

# **ROLFKUHN**GMBH

## PASSIVER TECHNISCHER BRANDSCHUTZ

### **General Conditions of Sale** 10/2016 Version

#### **1. Application / Offers**

- 1.1 The present General Conditions of Sale (GCS) apply to all contracts and future contracts, including collateral agreements on deliveries and other services made with entrepreneurs (Section 14 of the German Civil Code), juristic persons under public law and special funds under public law. We are not bound by the Buyer's terms and conditions of purchase, even if we do not expressly reject them after receipt, unless we have agreed to them in writing.
- 1.2 Our offers are non-binding unless they are expressly marked as binding. Agreements, in particular, verbal collateral agreements, promises, guarantees and other assurances made by our salespeople, require our written confirmation in order to become binding; this is also true for the waiver of this stipulation requiring written form. The stipulation of written form is also fulfilled by transmission via fax or e-mail.
- 1.3 Commercial terms, such as "EXW", "FOB" and "CIF", shall be interpreted in accordance with the most current set of Incoterms.

#### **2. Pricing**

- 2.1 Unless otherwise specified, prices quoted are ex works and do not include the costs of packaging and transport or VAT.
- 2.2 If the goods are to be packaged for delivery we will invoice the Buyer for the packaging material.
- 2.3 As agreed with the Buyer, we will also invoice the Buyer for a reasonable portion of the cost of any special tools and moulds we must produce in order to manufacture custom-made products ordered by the Buyer. We will retain ownership of those tools and moulds.

#### **3. Payment and Invoicing**

- 3.1 Payment obligations are not deemed to have been fulfilled until the relevant funds are at our full disposal. Payments are always applied to the oldest outstanding invoice.
- 3.2 Payments must be made - without taking any discounts - in such a way that the amount is available to us by the due date. Unless otherwise specified, invoices become due on delivery and must be paid within 30 days from delivery of the goods and receipt of the invoice, without taking any discounts. Payments must be made in such a way that the amount to be settled is available to us not later than on the day before the invoice becomes past due.
- 3.3 Any cash discount periods that have been granted begin on the invoice date. Without exception, an agreed discount only applies to the invoice amount, excluding freight and packaging, and requires the full payment of all liabilities owed by the Buyer at the time the discount is applied.
- 3.4 Any discounts and other reductions granted by us become void in the event of default. We do not accept bills. Cheques are not considered to be cash payments.
- 3.5 Counterclaims which are contested by us or have not yet been established as final and absolute do not entitle the Buyer to any retention or offsetting.
- 3.6 If the Buyer exceeds the term of payment, but from the time of default at the latest, we have the right to charge interest in the amount of the applicable official central bank's discount rate for overdraft credit, but at the minimum in the amount of the statutory default interest. We reserve the right to assert further claims for damage caused by delay.
- 3.7 If it becomes clear after the contract is concluded that our pecuniary claim is at risk due to a lack of performance by the Buyer, or if other circumstances occur that point to a significant deterioration in the Buyer's performance, we have the right to refuse agreed advance payments and assert the rights granted in Section 321 of the German Civil Code. We also have the right in such cases to declare all debts resulting from the ongoing business relationship with the Buyer due and payable, unless they fall under the statute of limitations. A lack of performance by the Buyer is also assumed if the Buyer falls more than three weeks behind with a considerable amount (10% or more of the outstanding bills), or if the Buyer's commercial credit insurance has been downgraded significantly.

#### **4. Delivery Times**

- 4.1 The delivery terms and deadlines specified by us are non-binding, unless expressly agreed otherwise in writing.
- 4.2 Delivery terms and deadlines are deemed to have been met if the delivery item has left our premises before they expire.
- 4.3 Adherence to our delivery commitment is subject to our obtaining the right supplies in time, unless the incorrect or delayed delivery of those supplies is our fault. If it is certain that the goods ordered will not be delivered to us through no fault of our own we have the right to cancel the contract.
- 4.4 Force majeure events entitle us to delay delivery by the duration of the obstruction, plus an appropriate ramp-up time. This is true even if those events occur during an existing delay. Force majeure is the equivalent of monetary, trade or other official measures, strikes, lock-outs, breakdowns not caused by us, obstruction of traffic routes, delays during import/customs procedures, and all other circumstances which, without being caused by us, significantly impair our deliveries and services or render them impossible. This applies regardless of whether those circumstances occur at our facility or at the facility of the supplier or another upstream supplier. If performance becomes unreasonable for one of the contracting parties as a result of the above-mentioned events, which may be assumed after a period of four months at the latest, the party has the right to cancel the contract by submitting a written declaration without delay.
- 4.5 We are liable for damage caused by a delay if we are guilty of deliberate intention or gross negligence. In the event of slight negligence our liability is limited to the foreseeable damage that is typical for the contract, not to exceed 10% of the agreed purchase price of the portion of the goods for which we are in default of delivery.

