



General Terms and Conditions for Deliveries of Goods to Customers of Rath GmbH

I General – Scope of validity

1.

These terms and conditions are applicable for all present and future business relationships. They are only applicable, however, to business with companies or corporate entities under public law or public-law trusts. Companies are understood in the context of these terms and conditions to be natural persons or legal entities or judicable partnerships with whom a business relationship is established and who here act within the framework of commercial or independent professional business activity.

Such persons are referred to hereinafter in the context of these terms and conditions as customers.

2.

Legal relationships between customers and us are governed exclusively by these general terms and conditions. Opposing or deviating terms and conditions of the customer are not recognised, except where we have expressly confirmed the applicability of such terms and conditions in writing. Our terms and conditions are also applicable in cases where deliveries to the customer are performed without reservation despite our knowledge of the existence of terms and conditions of that customer which oppose or deviate from our own terms and conditions. Should the terms and conditions of the customer contain provisions which are not contained in our terms and conditions, we already herewith expressly reject such provisions. Also in such cases, not the terms and conditions of the customer, but the principles developed in court practice to supplement terms and conditions taking into account the favourability rule shall apply.

3.

We reserve exclusive ownership and copyright in respect of all cost estimates, drawings, brochures, work sheets, etc., which may not be made accessible to third parties, whether as a whole or in part, without our consent. If documents are legitimately required by authorities, then we will declare our consent to such communication. We also reserve the right to make corrections to rectify errors in work folders, brochures, work sheets, information sheets or price lists before conclusion of a contract. In case of price or calculation errors, and where the ordered quantity deviates without prior consultation with us from the quantity

subject of the request for quotation, we shall be entitled to correct the agreed price, if either individual bases of calculation were subjects of contractual pricing, or if the customer has positively recognised the price error. We are entitled to make corrections at any time to rectify evident spelling mistakes.

4.

We reserve the right to modify the subject of the contract within the legally permissible scope. This includes in particular the right to implement design or form changes during the delivery period in the interest of technical progress.

5.

Where the performance of contractual obligations is dependent on the granting of corresponding approvals from authorities, modifications may be made in order to obtain such authority approvals. Any changes to an order after conclusion of the contract, furthermore, can only be considered if the arising excess costs are borne by the customer and a reasonable extension of the delivery period is expressly granted by the customer.

6.

In addition to these general terms and conditions, any technical conditions and specifications contained in the quotation or contract shall also apply, to which we herewith refer expressly.

II Conclusion of contracts

1.

Where quotations are expressly described as not binding, a contract is concluded only after written confirmation by us.

2.

With placing of an order, the customer declares a binding intention to purchase the ordered items and goods.

We are entitled to accept the offer of contract embodied by an order within two weeks after receipt by us. Our acceptance can be declared either in writing or through delivery to the customer.

3.

If the customer places an order by electronic means, we will confirm the receipt of the order without delay. The confirmation of receipt does not constitute a binding acceptance of the order. The confirmation of receipt may be embodied in a declaration of acceptance.



4.

Contracts are concluded subject to our own receipt of correct and timely deliveries from our suppliers.

This applies only in cases where the failure to deliver is not attributable to us, in particular where a congruent covering transaction is concluded with our supplier.

We will inform the customer accordingly without delay in case of non-availability. Any contribution which may have already been received from the customer will be returned. If the customer orders the goods by electronic means, the text of the contract will be stored by us and transmitted by e-mail to the customer together with these general terms and conditions upon request.

III Subject of the contract

1.

Decisive with regard to the subject of the contract is initially the agreed nature and quality of the goods. In this connection we refer to our technical conditions and to the detailed product descriptions.

2.

The subject of the contract is exclusively the sold product with the properties and features and for the intended purpose specified in the product description. Other or further-reaching properties and/or features or a further-reaching intended purpose are only to be considered agreed if they have been expressly confirmed by us in writing.

IV Reservation of ownership

1.

We reserve the ownership of the subject of a contract until all dues from the current business relationship have been received in full. The subject of the contract (reserved goods) thus remains our property until all claims against the customer arising from the business relationship have been settled.

