

## **GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY**

of Rahrbach GmbH, 42579 Heiligenhaus  
in the version valid as per 01.April 2005:

### **I. SCOPE OF APPLICATION**

1. Our general Terms and Conditions of Sale and Delivery shall apply exclusively; we expressly do not recognise any terms and conditions of the Purchaser/Client that conflict with or differ from our General Terms and Conditions. They are not binding, even if we have not expressly objected to them, unless we have agreed to the validity of other terms and conditions expressly and in writing. Our General Terms and Conditions of Sale and Delivery are deemed to be agreed upon acceptance of an order - or at the latest upon receipt of our delivery by the Purchaser/Client. They shall also apply if we deliver unconditionally to the Purchaser/Client in the knowledge that the terms and conditions conflict with or differ from our General Terms and Conditions of Sale and Delivery.
2. All agreements reached between ourselves and the Purchaser/Client for the purpose of implementing this contract must be set out in writing in this contract.
3. Our General Terms and Conditions of Sale and Delivery shall also apply to all future transactions with the Purchaser.

### **II. OFFERS AND OFFER DOCUMENTATION**

1. Offers and orders are not binding until we have confirmed the order in writing. Verbal agreements must be confirmed in writing in order to be valid. The written order confirmation shall apply to the scope of the placed order. Supplementary agreements and changes must be in writing; verbal agreements are invalid.
2. We retain title and copyright to diagrams, drawings, calculations and other documents; they must not be made accessible to third parties. The Client shall be responsible for ensuring that patents, licences, trademarks or similar industrial property rights of third parties are not infringed. The Client shall in this respect release us from possible compensation claims of third parties. The Client is in this respect obliged to pay compensation with the inclusion of lost profit.

### **III. PRICES**

All prices are in euros ex works Heiligenhaus plus VAT and excluding packaging; this is invoiced separately. The prices which are valid on the date of delivery will be charged.

### **IV. DELIVERY**

1. Delivery dates or delivery periods, which may be agreed on a binding or non-binding basis, must be in writing. Compliance with the delivery period and/or our delivery obligation is conditional for the punctual receipt of all documents, permits, clearances or plans to be supplied by the Purchaser/Client as well as proper satisfaction of the obligations of the Purchaser/Client.
2. We shall not be responsible for delays in delivery or performance, even with respect to binding delivery periods and dates, caused by force majeure or due to events which significantly impede the delivery or make the delivery impossible – this includes in particular strikes, lockouts, official directives, delays in the delivery of materials, operational disruptions, a lack of transportation, energy supply difficulties, etc., even if they have taken place at our suppliers' or their subcontractors' premises. They shall entitle us to extend the delivery or performance according to the duration of the impediment, plus an appropriate start-up time, or to withdraw from the contract in part or in full due to the non-fulfilled part.
3. If the impediment lasts longer than three months, the Purchaser/Client is entitled, after giving adequate time with respect to the non-fulfilled part of the contract, to withdraw from the contract. Should the delivery time be extended or should we withdraw in full or in part from the contract, the Purchaser/Client may not derive any compensation claims therefrom. We may only cite the aforementioned circumstances if we notify the Purchaser/Client immediately.
4. If we are responsible for non-compliance with binding delivery periods and dates or if we are in default, the Purchaser/Client is entitled to compensation for delayed performance to the sum of half a percent for each completed week of delay, but up to a maximum of five percent of the invoice value of the deliveries and performances affected by the contract. Claims extending beyond this are excluded, unless the delay is at least due to gross negligence on our part.
5. We are entitled to make part deliveries or part performances at any time.
6. Unless otherwise stated in the order confirmation, the delivery is agreed "ex works" (transfer of risk). At the request of the Purchaser/Client we shall cover the delivery with transport insurance; the costs incurred in this respect shall be borne by the Purchaser/Client.

### **V. TERMS OF PAYMENT**

Payments must be effected within 30 days net. For payment within 10 days, a 3% discount will be granted.

Tool costs, sample invoices and wage work (e.g. metal-cutting surface treatment and surface refinement) are excluded.

1. Tool costs are payable on a purely net basis, i.e. a third upon conclusion of the order, a third when a sample is submitted and a third after a further 30 days.

2. Sample invoices are payable on a purely net basis after invoice receipt. Bills of exchange will only be accepted by special agreement and on account of payment without the granting of discount. Discount and expenses shall be borne by the Purchaser/Client. They are payable immediately by the latter. We shall not be liable for punctual submission, protests, notification or returning the bill of exchange if it is not cashed, unless we or our vicarious agents are guilty of intent or gross negligence.

### **VI. OFFSET AND RETENTION**

The Purchaser/Client is not entitled to effect offsets or retentions. These are generally excluded unless the offset claim is undisputed or finally established in law.

### **VII. PAYMENT DEFAULT, COLLATERAL AND RETENTION OF TITLE**

1. If the Purchaser defaults on payment, interest on arrears is payable to the sum of 8% over the respective base rate (§ 288, Section 2 BGB (German Civil Code)). This shall not affect the enforcement of further compensation claims.
2. Up until the fulfilment of all claims (including all balances from the current account) against the Purchaser/Client that we are due for whatever legal reason now or in the future, we shall be granted the following collateral, which the Purchaser/Client shall release at its choice on request if the value of the collateral persistently exceeds the claims by more than 20%.
3. The goods shall remain our property. Processing or transformation shall always be effected for us as manufacturer, but without an obligation on our part. Should our (joint) ownership cease due to blending, it shall herewith already be agreed that the (joint) ownership of the Purchaser/Client of the integrated product shall be assigned to us in proportion to the objective value

of the supplied item (invoiced value). The Purchaser/Client shall grant our (joint) ownership free of charge. The goods to which we are due (joint) ownership shall be referred to hereinafter as reserved goods. We shall herewith already accept assignment of joint ownership.

