

Rathgeber GmbH - Terms and Conditions of sale, delivery and payment

1. General Terms and Conditions

1.1. Our deliveries and services are performed exclusively on the basis of the following conditions. We will not accept the Purchaser's general Terms and Conditions of business, unless we have expressly agreed to their validity in writing. Our Terms and Conditions (T&C's) outlined below also apply if we perform delivery to the Purchaser without reservation, whilst knowing that the Purchaser's terms and conditions conflict with or deviate from our terms and conditions as outlined below. Our Terms and Conditions also apply to all future business transactions in the context of a permanent business relationship with the Purchaser. These conditions also apply to legal entities constituted under public law and special funds under public law for deliveries and other services, including works contracts and the delivery of unjustifiable goods.

1.2. Our customers' data are stored and processed by us via EDP (electronic data processing), to the extent this is necessary for proper and correct completion of the business relationship. The provisions of the General Data Protection Regulation [GDPR] must be strictly observed.

2. Contract Conclusion

2.1. Our proposals are non-binding. All information on our products must be regarded as approximate average values. They are not guarantees of quality or consistency. Deviations customary in the industry (manufacturing tolerances) are permitted, as is oversupply or undersupply by up to 10%. Our sales units depend on the article: by the metre, kilogram, number of items or by other agreed units. Samples are non-binding samples. The properties of samples are not guaranteed.

2.2. The Purchaser's proposals will only be deemed to have been accepted if we have expressly declared this. Silence regarding such proposals does not constitute acceptance. The same also applies for commercial confirmation notices transmitted electronically, unless the electronic form of transmission has been mutually agreed for the business relationship and the transmission is made expressly to the address expressly designated for receiving such declarations. Silence towards proposals or bids transmitted in such a way does not constitute acceptance.

2.3. Our express declarations of acceptance of proposals can only be made by a person with an unlimited power of attorney; if this is not the case, orders are only be deemed to have been accepted if they are executed immediately following the order being placed or are performed on schedule. Similarly, subsidiary agreements not been made with one of the aforementioned persons only become effective upon our written confirmation.

3. Prices and Payment Terms

3.1. Prices valid on the day of delivery apply - even for back-to-back business transactions. All prices are understood to be net prices ex works or ex warehouse; in additions, the respective statutory Value Added Tax will be invoiced.

3.2. If the contract partner is an employer, and should a significant change in certain cost factors arise between concluding the contract and the delivery date, in particular wages, input material or freight costs, the agreed price may be adjusted accordingly for the extent of the influence of significant cost factors.

3.3. A special calculation risk is taken into account for producing tool moulds, in that we quote the Purchaser guide prices with a tolerance of +/- 10 %. This is expressly accepted by the Purchaser.

3.4. Breakages insurance can be taken out separately following an agreement upon the Purchaser's request and at the Purchaser's expense.

3.5. Our invoices are payable without deductions within 30 days following despatch of the goods (date as per the delivery note). Payment must be made free from charges or expenses. Should the Purchaser not pay within this period, the payment enters into delay. In the event of an

initial delivery to the Purchaser and in the event of default for payment with regard to earlier deliveries, we are entitled to request advance payment or security for our claim for payment. The costs for the money transfers must be borne by the Purchaser in full.

3.6. If payment is made by payment order, in particular using bills of exchange, discounting and redemption costs are borne by the Purchaser. Bills of exchange are only accepted subject to the possibility of discounting and only on account of payment.

3.7. In the event of the Purchaser's entering payment default or suspending payments, all our claims - including those arising from other contracts with the Purchaser - immediately fall due for payment; or if we become aware of other circumstances that give us considerable doubts regarding the Purchaser's ability to pay and creditworthiness. In these cases, we are entitled to complete outstanding deliveries only against advance payment or payment of security and, if the precondition or security has not been provided within two weeks, to withdraw from the contract without setting a new deadline. Further claims remain unaffected.

3.8. The Purchaser may only offset undisputed claims or legally established claims. He is only entitled to rights of retention in so far as his counterclaim is based on the same contractual relationship,

3.9. We are entitled to the type and scope of customary securities for our claims, even in so far as they are conditional or limited in time.

3.10. The statutory provisions on default of payment remain unaffected. If the Purchaser is an employer, then he must pay interest on the monetary debt at a rate of 9 percentage points above the base rate of interest during the period of default. We reserve the right to prove and assert higher damages caused by default.

4. Dimensions, weights, quality

4.1. Deviations in dimensions, weights and quality are permitted according to DIN standards, if this is a valid practise. Other deviations require special agreement.