Where the value of all security rights to which we are entitled exceeds the amount of all secured claims by more than 20%, we will release a corresponding part of the security rights upon request by the customer.

2.

We are entitled to insure the reserved goods at the customer's expense against theft, breakage, fire, water and other damage, unless the

customer furnishes evidence that such insurance has already been obtained.

3.

The customer is entitled to resell the goods in the course of normal business, subject to the proviso that the customer in turn either receives payment from his own customer or else declares a reservation to the effect that ownership does not pass to his customer until all payment obligations have been met. All claims and entitlements arising from the resale are already now assigned to us up to the amount of the invoice total. We herewith accept this assignment. Following assignment, the customer is empowered to collect the dues on our behalf. We reserve the right to collect the dues ourselves, however, should the customer fail to meet his payment obligations in a regular manner and fall into default.

4.

Any handling and processing of the reserved goods by the customer is always performed in our name and on our behalf. If the reserved goods are processed together with items not belonging to us, then we acquire co-ownership of the new product at the ratio of the value of the reserved goods supplied by us to that of the other processed items. The same applies where the reserved goods supplied by us are mixed with other items not belonging to us.

5.

While ownership is reserved, the customer is not permitted to pledge or assign the reserved goods as security.

6.

In case of seizure, confiscation or any other disposition by third parties, the customer is to inform us accordingly without delay. The customer is obliged to handle the reserved goods with due care. If maintenance or inspection work is necessary, the customer is to perform such work regularly at his own expense.

The customer is obliged to inform us without delay regarding any access to the reserved goods on the part of third parties, for example in case of seizure, as well as damage of any kind or destruction of the reserved goods.

The customer is to inform us without delay in case of any changes regarding possession of the reserved goods, as well as any change in his own address or place of domicile.

7.

In case of non-conforming behaviour on the part of the customer or similarly violations of obligations, in particular in case of delays in payment, we are



entitled to withdraw and repossess; the customer is obliged to surrender the reserved goods. Repossession or assertion of our reserved ownership does not require withdrawal on our part; neither such actions nor seizure of the reserved goods by us constitute a withdrawal from the contract, unless we declare this withdrawal expressly.

The filing of a petition for bankruptcy proceedings entitles us to withdraw from the contract and to demand immediate return of the reserved goods.

V Prices and terms of payment

1.

Unless specified otherwise in agreements or the order confirmation, our prices are quoted 'ex works' excluding packing; the latter will be invoiced separately.

2.

The offered purchase price is binding. The purchase price does not include any legally stipulated value-added tax, which will be charged and shown separately on the invoice at the legally stipulated rate applicable at the time of invoicing.

3.

No additional costs are incurred by the customer where an order is submitted by means of telecommunication.

4.

Deductions of discounts require a separate written agreement.

5.

Unless specified otherwise in the order confirmation, the purchase price is payable net (without deductions) within 30 days from the invoice date.

6.

During any period of default, the customer is to pay interest on the money debt at a rate 8% above the base interest rate. We reserve the right to demonstrate and assert higher default damages.

The customer in turn is at the same time entitled to demonstrate that we have suffered no or less damage as a result of the delay in payment.

7.

Payments are considered effected on the day on which we gain disposal of the amount. We accept bills of exchange for payment only after prior and express written agreement, but then

subject to exclusion of our liability regarding punctual and proper presentation and protest and furthermore only where bills are eligible for rediscount and properly net of tax. Amounts received by bill or cheque are credited subject to redemption and availability on the day on which we gain disposal of the amount. Discount, collection and other charges and expenses, including stamp duty on bills of exchange, are to be borne by the customer.

8.

We are not obliged to seek satisfaction initially from bills of exchange, cheques or other instruments presented to us as conditional payment.

If several similar obligations on the part of the customer are outstanding, the customer is not entitled to specify the debt against which a payment is effected. Instead we are permitted to count any received payments towards the customer's outstanding debts, including owed expenses and interest.

9.

