

General Terms and Conditions of Sale - Dieter Rest GmbH

1. General - scope of application

- 1.1. Our General Terms and Conditions of Sale shall apply exclusively; we shall not acknowledge any terms and conditions of the purchaser that conflict with or deviate from our General Terms and Conditions of Sale unless we have expressly agreed to their applicability and validity in writing. Our General Terms and Conditions of Sale shall also apply in the event that we are aware of terms and conditions of the purchaser that conflict with or deviate from our General Terms and Conditions of Sale and carry out the delivery to the purchaser without any reservations.
- 1.2. Any and all agreements made between us and the purchaser for the purpose of executing this contract shall be set forth in writing in this agreement.
- 1.3. Our Terms and Conditions of Sale shall only apply to business customers in the sense of section 310 subsection 1 and section 14 subsection 1 of the German Civil Code (Bürgerliches Gesetzbuch - BGB).

2. Offers - acceptance of offers - documents of offers

- 2.1. Our offers are subject to alteration without notice and are without obligation, unless we have expressly designated them as binding in writing. Declarations of acceptance and orders of the purchaser, insofar as they are to be classified as an offer according to section 145 of the German Civil Code (Bürgerliches Gesetzbuch - BGB), shall only become binding upon our written confirmation of the order. We may accept these offers of the customer - designated both as declarations of acceptance and as orders - within fifteen (15) working days from receipt of the offer by us.
- 2.2. The documents belonging to our offer in the sense of section 2.1, such as illustrations, drawings, etc., as well as the resulting specifications of dimensions and weights are only approximately applicable, unless we have expressly indicated them in writing as binding. The same shall apply to specifications for use. We reserve the right to tolerances customary in the industry within the scope of what is reasonable for the purchaser.
- 2.3. We reserve the property rights and copyrights to the illustrations, drawings, calculations and other documents provided. This shall also apply to such written documents which are designated as "confidential". Prior to their disclosure to third parties, the purchaser requires our explicit and written consent. Insofar as we do not accept the customer's offer within the period stipulated in section 2.1, these documents shall be returned to us without delay.

3. Prices - packaging costs - terms of payment

- 3.1. Unless otherwise stated in the order confirmation, our prices shall apply "ex works", excluding packaging, which shall be invoiced separately.
- 3.2. For the return of packaging, separate agreements shall apply.
- 3.3. If requested by the purchaser, we shall cover the delivery by transport insurance; the costs incurred in this respect shall be borne by the purchaser.
- 3.4. Unless a fixed price agreement has been made,

prices shall remain subject to reasonable changes due to changes in wages, material and distribution costs for deliveries which take place 3 months or later after conclusion of the contract.

- 3.5. If we have undertaken the installation, assembly or any other service and unless otherwise agreed, the purchaser shall bear, in addition to the agreed remuneration, all necessary ancillary costs such as travel and transport costs as well as any customs duties, fees, taxes or other public charges.
- 3.6. The statutory value added tax is not included in our prices; it will be separately shown in the invoice in the statutory rate on the day of invoicing.
- 3.7. The purchase price is to be paid within fourteen (14) days after delivery with 2% discount or after thirty 30 days net.
- 3.8. Default occurs according to section 286 subsection 3 of the German Civil Code (Bürgerliches Gesetzbuch - BGB) within thirty (30) days after the due date and receipt of the invoice by the purchaser. Delayed payment interest shall be charged at a rate of 9% above the base interest rate of the European Central Bank. The right to claim higher damage caused by delayed payment shall be retained.
- 3.9. The purchaser shall only be entitled to set-off rights if its counterclaims have been legally established, are undisputed or have been acknowledged by us. Furthermore, the purchaser shall only be entitled to exercise a right of retention to the extent that its counterclaim is based on the same contractual relationship.