4.2. Weights and dimensions are determined on our calibrated scales and clocks and are decisive for invoicing.

5. Execution of Deliveries, Transfer of Risk, Delivery Periods and Delivery Dates; Default of Acceptance

5.1. Our delivery obligation is subject to the reservation of correct and timely internal supply, unless we are responsible for the incorrect or delayed self-supply. The Purchaser bears the burden of proof for this.

5.2. The place of performance for our deliveries is our despatch warehouse in Mittenaar-Ballersbach. Unless otherwise agreed, despatch, route and means are left to our choice. We are entitled to make partial deliveries if these are reasonable for the customer.

5.3. Despatch and transportation always take place at the Purchaser's risk, individual clauses of INCOTERMS or the entire set of rules only apply in individual cases if these have been agreed with us in writing and in no case by reference to the Purchaser's general Terms and Conditions of business. The risk even transfers to the Purchaser in case of partial deliveries, as soon as the consignment has been handed over to the person or office responsible for transportation or has left our warehouse for the purpose of despatch, or has left our factory for delivery INCOTERMS Ex works. If loading or transportation of goods is delayed on grounds for which the Purchaser is responsible, then we are entitled to store the goods at the Purchaser's expense and risk at our reasonable discretion, i.e. to take measures deemed appropriate to preserve the goods and to invoice the goods as if delivered. The same applies if goods notified as ready for despatch are not called off within four days. Statutory provisions on default of acceptance remain unaffected.

5.4. In the case of orders from companies, § 447 BGB [German Civil Code] is definitive, if the shipment is made with our own means of transport or from a location other than the place of performance or if we bear the freight costs.

5.5. Special agreements are generally required for deliveries abroad. We are not obliged to deliver goods sold for export in our domestic country of manufacture (i.e. Germany) and to despatch goods destined for the country of manufacture (i.e. Germany) abroad. We are entitled to demand proof of export and confirmation of delivery.

6. Packaging, transportation aids

As far as is customary in the industry, we deliver goods packaged. The Purchaser bears the costs for this. We take packaging, protective and/or transportation aids back with us. We do not assume the Purchaser's costs for return transportation or for their own disposal of packaging. Packaging that goes beyond the transport route or any other special protection, e.g. for longer-term storage or for mere storage, require express agreement.

7. Delivery times, delays of delivery

7.1. Delivery periods commence on the date of order confirmation, but not before full clarification of all the details of the order. The same applies to delivery dates. Deadlines and dates refer to the time of despatch of goods. These will be deemed to have been complied with upon notification of readiness for despatch if the goods cannot be despatched on time through no fault of our own. All delivery periods and dates are subject to the reservation of unforeseeable disruptions to production and timely self-supply with the raw materials required and, in so far as merchandise is concerned, under the reservation of the ability to deliver and timely self-supply.

7.2. If the Purchaser does not fulfil contractual obligations - including cooperative or secondary obligations - such as opening a letter of credit, providing domestic or foreign certificates, making an advance payment, etc., in good time, we will be entitled to postpone our delivery periods and deadlines appropriately in accordance with the needs of our production process, notwithstanding our rights arising from the Purchaser's delay.

7.3. In case of deadlines and dates which are not expressly designated as fixed in the order confirmation, the Purchaser can set us a reasonable deadline for delivery/performance of a service two weeks after their expiry. We can only enter into delay upon expiry of this grace period.

7.4. Without affecting our rights arising from delay on the part of the Purchaser, deadlines and dates may be extended by the period of time for which the Purchaser does not fulfil his obligations towards us.

7.5. If call-offs exceed the quantity ordered for call-off orders, we are entitled to deliver only the quantity ordered or, at our discretion, to invoice the additional quantity according to the price on that date.

7.6. Cases of higher power (force majeure) or other events over which we have no control and which significantly hamper delivery/performance of services or make this impossible for us, release us from our obligations under the respective contract, temporary obstacles however only for the duration of the hindrance plus an appropriate start-up period. This also applies if these circumstances occur for our suppliers or their subcontractors. If the Purchaser cannot reasonably be expected to accept the delay, he can exercise his rights under § 326 Section 1 and Sections 3 - 5 BGB [Civil Code] and § 376 HGB [Commercial Code] respectively, after a prior hearing with us through an immediate written declaration. His right to recourse fundamentally only extends to the part of the contract not yet fulfilled.

8. Defect of Goods, Warranty

8.1. The Purchaser is obliged to carefully examine delivered goods - even if samples or specimens had previously been sent over - immediately upon receipt for completeness and correctness. The delivery is deemed to have been approved if a defects notice has not been received within five working days of receipt of goods at the place of destination or - if the defect could not be detected during a proper and correct inspection - within five working days of its discovery in writing, by e-mail or by fax. Under no circumstances is a defect present in the event of deviations of delivered goods customary in the industry from the order confirmation.