We reserve the right to modify our prices by a reasonable amount where cost reductions or cost increases occur after conclusion of the contract, in particular as a result of trade union bargaining agreements or price increases for materials, but similarly also due to exchange rate fluctuations. Proof will be furnished to the customer upon request.

The right to modify prices is applicable only in cases where a period of more than six weeks lies between the conclusion of the contract and the agreed delivery date. The customer is only entitled to withdraw from the contract if the price increase exceeds the increase in the general costs of living between order and delivery by more than an insignificant amount.

10.

All outstanding debts become payable immediately, if the customer ceases his payments, if settlement or insolvency proceedings are opened against the customer or if the opening of such proceedings is rejected due to lack of assets, or if circumstances become known which permit justified doubt regarding the creditworthiness of the customer.

The customer waives in this respect the assertion of any right of retention from earlier or other transactions under the business relationship.

11.

It is receipt of the payment and not the sending of the same which determines whether the purchase price has been paid punctually.

VI Delivery period and delivery delays

1.

Compliance with the agreed deadlines for deliveries is dependent on the punctual receipt of all documents to be supplied by the customer, all necessary approvals and releases, in particular with regard to plans, and compliance with the agreed terms of payment and any other obligations on the part of the customer.

If these prerequisites are not met in good time, the deadlines are to be extended by a reasonable period, except in cases where the delay is attributable to us.

2.

If the failure to comply with deadlines is attributable to force majeure, e.g. natural occurrences, mobilisation, war, uprising or the like, including for example strikes, lock-outs, etc., the deadlines are to be extended by a reasonable period.

3.

Should we be in default, and provided the customer is able to provide credible evidence that he has suffered damage as a result, the customer shall be entitled to demand compensation amounting to 0.5% for each full week, but not more than 5% in total, based on the price of those parts of the deliveries which cannot be taken into expedient use due to the default.

4.

Claims for compensation by the customer which exceed the scope described above are excluded for all cases of late delivery, also after expiry of any extension which may have been granted to us. This does not apply insofar as liability cannot be excluded in cases of malicious intent or gross negligence, physical injury or liability under product liability legislation or other statutory regulations. No changing of the burden of proof to the disadvantage of the customer is entailed. The customer's statutory rights of withdrawal are not affected.

5.

If it becomes impossible for us to deliver the goods which are subject of the contract, then the customer is entitled to demand compensatory damages, except where the impossibility lies beyond our control. The compensation entitlement of the customer is limited, however, to 10% of the value of those parts of the deliveries which cannot be taken into expedient use due to the impossibility.

This limitation does not apply insofar as liability cannot be excluded in cases of malicious intent

or gross negligence, physical injury or liability under product liability legislation or other statutory regulations. No changing of the burden of proof to the disadvantage of the customer is entailed. The customer's statutory rights of withdrawal are not affected.

6.

Should unforeseeable occurrences (force majeure, e.g. natural occurrences, mobilisation, war, uprising or the like, including for example strikes, lock-outs, etc.) lead to significant changes in the economic consequence or contents of the deliveries and have a significant effect on our business activity, the contract is to be adapted as reasonable within the context of good faith. If this is economically not reasonable, we are entitled to withdraw from the contract. If we intend to make use of this right to withdrawal, the customer is to be notified without delay as soon as we gain knowledge of the severity of the circumstances, and that also where the customer has initially agreed to an extension of the delivery period.

VII Passing of risk – Packing costs

1.

The risks of accidental loss and accidental deterioration of the subject of the contract passes to the customer when the goods leave the works, and that also where partial deliveries are to be effected or where we have taken on further services, e.g. transport costs or delivery and installation.

If acceptance of the goods is intended, then this is decisive for the passing of risk. It is to be performed without delay by the agreed acceptance date, or alternatively following our notification of readiness for acceptance. The customer is not entitled to refuse acceptance on the grounds of an insignificant defect.

2.

If dispatch or acceptance is delayed or not performed as a result of circumstances not attributable to us, the risk passes to the customer from the date of notification of readiness for dispatch or acceptance. We undertake to obtain whatever insurance is demanded by the customer at the customer's expense.