4. Delivery period – delay in delivery

- 4.1. The commencement of the delivery period stated by us shall be subject to the clarification of all technical issues.
- 4.2. The observance of the term of delivery requires the timely receipt of all documents to be provided by the purchaser, necessary approvals and releases, in particular of plans, as well as the observance of the agreed terms of payment and other obligations by the purchaser. If these prerequisites are not fulfilled in time, the terms shall be extended appropriately; this shall not apply if we are responsible for the delay. The objection of non-performance of the contract shall remain reserved.
- 4.3. We are entitled to make partial deliveries as well as short or over deliveries up to approx. 10%
- 4.4. If non-compliance with agreed delivery periods is due to force majeure and other unforeseeable events, in particular war, civil war, riot, strike, lockout, trade restrictions, embargoes, sanctions, epidemics and pandemics, official orders and restrictions, natural disasters or extreme natural events, the delivery terms shall be extended accordingly. The same shall apply in the event that we are not supplied by one of our suppliers in a timely and orderly manner due to such circumstances and events.
- 4.5. If the purchaser is in default of acceptance or culpably violates other duties to cooperate, we shall be entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses. Further claims or rights remain reserved.
- 4.6. If the prerequisites of section 4.5 are met, the risk of

accidental loss or accidental deterioration of the purchase item shall pass to the purchaser at the time at which the latter is in default of acceptance or creditor default.

- 4.7. We shall be liable in accordance with the statutory provisions insofar as the underlying purchase agreement is a fixed-date transaction in the sense of section 286 subsection 2 no. 4 of the German Civil Code (Bürgerliches Gesetzbuch - BGB) or section 376 of the German Commercial Code (Handelsgesetzbuch - HGB). We shall also be liable in accordance with the statutory provisions if, as a consequence of a delay in delivery we are responsible for, the customer is entitled to assert that its interest in the further fulfilment of the contract has ceased to exist.
- 4.8. We shall also be liable in accordance with the statutory provisions if the delay in delivery is due to an intentional or grossly negligent breach of contract we are responsible for; fault on the part of our representatives or vicarious agents shall be attributed to us. If the delivery delay is due to a grossly negligent breach of contract we are responsible for, our liability for damages shall be limited to the foreseeable, typically occurring damage.
- 4.9. We shall also be liable in accordance with the statutory provisions insofar as the delay in delivery we are responsible for is based on the culpable violation of an essential contractual obligation; in this case, however, the liability for damages shall be limited to the foreseeable, typically occurring damage.
- 4.10. Further statutory claims and rights of the purchaser remain reserved.

5. Passing of risk

- 5.1. Unless otherwise stipulated in the order confirmation, delivery is agreed "ex works". The risk of accidental loss and accidental deterioration of the item delivered by us shall therefore pass to the customer upon handover to or collection by the transport person, unless we have expressly undertaken in writing to ship or assemble the delivery item. This shall also apply if partial deliveries are made.
- 5.2. For deliveries including installation and assembly, the risk shall pass to the purchaser on the day of acceptance at the purchaser's own premises or, if agreed, after a faultless trial run.
- 5.3. In the event shipment, delivery, the start or performance of installation or assembly, the taking over in the own premises or the trial run is delayed for reasons the purchaser is responsible for or if the purchaser is in default of acceptance for other reasons, the risk shall pass to the purchaser at the time the default of acceptance occurs.

6. Liability for defects

- 6.1. The purchaser's claims for defects are subject to the prerequisite that the latter has duly met its obligations to examine the items delivered and to give notice of defects in accordance with section 377 of the German Commercial Code (Handelsgesetzbuch - HGB) or, if applicable, art. 38, 39 of the United Nations Convention on Contracts for the International Sale of Goods (CISG). In this context, the customer shall inspect the items delivered for any defects without undue delay, but no later than one (1) week after re-

ceipt, and shall subsequently notify us if such defects have been detected.