#### **5. Reservation of Title**

- 5.1 We retain ownership of all delivered items (goods subject to retention of title) until we have received all payments resulting from the business connection, irrespective of legal basis, including any future and conditional payments owed. This is true

- even if payments were applied to specially marked debts. For revolving accounts, the goods subject to retention of title are used to secure our balance claims.
- 5.2 At all times and during any processing stage, the goods subject to retention of title are processed for us as the manufacturer within the meaning of Section 950 of the German Civil Code, without binding us. The processed goods are considered to be goods subject to retention of title within the meaning of subparagraph 5.1. If the Buyer processes, combines or mixes the goods subject to retention of title with other goods, we acquire joint ownership of the new item according to the invoice value of the goods subject to retention of title in relation to the invoice value of the other goods used. If the combining or mixing of the goods terminates our ownership, the Buyer assigns to us in advance, and we herewith accept, its rightful ownership of the new stock or item in the amount corresponding to the invoice value of the goods subject to retention of title, and holds it in safe custody for us free of charge. The resulting co-ownership rights are considered to be goods subject to retention of title within the meaning of subparagraph 5.1. If this assignment in advance coincides with an extended reservation of title of another supplier we are entitled to the fraction of the outstanding debts that corresponds to the ratio of the adjusted amount of the goods subject to retention of title to the other processed goods. We offer in advance to grant the Buyer an expectant right in future co-ownership shares. The Buyer herewith accepts this offer.
  - 5.3 The Buyer is only permitted to sell the goods subject to retention of title in the ordinary course of business and subject to its normal terms and conditions, as long as it is not in arrears, and provided that the receivables from the resale are assigned to us in accordance with subparagraphs 5.4 and 5.6. The Buyer is not entitled to dispose of the goods subject to retention of title in any other way without our prior consent.
  - 5.4 The Buyer assigns to us in advance its receivables from the resale of the goods subject to retention of title; we herewith accept the assignment in advance. They serve as security to the same extent as the goods subject to retention of title. As long as we own the goods subject to retention of title we have the right to rescind the resale permission if we have a factually justified reason for doing so. If the goods subject to retention of title are resold by the Buyer in combination with others goods that are not sold by us the assignment of receivables from the resale only applies to the resale value of the sold goods subject to retention of title. If we have co-ownership of the resold goods in accordance with subparagraph 5.2 the assignment of receivables only applies to the amount of those co-ownership shares.
  - 5.5 The Buyer has the right to collect outstanding debts from the resale until we revoke that right, which we are allowed to do at any time. The above does not affect our right to collect those debts ourselves, however, we shall refrain from collecting the debts as long as the Buyer meets its payment obligations. In case of default by the seller we also have the right to request that the goods be returned to us after a suitable grace period and to prohibit the resale and further processing of goods, which have already been delivered. The acceptance of returned goods does not constitute a cancellation of the contract. At our request the Buyer is obliged to notify its customers at once of the assignment, if we do not do so ourselves, and to give us the information and documentation we need to collect the debt.
  - 5.6 The Buyer is obliged to notify us at once of any attachments or similar third-party interference and of the presence of an insolvency situation or petition for insolvency; the Buyer must inform the third party at once of our rights.
  - 5.7 If the value of existing securities exceeds the total secured debt by more than 50% we are obligated to release securities of our choice upon the Buyer's request.
- 6. Execution of Deliveries**
- 6.1 Upon delivery of the goods to a haulier, but not later than when the goods leave the warehouse or, in the case of chain-of-delivery contracts, the supplier, the risk for all transactions, including "freight-prepaid" and "free buyer's address" transactions, is transferred to the Buyer; this is also true for carriage-free deliveries and deliveries using our own vehicles. The obligation and costs of unloading are the Buyer's responsibility. We provide insurance only at the Buyer's request and expense.
  - 6.2 If shipping is delayed for reasons beyond our control, or if the Buyer fails to accept the goods on time, even though they were offered to the Buyer in accordance with the contract, the risk is transferred to the Buyer upon receipt of the notification of availability.
  - 6.3 If a replacement delivery is made at the Buyer's request following the loss of a shipment during transport we are not required to take back that shipment if the original goods are found.
  - 6.4 We are entitled to make partial deliveries to a reasonable extent. We reserve the right to exceed or fall below the ordered amount by up to 30% for reasons associated with the production process. If the Buyer requests the subsequent shipment of missing goods in such an event, the request is considered to be a new order.
  - 6.5 In the case of call orders we have the right to manufacture the entire order amount, or have it manufactured, at the same time. We are unable to accommodate change requests after an order has been placed, unless this has been specifically agreed. Unless any firm agreements to the contrary have been made, we are only able to adhere to call-off dates and amounts within the scope of our delivery and manufacturing capabilities. If goods are not called-off according to contract we have the right to invoice them as if they had been delivered after a reasonable grace period.
  - 6.6 In the case of orders with continuous deliveries, the goods called-off must be of about the same quantity and type each month. If an order is not called-off or stopped in time we have the right, after the grace period has expired, to make our own selection and to either deliver the goods or to cancel the outstanding portion of the contract and request compensation in lieu of performance. The Buyer must take delivery of our inventory upon expiration of the contract.
- 7. Notice of Defects and Liability for Defects**
- 7.1 The internal and external characteristics of the goods, in particular, their quality, type and amount, are determined on the basis of the agreed, and in the absence of an agreement, the DIN and EN in effect when the contract is concluded, and on the basis of usage and trade practice in the absence of those. References to standards and similar rules, as well as information about quality, type, dimension, weight and usability of the goods, information in drawings and illustrations and statements in advertisements do not constitute promises or guarantees, unless they are specifically marked as such. The same applies to declarations of conformity and corresponding registering marks, such as CE or GS. The Buyer bears the risks of suitability and usage.
  - 7.2 If the goods are defective the Buyer is entitled to the rights arising from product defects as stipulated by the German Civil Code, with the proviso that it is our privilege to choose between subsequent improvement or supplementary performance, and that minor defects only entitle the Buyer to a corresponding reduction in the sales price (discount). Negligible quality deviations of the delivered product from the agreed quality, negligible impairment of serviceability, and natural wear and tear do not entitle the Buyer to assert a claim for defects. Claims for defects also do not apply to deviations in size and technical specifications, if those deviations are within the permissible and/or normal tolerances for the type of product in question and if they are deemed acceptable to the Buyer in consideration of our justified interests. Supplementary

