

General Terms and Conditions of Payment and Delivery of Manfred Reiner Röhren- und Stahlhandel GmbH
Last updated November 2019

Section 1 Scope

1. These Terms of Sale apply only to entrepreneurs, legal persons under public law or special funds under public law within the meaning of Section 310 (1) German Civil Code [BGB]. For drop shipments, the terms and conditions of the price list of the commissioned supplier plant apply as well. We only accept provisions of the Customer that deviate from or contradict our Terms of Sale if we have expressly done so in writing.
2. These Terms of Sale also apply to all future business with the Customer, provided they are legal transactions of similar kind.

Section 2 Offer and conclusion of the contract

1. Insofar as an order is to be deemed an offer with binding effect as per Section 145 BGB, we are entitled to a two-week acceptance period.
2. In case of doubt, the Incoterms in their currently valid version apply to the interpretation of trade terms. Quality and dimensions are determined according to DIN, EN, and ISO standards and material data sheets; if there are none, then according to what is customary for the trade. References to standards, material data sheets, or factory certificates as well as indications of quality, dimensions, weight, and usability of the goods do not constitute any warranties or guarantees, neither do declarations of conformity, manufacturer statements, and marks such as CE and GS.

Section 3 Provided documentation

We reserve all ownership and intellectual property rights of all documents provided to the Customer upon order placement, for example calculations, drawings, etc. These documents must not be made accessible to third parties without our express written consent. If we do not accept the offer of the Customer within the time stated in Section 2, this documentation must be returned to us immediately.

Section 4 Pricing and payment

1. Unless otherwise agreed in writing, our prices are quoted ex works or ex warehouse excluding packaging, freight rates, import duties, and the currently applicable value added tax. Packaging costs are invoiced separately.
2. The purchase price must be transferred only to the account indicated overleaf. Discounts may only be deducted if there is a corresponding written separate agreement.
3. Unless otherwise agreed, the purchase price is due 10 days after delivery. Default interest is charged in the amount of 9 % above the respective base interest rate p.a. We reserve the right to the assertion of higher claims due to damage caused by default.
4. Provided that no fixed prices were agreed, we reserve the right to reasonable changes in pricing caused by changes in the cost of wages, material, and sales for deliveries occurring 3 months after conclusion of the contract or later. In particular, this applies in the event that levies and other third-party charges included in the agreed price change or arise to the corresponding amount as well as in case of drop shipments if and insofar as the prices or pricing components of the items to be delivered change in the time between the conclusion of the contract and delivery after the end of a 3-month period after conclusion of the contract.
5. If after concluding the contract it becomes apparent that our claim for payment is jeopardized by insufficient solvency of the Customer or if the Customer gets into arrears with a significant amount, or if any other circumstances arise that might lead to a deterioration of the financial circumstances of the Customer after the contract is concluded, we are entitled to the rights described in Section 321 BGB. In that case, we are also entitled to demand immediate payment of all receivables not yet due from the current business relation.

Section 5 Rights of retention

The Customer is only entitled to enforce a right of retention if the counter-claim arises from the same contractual relationship.

Section 6 Delivery time

1. Our supply commitment is subject to correct and timely supply on the part of our suppliers and in the case of import transactions also to the receipt of monitoring documents and import licences, unless we are at fault for the incorrect or delayed delivery.
2. The indicated delivery times are approximate. The period of delivery begins on the date we confirm the order and only applies if all details of the order are clarified and the Customer complies with all its duties in good time, for example the supply of all official certificates and permits, the presentation of letters of credit and securities, or making down payments. We reserve the right to raise objection to non-fulfilment of the contract.
3. Dispatching the goods from the factory or warehouse is sufficient for the observance of the deadline. If we cannot dispatch the goods for reasons we are not responsible for, the delivery is already considered as delivered on time with the notification of readiness for dispatch.
4. Circumstances amounting to force majeure entitle us to delay deliveries by the time corresponding to the duration of the impediment and a reasonable starting period. This also applies when any such events occur during an already existing delay. Circumstances amounting to force majeure include currency, trade and other sovereign measures, strikes, lock-outs, disruptions in operations not caused by us (for example fires, machine and roller breakage, lack of raw materials and power), obstructions on transport routes, delays caused by import/customs clearances and any other circumstances that, without us being at fault, significantly impede performance of delivery and services or render them impossible. It is irrelevant whether these circumstances occur at our location, at that of the supplier plant, or any other upstream supplier. If as a consequence of the aforementioned circumstances it is no longer reasonable to expect from one of the contractual parties to perform, the respective contractual party is entitled to withdraw from the contract.
5. Partial deliveries as well as excess or short deliveries by up to 10% are admissible.
6. If the Customer is in default of acceptance or culpably violates any other duties to cooperate, we are entitled to demand reimbursement of any damages incurred, including any additional expenses incurred. We reserve the right to further claims. Provided the aforementioned prerequisites are fulfilled, the risk of accidental loss or coincidental degradation of the goods is transferred to the Customer when default in acceptance or of debtor begins.
7. Other statutory claims and rights of the Customer caused by delays in delivery remain unaffected.