3.

Partial deliveries are permissible insofar as this is reasonable for the customer.

4.

The goods are deemed to be delivered should the customer fall into default in respect of the acceptance.

5.

Transport and other packing compliant with the packing regulations is not taken back, with the exception of pallets. The customer is obliged to provide for disposal of the packing at his own expense.

VIII Refusal to take delivery

1.

If the customer refuses to take delivery of the goods, then we may set a reasonable deadline period for delivery acceptance. If the customer has still not taken delivery of the goods by the deadline granted, then we are entitled to withdraw from the contract and to claim compensatory damages. In this case, we may demand damages to the amount of 20% of the agreed purchase price without needing to provide evidence of the actual damage incurred.

2.

This entitlement to claim flat-rate compensation does not curtail the right of the customer to prove that in the particular case involved no damage or only significantly less damage has been incurred.

3.

If, before delivery of the goods, the customer declares to us or a third party his wish not to implement the contract or else not to take delivery of the goods, or if this intention is expressed conclusively in his actions, then we are entitled, in lieu of fulfilment of the contract, to demand payment of flat-rate compensation amounting to 20% of the agreed total purchase price.

IX Warranty in case of material defects

1.

We assume liability as follows in case of material defects:

All those parts or services which within the period of limitation – irrespective of the time of actual use – display material defects are at our discretion to be either reworked, delivered once more or repaired as new free of charge, insofar as the cause of the defect was already present at the time of the passing of risk.

2.

The customer must notify evident defects to us in writing within a period of two weeks after receipt of the goods; otherwise, the entitlement to claim remedy for material defects is excluded. Timely sending is sufficient to comply with this deadline. The customer bears the full burden of proof for all grounds for claims, in particular for the defect

itself, for the time of determination of the defect and for punctual notification of the defect.

3.

Following notification of a material defect, the customer is permitted to hold back payments up to an amount reasonable in connection with the material defects determined. The customer is only permitted to hold back payments, however, where there can be no doubt as to the justification of the notice of material defects. If the notice of material defect is shown to be unjustified, we are entitled to demand reimbursement of the expenses incurred from the customer.

4.

The customer is to reach corresponding agreement with us with regard to granting of the necessary time and opportunity to perform the reworking or replacement deliveries we deem to be necessary; otherwise we are released from all liability for the consequences. Only in urgent cases where operational safety is endangered or to avert disproportionately greater damage, and subject to our being informed immediately of such circumstances, is the customer entitled to remedy the defect himself or to have the defect remedied by third parties and to demand reimbursement of the necessarily incurred expenses.

5.

If our remedy is unsuccessful, then the customer is entitled, always at his own discretion, to demand a reduction of the purchase price or cancellation of the contract. The customer is not entitled to withdraw from the contract, however, on the grounds of only a minor violation of the contract, in particular in the case of only minor defects. This applies irrespective of any claims for compensatory damages, though the customer is not entitled to demand compensation for assumed expenses.

6.

No claims ensue with reference to material defects in case of only insignificant deviation from the agreed quality, nor in case of only insignificant impairment of the suitability for use, nor where attributable to natural wear and tear or damage arising after the passing of risk due to incorrect or negligent handling, excessive loads, unsuitable media, tools or equipment, imperfect construction work, unsuitable foundations or special external influences or interactions not reasonably to be assumed in the context of the contract, nor in the case of non-reproducible software errors. Claims with reference to material defects are also excluded in case of unsuited or improper use of the goods, incorrect assembly or commissioning by the customer or third parties, incorrect maintenance and furthermore chemical, electrochemical or electrical influences insofar as these are beyond our control. If improper



modifications or maintenance work are performed by the customer or third parties without our prior consent, then claims with reference to material defects are similarly excluded for these cases and any ensuing consequences.

7.

Claims from the customer with reference to expenses incurred for the purpose of remedy, in particular transport, travel, labour and material costs, are excluded to the extent that the expenses are increased by moving the goods subsequently to a place other than the premises of the customer, unless such relocation constitutes contractual use.