- performance shall take place at our facility; we are not responsible for the costs of assembly, disassembly and transport to our facility in connection with the supplementary performance. Replaced parts become our property.
- 7.3 The regulations of the German Commercial Code apply to the inspection of goods and the reporting of defects, with the proviso that: material defects must be reported in writing at once, but not later than five days from the date of delivery; defects which are not detected within this period despite careful inspection must be reported in writing at once, but not later than five days from the date of detection.
  - 7.4 We will only assume the costs incurred in connection with supplementary performance in individual cases, provided they are reasonable compared with the purchase price of the merchandise and do not exceed 150% of its value. Excluded are the Buyer's costs in connection with the assembly and/or disassembly of the defective item, sorting costs, costs incurred by the Buyer for removing the defect on its own, and additional costs resulting from the sold and delivered goods being at a location which differs from the agreed place of fulfilment.
  - 7.5 As long as the Buyer does not give us an opportunity to verify the defect, and in particular, does not provide us with the rejected goods or with samples thereof, the Buyer is not permitted to claim those defects. At our request the Buyer must either allow us to inspect the goods which are the subject of the complaint or return the goods to us. If a notice of defects was submitted without good reason the Buyer must reimburse us for any expenses incurred by us as a result.
  - 7.6 Claims for defects may not be asserted if and to the extent to which defects are the result of improper modifications or repairs of the delivered goods carried out by the Buyer or by a third party at the Buyer's instigation. The same applies to defects which occur as a result of incorrect or negligent use, such as failure to observe instructions on processing, storage and usage; inadequate or incorrect storage or usage; incorrect processing, assembly or commissioning by the Buyer or a third party; excessive use; defective construction work; and special external influences not provided for in the contract.
  - 7.7 Other claims are excluded in accordance with subparagraph 8. This is particularly true for claims for compensation for damages which did not affect the merchandise itself (consequential harm caused by a defect).
  - 7.8 An unjustified request for removal of defects entitles us to compensation if the Buyer should have realised that there was no defect upon careful inspection of the item(s).

