

Terms and conditions of sale, delivery and payment, Rickmeier GmbH

(Status 01 April 2024)

Applicable in dealings with:

1. persons who, at the time of conclusion of the contract, are acting in execution of a commercial or self-employed professional activity (entrepreneurs);
2. legal entities as defined by public law or a public separate estate.

I. General information

1. All deliveries and services are based exclusively on these conditions and any separate contractual agreements. Acceptance of the order does not render any deviating terms of purchase of the Buyer part of the contract. A contract is concluded - unless agreed otherwise - with the written order confirmation of the Supplier.
2. The Supplier retains right of title and copyright to samples, quotations, drawings and similar information of tangible and intangible nature, including such in electronic form; they must not be divulged to third parties. The Supplier agrees not to disclose information or documents specified by the Buyer as confidential to third parties without the Buyer's consent.

II. Price and payment

1. Unless explicitly agreed otherwise, all prices are quoted ex works, including loading at the factory but excluding packaging and unloading. Packaging will be charged at cost and is non-returnable. Installation and commissioning costs for hydraulic systems are only included in the prices quoted where this is expressly confirmed.
2. The agreed prices do not include Value Added Tax, which will be added to the prices at the respective legally prescribed rate.
3. In the absence of any special agreement, payment is to be made, without any deduction, to the Supplier's account.
4. The Buyer is only entitled to withhold payment in as far as their counterclaims are undisputed or have been confirmed by a court of law.
5. The Buyer is only entitled to offset against counterclaims from other legal transactions in as far as these counterclaims are undisputed or have been confirmed by a court of law.
6. Should the Buyer be in default of payment, interest will be charged on the open balance in accordance with § 288 Section 2 German Civil Code (BGB) (9 % above the base interest rate). Where the Supplier can furnish proof of greater damage caused by the default in payment, they are entitled to assert such a claim.

III. Delivery time, delays in delivery

1. The delivery time will be governed by the agreements between the parties to the contract. Compliance with the agreed delivery date by the Supplier is dependent on prior clarification of all commercial and technical questions between the parties to the contract and fulfilment of the Buyer's obligations, for example procuring necessary official approvals or certificates or making a downpayment. If these conditions are not met, the delivery time will be extended by a reasonable period. This shall not apply if the Supplier is responsible for the delay.

2. Compliance with the delivery deadline shall be subject to the proviso that the Supplier receives the right supplies in good time. The Supplier will provide notification of any impending delays as soon as possible.
3. The delivery time shall be deemed to have been complied with if the delivery object has left the Supplier's factory before the expiry of the delivery time or notification of its readiness for dispatch has been issued. In as far as acceptance is to take place - except in the case of justified refusal of acceptance - the date fixed for acceptance, or alternatively for notification, is decisive.
4. If despatch or inspection of the delivery object is delayed due to circumstances for which the Buyer is responsible, the Buyer shall bear any costs resulting from such delay, starting one month from notice of readiness for dispatch or acceptance.
5. Where failure to meet the delivery deadline is attributable to force majeure, industrial disputes or other events beyond the control of the Supplier, the delivery period will be extended accordingly. The Supplier will notify the Buyer as soon as possible of the beginning and the end of any such event.
6. The Buyer shall be entitled to withdraw from the contract without notice if the Supplier is unable to effect full performance before the transfer of risk. The Buyer is also entitled to withdraw from the contract if the execution of part of the order becomes impossible and the Buyer has a justified interest in refusing a partial delivery. If this is not the case, the Buyer is under obligation to pay the contract price attributable to the partial delivery. The same shall apply in the event of inability of the Supplier to render performance. Otherwise, Section VII.2 applies.

If the impossibility or incapacity arises during default of acceptance, or if the Buyer is solely or largely responsible for these circumstances, the Buyer shall remain under obligation to effect payment.
7. If the Supplier is in default and the Buyer incurs losses as a result, the Buyer shall be entitled to demand a lump-sum compensation for delay. This compensation shall amount to 0.5% for every full week of the delay, but to a maximum total of 5% of the value of that part of the overall delivery which cannot be used in a timely manner or in conformity with the contract.

If the time of delivery has expired and the Buyer sets the Supplier a reasonable deadline for performance - taking into account the statutory exemptions - and this deadline expires, the Buyer shall be entitled to withdraw from the contract within the framework of the statutory provisions. Within a reasonable period of time and at the request of the Supplier, the Buyer will notify the Supplier whether or not they intend to exercise the right to rescind the contract.