- 6.2. To the extent that the purchased item is defective, we shall be entitled at our option to subsequent performance in the form of rectification of the defect or delivery of a new item free of defects. We shall always be given the opportunity to remedy the defect within a reasonable term. In the event of subsequent performance, we shall bear the necessary costs only up to the amount of the purchase price. Prior to any return of the items, our consent must be obtained.
- 6.3. In the event that the supplementary performance fails, the purchaser shall be entitled, at its option, to demand rescission or reduction of the purchase price.
- 6.4. Claims for defects shall not exist in the case of merely insignificant deviation from the agreed quality, in the case of only immaterial impairment of usability, in the case of natural wear and tear and in the case of damage arising after the transfer of risk as a result of incorrect or negligent handling, excessive strain, unsuitable operating materials or due to extraordinary external influences not assumed under the contract. If improper repair work or modifications are carried out by the purchaser or third parties, no claims for defects shall exist neither for these nor for the consequences arising as a result thereof.
- 6.5. Any claims of the purchaser for expenses incurred for the purpose of subsequent performance, in particular transport, travel, labor and material costs, shall be excluded to the extent that expenses are increased as a result of the items delivered by us having been subsequently transported to a place other than the purchaser's place of business, unless such transport is in accordance with their intended use.
- 6.6. We shall be liable in accordance with the statutory provisions if the purchaser asserts claims for damages based on intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents. Insofar as we are not accused of intentional breach of contract, the liability for damages shall be limited to the foreseeable, typically occurring damage.
- 6.7. We shall be liable in accordance with the statutory provisions if we are in culpable breach of a material contractual obligation; however, even in this case, liability for damages shall be limited to the foreseeable, typically occurring damage.
- 6.8. Insofar as the purchaser is entitled to compensation for damage instead of performance due to a negligent breach of obligation, our liability shall be limited to compensation for the foreseeable, typically occurring damage.
- 6.9. Recourse claims of the purchaser against us shall only exist to the extent that the purchaser has not entered into any agreements with its customer that go beyond the statutory mandatory claims for defects.
- 6.10. Liability for culpable injury to life, limb or health shall remain unaffected; this shall also apply to mandatory liability under the German Product Liability Act (Produkthaftungsgesetz - ProdHaftG) or similar mandatory statutory provisions.
- 6.11. Unless otherwise stipulated above, any liability shall be excluded.
- 6.12. In the event that the United Nations Convention on Contracts for the International Sale of Goods (CISG) should apply, we shall exclusively be liable if we can

be accused of gross negligence or intent with regard to a contractual breach of duty. The liability for damages is - except in the case of intent - limited to the foreseeable, typically occurring damage.

- 6.13. The limitation period for claims for defects is twelve (12) months, beginning with the transfer of risk. This period shall not apply to the extent that the law pursuant to sections 438 subsection 1 no. 2, 445b subsection 1 and 634a subsection 1 no. 2 of the German Civil Code (Bürgerliches Gesetzbuch - BGB) prescribes longer periods.

7. Further liability

- 7.1. Any further liability for damages than stipulated in section 6 shall be excluded, irrespective of the legal nature of the asserted claim. This shall apply in particular to claims for damages arising from culpa in contrahendo, from other breaches of duty or from tort claims for compensation for property damage pursuant to section 823 of the German Civil Code (Bürgerliches Gesetzbuch - BGB).
- 7.2. The limitation according to section 7.1 shall also apply to the extent that the purchaser demands reimbursement of useless expenses instead of a claim for damages in lieu of performance.
- 7.3. To the extent that liability for damages is excluded or limited in relation to us, this shall also apply with regard to the personal liability for damages of our employees, workers, representatives and vicarious agents.

8. Impossibility of performance – adaptation of contract

- 8.1. To the extent that delivery is impossible, the purchaser shall be entitled to claim damages, unless we are not responsible for the impossibility. However, the purchaser's claim for damages shall be limited to 5% of the value of that part of the delivery item being unable to be used for its intended purpose due to the impossibility. This limitation shall not apply in cases of mandatory liability based on intent, gross negligence or injury to life, limb or health. The right of the purchaser to rescind the contract shall remain unaffected.
- 8.2. To the extent that unforeseeable events in the sense of section 4.4 substantially change the economic significance or the content of the delivery or have a substantial effect on our operations, the contract shall be adapted appropriately in accordance with the principles of good faith. If this is not economically reasonable, we shall be entitled to rescind the contract. If we intend to use this right of rescission, we shall notify the purchaser thereof without undue delay after having realized the consequences thereof, even if an extension of the delivery period had initially been agreed with the latter.

