

## General Terms and Conditions of Sale and Delivery

### 1. Scope

These General Terms and Conditions of Sale and Delivery shall govern the transaction described in seller's order confirmation unless additional or contrary terms are expressly stated in the seller's order confirmation. The purchaser's General Terms and Conditions, in particular the purchaser's Purchasing Terms and Conditions, do not become part of the contract even if the seller accepts payments from the purchaser and makes deliveries.

### 2. Conclusion of the contract

A contract for the sale of goods is made and becomes effective upon receipt by the purchaser of the seller's written order confirmation upon the terms stated therein.

### 3. Scope of delivery

The final and complete description of the deliveries and services to be rendered by the seller is given in the order confirmation including any annexes thereto.

### 4. Plans and technical documentation

4.1 Technical documentation such as illustrations, drawings, details of weights and dimensions provided by the seller are only approximate, unless they are contained in or referred to in the order confirmation or an annex thereto.

4.2 Data provided by the seller in respect of buildings (foundation plan, power supply plans, etc.) are not binding upon the seller, unless they are contained or referred to in the order confirmation, and they must be verified and complied with by the purchaser with respect to structural features. The purchaser is solely responsible for ensuring that its premises comply with the structural prerequisites for installing the items being supplied.

4.3 Each party to the contract reserves all rights to calculations, plans and technical documentation which it has made available to the other party. The party to the contract receiving such material acknowledges these rights and will not make the documentary material wholly or partially accessible to third parties or utilize it for purposes other than that for which it has been made available without obtaining the prior written authorization of the other party to the contract.

4.4 The purchaser itself may use the software, know-how and documentary material made available to it to the extent provided for but may not disclose them to third parties or copy them. Any extension or

modification of software by the purchaser requires the written consent of the seller. The purchaser may only reproduce, revise, translate or convert the software from the object code to the source code to the extent permitted by law.

### 5. Health and safety requirements

The goods manufactured and supplied by the seller shall conform to the relevant directives and standards of the European Community, insofar as their application is mandatory for these goods. Otherwise, compliance with any standards, directives or rules requires written agreement to this effect in the order confirmation. All components or non-independently functioning machines are supplied by the seller in accordance with the provisions of the EU directive applicable to manufacturers of partly completed machines.

### 6. Retention of ownership

6.1 The delivered goods shall remain the property of the seller until full payment of all claims arising from the business relationship between the seller and the purchaser.

6.2 The purchaser shall be entitled to resell the retained goods in the ordinary course of business; however, the purchaser shall not be entitled to pledge the retained goods or assign them as security. The purchaser shall be obliged to secure the seller's rights when reselling the retained goods on credit.

6.3 The purchaser hereby assigns to the seller the claim of the purchaser arising from the resale of the retained goods; the seller accepts the assignment. Notwithstanding the assignment and the seller's right to collect, the purchaser shall be entitled to collect as long as it meets its obligations to the seller and does not suffer any financial collapse. At the seller's request, the purchaser shall provide the seller with the information on the assigned claims required for collection and notify the debtors of the assignment.

6.4 Any handling or processing of the retained goods shall be carried out by the Purchaser on behalf of the seller without any obligations arising for the seller. In the event of processing, combination, mixing or blending of the retained goods with other goods not belonging to the seller, the seller shall be entitled to the resulting co-ownership share in the new item in the ratio of the invoice value of the reserved goods to the other processed goods at the time of processing, combination, mixing or blending. If the purchaser acquires sole ownership of the new item, the contracting parties agree that the

purchaser shall grant the seller co-ownership of the new item in proportion to the invoice value of the processed or combined, mixed or blended retained goods and shall keep it in safe custody for the seller free of charge. If the retained goods are resold together with other goods, irrespective of whether without or after processing, combining, mixing or blending, the advance assignment agreed above shall apply in the amount of the invoice value of the retained goods which are resold together with the other goods.

6.5 The purchaser shall inform the seller without undue delay of any enforcement measures by third parties against the retained goods or the claims assigned in advance, handing over the documents necessary for an intervention. There shall also be a duty to inform if insolvency proceedings are applied for against the purchaser's assets. The application for the opening of insolvency proceedings shall entitle the seller to withdraw from the contract and to demand the immediate return of the delivered goods.

6.6 If the purchaser acts in breach of the contract, in particular if the purchaser is in default of payment, the seller shall be entitled, after issuing a reminder, to take back the retained goods at the purchaser's expense or, if applicable, to demand assignment of the purchaser's claims for return against third parties. The purchaser shall be obliged to return the goods. On the basis of the retention of title, the seller may only demand the return of the goods if it has withdrawn from the contract.

