

# GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

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## § 1 General information / Scope of application

(1) These General Terms and Conditions of Sale and Delivery (GTC) shall apply exclusively. Any differing, contradictory or supplementary general terms and conditions of the customer shall form part of the contract only and to the extent that we have expressly approved their validity in writing. This requirement for approval applies in all cases, for example, even if we make a delivery to the customer without reservation and in full knowledge of the general terms and conditions of this customer.

(2) These GTC apply exclusively to entrepreneurs, legal entities under public law, and special funds under public law within the meaning of Section 310 (1) of the German Civil Code (BGB).

(3) The GTC shall apply in particular to contracts for the sale and/or supply of movables (hereinafter also: "Goods"), regardless of whether we produce the Goods ourselves or purchase these from other suppliers (Sections 433, 651 BGB).

(4) The GTC shall apply in their respective version also for future contracts for the sale and/or supply of movables with the same customer, without us having to refer to these in each individual case.

(5) Individual agreements reached with the customer in specific cases (including subsidiary agreements, addenda and amendments) shall in every case take precedence over these GTC. The content of such agreements shall be determined by a written contract and/or our written confirmation.

(6) Ancillary agreements made orally or by telephone shall only be effective after our confirmation in writing or text form. Subsequent amendments to these GTC must be made in writing. This also applies to the amendment of this written form clause.

## § 2 Conclusion of agreement

(1) All of our quotations are non-binding and without obligation. This applies even where we have provided catalogues, technical documentation (e.g. drafts, plans, accounts, calculations and references to DIN standards) and/or any other product descriptions or documents—including in electronic format—to the customer. In the absence of a special agreement, a contract shall only come into existence with our written order confirmation. All amendments and ancillary agreements shall only be valid if made in writing.

(2) We retain all property and intellectual property rights to cost estimates, drawings and similar information (hereinafter referred to as: Documents) of a tangible or intangible nature—also in electronic form. The Documents may only be made accessible to third parties with our prior written consent.

## § 3 Prices and terms of payment

(1) Unless otherwise agreed in individual cases, our prices are ex works, plus the respective statutory value added tax.

(2) Unless otherwise agreed, our terms of payment are as follows: 10 days 2% discount, 30 days net. If the value of the Goods exceeds €3,000.00, we reserve the right to demand a deposit/advance payment.

(3) After the due date, default interest shall be charged at the applicable statutory interest rate. We reserve the right to assert further default damages.

## § 4 Offsetting, retention

(1) The customer is only entitled to set-off if the counter-claim is uncontested or has been legally established. The customer is only entitled to assert rights of retention on the basis of counter-claims from the same contractual relationship.

(2) If, after conclusion of the contract, we become aware of facts indicating a significant deterioration in the financial circumstances of the customer which, according to prudent commercial judgement, are likely to jeopardise our claim to payment, we may demand the provision of suitable security within a reasonable period of time or advance performance until payment has been made in full. If the customer fails to comply with this request within a reasonable period, we shall be entitled to withdraw from the contract.

(3) If the customer is in arrears with a partial performance, we may call the entire remaining claim due immediately. Any statutory rights shall remain unaffected.

## **§ 5 Delivery time and default in delivery**

(1) The delivery dates and deadlines shall be deemed non-binding, subject to any agreement to the contrary. Compliance with our obligation to deliver requires the timely and proper fulfilment of all the customer's obligations. The right to object to the unfulfilled contract is reserved.

(2) Our delivery obligation shall in particular be subject to correct and timely self-delivery by our suppliers, unless we are responsible for the incorrect or delayed self-delivery. If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (non-availability of the service), we will inform the customer of this immediately. We will immediately refund any consideration already received.

(3) If non-compliance with delivery deadlines is due to unforeseeable extraordinary events which we were unable to avert even with reasonable care given the circumstances of the case, e.g. war, acts of terrorism, civil unrest, forces of nature, accidents, epidemics and comparable outbreaks of diseases, strikes and lockouts, other operational disruptions and delays in the delivery of essential operating materials or primary materials, the delivery deadlines shall be extended accordingly. This shall also be the case if these circumstances occur for our suppliers.