9. Retention of title

- 9.1. Until full payment of all our present and future claims arising under the purchase agreement as well as under an ongoing business relationship (hereinafter referred to as "Secured Claims"), we retain title to the sold items.
- 9.2. The purchaser is obliged to treat the purchased items with due care; in particular, to sufficiently insure them at its own expense against damage by fire, water and

theft at replacement value.

- 9.3. The items subject to retention of title may neither be pledged to third parties nor assigned as collateral before complete payment of the Secured Claims. The purchaser has to notify us immediately in writing if an application for the opening of insolvency proceedings is filed or there is any access by third parties to the items belonging to us (e.g. pledges).
- 9.4. In the event of a breach of contract by the purchaser, in particular non-payment of the purchase price due, we shall be entitled to rescind the agreement in accordance with the statutory provisions or/and to demand the return of the items on the basis of the title retention. The demand for return does not simultaneously imply the declaration of rescission; rather, we are entitled merely to demand the return of the items and to reserve the right to rescind the agreement. If the purchaser does not pay the purchase price due, we may only assert these rights if we have previously set the purchaser a reasonable deadline for payment without success or if setting such a deadline is dispensable according to the statutory provisions.
- 9.5. Until revocation, the purchaser shall be entitled to resell and/or process the items subject to retention of title in the orderly course of business according to the following provisions (sections 9.6 to 9.9).
- 9.6. The retention of title shall extend to the products resulting from the processing, mixing or combining of our items at their full value, whereby we shall be deemed to be the manufacturer. In the event that, as a result of processing, mixing or combining with products of third parties, the latter's title remains, we shall acquire co-ownership in relation to the invoice values of the processed, mixed or combined products. Otherwise, the same shall apply to the resulting product as to the item delivered under retention of title.
- 9.7. Claims against third parties arising from the resale of the purchased item or the product shall be assigned to us by the purchaser in advance as collateral in their entirety or in the amount of our co-ownership share, if any, pursuant to section 9.6. We hereby accept this assignment.
- 9.8. The purchaser shall remain entitled to collect the claim in addition to us. We undertake not to collect the claim as long as the purchaser meets its payment obligations towards us, there is no deficiency in its ability to pay and we do not assert the retention of title by exercising a right pursuant to section 9.4. Should this be the case, however, we may demand that the purchaser informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. In addition, in this case we shall be entitled to revoke the purchaser's entitlement to further sale and processing of the items subject to retention of title.
- 9.9. In the event that the realizable value of the collaterals exceeds our claims by more than 20%, we shall, at the purchaser's request, release collaterals of our choice.

10. Place of Jurisdiction - Choice of Law - Place of Performance

- 10.1. In case the purchaser is a merchant in the sense of the German Commercial Code (Handelsgesetzbuch - HGB), a legal entity under public law or a separate

fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our place of business in Arnsberg. The same shall apply if the purchaser is a business customer in the sense of section 14 of the German Civil Code (Bürgerliches Gesetzbuch - BGB). However, we shall also be entitled in all cases to bring an action at the place of performance of the delivery obligation in accordance with these General Terms and Conditions of Sale or a prior individual agreement or at the purchaser's general place of jurisdiction. Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.

- 10.2. This contract and the entire legal relationship between the parties shall be governed by the laws of the Federal Republic of Germany.
- 10.3. Unless otherwise stated in the order confirmation, our registered office in Arnsberg shall be the place of performance.

11. **Miscellaneous**

In the event that any provision of these General Terms and Conditions of Sale and the further agreements made are or become invalid, this shall not affect the validity of the remaining provisions. The contracting parties shall be obliged to replace the invalid provision by a provision which comes as close as possible to it in terms of economic success. The same shall apply accordingly to any gaps in the provisions.