6.7 The seller's title to the goods shall also remain in cases of payment by check/bill of exchange. It shall only expire when the check/bill of exchange liability has been finally and completely fulfilled by the purchaser and the seller can no longer be held liable under the check/bill of exchange.

6.8 The seller undertakes to release the securities to which it is entitled in accordance with the above provisions at its discretion at the purchaser's request to the extent that their value exceeds the claims to be secured by 10% or more.

## **7. Delivery, transfer of risk, insurance, etc.**

7.1 Delivery, transfer of risk, insurance, etc., shall be made pursuant to the agreed Incoterms® clause (2010 Edition, ICC). Unless agreed otherwise, delivery, transfer of risk, insurance, etc., shall be ex works pursuant to Incoterms®, 2010 Edition.

7.2 Part deliveries are permissible.

7.3 If delivery is delayed for reasons for which the seller is not responsible, the risk ex works pursuant to Incoterms®, 2010 Edition, passes to the purchaser. The items being supplied will be stored and insured by the seller at the purchaser's expense and risk.

7.4 In the absence of a special agreement, the prices shall apply ex works plus the respective statutory value added tax applicable in Germany.

7.5 The retention of payments or offsetting on account of any counterclaims of the purchaser which are disputed by the seller, and which have not been finally

decided by a court of law shall not be admissible.

## **8. Failure by the seller to comply with the delivery period/date of delivery**

8.1 The delivery period results from the agreements of the contracting parties. Compliance with the delivery period by the seller shall be subject to the condition that all commercial and technical questions between the contracting parties have been clarified and that the purchaser has fulfilled all its obligations, e.g. provision of the necessary official certificates or approvals or payment of a deposit. If this is not the case, the delivery period shall be extended accordingly. This shall not apply if the seller is responsible for the delay.

8.2 Compliance with the delivery period shall be subject to correct and timely delivery to the seller.

8.3 The delivery period will be appropriately extended and the date of delivery postponed in the event of force majeure such as pandemics, epidemics, mobilization, war, riot, labor disputes, damage caused to the plant by natural disaster, embargoes, official measures, supply, transport or energy bottlenecks, obstruction of import, export or transit, etc., or other obstacles outside the control of the seller, irrespective of whether these arise with the seller, the purchaser or a third party. Each party to the contract will itself bear the costs it incurs as the result of an event of force majeure. Unless otherwise agreed, the contract may be terminated by either party if the duration of the impediment exceeds 120 days.

8.4 The delivery period shall be deemed to have been complied with if the goods have been made available for collection at the seller's works or the seller has notified the purchaser that the goods are ready for dispatch by the time the delivery period expires. If acceptance is to take place, the acceptance date shall be decisive – except in the case of justified refusal of acceptance – alternatively the notification of readiness for acceptance. If shipment or acceptance of the goods is delayed for reasons for which the purchaser is responsible, the costs incurred by the delay shall be charged to the purchaser, starting one month after notification of readiness for shipment or acceptance.

8.5 If the seller culpably fails to meet the delivery deadline or delivery date, the purchaser shall be entitled to payment of liquidated damages from the fifth week and commencing with the fifth week of the delay, to the exclusion of any further claims. The liquidated damages shall be limited to 0.5% of the order value of the delayed part of the delivery per full week of further delay, but in any case, to a total of 5% of the order value of the delayed part of the delivery.

8.6 In the event of a delay in delivery, the purchaser may grant the seller a reasonable grace period. If the seller culpably fails to deliver within this period, the seller shall be entitled to withdraw from the contract by written notice to the seller in respect of that part of the delivery which, owing to the seller's delay, cannot be used for the intended purpose. If the purchaser withdraws from the contract, it shall be entitled to compensation for the damage demonstrably suffered by it as a result of the delay. The total amount of compensation, including liquidated

damages under Clause 8.5, shall not exceed 10% of the order value of the part of the goods in respect of which the purchaser has withdrawn from the contract. Further claims of the purchaser arising from a delay in delivery shall be determined exclusively in accordance with Clause 12 of these General Terms and Conditions of Sale and Delivery.

## **9. Deterioration in financial condition/Default of acceptance by the purchaser**

9.1 If the seller learns of a material deterioration in the financial condition of the purchaser the seller can request full or partial payment in advance or the provision of security, or cancel the contract.

9.2 If delivery is delayed due to circumstances for which the purchaser is responsible, the seller is entitled to store the items being supplied at the purchaser's expense.

9.3 The seller may also give the purchaser a reasonable grace period for accepting the delivery. After this has expired without such acceptance the seller may make other arrangements for the disposal of the items being supplied and/or cancel the contract and claim liquidated damages in the amount of 10% of the order value, plus any additional damages, which may be proven.