Any further claims arising from delays in delivery will be based exclusively on Section VII.2 of these terms and conditions.
8. We make no commitment to deliver goods without a binding obligation from the Buyer to accept them - subject to agreements to the contrary in individual cases. Delivery to the customer - even over an extended period - does not constitute any warranty of delivery in the future, unless this is expressly agreed upon. In particular, the unchallenged acceptance of a delivery forecast or similar documents from the customer gives rise to no delivery obligation on our part.
9. If, in individual cases, we have entered into any commitment to deliver without specification of a total delivery quantity (long-term supply contract), we shall have an ordinary legal right of termination with three months' notice. Conversely, the same right of termination applies if the customer enters into a commitment to accept goods without specification of a total delivery quantity.
10. If, after conclusion of the contract, it becomes clear that our entitlement to payment is jeopardised due to the Buyer's lack of performance, § 321 German Civil Code (BGB) shall apply. In particular, such a risk arises when our credit insurer refuses to cover the order or parts of the order. In particular, such a risk also exists if the Buyer fails to fulfil their contractual obligations towards us or third parties inadequately or is slow to effect payment.

IV. Transfer of risk, acceptance

1. The risk passes to the Buyer when the article to be supplied has left the works, even if partial deliveries are made or the Supplier assumes other services, e.g. shipping costs or delivery and installation. In as far as acceptance is to take place, the date fixed for acceptance is decisive. Acceptance must be carried out immediately on the fixed date, alternatively following notification by the Supplier of readiness for acceptance. The Buyer is not entitled to refuse acceptance on the basis of a minor defect.
2. In the event of a delay in or failure of dispatch or acceptance due to circumstances for which the Supplier is not responsible, the risk will be transferred to the Buyer from the day of notification of dispatch or readiness for dispatch. The Supplier is under obligation to take out the insurance requested by the Buyer at the Buyer's expense.
3. Partial deliveries are permissible in as far as these can be reasonably expected of the Buyer.

V. Retention of title

1. The Supplier retains the right of title to the goods until receipt of all payments arising from the contract. In the case of breach of contract by the Buyer, in particular default of payment, the Supplier shall be entitled to repossess the purchased item. Repossession of the purchased goods by the constitutes withdrawal from the contract. The Supplier is entitled to sell the goods after repossession; the proceeds from such a sale will be offset against the Buyer's liabilities, less appropriate administrative costs.
2. The Buyer is under obligation to treat the goods with due care, in particular, to insure their replacement value adequately at own expense against fire, water and theft, and to store the goods in a location protected against moisture and at an appropriate temperature. If maintenance and inspection work is necessary, the Buyer must carry out such work in due time at own cost.
3. In the event of seizures or other action by third parties, the Buyer must notify the Supplier immediately in writing to enable the Supplier to file a claim pursuant to §771 of the German Code of Civil Procedure (ZPO). In as far as the third party is not in a position to refund to the Supplier the judicial or extrajudicial expenses of a lawsuit pursuant to §771 of the German Code of Civil Procedure (ZPO), the Buyer shall be liable for the losses incurred.
4. The Buyer is entitled has the right to resell the purchased goods in the ordinary course of business. The Buyer hereby assigns to the supplier all claims up to the amount of the final invoice (including Value Added Tax) which accrue to him from the resale against his customers or third parties, irrespective of whether the goods have been re-sold without or following further processing. The Buyer remains entitled to assert this claim even after assignment, as long as the Supplier has not revoked this authorisation. The Supplier's right to collect the assigned claims remains unaffected by this. However, the Supplier undertakes not to collect such a claim as long as the Buyer meets their payment obligations arising out of the proceeds collected, is not in default of payment and in particular has not filed an application for the opening of settlement or insolvency proceedings nor suspended payments. If one of these applies, the Supplier is entitled to demand that the Buyer disclose to the Supplier the assigned receivables and the respective debtors and that the Buyer provides all information required to collect said receivables, surrenders the corresponding documents and notifies the third-party debtors of the assignment.
The Buyer is not entitled to assign claims which hinder advance assignment of the Buyer's claim to the Supplier as part of the extended reservation of title; this also applies to factoring transactions with adverse effect, which the Buyer is also not permitted to engage in due to the Supplier's authorisation to collect.
5. The processing or modification of the purchased item by the Buyer is always carried out on behalf of the Supplier. If the goods are processed with other objects not belonging to the Supplier, the Supplier shall acquire co-ownership rights in the new product according to the ratio of the value of the goods to the other objects at the time of processing. Apart from this, the same applies for the item resulting through processing as for the purchased item supplied with retention of title.