8.

Claims by the customer under a right of recourse to us are accepted only insofar as the customer has not reached agreements with his own customers which exceed the statutory entitlement to assert claims with reference to material defects. Clause IX.7. applies accordingly in determining the extent of a recourse claim.

9.

The customer is entitled within the framework of the statutory regulations to withdraw from the contract, taking into account the exceptional cases specified in statutory provisions, if we allow a reasonable deadline granted for renewed or replacement delivery in connection with a material defect to pass without providing remedy. If only an insignificant defect is present, the customer is only entitled to demand reduction of the agreed purchase price.

10.

If the customer chooses to withdraw from the contract following failure to remedy a material defect, he is not entitled to claim also compensatory damages in connection with the defect.

11.

If the customer chooses to claim compensatory damages following failure to remedy a material defect, the goods remain in the possession of the customer if this can be deemed reasonable. The amount of the compensatory damages is here limited to the difference between the purchase price and the value of imperfect goods. This does not apply if we have caused the violation of the contract malevolently.

12.

It is agreed for all cases that only the manufacturer's product description is relevant as specification of the nature and quality of the goods. Public statements, claims or advertising by the

manufacturer, on the other hand, do not constitute contractual specifications of the nature and quality of the goods.

13.

If the customer receives imperfect assembly instructions, then we are obliged only to supply correct assembly instructions and this only insofar as the defects in the assembly instructions preclude proper assembly.

14.

The customer receives from us no guarantees in the legal sense. Manufacturer guarantees remain unaffected.

15.

Claims for compensatory damages are subject furthermore to the provisions of Section XI. Further-reaching or other claims by the customer against us or our agents in connection with a material defect in excess of the claims designated by this Section IX are excluded.

X Warranty pertaining to legal defects, industrial property rights and copyright

1.

Unless agreed otherwise, we are obliged to perform the deliveries free of industrial property rights and copyrights held by third parties (hereinafter referred to as property rights) merely in respect of the country of the place of delivery. Insofar as a third party raises justified claims against the customer regarding the violation of property rights by goods delivered by us and used in accordance with the contract, we are liable towards the customer within the period determined in Section XII below as follows:

We will initially at our discretion and at our expense either obtain a right of use for the goods concerned or else modify or exchange the goods and services such that the property right is no longer violated. We will thus at our expense obtain for the customer a right of continued use or alternatively modify the goods in a manner reasonable for the customer to remedy the violation of property rights.

If this is not possible on economically reasonable terms or within a reasonable period, then the customer becomes entitled to withdraw from the contract. Subject to the above-mentioned circumstances, we are ourselves also entitled to withdraw from the contract.

2.

Our obligation to pay compensatory damages is governed by the stipulations of Section XI.

3.

We will furthermore indemnify the customer in respect of undisputed or non-appealable claims from

the owner of the property rights concerned.

4.

The above provisions and our obligation are final for the case of violation of property rights or copyright. They are only applicable, however, if the customer has informed us in writing and without delay of the claims asserted by third parties, has not recognised a violation and we remain able to reserve all rights to defensive measures and settlement negotiations.

If the customer discontinues use of our goods and services, whether to minimise the potential damages or for other important reasons, he is obliged to subsequently inform the third party that this discontinuation of use does not constitute recognition of any violation of property rights.

5.

Claims by our customer are excluded insofar as he is himself responsible for the violation of property rights.

6.

Claims by the customer are furthermore excluded insofar as the violation of property rights is attributable to individual specifications on the part of the customer, an objection we could not presume, or the fact that the goods, services or other subject of our contract were modified by the customer or used in conjunction with products not supplied by us. The customer is thus not entitled to assert claims if the violation of rights arises because the customer has independently modified or used the goods in a manner not covered by the contract.

Claims by the customer are similarly excluded if the legal defect is founded on an instruction from the customer. Claims are also excluded if we do not remain able to reserve all rights to defensive measures, including out-of-court settlement.

Claims by the customer are moreover excluded if he fails to support us to a reasonable extent to avert the asserted claims or to permit our implementation of the modification measures in accordance with Clause X.1.