5. Should third parties access the reserved goods, the Purchaser/Client shall refer to our ownership and inform us immediately.

6. In the event of conduct on the part of the Purchaser/Client that is in breach of contract – in particular payment default – we shall be entitled to take back the reserved goods or, if necessary, to demand the assignment of the rights to possession of the Purchaser/Client from third parties. If we take back the reserved goods, this does not constitute withdrawal from the contract, unless we had expressly declared this in writing. Pledging of the reserved goods by us shall always constitute withdrawal from the contract.

### **VIII. WARRANTY**

1. The warranty period is 12 months, starting from the transfer of risk. This period is a limitative period and also applies to claims for compensation of consequential damage, unless claims are asserted arising from unauthorised handling or according to the Product Liability Law.

2. The warranty rights of the Purchaser/Client are conditional upon the latter having duly complied with its obligations to examine the goods and immediately notify defects in accordance with § 377, 378 HGB (German Commercial Code).

3. If a product defect exists for which we are responsible, we are entitled at our discretion to either remedy the defect or supply a replacement. If we choose to remedy the defect, we are obliged to bear all the necessary costs for the purposes of remedying the defect, in particular transport, labour and material costs. Insofar as the latter are not increased because the goods have to be taken to a location other than the place of performance. Replaced parts shall become our property. Our liability for external products shall be limited to assignment of the liability claims against the supplier of the external product that are due to us.

4. If we are not willing or able to remedy the defect or supply a replacement or, in particular, if this is delayed by more than a reasonable period for reasons for which we are responsible or should efforts to remedy the defect or supply a replacement otherwise fail, the Purchaser/Client shall be entitled at its discretion to either withdraw from the contract or demand an appropriate reduction of the purchase price. Other claims of the Purchaser/Client, unless they arise from acceptance of a guarantee, are, for whatever legal reason, excluded. This does not apply to intent, gross negligence or infringement of essential contractual obligations of the Client.

5. In the event that the Purchaser's client or its client justifiably demands subsequent performance according to legal requirements, the Purchaser must give us the possibility within a reasonable period of time to carry out the subsequent performance ourselves before it obtains a replacement elsewhere. The Purchaser must impose this obligation on its client accordingly. Should the Purchaser fail to meet this obligation, we shall reserve the right to reduce the reimbursement of expenses to the amount that we would have incurred if we had carried out the subsequent performance ourselves. This shall not affect § 444 BGB (German Civil Code).

### **IX. JOINT LIABILITY**

Further liability for compensation, as stipulated in Clause VIII – without taking into consideration the legal nature of the asserted claim – is excluded. With respect to any claims according to the Product Liability Law, our liability is restricted to the performance of the insurance taken out by us thereto. The Purchaser/Client shall be allowed to inspect the insurance policy on request. Insofar as our liability is excluded or restricted, this also applies to the personal liability of our salaried staff, workers, representatives and vicarious agents.

### **X. TOOLS**

A share of tool costs shall be charged for tools to be manufactured on behalf of the Purchaser/Client. In view of the constructive performance, the tools are generally our property and shall remain in our possession. Tools shall be used exclusively for orders of the Purchaser/Client, unless the latter exclusively declares its consent to further use for third parties.

Repayment of the share of tool costs is not envisaged in general and is subject to special written agreements. We shall undertake to carefully maintain and store the tools and shall also bear the costs incurred through normal wear and tear. Nevertheless, we do shall not be liable for damage that occurs despite proper handling. The storage obligation shall cease if a repeat order is not made by the Purchaser/Client within a period of two years after the last delivery (transfer of risk). We are not obliged to accept follow-up orders.

### **XI. DEVELOPMENT ORDERS**

In the case of orders whose execution requires special development work, the Purchaser/Client shall not acquire any inventor's/patent rights to the developed items or to the equipment for manufacturing these items; this also applies if the Purchaser/Client paid some of the development and/or manufacturing costs.

### **XII. DATA INFORMATION**

We are entitled to store personal data within the framework of business relations and to process these within the corporate group. The provisions of the Data Protection Act shall also apply.

### **XIII. OTHER**

Insofar as the Purchaser is a general merchant, our registered office is the legal venue; nevertheless, we are also entitled to institute legal proceedings against the Purchaser at its local court.

Unless stated otherwise in the order confirmation, our registered office is the place of performance.

The law of the Federal Republic of Germany shall apply exclusively; the UN Sales Convention (CISG) is expressly excluded.

All terms and conditions that previously applied shall be rendered ineffective herewith.

Amendments and additions to this contract must be in writing. This also applies to amendments to the written form clause. Verbal supplementary agreements have not been reached.

Should individual provisions of this contract be or become invalid or contain a loophole, this shall not affect the remaining provisions. The contracting parties are obliged, in as far as can be expected according to loyalty and good faith, to replace an invalid provision with a valid provision that equals its economic success insofar as this does not constitute a significant change to the contents of the contract. The same shall apply should a matter requiring settlement not have been expressly dealt with.