

General Terms of Purchase of RECKMANN GmbH

§ 1 General provisions, scope

- (1) These General Terms of Purchase shall apply to all business relationships with our business partners and suppliers (hereinafter: "Sellers"). The General Terms of Purchase shall only apply if the Seller is an entrepreneur (§ 14 of the German Civil Code), a legal person under public law or a special fund under public law.
- (2) The General Terms of Purchase shall apply in particular to contracts on the sale and/or supply of movable things (hereinafter also referred to as: Goods), regardless of whether the Seller produces the Goods themselves or purchases them from suppliers (§§ 433, 651 of the German Civil Code). The General Terms of Purchase in their respective version shall also apply as a framework agreement to future contracts on the sale and/or supply of movable things with the same Seller, without our having to refer to them in each individual case.
- (3) These General Terms of Purchase shall apply exclusively. Deviating, contradictory or additional General Terms of Business of the Seller shall only become part of the contract if and insofar as we have given our express written consent to their validity. This requirement for consent shall apply in all cases; for example, even if we, being aware of the Seller's General Terms of Business, accept his deliveries without reservation.
- (4) Particular agreements concluded with the Seller in the individual case (including supplementary agreements, additions and amendments) shall always take precedence over these General Terms of Purchase. A written contract or our written confirmation shall be conclusive for the contents of such agreements.
- (5) Legally relevant declarations and notifications that are to be submitted to us by the Seller after conclusion of the contract (e.g. setting deadlines, reminders, declaration of withdrawal) shall only be valid if made in writing.
- (6) References to the validity of statutory provisions shall be for the purposes of clarification only. The statutory provisions shall therefore apply even without clarification of this kind, insofar as they are not directly modified or expressly excluded in these General Terms of Purchase.

§ 2 Conclusion of contract

- (1) Our order shall be regarded as binding at the earliest when it is submitted or confirmed in writing. The Seller must inform us before acceptance of obvious errors (e.g. literal and calculation errors) and omissions in the order, including the order documents, for the purposes of correction or completion; otherwise, the contract shall be considered not to have been concluded.
- (2) The Seller shall be required to confirm our order in writing or to carry it out without reservation (acceptance), in particular by shipping the Goods, within a period of 2 working days. Delayed acceptance shall be regarded as a new offer and shall require our acceptance.

§ 3 Delivery time and delayed delivery

- (1) The delivery time stated by us in the order shall be binding. If the delivery time was not stated in the order and was not otherwise agreed, it shall be 3 weeks from the conclusion of the contract. The Seller shall be required to inform us in writing without undue delay if he expects – for whatever reason – not to be able to meet agreed delivery times.
- (2) If the Seller fails to render his performance or fails to do so within the agreed delivery time, or if he is in default, our rights – in particular to withdrawal and compensation for damages – shall be determined by the statutory provisions. The provisions in section 3 shall remain unaffected.
- (3) If the Seller is in default, we may demand a contractual penalty amounting to 0.3% of the net price per working day, but not more than 5% in total of the net price of the Goods that were delivered late. We shall be entitled to demand the contractual penalty in addition to fulfilment and, as a minimum amount, damages owed by the Seller in accordance with the statutory provisions; the assertion of further damage shall not be affected. If we accept the delayed performance, we must assert the contractual penalty no later than at the time of the final payment.

§ 4 Performance, delivery, passing of risk, default in acceptance

- (1) The Seller shall not be entitled to have the performance owed by him rendered by third parties (e.g. subcontractors) without our prior written consent. The Seller shall bear the procurement risk for his performance unless it is a one-off production.
- (2) Delivery shall be made “free domicile” unless otherwise agreed. If a deviating agreement has been made, the respective destination shall be the place of performance (debt payable at the address of the payee).
- (3) A delivery note is to be enclosed with the delivery stating the date (of issue and shipping), contents of the delivery (article number and quantity) and our order ID (date and number). If the delivery note is missing or incomplete, we shall not be responsible for resulting delays in processing and payment. Separately from the delivery note, a corresponding shipping note with the same contents is to be sent to us.
- (4) The risk of accidental destruction and accidental deterioration of the item passes to us on handover at the place of performance. Insofar as acceptance is agreed, this shall be conclusive for the passing of risk. Furthermore, the statutory provisions of service-contract legislation shall apply accordingly in the event of acceptance. It shall be deemed equivalent to handover or acceptance if we default in acceptance.

(5) The statutory provisions shall apply to the occurrence of our default in acceptance. The Seller must, however, expressly offer us his performance even if an identified or identifiable calendar period is agreed for action or cooperation on our part (e.g. provision of materials). If we default in acceptance, the Seller may demand reimbursement of his extra expenses in accordance with the statutory provisions (§ 304 of the German Civil Code). If the contract relates to a specific item (one-off production) that is to be produced by the Seller, the Seller shall only be granted more extensive rights if we have agreed to cooperate and are responsible for the failure to cooperate.

§ 5 Prices and terms of payment

- (1) The price stated in the order is binding. All prices shall exclude statutory value-added tax.
- (2) Unless otherwise agreed in the individual case, the price shall include all performances and collateral performances of the Seller (e.g. assembly, installation), as well as all additional costs (e.g. appropriate packaging, transport costs including any transport and liability insurance). The Seller must take back packing materials on our request.
- (3) Unless a different term of payment is agreed, the agreed price is payable within 30 calendar days of complete delivery and performance (including an agreed acceptance, where applicable), as well as receipt of a proper invoice.
If we make a payment within 14 calendar days, the Seller shall grant us a 3% discount on the net amount of the invoice.
- (4) We shall not owe due date interest. The Seller's right to claim payment of default interest shall not be affected. The statutory provisions shall apply to the occurrence of our default. However, a reminder by the Seller shall be required in any case.
- (5) We shall be entitled to rights of set-off and retention, as well as to the defence of unperformed contract, to the extent permitted by law. We shall in particular be entitled to retain payments that are due as long as we are still entitled to claims against the Seller based on incomplete or defective performances.
- (6) The Seller shall only have a right of set-off or retention for counterclaims that have been finally and non-appealably established or that are uncontested.