Section 7 Transfer of risk on dispatch

1. If the goods are sent to the Customer at its request, the risk of accidental loss or coincidental degradation of the goods, including seizure, is transferred to the Customer at the latest when the goods leave the factory/warehouse; this also applies to FOB, CIF, carriage paid, free house, and free delivered transactions. Whether the goods are sent from the place of performance or who is liable for the freight charges is irrelevant to the validity of the aforementioned provision. Unless instructed otherwise, we will select the forwarding agent or

carrier. The Customer must pay for the dispatch costs including unloading. We only insure the goods if the Customer expressly instructs us to do so.

2. If dispatch is delayed by fault of the Customer, we will charge storage costs beginning one month after notification of readiness for dispatch, but at least 0.7 % of the invoiced amount per month, unless the Customer proves that the damage incurred was less. Further claims arising from default of acceptance remain unaffected.

The Customer must report any damage to goods in transit to the carrier or to any other person entrusted with transport immediately in writing.

The damage must be noted on the consignment note, the shipping mandate, or the delivery note and be signed by the delivering driver; alternatively, a damage protocol can be drawn up. If the goods are not retrieved as contractually agreed, we are entitled to invoice the goods as delivered upon expiration of a reasonable grace period. If the dispatch of the goods is delayed for reasons attributable to the Customer, the risk is transferred when the Customer is notified of the readiness to dispatch. The goods are delivered without packaging and without rust protection. We only provide packaging, protection and/or transport material according to our experience and only upon request and at the expense of the Customer. In contracts with continuous deliveries, the Customer must provide calls and a delivery schedule of grades; otherwise we are entitled to determine these arrangements at our own discretion. If the individual calls exceed the total contractually agreed quantity, we are entitled to deliver the excess quantity, but are under no obligation to do so. We are entitled to invoice the excess quantity at the prices that apply at the time the call or the delivery is made.

Section 8 Retention of title

1. We reserve the right to retention of title of the delivered goods until all receivables arising from the delivery contract have been settled in full. This also applies to future deliveries, even if we do not expressly refer to this term. We are entitled to take the purchased goods back if the Customer is in breach of contract.

2. The Customer must handle the purchased goods with care as long as ownership has not been transferred yet. In particular, the Customer must sufficiently insure the goods against theft, fire, and damage caused by water at their original value and at its own expense (note: only admissible for the sale of high-grade goods). If maintenance or inspection work is necessary, the Customer must carry it out in time and at its own expense. As long as ownership has yet to be transferred, the Customer must inform us immediately in writing if the delivered object is seized or subject to any other interference from third parties. If the third party is not capable of reimbursing the judicial and extra-judicial costs of a legal action as per Section 771 of the German Code of Civil Procedure [ZPO], the Customer is held liable for the losses we incur.

3. The Customer is entitled to the resale of the goods subject to retention of title in the due course of normal business operations. The Customer hereby cedes all claims from the resale of goods subject to retention of title owed by the purchaser amounting to the final invoiced amount (including value added tax) agreed with us. This cession applies independently of whether the purchased goods are resold in their original state or have been further processed. The Customer remains entitled to collect any trade debts even after cession. Our entitlement to collect trade debts ourselves remains unaffected. However, we will not collect the trade debts as long as the Customer fulfils its financial obligations with the proceeds received, is not in default of payment and, in particular, has not filed an application for the initiation of insolvency proceedings or if there is no cessation of payment.

4. All processing, modification, or remodelling work of the purchased objects carried out by the Customer is always done in our name and on our behalf. In this case, the Customer's expectant right to the purchased object continues to apply for the remodelled object. If the purchased goods are processed together with other objects not owned by us, we acquire co-ownership of the new object in proportion of the objective value of our purchased object to that of the other objects used at the time of processing. The same applies for mixing. If the objects are mixed in such way that the object of the Customer is deemed the main object, it is hereby agreed that the Customer transfers proportional co-ownership to us and thereby preserves the arising sole ownership or co-ownership for us. To secure our claims against the Customer, the Customer will also cede any such claims to us that arise from the combination of the goods subject to retention of title with property owed by a third party; we hereby accept this cession.

