inspect and complain pursuant to § 377 of the German Commercial Code (*Handelsgesetzbuch*).
4. No warranty is assumed for defects resulting from inappropriate or improper use or storage, incorrect installation or initial operation or other circumstances caused by the customer or by third parties.
5. In addition, no claims for defects shall exist for merely minor deviations from the agreed quality, for merely insignificant impairments of usability, or for natural wear and tear.
6. In the event of an unjustified notification of defects, the customer shall bear the costs for the expenditure incurred by us for the examination thereof. The mere fact that we perform work based on a notification of defects from the customer does not signify any acknowledgment whatsoever about the existence of a defect or a legal obligation.
7. Claims of the customer due to expenditures made for the purpose of providing subsequent performance, particularly transportation costs, travel costs, labor costs and material costs shall be excluded to the extent that the expenditures increase because the subject of the delivery was subsequently brought to a different location than the customer's place of business, unless the relocation corresponds to its intended use.
8. The customer will have rights of recourse against us pursuant to § 478 of the German Civil Code (*Bürgerliches Gesetzbuch*) (recourse of the business owner) to the extent that the customer has not entered into any agreements with its buyer beyond the statutory claims for defects. Subsection 8 shall also apply accordingly with respect to the scope of the customer's right of recourse against us pursuant to § 478 (2) of the German Civil Code.

X. Compensatory Damages, Liability

1. Any and all customer claims for compensatory damages that arise, on whatever legal grounds, either directly or indirectly in connection with our services/goods are hereby waived and excluded, except as otherwise provided in these Terms and Conditions.
2. In cases involving simple negligence, we shall be solely liable for the breach of material contractual obligations (material contractual duties [*Kardinalpflichten*]). Material contractual duties are any obligations that must be fulfilled to enable due performance of the contract and the observance of which the customer regularly relies upon and should be able to rely upon; namely, the rights and obligations that the contract is specifically supposed to protect in its content and purpose. In these cases, our liability is limited to the foreseeable damages that are typical for the contract.
3. Compensatory damage claims, which the customer has against us and which are traced back to contractual penalty claims of the customer or the customer's buyer, or any other provisions which go beyond the statutory warranty, are deemed to be not foreseeable for us or not contractually typical in the aforementioned sense.
4. We assume unlimited liability for fault-based damages based on death, bodily injury or impairment to health. For other damages, we assume unlimited liability if they were caused by an intentional or grossly negligent breach of duty by us or by one of our statutory representative or vicarious agents. Our liability under the German Product Liability Act is also unlimited.
5. The foregoing exclusions and limitations of liability shall apply to the same extent with respect to our governing bodies, our statutory representatives, our employees and other vicarious agents.

XI. Place of Performance, Judicial Forum and Governing Law

1. The place of performance is Fridolfing.
2. The exclusive venue for all disputes arising directly or indirectly under the contractual relationship is Traunstein, if the customer is a businessman. Traunstein shall also be the exclusive venue if the customer has no general place of jurisdiction in Germany, if the customer relocates its domicile or place of business or habitual residence to outside of Germany after conclusion of the contract, or if the domicile, place of business or habitual residence of the customer is unknown at the time the action is brought. In any case, we are also entitled to bring an action at the general place of jurisdiction of the customer.
3. The laws of the Federal Republic of Germany shall exclusively govern this contract including the interpretation thereof, to the exclusion of conflict of law provisions and the UN Convention of Contracts for the International Sale of Goods (CISG).
4. Should an action be brought against us abroad by a third party due to a product defect for compensation of personal injuries and/or property damage, or due to a breach of intellectual property rights, then if this action is associated with a delivery by us to a customer, we may, at our discretion, institute the necessary procedural steps in the relevant foreign jurisdiction to enforce any claims for indemnification or recourse against the customer.

XII. Final Provisions

Should any provisions of the contract or provisions of these General Terms of Payment and Delivery be invalid either in whole or in part, then the statutory provisions shall apply. The other terms and conditions shall remain in effect.