

1. SCOPE OF APPLICATION

- 1.1 These General Terms and Conditions are only applicable in commercial transactions with entrepreneurs. For the purpose of these General Terms and Conditions entrepreneurs are natural persons, legal entities or partnerships with legal capacity which at the conclusion of a contract act in the course of their commercial or self-employed professional activity.
- 1.2 All our deliveries and services are performed exclusively in accordance with these General Terms and Conditions. Conditions to the contrary or deviating therefrom are not recognized unless their validity has been explicitly consented to.
- 1.3 Our General Terms and Conditions shall also apply to future transactions even if not specially referred to them in an individual case.

2. OFFER AND CONCLUSION OF CONTRACT

- 2.1 Our offers are without engagement and not binding unless explicitly stated to be a binding offer.
- 2.2 Our written order confirmation determines the order. If a customer objects to the content of the order confirmation he shall immediately object to it. Otherwise the contract will be concluded pursuant to the order confirmation.
- 2.3 If the order is immediately executed, the invoice and/or delivery note for the goods are deemed the order confirmation.

3. PRICES

- 3.1 The prices stated in the order confirmation are definitive. These prices are ex works and do not include packaging, freight, postage, insurance, duties, other expenses, and VAT.
- 3.2 To the extent that between the signing of the contract and the execution of the order cost increases unforeseeable for us should occur, e.g. by increase of costs of wages or materials, or introduction of and/or considerable increase in taxes or duties, we are entitled to a price adjustment within the framework of the altered circumstances and without charging an additional profit. This does not apply if we are in default of delivery. In the event of price increases in excess of more than 20% of the prices stated in the contract, the customer may withdraw from the contract. This is not possible if the underlying factors of the cost increase occur while a customer is in default of acceptance or payment or during a delay in delivery caused by the customer.

4. PAYMENT

- 4.1 All payments are to be made in Swiss Francs exclusively to us.
- 4.2 Our invoices are due for payment within 30 days from the date of the invoice without any deductions.
- 4.3 Drafts and checks are only accepted on account of payment pursuant to an explicit agreement. Discount fees and other costs shall be paid by the customer.

5. SETTING-OFF AND RETENTION

The customer is only allowed to set-off an undisputed or legally established counterclaim. The customer is only permitted to claim a right of retention if it is based on the same contractual relationship.

6. DELIVERY

- 6.1 Our stated delivery dates are not binding unless they have been explicitly agreed upon as binding. A delivery period starts with the order confirmation, however, not before documentation and information on technical details, approvals, and releases to be obtained by the customer, and down-payments possibly agreed upon have been received.
- 6.2 Even for periods and dates agreed upon as binding, we shall not be responsible for delays in deliveries and services caused by force majeure and unforeseeable events for which we are not responsible. In such case we have the right to postpone delivery and/or service for the period of obstruction plus an adequate start-up period. If the obstruction continues for more than three months, the customer shall be entitled to withdraw from the contract after having granted a reasonable additional period. In such case all claims for damages of the customer are excluded.
- 6.3 If we are in default of delivery and if we are grossly at fault, we shall be liable to the customer for damages caused by delay. For slight negligence our liability for damages proved and caused by delayed performance is limited to a compensation of 0.5% for each full week of delay, however, altogether not to exceed 5% of the price of that portion of the delivery which could not be purposefully applied due to the delay.
- 6.4 We have the right to perform partial deliveries as long as the rest of the parts are supplied within the delivery period agreed upon unless it is unacceptable for the customer.
- 6.5 For reasons of production planning we are entitled to ship an excess or deficiency of up to 10% of the ordered quantity agreed upon unless it is unacceptable for the customer.

7. TRANSFER OF RISKS / SHIPMENT

- 7.1 Shipment and transport of the goods are at the customer's costs and risk. The risk shall pass to the customer as the goods leave our premises. This shall also apply if we have individually agreed to freight-free shipment by us.
- 7.2 If shipment is delayed because of circumstances caused by the customer, the risk shall pass to the customer on the date the goods are ready for shipment.
- 7.3 If we choose the type, route, or person of shipment we shall only be liable if we are grossly at fault in such choice.

8. PROVISION OF MATERIALS

- 8.1 If materials are supplied by the customer, they shall be delivered at his costs and risk with a reasonable bonus for quantity of at least 5%, in due time and flawless condition.
- 8.2 In the event of non-compliance with these conditions the period of delivery shall be reasonably extended. Except in cases of force majeure, the customer shall pay the additional costs caused by interruptions in production.

9. NOTICE OF DEFECTS

- 9.1 At acceptance or receipt of the goods, the customer shall check each delivery for completeness and damage to packaging. Complaints shall be forwarded in writing without delay. The carrier shall be caused to determine the facts of the case.
- 9.2 The customer is obliged to immediately inspect the goods and complain in writing of any recognizable defects. Hidden defects shall be complained of in writing immediately following their discovery. Otherwise the shipment shall be considered as approved.