9.4 The foregoing provisions also apply in the event of the revocation of a delivery order, which is already in the process of manufacture.

## **10. Inspection and acceptance of delivery**

10.1 The purchaser is entitled to conduct inspections on the seller's premises with the seller's prior written consent at the purchaser's sole expense.

10.2 After the seller has installed and put into operation the machinery, the purchaser must conduct acceptance tests within one month and notify the seller immediately in writing of any defects or failure of the machinery to perform according to its agreed specifications. If the purchaser fails to do this, the deliveries and services are deemed to be approved.

10.3 The seller is entitled to attend all such acceptance tests and to request that a prior trial run be performed under its technical supervision. If the trial run reveals a failure of the machinery to perform according to its agreed specifications the purchaser shall permit the seller to repair or replace any or all of the deliveries pursuant to Clause 11 of these terms and conditions.

## **11. Warranty; liability for defects**

For defects of quality and defects of title of the delivery, the seller warrants as follows, to the exclusion of further claims – subject to Clause 12.

### **Defects of quality**

11.1 All parts which prove to be defective as a result of a circumstance occurring prior to the passing of risk shall at the seller's discretion be repaired or replaced

free of charge. The seller shall be notified immediately in writing of the discovery of such defects. Replaced parts shall become the property of the seller.

11.2 To carry out all repairs and replacement appearing necessary at the seller's reasonable discretion, the purchaser shall, after consultation with the seller, give the seller the necessary time and opportunity, otherwise the seller shall be released from liability for the consequences. Only in urgent cases of danger to operational safety and to prevent disproportionately large damage, in which case the seller must be notified immediately, or if the seller is in default with the rectification of the defect, or if the written consent of the seller has been obtained, shall the purchaser have the right to rectify the defect itself or to have it rectified by third parties and to ask for reimbursement of the necessary costs from the seller.

11.3 Of the direct costs arising from the rectification or replacement, the seller shall bear – if the claim proves to be justified – the costs of the replacement part including dispatch, the costs of removal and installation as well as the costs for the provision of any necessary service personnel and assistants, as long as this does not result in a disproportionate burden for the seller.

11.4 The purchaser shall be entitled to withdraw from the contract if the seller does not comply with a reasonable grace period set by the purchaser for the repair or replacement. If there is only a minor defect, the purchaser shall only have the right to reduce the purchase price. The right to reduce the purchase price shall otherwise remain excluded.

11.5 Markings on the delivery item, references to regulations or technical standards, information in drawings or plans, weight and dimension specifications as well as information in advertising brochures etc. shall not be deemed to constitute the assumption of a guarantee. Special characteristics of the delivery item (such as special service lives, production quantities, etc.) or of the products to be manufactured with it shall only be deemed to be guaranteed if they have been expressly agreed as "guaranteed" in writing. The guarantee shall apply at the longest until the expiry of the warranty period. If guaranteed properties are not or only partially fulfilled, the purchaser shall exclusively have the rights pursuant to Clauses 11 and 12, unless otherwise agreed in writing.

11.6 No warranty shall be assumed for damages or functional defects resulting from the following causes: Unsuitable or improper use, non-compliance with the operating and maintenance instructions, faulty assembly or commissioning and improper repair or modification by the purchaser or third parties, without the seller's consent, natural wear and tear, faulty or negligent handling, unsuitable operating materials, substitute materials, defective construction work, unsuitable foundation soil, chemical, electrochemical or electrical influences, unless they are attributable to the seller's fault. If it turns out that the defect is due to a circumstance which does not give rise to warranty, the purchaser shall reimburse the seller for all costs incurred as a result.

11.7 For deliveries and services of sub-sellers and third-party sellers prescribed by the purchaser, the seller assumes warranty only to the extent that it has claims for

defects against the sub-seller or third-party seller concerned.

11.8 Only the purchaser shall be entitled to claims for defects against the seller. They are not assignable.

### **Defects of title**

11.9 If the use of the delivery item leads to an infringement of industrial property rights or copyrights in the country of destination, the seller shall in principle, at its own expense, grant to the purchaser the right to continue using the delivery item or modify the delivery item in a manner reasonable for the purchaser in such a way that an infringement of property rights no longer exists. If this is not possible under economically reasonable conditions or within a reasonable period of time, the purchaser shall be entitled to withdraw from the contract.

11.10 Subject to Clause 12, the obligations of the seller set forth in the preceding Clause 11.9 shall be conclusive in the event of an infringement of industrial property rights or copyrights. They shall only exist if

- the purchaser notifies the seller without undue delay of any asserted infringement of industrial property rights or copyrights.
- the purchaser supports the seller to a reasonable extent in defending the asserted claims and enables the seller to carry out the modification measures in accordance with Clause 11.9.
- the seller reserves the right to take all defensive measures including out-of-court settlements.
- the defect of title is not based on an instruction of the purchaser.

and

- the infringement of rights is not caused by the fact that the purchaser has modified the delivery item without authorization or has used it in a manner not in accordance with the contract.