6. If the purchased item is inseparably mixed or combined with other objects not belonging to the Supplier, the Supplier shall acquire co-ownership rights in the new product according to the ratio of the value of the purchased item (final invoice amount including VAT) to the other processed objects at the time of mixing or combination. If the items are mixed or combined in such a way that the Buyer's item is to be regarded as the primary item, it is agreed that the Buyer shall assign pro rata co-ownership to the Supplier. The Buyer shall hold the sole property or joint property thus created in trust for the Supplier.
7. The Buyer shall also assign to the Supplier as security for the Supplier's claims against the Buyer accruing against a third party from against a third party from linking of the purchased item with a piece of real estate.
8. The Buyer shall also assign to the Supplier as security for the Supplier's claims against the Buyer accruing against a third party from against a third party from linking of the purchased item with a piece of real estate.

VI. Claims for defects

The Supplier shall be liable for defects of quality and title in the goods supplied - to the exclusion of further claims and subject to Section VII- as follows:

Quality defects

In as far as the parties to the contract have reached an agreement on the quality of the purchased item, objective requirements placed on the purchased item shall not apply.

1. Claims by the Buyer on the grounds of defects shall be dependent upon the Buyer having complied with their obligations under § 377 of the German Commercial Code (HGB) regarding the inspection of goods and notification of defects. The Buyer must notify the Supplier in writing and within five days of receipt of the goods at the latest of any defects detected on reasonable inspection of incoming goods, without prejudice to further statutory obligations regarding the inspection of goods and notification of defects.
2. All parts which are discovered to be defective due to circumstances existing before the transfer of risk will be repaired or replaced, at the discretion of the Supplier and free of charge. The Supplier must be informed immediately in writing if such defects are detected. Replaced parts become the property of the Supplier.
3. After notifying the Supplier, the Buyer shall provide the necessary time and opportunity for the Supplier to effect any repairs and replacement deliveries which the Supplier deems necessary; if the Buyer fails to do so, the Supplier is released from liability for the consequences. Only in urgent cases where there is a risk to operational safety and to avert disproportionately extensive further damage, whereby the Supplier must be informed immediately, is the Buyer entitled to remedy the defect or have it remedied by third parties and to demand reimbursement of the necessary expenses by the Supplier.
4. Provided that the complaint proves to be justified, the expenditure incurred for the purpose of subsequent performance will be borne by the Supplier, in so far as this does not place an unreasonable burden on the Supplier. If expenditure increases due to the Buyer transporting the purchased item to a location other than the place of performance after delivery, any resulting additional costs shall be borne by the Buyer. After the sale of a newly manufactured item, the Supplier, in accordance with statutory obligations, will also reimburse all expenses incurred by the Buyer within the framework of claims for recourse in the supply chain.
5. The Buyer is entitled, within the scope of the statutory provisions, to withdraw from the contract, if the Supplier - taking into account the statutory exemptions - fails to meet a reasonable period of grace granted for the purpose of effecting repairs or replacement deliveries to remedy a quality defect. Where

there is only a minor defect, the Buyer shall only have the right to reduction of the contractually stipulated price. The right to reduction of the contract price is otherwise excluded.

6. Any further claims will be based exclusively on Section VII. 2 of these terms and conditions.
7. In particular, no liability is accepted in the following cases:
Improper or incorrect use, faulty assembly or commissioning by the Buyer or third parties, natural wear and tear, faulty or negligent handling, improper maintenance, unsuitable operating materials (in particular contaminated or inadequately filtered lubricating oils), faulty construction work, unsuitable subsoil, chemical, electro-chemical or electrical influences - in as far as the Supplier is not responsible for them.
8. Unless otherwise agreed, the Supplier offers no guarantee that the supplied products are suitable for the purpose envisaged by the Buyer. This applies in particular where the Supplier delivers items made to the Buyer's drawings, specifications, samples etc. Furthermore, the Supplier assumes no warranty for the performance and operational safety of the products supplied in the product environment envisaged by the Buyer, i.e. in the respective overall system comprising the product supplied (e.g. a pump) and the other system components (e.g. motor, lubrication system). In other words, the Buyer bears sole responsibility for the overall system; this also includes testing of the system under real-life conditions. The Supplier bears no liability for the consequences of inadequate repairs carried out by the Buyer or a third party.
9. The same applies to modifications of the delivered item without the prior approval of the Supplier.