5. We commit to release the securities we are entitled to upon request of the Customer provided that their value exceeds the secured claims by more than 20 %.

Section 9 Acceptance and weight

1. If acceptance has been agreed, it can only take place in the factory or in our warehouse immediately after notification of readiness for acceptance. The nature and scope of acceptance tests are determined by EN 10204 and the material standards. The costs for acceptance are based on the price list of the supplying factory. Any other testing costs are charged according to expenditure.

2. Regarding the weight of the goods, our weighing results or those of our supplier are authoritative. The weight slip is presented as proof of weight. To the extent permitted by law, the weight of products can be determined without weighing based on the pertinent standards. The marking ups and downs usual for steel trade in the Federal Republic of Germany (commercial weight) remain unaffected. The number of items, bales of material, etc. indicated on the dispatch note are non-binding for goods invoiced by weight. Differences from the calculated weight of individual items are distributed proportionally.

Section 10 Liability for defects, warranty, notification of defects

1. The characteristics of the goods, in particular their grade, type and dimensions, shall be determined in accordance with the agreed DIN and EN standards applicable at the time of conclusion of the contract or, in the absence of such an agreement, in accordance with current practice and commercial practice. References to standards and similar regulations as well as information on grades, types, dimensions, weights and usability of the goods, information in drawings and illustrations as well as statements in advertising material do not constitute assurances or guarantees, neither do declarations of conformity and corresponding labels such as CE and GS. Suitability and usage risks are the responsibility of the buyer.

2. The buyer must immediately inspect the quantity and quality of the goods received and notify the seller in text form of any apparent defects. If a defect becomes apparent later, the buyer must notify the seller of this in text form immediately after discovery. If the buyer omits the timely notification of defects, the goods shall be deemed approved. In this case, all warranty rights of the buyer shall cease to apply. In the case of mutual commercial transactions between merchants, § 377 HGB (Handelsgesetzbuch = German Commercial Code) remains unaffected.

3. In the case of an intended build-in of the goods, the buyer has the obligation to check the characteristics of the goods relevant for the build-in already on receipt of the goods within the scope of § 377 HGB (German Commercial Code) and to notify the seller of defects immediately in text form.

4. Insofar as, in the event of build-in or attachment of the goods, the buyer fails to check the relevant external and internal characteristics of the goods prior to such build-in or attachment, he shall act with gross negligence within the meaning of §§ 439 Para. 3, 442 Para. 1 S. 2 BGB (Bürgerliches Gesetzbuch = German Civil Code). In this case, the buyer's warranty rights with regard to these characteristics shall only be considered if the defect in question has been fraudulently concealed or a guarantee has been given for the quality of the goods.
5. If the buyer should discover defects in the goods, he shall be obliged to make the complained goods or samples thereof available to the seller for the purpose of examining the complaint and to allow the seller to examine the complained goods within a reasonable period of time. In the event of refusal, the warranty shall cease to apply. Until the completion of the inspection by the seller, the buyer may not dispose of the complained goods, i.e. they may not be divided, resold or further processed.
6. In the event of justified complaints, the seller shall be entitled to determine the type of supplementary performance (subsequent delivery, rectification of defect) taking into account the nature of the defect and the legitimate interests of the buyer. If the supplementary performance fails, or if it does not take place despite a reasonable period of time being set and a period of grace set by the buyer, the buyer shall be entitled - without prejudice to any claims for damages pursuant to § 11 of these Conditions - at his discretion to demand a reduction in the purchase price or, if the defect is not insignificant, to withdraw from the contract.
7. If the buyer has built-in the defective goods into another object or attached them to another object in accordance with their type and purpose of use, he shall be entitled in accordance with § 439 para. 3 BGB (German Civil Code) to demand compensation from the seller for the necessary expenses for removing the defective goods and the built-in or attachment of the rectified or delivered non-defective goods ("removal and built-in costs"). The necessary removal and built-in costs shall only be those which relate to the removal and built-in or the attachment of identical products, which have been incurred on the basis of standard market conditions and which are proven to the seller by the buyer in text form by submitting relevant supporting documents. The buyer's right of advance payment in this respect shall be excluded. Additional costs, in particular costs for consequential damage caused by defects, sorting costs, loss of profit, downtime costs or additional costs for replacement purchases are not removal and built-in costs and can therefore not be reimbursed within the scope of supplementary performance in accordance with § 439 Para. 3 BGB.
8. If the expenses claimed by the buyer for supplementary performance are disproportionate in individual cases, in particular in relation to the purchase price of the goods in non-defective condition and taking into account the significance of the lack of conformity, the seller shall be entitled to refuse reimbursement of these expenses. A disproportionality exists in particular if the claimed expenses, in particular for removal and built-in costs, exceed 150% of the invoiced value of the goods or 200% of the defect-related reduced value of the goods.
9. Claims of the buyer due to expenses necessary for the purpose of supplementary performance, in particular transport, workmen's travel, work and material costs, are excluded to the extent that these expenses increase because the goods were subsequently taken to a location other than the buyer's branch office or as contractually agreed, unless the transfer corresponds to the intended use of the goods.
10. The buyer must inform the seller as soon as possible about a warranty case occurring with a consumer.
11. Claims for material defects shall become statute-barred 12 months after delivery. This shall not apply if longer periods are provided for by law pursuant to § 438 para. 1 no. 2 (buildings and items for buildings), § 438 para. 3 (fraudulent concealment), § 479 para. 1 (recourse claims) and § 634a para. 1 no. 2 (construction defects) BGB (German Civil Code).
12. Recourse claims according to §§ 478, 479 BGB (German Civil Code) only apply if the consumer was entitled to assert claims against the buyer and only to the extent permitted by law and not, however, for the buyer's goodwill arrangements not agreed with the seller. Furthermore, they require that the party entitled to recourse fulfil its own obligations, in particular the obligation to notify defects.
13. The seller shall be liable for damages or reimbursement of futile expenses for material defects in accordance with § 11 (General limitation of liability).
14. An unjustified claim for supplementary performance shall entitle us to damages if the buyer could have recognised with careful examination that there was no material defect.