(4) Claims for damages by the customer due to delay or non-fulfilment of the delivery shall be limited to the foreseeable damage typical for the contract, even after expiry of any deadline set for us for delivery. This shall not apply in cases of wilful intent, gross negligence or for injury to life, limb or health. The customer may only legally withdraw from the contract within the framework of the statutory provisions if the delay in delivery is caused by us. No change in the burden of proof to the detriment of the customer is associated with the above provisions.

(5) We reserve the right to make changes to design and shape as well as changes to the scope of delivery, provided that the Goods are not significantly changed and the changes are reasonable for the customer.

## **§ 6 Impossibility of performance, embargoes, contract adjustment**

(1) The performance of the contract is subject to the proviso that there are no obstacles due to German, EU or other applicable regulations of foreign trade law or any embargoes or other sanctions. Insofar as necessary, the customer is obliged to provide information and documents required for the export or shipment; this applies in particular to documents required in the context of an application procedure to the BAFA (Federal Office of Economics and Export Control) (e.g. declaration of final destination or official documents). If we are unable to comply with our performance for reasons outside our control due to the conflicting regulations, we shall inform the customer of this without delay. We will immediately refund any consideration already received.

(2) If unforeseeable events within the meaning of section 5 para. 4 significantly change the economic significance or the content of the delivery or have a significant effect on our business, the contract shall be adjusted appropriately in good faith. If this is not financially viable, we shall be entitled to withdraw from the contract. If we wish to make use of this right of withdrawal, we must inform the customer of this without delay after becoming aware of the implications of the situation, even if an extension of the delivery period was initially agreed with the customer.

## **§ 7 Transfer of risk, acceptance, default of acceptance**

(1) Delivery is made ex works, which is also the place of performance. At the customer's request and expense, the Goods shall be shipped to another destination (sales shipment). Insofar as no other agreement has been reached, we are entitled to determine the nature of the despatch ourselves (in particular the transport company, route of despatch, packaging).

(2) In cases of sales shipments the customer shall bear the transport costs ex works and the costs of any transport insurance requested by the customer. Any customs duties, fees, taxes and other public charges shall be borne by the customer. Our packaging and freight charges shall apply. These can be viewed on our website at [www.raab-gruppe.de](http://www.raab-gruppe.de).

(3) The risk of accidental loss and accidental deterioration of the Goods shall pass to the customer at the latest upon hand-over. For sales shipments, however, the risk of accidental loss and accidental deterioration of the Goods as well as the risk of delay shall pass over to the customer upon delivery of the Goods to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment. If acceptance is agreed, this shall be binding for the transfer of risk. Acceptance shall also be governed by the statutory regulations for the law on labour contracts.

(4) If the customer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the customer is responsible, we shall be entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). In this case we shall charge lump-sum compensation in the amount of 0.5% of the agreed net value of the Goods per calendar week or part thereof, but no more than 5% of the agreed net value of the Goods, beginning with the delivery deadline or—in the absence of a delivery deadline—with the notification that the Goods are ready for shipment. Proof of higher damages and our statutory claims (in particular compensation for additional expenses, reasonable compensation, termination) shall remain unaffected. The lump sum shall, however, be offset against further monetary claims. The customer shall bear the burden of proof for demonstrating that no or substantially less damage has been caused than that contained within the above lump sum.

(5) In the event of a second delivery (even after a free first delivery), the customer shall be invoiced for the freight costs incurred by the freight forwarder.

## **§ 8 Retention of title**

(1) Until complete payment of all our current and future receivables arising from the purchase contract and the ongoing business relationship (secured claims) has been made, we shall retain ownership of the sold Goods.

(2) The Goods subject to retention of title may not be pledged to third parties or assigned as security before full payment of the secured claims. The customer must inform us immediately in writing if and to the extent that third parties seize the Goods belonging to us.

(3) In the event of any conduct by the customer in breach of the contract—in particular in the event of non-payment of the purchase price due—we shall be entitled to withdraw from the contract in accordance with the statutory provisions and to demand the return of the goods on the basis of the retention of title and withdrawal. Should the customer fail to pay the due purchase price, we may only assert these rights if we have previously set the customer a reasonable deadline for payment without success or if setting such a deadline is dispensable under the statutory provisions.