In the case of goods that have been sold as declassified or used material, the buyer is not entitled to any claims for possible defects.

8.2. We will only assume liability for a specific purpose or a specific suitability in so far as this has been expressly agreed; in all other respects, the risk of suitability and use are borne exclusively by the Purchaser. We are not liable for deterioration or decay or improper handling of goods following the transfer of risk.

8.3. If the buyer notifies us of a defect, he must present it to us without delay. Upon our request, the goods complained about must be made available to us or must be returned to us for inspection or subsequent performance at our expense,

8.4. Transportation damages must be reported to the freight forwarder and to us; the notification obligations of the German General Freight Forwarding Conditions apply in this respect.

8.5. In the event of a justified defects notice, in the event of defects or in the absence of a guaranteed quality or texture of delivered goods, we are obliged at our discretion, to remedy the defect through subsequent repair or improvement or through delivering a replacement. In doing so, we bear the costs for rectifying defects, in so far as these are not increased by the fact that the delivered object has been taken to a place other than the place of performance by the Purchaser. If subsequent performance fails, the Purchaser can demand a reduction of the purchase price or cancellation of the contract after he has granted us a reasonable period of grace of at least ten weeks, unless this is not required by statutory regulations. In the event of withdrawal, the customer is liable for deterioration, dilapidation and uses not made, not only for his own duty of care, but for any representation. More extensive claims, e.g. for claims for damages or costs for replacements made in vain, only exist in accordance with Number 10 of these general Terms & Conditions.

8.6. The limitation period in cases of defective delivery ends - except in cases of intent or of gross negligence - one year following delivery. Unaffected by this, the statutory limitation periods for goods which have been used for construction purposes in accordance with their normal method of use and whose defectiveness caused the defect are valid; subsequent rectification of defects or replacement delivery does not allow the period of limitation to start again.

8.7. Claims against us due to fraudulent concealment of a defect or express assumption of a guaranteed quality or texture are governed exclusively by statutory provisions.

8.8. Rights of withdrawal in all cases fundamentally pre-suppose, that the Purchaser - when he is not a consumer — has fulfilled all his obligations to notify us in his relationship to us according to § 377 HGB [Commercial Code].

9. Reservation of proprietary rights

9.1. In contracts with consumers, the delivered goods remain our property (reserved goods) until our claim has been fulfilled.

9.2. In the case of contracts with employers, delivered goods remain our property (goods subject to reservation of title) until all claims we are entitled to within the scope of the business relationship have been settled, including claims arising in future, including those arising from contracts concluded at the same time or at a later date. If there is a current account relationship between us and the employer, the retention of title refers to the acknowledged balance. If payment of the purchase price by the entrepreneur creates a bill of exchange liability for us, our retention of title does not expire before the bill of exchange has been honoured by the employer as drawee.

9.3. In the event of culpable breach of significant contractual obligations on the part of the Purchaser, in particular in the event of payment default, we are entitled to take back goods if the conditions for withdrawal from the contract are met, and if necessary, to enter the Purchaser's premises and remove the goods. We can also prohibit further processing of delivered goods. Our taking goods back constitutes a withdrawal from the contract. In the event of seizure by third parties, the

Purchaser must inform us immediately in writing or, in the event of danger in delay, by other suitable means.