Defects of title

10. If the use of the delivered item leads to the violation of industrial property rights or copyrights within Germany, the Supplier will at own expense procure for the Buyer the right of continued use or modify the delivered item in a manner acceptable for the Buyer and in such a way that it no longer infringes intellectual property rights.

If this cannot be achieved under economically reasonable conditions or can not be accomplished within a reasonable time, the Buyer shall be entitled to withdraw from the contract. Under the conditions indicated, the Supplier is also entitled to withdraw from the contract.

Furthermore, the Supplier shall indemnify the Buyer against claims of the respective owners of the property rights which are undisputed or which have been determined by a court of law.

11. The Supplier' obligations listed in Section VI. 10 - subject to the provisions of Section VII.2 - are final with respect to property or copyright infringements.

They apply only

- if the Buyer informs the Supplier immediately of any alleged violations of property rights or copyrights,
- if the Buyer supports the Supplier appropriately in defence against the claims made or enables the Supplier to carry out modification measures in accordance with Section VI. 8,
- if the Supplier retains the right to all defence measures, including out-of-court settlements,
- if the defect of title is not due to any instruction from the Buyer and
- if the infringement was not caused by the fact that the Buyer has arbitrarily modified the delivery item or used the item in a manner not compliant with the contract.

VII. Liability of the Supplier, disclaimer

1. If the delivery item cannot be used by the Buyer for the contractually agreed purpose due to negligence or fault on the part of the Supplier in the execution of suggestions or advice before or after conclusion of the contract or by culpable violation of other collateral obligations under the contract - in particular

instructions on the proper operation and maintenance of the delivered item - the provisions of Sections VI and VII.2 shall apply, to the exclusion of further claims on part of the Buyer.

2. The Supplier only bears liability for damage not caused to the delivery item - for any legal reason -
 - a) in the case of intent and gross negligence,
 - b) in the event of culpable injury to life, limb and health,
 - c) for defects which the Supplier has fraudulently concealed,
 - d) within the scope of a guarantee,
 - e) if the goods supplied are found to be defective, in as far as the Seller is liable for personal injury or damage to property for private use under the Product Liability Act.

In the case of culpable breach of fundamental contractual obligations, the Supplier is liable both in the event of gross negligence by non-executive employees and in the case of simple negligence, whereby the latter instance shall be limited to reasonably foreseeable damage that is typical of the contract. Any and all other claims are excluded.

VIII. Limitation

All claims of the Buyer - irrespective of the legal grounds - shall lapse after a period of 12 months; this also applies to the limitation of rights of recourse in the supply chain in accordance with § 445b Section 1 of the German Civil Code (BGB). The suspension of the statute of limitations pursuant to § 445b Section 2 of the German Civil Code (BGB) remains unaffected by this; it ends at the latest five years after delivery of the product to the Buyer by the Supplier. These provisions regarding the limitation period for rights of recourse and suspension of the statute of limitations shall not apply insofar as the last purchase in this supply chain is a purchase of consumer goods. For claims for damages pursuant to Section VII. 2 a – c and, the statutory periods shall apply. The statutory limitation periods shall also apply to claims relating to buildings or delivery items which, consistent with their common application, are used in buildings and have caused the latter's defectiveness.

IX. Applicable law, place of jurisdiction, place of performance

1. The place of jurisdiction shall be the court with jurisdiction over the Supplier's place of business. However, the Supplier is also entitled to institute legal proceedings at the principal place of business of the Buyer.
2. The law of the Federal Republic of Germany applies exclusively to all business and legal relations between Buyer and Supplier; the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
3. Unless agreed otherwise, the registered office of the Supplier in Balve-Garbeck is the place of performance.

X. Final provisions

Diese Verkaufsbedingungen unterliegen deutschem Recht und sollen nach deutschem Rechtsverständnis ausgelegt werden. Sie werden in deutscher und englischer Sprache ausgefertigt. Im Falle von Abweichungen zwischen der deutschen und der englischen Fassung hat die deutsche Fassung Vorrang.

These conditions of sale shall be governed by and construed in accordance with the laws of Germany. They shall be executed in both the German and the English language. In the event of any inconsistency between the German and the English version, the German version shall prevail.