(4) The customer is authorised to resell and/or process the Goods subject to retention of title in the ordinary course of business. In such cases, the following provisions also apply.

a) Retention of title also extends to the products arising from the processing, mixing or combination of our Goods to their full value, whereby we are considered the manufacturers. Should the property rights of third parties continue to exist following the processing, mixing or combination with their goods, then we shall receive joint ownership on the basis of the proportional values of the processed, amalgamated or combined goods. Otherwise, the same shall apply for the new product as for the delivered Goods that were subject to the retention of title.

b) The customer hereby assigns to us by way of security the receivables against third parties arising from the resale of the Goods or the product in full or in the amount of our possible co-ownership share as per the above paragraph. We hereby accept the assignment. The obligations of the customer specified in para. 2 shall also apply in regard to the assigned receivables.

c) The customer remains authorised to collect these receivables along with us. We undertake not to collect the receivable as long as the customer meets their payment obligations towards us, is not in default of payment, no application for the opening of insolvency proceedings has been filed and there is no other deficiency in their ability to pay. If this is the case, however, we may demand that the customer informs us of the assigned claims and their debtors, provides all information necessary for the collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.

d) If the realisable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the customer's request.

## **§ 9 Transfer of ownership by way of security**

By way of security for current and future claims arising from the business relationship, we may claim transfer of ownership from the customer up to the amount of 120% of the outstanding claim if the fulfilment of the claims is at risk due to the customer's lack of ability to pay.

## **§ 10 Claims for defects of the customer**

(1) All those parts or services which have a material defect, the cause of which already existed at the time of the transfer of risk, shall at our discretion be repaired, replaced or provided again free of charge. The basis of our liability for defects shall primarily be the agreement reached on the quality of the Goods. Agreement on the condition of the goods shall be also determined by the relevant product specifications, which are provided to the customer prior to their order or which have been brought into the contract in the same way as these GTC. However, we do not assume any liability for public statements made by the business partner or other third parties (e.g. advertising statements).

(2) A prerequisite for the assertion of claims for defects is that the customer has fulfilled their statutory obligations to inspect and give notice of defects (Sections 377, 381 of the German Commercial Code - HGB). The customer must submit any complaints in writing without delay. If a defect becomes apparent during the inspection or at a later stage, this must be notified in writing within five (5) days at the latest, whereby timely dispatch of the notification is sufficient to meet the deadline. Irrespective of these obligations to inspect and provide notice of defects, the customer must declare any obvious defects (including incorrect or incomplete delivery) within a period of five (5) days after delivery, whereby the date on which the notice is sent shall also be decisive for meeting this deadline. Should the customer fail to conduct the proper inspection and/or provide notice, then our liability for the undeclared defect shall be excluded.

(3) In the case of claims for defects, the customer is permitted to retain payments to an extent which is proportionate to the defects which have occurred. The customer may only withhold payments if a notice of defect is being made which is undoubtedly well-founded. The customer does not have a right to withhold payments if its claims for defects have expired. Should a wrongful notice of defect be made, we are entitled to claim reimbursement for expenses incurred from the customer.

(4) We must be granted the opportunity to rectify the situation within a reasonable deadline. Our right to refuse subsequent performance if the legal requirements are met remains unaffected.

(5) If the subsequent performance fails, the customer may—irrespective of any claims for damages—withdraw from the contract or reduce the remuneration.

(6) Claims for defects shall not exist if there are only insignificant deviations from the agreed quality, if there is only insignificant impairment of usability, if there is natural wear and tear or damage occurring after the transfer of risk as a result of improper installation or commissioning or as a result of improper modifications or repair work by the customer or third parties, as a result of incorrect or negligent handling, excessive loading, unsuitable operating materials, defective construction work or as a result of special external influences which are not assumed under the contract, as well as in the case of non-reproducible defects. If the customer or third parties carry out improper modifications, installation/removal or repair work, there shall also be no claims for defects for these or the resulting consequences.

(7) Claims by the customer for expenses incurred for the purpose of subsequent performance are excluded if said expenses increase because the object of delivery/performance is subsequently transferred to a location other than a subsidiary of the customer, unless said transfer corresponds to its intended use. This applies mutatis mutandis to the customer's claims for reimbursement of expenses pursuant to Section 445a BGB (seller's right of recourse), provided that the last contract in the supply chain is not a purchase of consumer goods.

(8) The customer's right of recourse against us under Section 445a BGB (seller's right of recourse) shall only exist insofar as the customer has not entered into any agreements with its customer that go beyond the statutory claims for defects.