- 9.4. Processing and treatment of reserved goods by an employer is carried out for us as the manufacturer within the spirit of § 950 BGB [German Civil Code] without placing us under any obligation. The treated and processed goods will be deemed goods subject to retention of title within the spirit of these conditions.
- 9.5. If the reserved goods are processed, combined and mixed with other goods by the Purchaser, who is an employer, we are entitled to co-ownership of the new item in the ratio of the invoice value of the reserved goods (final invoice sum including VAT) to the invoice value of the other goods. If our ownership expires through combination, mixing or processing, the employer even now transfers the proprietary rights or expectant rights he is entitled to, to us of the new stock or object to the extent of the invoice value of the reserved goods, in case of processing to the ratio of the invoice value of the reserved goods to the invoice value of the other goods used and must store them for us free of charge. Our co-ownership rights will be deemed goods subject to retention of title within the spirit of these Terms and Conditions.
- 9.6. The Purchaser may only sell the reserved goods on in the normal course of business under his customary Terms and Conditions, so long as he is not in default. He is not entitled to dispose of the reserved goods in any other way. Reserved goods for fulfilling work and services contracts and contracts for delivery of work and materials will also be deemed to be selling goods on.
- 9.7. If the Purchaser is an employer, he even now assigns his claims from selling reserved goods on to us, including all subsidiary rights. We herewith accept this assignment. They serve as security to the same extent as reserved goods within the spirit of these conditions. If there is a current account relationship between the employer and the customer, this assignment also refers to the acknowledged balance and, in the event of insolvency of the customer, to the "causal" balance existing at that time.
- 9.8. If the reserved goods are resold by the buyer together with other goods, then the claim from resale will be paid to us in the proportion of the invoice value of reserved goods to the invoice value of the other goods. We hereby accept this assignment. In the event of resale of goods to which we have co-ownership rights in accordance with the paragraphs above, a share of the claim corresponding to our share of co-ownership will be assigned to us.
- 9.9. A Purchaser, who is an employer, is also entitled to collect claims even following assignment. Our authority to collect claims ourselves remains unaffected by this, however, we are obliged not to collect a claim as long as the Purchaser fulfils his payment obligations, does not enter into payment delay and, in particular, no application has been made to open insolvency proceedings for his assets nor have payments been suspended. If this is the case, however, then we can demand that the Purchaser informs us about the assigned claims and their debtor, provides all information required to collect these, hands over the relevant documents and notifies the debtors (third parties) of the assignment.
- 9.10. The Purchaser is not authorized to assign claims. An assignment by means of genuine factoring is permitted for the Purchaser under the condition that he notifies us of this with details of the factoring bank and the accounts maintained there and the factoring proceeds exceed the value of the secured demand.
- 9.11. We are obliged to release the securities we are entitled to at the Purchaser's request, when the realisable value of our securities exceeds claims which must be secured by more than 10%. We are responsible for selecting the security which must be released.

10. General limitation of liability

- 10.1. For claims for damages and reimbursement of expenses for culpable actions, irrespective of the legal reason, including breach of duty, unlawful act, product liability (with the exception of any liability under the Product Liability Act), in the event of slight negligence we are only

liable in the event of a breach of significant duties placing the purpose of the contract at risk and only for typical and foreseeable damages. Otherwise, our liability for slight negligence is excluded. In the case of liability due to gross negligence, we are only liable for typical foreseeable damages. Furthermore, liability independent of any fault is excluded.

- 10.2. The exclusion of liability and the limitation of liability in Section 1 does not apply, if liability exists for injury to life, limb or health, in the event of accepting a guarantee of the quality or texture, or in the event of fraudulent concealment of a defect.
- 10.3. All claims for damages and for reimbursement of expenses against us, on whatever legal grounds, become time-barred one year after the transfer of risk to the customer, in cases of tortious liability from the time of knowledge of this or of grossly negligent ignorance of the circumstances giving rise to the claim or of the person liable for compensation. This does not apply in cases of intent, in cases referred to in Section 2 and for objects which have been used for construction projects in accordance with their normal use and which caused its defectiveness. Any possible shorter statutory periods of limitation take precedence.
- 10.4. If the final user of the goods is a consumer, then statutory provisions apply for limitation of any possible claim for recourse by the Purchaser against us.
- 10.5. The provisions of Sections 10.1 to 10.4 also apply in favour of our employees.

11. Manufacture according to Purchaser's instructions

- 11.1. In case of production according to customer drawings, samples and other instructions from the Purchaser, we assume no warranty or liability for the functional capability of the product or for other defects, in so far as these circumstances are based on the customer's instructions. The Purchaser releases us from possible third party claims against us, also from product liability due to damages caused by the goods, unless we caused the damages intentionally or grossly negligently.
- 11.2. Moulds, tools and construction design documents produced by us for implementing the order are exclusively our property; the Purchaser is not entitled to claims for these, even if he participates or has participated in the costs for producing the moulds, tools and construction design documents.

12. Applicable law

The laws of the Federal Republic of Germany apply with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11/04/1980.

13. Final clauses

- 13.1. The place of performance for both parties for the contract is Mittenaar-Ballersbach, unless expressly agreed otherwise.
- 13.2. If the Purchaser is an employer, a legal entity constituted under public law or a special fund constituted under public law, the place of jurisdiction is Herborn, unless another place of jurisdiction is specified as mandatory. However, we are entitled to raise claims against the Purchaser at his general place of jurisdiction.
- 13.3. The Purchaser's rights arising from the contracts concluded with us are non-transferable.
- 13.4. With regard to any existing legal invalidity of individual provisions of these general Terms & Conditions, should the situation arise, reference is made to the provisions of § 306 Section 1 BGB [German Civil Code], which are valid without restriction.
- 13.5. We comply with the provisions of the General Data Protection Regulation [GDPR] without any restrictions. The Purchaser assures us – in so far as he is not a consumer - that he also complies fully with the provisions of the General Data Protection Regulation [GDPR] on his part.