

General Conditions for supply of products and services by R.T.S. Rochem Technical Services GmbH

For commercial transactions between businesses

As of June 2021

I. General Provisions

1. These General Conditions (GC) shall govern the legal relations between us and the purchaser in respect of our supplies of goods and services exclusively. The purchaser's general terms shall apply only, if expressly accepted by us in writing. The scope of delivery shall be determined by an agreement or concordant written declarations. In case of any deviation between the written agreement and these GC, the written agreement shall prevail.
2. Agreements that deviate from our GC apply only to the transaction for which they have been expressly agreed in writing. They have neither retroactive effect nor are they valid for future business unless confirmed in writing again.
3. We herewith reserve any property rights and copyrights pertaining to drawing, calculations, product descriptions, direction for use, quotations and other documents (hereinafter "Documents"). Documents shall not be made assessable to any third parties without our prior consent and shall be returned immediately in case no contract has been concluded.

II. Offers and conclusion of contracts

4. Price information in advertising or brochures are not binding. Our offers shall be binding for 30 calendar days from the date of the offer, unless mentioned otherwise.
5. Contracts shall become effective only after we issue a written order confirmation. Verbal statements become binding only upon written confirmation.
6. We define mode and route of transport, unless the purchaser provides instructions in writing.
7. The purchaser is responsible for the accuracy of the information provided in view of the setup of an offer. The purchaser confirms not to violate any third party rights related to the information provided.

III. Prices, Payment Conditions and Set-off

8. Prices are ex works and excluding packaging. VAT will be added at the applicable rates. Transport, customs duty, insurance and other dues will be charged additionally.
9. Prices will be increased in proportion to any increase of prime prices occurring between the conclusion of the contract with the purchaser and the delivery of the goods.

10. Should we be responsible for assembly or erection, unless otherwise agreed, the purchaser shall pay the agreed remuneration and any costs required for travelling and transport as well as allowances.
11. Payments shall be made without any discount within the payment term from the date of the invoice free to our payment account.
12. Should due dates for payments be exceeded, the legal consequences of delay shall become effective without any further notice. We shall be entitled to a default interest in accordance with § 288 BGB (German Civil Code) of 9% plus the actual base rate under § 247 BGB. In addition, we are entitled to withhold any further supplies, to request the return of supplies and to claim damages due to a breach of contract.
13. The purchaser may set-off only those claims, which are undisputed or legally binding.

IV. Delivery terms and delay

14. Terms of delivery shall only be binding if all documents and plans to be furnished by the purchaser, necessary permits and approvals, are received in time and if agreed terms of payment and other obligations of the purchaser are fulfilled. If these conditions are not fulfilled in time, times set shall be extended in accordance with the delay caused by the purchaser.
15. Delivery terms will be reasonably extended in the following cases:
 - (a) force majeure, such as mobilization, war, pandemic, terror attacks, rebellion or similar events (e.g. strike or lockout);
 - (b) in cases, where we do not receive our own supplies in due time or in due form;
 - (c) hindrances attributable to German, US or otherwise applicable national, EU or international rules of foreign trade law or to other circumstances for which supplier is not responsible;
 - (d) virus attacks or other attacks on our IT-systems.
16. In cases of delay attributable to us, the statutory provisions shall apply. In cases of ordinary negligence, our compensation as liquidated damages is capped at 0.5% for every completed week of delay, but in no case more than 5% of the price of that part of the delivery, which could not be put to the intended use due to the delay.
17. To the extent permitted by the law, all purchaser's claims for damages due to delayed deliveries or claims for damages in lieu of performance exceeding the limits hereinabove are excluded.
18. The statutory additional period to be granted by the purchaser in an event of delay is two weeks. It begins on the date of receipt of the respective notice. The purchaser may only withdraw from the contract after the additional period has expired.
19. If dispatch is delayed due to purchaser's request by more than one month after notification of the readiness for dispatch was given, subject to proof of higher costs, we may charge the purchaser for every additional month commended, storage costs of 0.5% of the price of the delivery, but in no case more than a total of 5%.

V. Passing of Risk

20. The risk passed to the purchaser as soon as the delivered goods are handed over to the purchaser or his shipper or the goods have left our works for dispatch.
21. If the purchaser delays the dispatch or if the purchaser does not want the goods dispatched at all the risk passes on the date of our notice to the purchaser that the goods are ready for dispatch.
22. Upon request, the goods will be insured in the name and at the expense of the purchaser.