§ 6 Confidentiality and retention of title

- (1) We shall reserve the property rights and copyrights to illustrations, plans, drawings, calculations, implementation instructions and other documents. Documents of this kind are to be used exclusively for the purposes of contractual performance and are to be returned to us after completion of the contract. The documents are to be kept secret from third parties, including after termination of the contract. The obligation of confidentiality shall only expire if and to the extent that the knowledge contained in the documents handed over has become public knowledge.

(2) The above provision shall apply accordingly to substances and materials (e.g. software, finished and semi-finished products), as well as to tools, templates, specimens and other objects that we provide to the Seller for production. Objects of this kind are – so long as they are not processed – to be stored separately and protected from destruction and loss to the usual extent at the Seller's expense.

(3) Processing, intermixture or combination of provided objects by the Seller shall be carried out on our behalf. If third parties retain a right of ownership in the event of processing, intermixture or combination with items belonging to them, we shall acquire co-ownership of the new item in proportion to the value of our provided item to the other items.

(4) Ownership of the Goods shall be transferred to us unconditionally and regardless of whether the price has been paid. In any case, all forms of expanded or extended retention of title shall be excluded such that any retention of title asserted by the Seller shall apply only until payment is made for the Goods delivered to us and only to these goods.

§ 7 Defective delivery

(1) Unless otherwise provided below, the statutory provisions shall apply to our rights in the event of material and legal defects of the Goods (including incorrect and short deliveries, improper assembly, or defective assembly or operating instructions) and in the event of other breaches of duty by the Seller.

(2) In accordance with the statutory provisions, the Seller shall be responsible in particular for ensuring that the Goods have the agreed quality upon the passing of risk. In any case, those product descriptions that are the subject matter of the respective contract – especially if designated or referred to in our order – or that were incorporated into the contract in the same way as these General Terms of Purchase shall be regarded as an agreement on the quality. It shall make no difference in this respect whether the product description originates from us, the Seller, or the producer.

(3) By way of derogation from § 442(1) sentence 2 of the German Civil Code, we shall be entitled to claims for defects even if the defect remained unknown to us due to gross negligence at the time when the contract is entered into.

(4) The statutory provisions (§§ 377, 381 of the German Commercial Code) shall apply to the commercial duty to inspect and give notice of defects, subject to the following proviso: our duty to inspect shall be restricted to defects that come to light in our incoming goods inspection through external examination including the delivery documents, as well as in our quality control in the spot-check procedure (e.g. transport damage, incorrect and short delivery). Insofar as acceptance is agreed, there shall be no duty to inspect. Furthermore, it shall depend on the extent to which an inspection is feasible in the ordinary course of business, taking account of the circumstances in the individual case.

Our duty to give notice with regard to defects discovered at a later time shall remain unaffected. In all cases, our notice (notice of defects) shall be deemed to be in good time and without undue delay if it is received by the Seller within 5 working days.

(5) The Seller shall bear the costs he incurs for the purposes of testing and repair even if no defect is in fact found to be present. Our liability for damages in the event of an unjustified demand for the remedy of a defect shall remain unaffected; we shall, however, only be liable in this respect if we recognised or, due to gross negligence, did not recognise that no defect was present.

(6) Should the Seller fail to meet his obligation to provide supplementary performance – by, at our discretion, either remedying the defect (repair) or delivering an item free of defects (replacement) – within a reasonable period set by us, we may remedy the defect ourselves and demand damages from the Seller for the expenses necessary for this or demand a corresponding advance payment. If cure by the Seller has failed or is unreasonable for us (e.g. because of particular urgency, risk to operational safety, or imminent occurrence of disproportionate damage), this shall not require the specification of a period of time; the Seller is to be informed without undue delay or, if possible, in advance.

(7) Furthermore, we shall be entitled under the statutory provisions to a reduction in the purchase price or to revoke the contract in the event of a material or legal defect. We shall also be entitled under the statutory provisions to reimbursement for damages and expenses.

§ 8 Recourse against the supplier

(1) In addition to the claims for defects, we shall be entitled without restriction to our claims under the statutory provisions for compensation within a supply chain (recourse against the supplier pursuant to §§ 478, 479 of the German Civil Code). We shall in particular be entitled to demand from the Seller exactly the type of cure (repair or replacement) that we owe to our customer in the individual case. This shall not restrict our statutory right of choice (§ 439(1) of the German Civil Code).

(2) Before we recognise or satisfy a claim for defects made by our customer (including reimbursement of expenses in accordance with §§ 478(3), 439(2) of the German Civil Code), we shall inform the Seller, briefly stating the facts, and request a written statement of position. If the statement of position is not provided within a reasonable period and if no mutually agreed solution has been reached, the claim for defects actually conceded by us shall be deemed to be owed to our customer; the responsibility to provide evidence to the contrary shall lie with the Seller in this case.

(3) Our claims arising from recourse against the supplier shall also apply if the Goods were further processed by us or one of our customers, e.g. by installation into another product, before being sold to a consumer.