7.

In case of any violation of property rights, the claims on the part of the customer as governed by Clause X.1. apply, otherwise the provisions of Clauses X.1., 3., 8. accordingly.

In the case of any other legal defects, the provisions of Section IX apply accordingly. Further-reaching or other claims by the customer

against us or our agents in connection with a legal defect in excess of the claims designated by this Section are and will be expressly excluded.

XI Limitations of liability

1.

Claims for compensatory damages by the customer, irrespective of their legal grounds, but in particular with regard to a violation of duties arising from the contractual relationship or impermissible actions, are excluded.

2.

This does not apply in cases where liability cannot be excluded, e.g. liability in accordance with product liability legislation, in cases of malicious intent, gross negligence or physical injury, where a warranty has been given regarding the presence of a particular quality, or in case of a violation of substantial contractual obligations or malevolent actions on our part.

Compensatory damages due to a violation of substantial contractual obligations is limited, however, to the average immediate damage typical for the contract and foreseeable in accordance with the nature of the goods, except where malicious intent or gross negligence is involved or liability is assumed for physical injury or a given warranty regarding the presence of a particular quality or in case of malevolent actions on our part.

3.

No changing of the burden of proof to the disadvantage of the customer is entailed by the above stipulations.

XII Period of limitation

1.

All claims on the part of the customer, irrespective of their legal grounds, including therefore also claims with reference to material defects, are barred after 12 months.

2.

In case of malicious intent or malevolent action on our part or on the part of our agents, and in case of claims under product liability legislation, the statutory periods apply.

3.

The statutory periods also apply where longer periods are prescribed in the legislation of the German Civil Code (BGB) in its provisions §438 (1) No. 2 (use for buildings), §479 (1) (rights of recourse) and §634a (defects in building work). The statutory periods thus apply in particular also for delivered goods which were used in a building in accordance with their



usual purpose and resulted in a defect in this building.

XIII Retention and set-off

1.

The customer acquires a right of set-off only where his counterclaims have become non-appealable or have else been recognised by us.

2.

The customer can only assert a right of retention if his counterclaims arise from the same contractual relationship.

XIV Assigning of claims

1.

The assigning of claims held against us requires our written consent to become effective. We will not refuse this consent without important reason.

2.

In the case of assignments which arise from an extended reservation of ownership, consent is to be considered granted from the outset.

XV Data protection clause

We use and process personal data collected in connection with the contract only for the purposes of contract implementation, customer relations, market and opinion research and our own marketing activities.

XVI Use of software

1.

If the scope of delivery includes software, then the customer is granted a non-exclusive right to use the supplied software, including its documentation. It is provided for use on the subject of the contract intended for this purpose. Use of the software on more than one system is not permitted.

2.

The customer is only permitted to duplicate, revise, compile or convert the software between object code and source code to the extent permitted by law (German Copyright Law §§ 69a ff). The customer undertakes not to remove or modify any manufacturer identification – and in particular copyright marks – without our prior express permission.

We and/or the software supplier retain all other rights in the software and its documentation, including any copies. The sublicensing of software is not permitted.

XVII Miscellaneous

1.

The laws of the Federal Republic of Germany shall apply, to the exclusion of the stipulations of UN Sales Law.

2.

The exclusive venue for all disputes arising from this contract is the place of our offices. This applies also where the customer does not have a place of general jurisdiction in Germany or else his domicile or place of habitual residence is not known at the time an action is filed. We remain entitled, however, to file an action at the place of the customer's main offices.

3.

Should individual provisions of the contract with the customer, including these general terms and conditions of business be or become wholly or partially invalid, then this shall not affect the validity of the remaining provisions. The wholly or partially invalid provision is to be replaced by a valid provision whose economic result comes as close as possible to that of the invalid provision.

4.

The same applies accordingly during implementation of the contract should a gap requiring rectification be discovered in the contract, or similarly should any provision, due to altered circumstances, become meaningless or be considered obsolete or become unenforceable.

Meissen, January 2006