11.11 The seller shall not be liable if the purchaser was aware of the industrial property right or could not have been unaware of it.

11.12 To the extent that the purchaser is sued for an infringement of third-party industrial property rights, the purchaser shall only have proven such defect of title once a final judgment has been rendered against it.

### **Defects of quality and title**

11.13 The limitation period for claims for defects shall be 12 months, except in the case of fraudulent concealment of the defect.

11.14 If delivery, acceptance of delivery, installation or commissioning is delayed for reasons for which the seller is not responsible, the limitation period shall run for a maximum of 18 months after notification of readiness for delivery by the seller or delivery.

11.15 If parts of the delivery are to be replaced or repaired in accordance with Clause 11.1, a new limitation period for warranty claims shall commence for the new or repaired parts of six months from completion of the repair or from delivery of the new parts. This shall not

apply in the event of fraudulent concealment of the defect.

11.16 Further claims due to defects of quality or defects of title shall be determined exclusively in accordance with Clause 12.

## **12. Disclaimer of liability**

12.1 The supplier shall be liable without limitation for culpably caused damage in the event of intent and gross negligence.

12.2 In the event of

- injury to life, body or health,
- damage covered by the Product Liability Act,
- damages resulting from the breach of a cardinal obligation (cardinal obligations are obligations the fulfilment of which makes the proper performance of the contract possible in the first place and on the observance of which the contractual partner may regularly rely),
- breach of warranted characteristics as well as fraudulent concealment of defects,

the seller shall also be liable for slight negligence and thus for any fault.

12.3 In the event of a breach of cardinal obligations, the amount of liability shall be limited to the foreseeable damage typical for the contract, unless another of the cases of extended liability listed above is given at the same time.

12.4 Any further liability than provided for in these terms and conditions is excluded – regardless of the legal nature of the asserted claim – in particular liability for indirect and unforeseeable damage, loss of production and use, loss of orders, loss of profit and financial loss. However, the above limitations or exclusions of liability shall not apply to any strict liability prescribed by law or liability arising from a strict warranty.

## **13. Operating safety**

13.1 The purchaser undertakes to comply with the operating instructions and safety information provided with the items supplied and to instruct its personnel accordingly, so that the safe operation of the items supplied is ensured. In the absence of written notification to the contrary from the purchaser, the purchaser shall be deemed to have received operating instructions and safety information.

13.2 Safety devices and warning notices placed by the seller may not be removed. Poorly attached or damaged notices must immediately be reattached or replaced. The seller promises the purchaser to replace safety notices, which have become unserviceable at any time in reasonable numbers. Changes in safety instructions must be implemented immediately and complied with by the purchaser.

13.3 Modifications to the supplied goods, which could adversely affect the safety of operating personnel, may only be performed by the seller.

13.4 The purchaser is obliged to inform the seller in writing immediately if an accident occurs in connection with the items supplied or it transpires that the operation of the items supplied entails hazards.

13.5 The purchaser shall indemnify the seller against any and all liability to third parties, which arises from any failure to perform the foregoing obligations.

#### **14. Place of performance, applicable law, jurisdiction, written form**

14.1 The place of performance for payment and for delivery shall be the seller's registered office.

14.2 Unless otherwise agreed these General Terms and Conditions of Sale and Delivery and the entire legal relationship between the seller and the purchaser shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the CISG (United Nation on Contracts for the International Sale of Goods).

14.3 The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the court having jurisdiction at the seller's registered office. If the seller acts as plaintiff, it shall be entitled – but not obliged – to bring an action before the court having jurisdiction at the purchaser's registered office.

14.4 Ancillary agreements, reservations, amendments and supplements shall only be valid if confirmed in writing by the seller. This shall also apply to any waiver of the written form requirement.

14.5 Notifications and declarations, in particular reminders, must be in writing to be valid.

14.6 If the seller carries out the installation, the seller's "General Conditions of Installation" shall also apply.

#### **15. Data Protection**

The parties undertake to comply with the provisions of the applicable data protection legislation. Unless agreed otherwise, personal data obtained in connection with the services as set out herein, shall be exclusively used to the extent necessary for the performance of such services. For such purpose Rieter Components Germany GmbH may also transmit personal data to companies associated with Rieter in another country. For further information on our processing of personal data please see the Data Privacy Statement on our homepage: [www.accotex.com](http://www.accotex.com) and [www.temco.de](http://www.temco.de).

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