Section 11 General limitation of liability and statute of limitations

1. For infringement of contractual and non-contractual obligations, in particular for impossibility, default, culpa in contrahendo and tort, we shall only be liable - also for our executives and other vicarious agents - in cases of wilful intent and gross negligence, in the latter case limited to the typical damage foreseeable at the time the contract was concluded.
2. The restrictions in § 11 para. 1 do not apply in the case of culpable infringement of essential contractual obligations, insofar as the achievement of the purpose of the contract is endangered. Furthermore, these limitations shall not apply in cases of mandatory liability under the Product Liability Act, in cases of injury to life, body or health and even if and to the extent that we have fraudulently concealed defects or guaranteed their absence. The rules on the burden of proof remain unaffected by this.
3. If we are in default with a delivery or other service, the buyer may claim compensation for the damage caused by default in addition to the delivery or other service; in the case of slight negligence, however, limited to a maximum of 10% of the agreed price for the delivery or other service in default. The buyer's right to claim damages instead of performance in accordance with § 11 para. 1 and § 11 para. 2 shall remain unaffected.
4. Unless otherwise agreed, contractual claims against us which arise for the buyer on the occasion of and in connection with the delivery of the goods and our other services shall be statute-barred one year after delivery of the goods. This shall not apply insofar as § 438 para. 1 no. 2 BGB, §§ 478, 479 BGB or § 634a para. 1 no. 2 BGB (German Civil Code) provide for longer periods as well as in cases of injury to life, body or health, in the event of an intentional or grossly negligent infringement of obligations by us or fraudulent concealment of a defect. In cases of defective supplementary performance, the statute of limitations shall not recommence.

Section 12 Supplementary provisions for export business

1. The parties will provide all information necessary to determine whether the export and/or import of goods is subject to any restrictions.
2. The Customer is solely responsible for export and import licences. We are not liable for missing required permits and licences and for the consequential impracticability of the delivery or delays in delivery. The same applies if the required permits and licences cannot be subsequently produced or are revoked. The provisions of Section 10 apply accordingly.
3. Should the contract not be feasible due to missing export and/or import licences, we are entitled to withdraw from the contract. In this case, we are also entitled to claim compensation for damages.

Section 13 Other provisions

1. This contract and the entirety of the legal relationships between the parties are subject to the law of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. The place of fulfilment and exclusive jurisdiction for all disputes arising from this contract is our place of business, provided nothing else has been agreed in the order confirmation.
3. All agreements made by the parties regarding the execution of this contract are laid down in writing in this contract.