(9) Warranty claims for subsequent performance shall become statute-barred twelve months after the statutory commencement of the limitation period. This shall only apply to contracts in which a consumer is not involved. In legal transactions with consumers, the statutory warranty periods shall apply. The warranty period of 12 months shall not apply if the law prescribes longer periods, in particular according to Sections 438 (1) (2) (buildings and things used for a building) and 634a (1) (2) (defects of a building) BGB, in the case of intent, fraudulent concealment of a defect as well as non-compliance with a quality guarantee. Claims of the customer for reimbursement of expenses according to Section 445a BGB (recourse of the seller) shall also become statute-barred 12 months after the statutory commencement of the limitation period, provided that the last contract in the supply chain is not a purchase of consumer goods. The statutory regulations on expiry suspension, interruption and recommencement of limitation periods remain unaffected. The limitation periods of the German Product Liability Act shall likewise remain unchanged in all cases.

(10) Claims for damages by the customer due to a material defect are excluded. This does not apply to fraudulent concealment of the defect, to non-compliance with a quality guarantee, to injury to life or limb or health and to a wilful or grossly negligent breach of duty on our part. No change in the burden of proof to the detriment of the customer is associated with the above provisions. Further claims or claims of the customer other than those regulated in section 10 of these GTC due to a material defect are excluded.

## **§ 11 Product classification, order cancellation, right of return**

(1) The articles are classified A, B and C in our price list. A-classified articles are kept in stock. B-articles are not kept in stock. They are articles that are identical in design or differ only slightly. C-articles are special and customised parts that are manufactured on a one-off basis for a specific order.

(2) An order cancellation is only possible item by item for A-classified articles from our respective valid price list up to five (5) working days before the planned delivery date. In the event of an order cancellation, a flat-rate cancellation fee of 5% of the cancelled order amount, but at least €25.00, will be charged. We reserve the right to prove and charge higher cancellation costs. The customer is free to prove that lower cancellation costs were incurred.

(3) A-classified items from the current price list, with the exception of shafts, concrete and particle separators, in re-saleable condition can be returned. The return shall only take place after prior notification, within one (1) month from the invoice date. In the event of a return in accordance with the contract, flat-rate withdrawal costs of 30% of the returned items, but at least €25.00, will be charged. We reserve the right to prove and charge higher cancellation costs. The customer is free to prove that lower cancellation costs were incurred.

## **§ 12 Other liability**

(1) Unless otherwise stipulated in these GTC, including in the following provisions, we shall be liable in cases of violation of contractual and non-contractual obligations in accordance with the statutory provisions.

(2) We shall be liable for damage compensation—regardless of the legal grounds—in the event of gross negligence and intent. In the event of slight negligence we shall be liable only for

a) damage arising from culpable injury to life, limb or health,

b) damage from the culpable breach of an essential contractual obligation (an obligation, the fulfilment of which is a prerequisite to enable the proper implementation of the contract and upon compliance with which the contract partner regularly relies and should be able to rely); in this instance, our liability shall be limited to compensation for the foreseeable damage typically occurring.

(3) Limitations of liability arising from paragraph 2 shall not apply if we fraudulently conceal a defect or have assumed a guarantee for the quality of the Goods. The same shall apply for claims of the customer under the German Product Liability Act.

(4) On the grounds of a breach of duty that does not arise from a defect, the customer may only withdraw from or terminate the contract if we are culpable for the breach of duty. A free right to termination for the customer (particularly in accordance with Sections 651, 649 BGB) is excluded. Otherwise, the statutory provisions and legal consequences shall apply.

### **§ 13 Data protection**

The information on data protection within the meaning of Article 13 GDPR can be found in our data protection information. The currently valid data protection information is available at [www.raab-gruppe.de/datenschutz](http://www.raab-gruppe.de/datenschutz).

### **§ 14 Choice of law and place of jurisdiction**

(1) This contract and the entire legal relationship between the parties are subject to the law of the Federal Republic of Germany, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(2) The place of performance and exclusive place of jurisdiction for all disputes arising from this contract is our registered office, unless otherwise stated in the order confirmation. This provision shall only apply if the customer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law. We shall, however, also be entitled to take action at the general place of jurisdiction of the customer.