## **8. General Limitation of Liability and Statute of Limitations**

- 8.1 We are only liable for violations of contractual and non-contractual obligations, in particular as a result of impossibility, delay, faulty consultation or faulty contract initiation, and unlawful acts - including violations committed by our executive team and other employees - in the case of deliberate intention or gross negligence, limited to damages which are typical for the contract and foreseeable at the time the contract is concluded.
- 8.2 The restrictions in subparagraph 8.1 do not apply in the case of culpable violations of fundamental contractual obligations. Fundamental contractual obligations include the duty to deliver on time and freedom from defects which impair the functionality and usability of the goods to a significant degree, as well as the duties to provide advice, protect and exercise proper care which are designed to protect the Buyer or its personnel against considerable harm. The restrictions also do not apply in cases of compulsory liability in accordance with the Product Liability Act, of injuries to life, body or health, and if and to the extent to which we have fraudulently concealed product defects or guaranteed the lack of such defects. Nothing in the above shall affect the regulations regarding burden of proof.
- 8.3 Unless otherwise agreed, contractual claims arising against us as a result of or in connection with the delivery of the goods are subject to a limitation period of one year from the delivery of the goods. This period also applies to goods which were used for a building in accordance with their usual manner of use and whose defectiveness was caused by the Buyer itself, unless this manner of use was agreed in writing. Nothing in the above shall affect the statutory limitation period for our liability for intentional and grossly negligent violations of duty, culpably caused damage to life, body or health, and the statutory limitation period for statutory rights of recourse. In the case of defective supplementary performance the period of limitation is not reset.

## **9. Copyrights**

- 9.1 We reserve the right of ownership and copyrights for quotations, drafts, drawings, design suggestions and other documents as well as for prototypes; they may only be made available to third parties, copied and/or used for in-house production with our consent; and they, as well as other information about distinguishing characteristics, do not constitute a quality description. Drafts, drawings, etc. and other documents that accompany proposals must be returned upon request.
- 9.2 We strive to make the documents belonging to our proposal (e. g., illustrations, drawings, information about performance, weights and measurements and the like) as accurate as possible, however, they are only approximations, unless they are specifically marked as binding in writing. We reserve the right to make improvements and dimensional changes to the extent that this is customary in the trade and reasonable for the Buyer.
- 9.3 If we have delivered items made in accordance with drawings, models, prototypes or other documentation provided by the Buyer, it is the Buyer's responsibility to guarantee that no third-party industrial property rights were violated. If a third party specifically prohibits us from manufacturing and delivering such items under reference to industrial property rights we have the right, without being obliged to verify the legal situation, to cease any further activity and request compensation if the Buyer is guilty of the violation. The Buyer also undertakes to indemnify us at once from all related third-party claims.

## **10. Test Components, Moulds, Tools**

- 10.1 If the Buyer needs to provide us with parts in order to execute our work they must be delivered to us free production facility, on time, free of charge and free of defects in the agreed or, in the absence of an agreement, an appropriate excess amount to account for rejects. If this is not the case the Buyer shall bear any related costs incurred and any other consequences.
- 10.2 The Buyer is responsible for manufacturing test components, including the cost of moulds and tools.
- 10.3 Our liability for tools, moulds and other manufacturing aids provided by the Buyer is limited to the diligence we employ on our own account. The Buyer bears the costs of maintenance and care. Irrespective of the Buyer's property rights, our retention requirement expires not later than two years after the last item was produced using the mould or tool.

## **11. Place of Performance, Jurisdiction, Applicable Law**

- 11.1 The place of performance for our deliveries is our factory. The place of performance for all payment obligations is our main office.
- 11.2 The place of jurisdiction is the location of our main office. We also have the right to sue the Buyer at its place of jurisdiction.
- 11.3 German law, under exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 04/11/1980, applies to all legal relationships between us and the Buyer.

11.4 At our discretion, we have the right as plaintiffs to request that a dispute arising in connection with legal relationships governed by our terms and conditions be settled according to the rules of arbitration of the German Institution for Arbitration (DIS e.V.) in lieu of resorting to a court of law in accordance with subparagraph 11.2. The location of the arbitration is the same as our main office; the language of the arbitration is either German or English, at our option.

**12. Authoritative Version**

In cases of doubt the German version of these General Conditions of Sale shall prevail.

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