VI. Warranty/Defects

23. The purchaser is obliged to inspect the goods upon receipt. Defects must be notified in writing immediately, latest however within 14 days after receipt of the goods, with an exact description of the defect. We must be notified of hidden defects and defects that are detected only after the goods have been put into operation immediately after they have been discovered, again including an exact description of the defect.
24. If the notice of defect is justified, the statutory warranty provisions apply. Any further claims are excluded. The defect will be rectified at our discretion either by removing/repairing it, exchanging parts or delivering new parts.
25. If after the defect has been remedied a new justified warranty claim is raised and the purchaser cannot reasonably be expected to accept further subsequent improvements or re- placement deliveries, the purchaser has the right to demand a reduction of the purchase price or rescission of the contract.
26. The purchaser makes the defective parts available for our inspection in the condition they were in when the defect was discovered.
27. The warranty period is 12 months, from the date of delivery, unless mandatory rules provide for a longer warranty period.
28. Insignificant deviations in dimensions and designs do not entitle the purchaser to any claim, unless exact compliance has been expressly agreed.
29. Technical improvements as well as necessary technical modifications are deemed in accordance with the contract insofar as they do not adversely affect the usability of the goods.
30. Our warranty expires, if the purchaser does not immediately examine the goods and report any defects. If our operating or maintenance instructions and intervals are not complied with, products are modified, no original spare parts or cleaning chemicals of ROCHEM/ROMACO are used or the goods are not operated and maintained by skilled personnel, no warranty can be claimed.
31. We are not liable for normal wear and tear.

VII. Other damage claims

32. Unless otherwise provided in these GC, the purchaser has no claim for damages for whatever legal reason, including infringement of duties arising in connection with the contract or tort.
33. However, we shall be liable based on the German Product Liability Act, in case of fraud and intent, gross negligence, failure to comply with a guarantee granted, negligent injury to life, limb or health and negligent breach of fundamental obligations of the contract.
34. In case of a breach of fundamental obligations of the contract, damages shall be limited to the foreseeable damage, which is intrinsic to the contract.
35. In case the purchaser refuses to accept the goods or parts thereof, the purchaser shall compensate any damages accrued. In full settlement of our damages at our sole discretion we shall be entitled to claim liquidated damages in the amount of 15% of the agreed sales price for the goods.

VIII. Data Protection

36. The parties agree to process personal data of the other party in full compliance with the applicable data protection regulations, in particular the EU General Data Protection Regulation (GDPR) and the German Federal Data Protection Act (Bundesdatenschutzgesetz, BDSG). Within the scope of their contractual relation, the parties process personal data of the other party for the purpose of contract-related communication, pre-contractual measures and performance of contract in accordance with Art. 6 (1) (b) GDPR. In order to fulfil our information obligations under the GDPR, we refer to the privacy policy published on our website www.rts-rochem.de.

IX. Retention of title

37. We retain title to the goods delivered until all claims under the contract have been settled. The purchaser shall not be entitled to pledge or assign the goods as collateral. In case the goods are seized or retained, the purchaser is obliged to notify us immediately and must inform the third parties about the retention of title of the goods. In such cases, the purchaser shall bear all costs of intervention measures to be taken.
38. The purchaser is entitled to sell the goods subject to the retention of title within the scope of sound business management or to process, connect or intermix with its or third party goods. In the later event, we shall be entitled to a co-ownership of the processed, connected and intermixed goods in proportion of the value of our delivery and the value of the goods processed, connected or intermixed, according to § 947 para 1 BGB (German Civil Code). If the purchaser sells goods the purchaser is obliged to assign to us all price claims against its customers (in case of co-owned good, the price claims corresponding to our ownership share) as a security, until we have received complete settlement of our claims under the contract. Furthermore, we shall be authorized to collect all outstanding claims in our name.
39. Should the value of the securities exceed our claims by more than 30%, we will release securities at our own discretion, upon the request of the purchaser.

The right of the purchaser to sell goods, which are subject to the retention of title (including those we co-own), terminates as soon as the purchaser discontinues payments or is in arrears with his payments to us. In this instance, the purchaser is only allowed to dispose of the goods with our explicit permission. In such a case, we have the right to ask the purchaser to return the goods delivered. Our authorized agents shall be admitted to enter the premises of the purchaser for this reason. The purchaser is obliged to mark all goods, which are subject to retention of title, and to store them apart from other goods. The purchaser is obliged to insure all goods, which are subject to the retention of title, against theft and fire. The purchaser assigns any claims against the insurance company to us.

40. In case the retention of title is not legally recognized in the country of the purchaser's domicile or in the country of the destination of the goods, the purchaser is obliged to return the goods, which are subject to retention of title according to the above-noted regulations on his own expense, as long he has not settled our claims. In case particular steps should become necessary for the retention of title to come into effect (like registration), the purchaser upon our request on his cost is obliged to immediately initiate all necessary steps to bring this forth, or to cooperate to make the retention of title effective.

X. Assignment of contractual claims

41. The purchaser may not assign any claims under the contract relation with without our written consent.

XI. Severability

42. The invalidity of certain clauses under these GC do not affect the validity of the other terms and conditions. The parties will replace invalid terms by other rules that in their result meet the invalid terms and conditions nearest possibly.

XII. Governing law and jurisdiction

43. The GC and the contractual relation between the purchaser and us shall be governed by the substantive laws of Germany, with the exclusion of the stipulations of the United Nations Convention on contracts for the international sale of goods.
44. Hamburg is the place of execution for all obligations. If the customer is a salesperson, a corporate body governed by public law or a fund asset subject to public law, the exclusive place of jurisdiction is the court in charge for our registered office.

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