10. WARRANTY CLAIMS

- 10.1 The reference samples submitted to the customer for inspection upon request are authoritative for quality and execution of the products. A reference to technical standards cannot be interpreted as guaranteed quality.
- 10.2 If we have advised the customer outside the contractual services agreed upon, we shall only be liable for the workability and suitability of the item delivered if this has been explicitly confirmed in advance.
- 10.3 If there is a defect for which we are responsible we have the right to remedy by either opting to make repairs or supply an item free of defects. If we refuse to remedy the defect, if repairs fail, or if it is unacceptable to the customer, he may resort to further legal remedies. An insignificant reduction of the value or suitability cannot be considered. The provisions listed in clause 11 below are applicable to warranty claims.
- 10.4 The customer shall grant us the time and opportunity required for performing all repairs or replacement deliveries considered necessary; otherwise we shall be released of our liability for the resulting consequences. Only in urgent cases, where the safety of operations is at risk or if unreasonably large damages are to be prevented, does the customer have the right to repair the defects himself or by third parties and claim compensation of the necessary costs from us.
- 10.5 A customer's warranty claims expire within 12 months after the transfer of risk.

11. LIMITATIONS OF LIABILITY/COMPENSATION FOR DAMAGES

- 11.1 We are liable for intent and gross negligence. Liability is excluded for medium and slight negligence as well as for force majeure.
- 11.2 We are only liable for warranty claims if we maliciously concealed a defect or if we made express warranties. Liability for warranty claims is excluded for gross, medium and slight negligence as well as for force majeure. Liability is also excluded for any other claims for damages, whatever their legal basis.
- 11.3 The liability restrictions in clause 11.1 and 11.2 do not apply to claims under the product liability law as well as for bodily injuries.
- 11.4 The liability for auxiliary persons is excluded.
- 11.5 Warranty claims expire within 12 months after the transfer of risk.

12. RESERVATION OF OWNERSHIP

- 12.1 We reserve ownership of all goods delivered by us until all claims in connection with the delivered goods are fully paid. We are entitled to file for reservation of ownership with the competent authority pursuant to article 715 Swiss Civil Code. The claims also include claims arising from checks and drafts, and claims from current account. If a liability based on a draft should be established for us in connection with the payment, the reservation of ownership does not expire until our liability for the draft has been excluded.
- 12.2 If the customer is in default of payment, we shall be entitled to immediately rescind the contract and request surrender of the goods.
- 12.3 The customer shall inform us without delay of seizures or other encroachments of third parties. The customer shall bear all costs involved in the removal of the seizure and replacement of the item of delivery, unless these costs can be collected from the third party.
- 12.4 Subject to revocation for cause, the customer is entitled to dispose of the item of delivery within his ordinary course of business. The transfer of ownership by way of security and pledging is prohibited until full payment of the purchase price. The customer shall only be permitted to transfer the goods under reservation of ownership to a purchaser if the customer is not in default of his obligations towards us.

In the event of a resale the customer at this time already assigns to us all claims resulting from the resale, especially claims for payment but also other claims in connection with the sale, in the amount of the final amount of our invoice (including VAT), regardless whether the item of delivery has been resold without or after processing.

Until our revocation permitted for cause the customer is entitled to collect as a trustee the claims assigned to us. A resale of claims within the framework of non-recoursefactoring requires our previous consent. We as well as the customer are entitled to inform the third-party debtors of the assignment of the claims. The customer's authority to collect ceases with the notification of assignment to the third-party debtor. In the event of revocation of the authority to collect, we can request the customer to inform us of all assigned claims and their debtors, furnish all information required for collection, hand over the relevant documentation, and inform the debtors of the assignment. A cause within the meaning of these provisions includes, but is not limited to, default of payment, discontinuance of payment, opening of insolvency proceedings, bill protest, or justified indications of over-indebtedness or imminent insolvency of the customer.

- 12.5 The customer is not entitled to process the delivered item until full payment. If the item of delivery is nevertheless processed together with other items which are not our property, we shall acquire co-ownership in the new item in proportion of the amount of invoice to the purchase price of the other items processed until full payment of our claims. Apart from that, the same provisions as for an item of delivery shall apply to the new item produced by processing.
- 12.6 Upon request by the customer we shall release at our discretion the securities to which we are entitled to the extent that the realizable value of our securities exceeds the claims to be secured by over 10%.

13. DETERIORATION OF ASSETS

- 13.1 If we become aware that bills of the customer are protested, measures of compulsory execution are commenced against him, or that any other substantial deterioration of his assets occurs, we shall be entitled to request advance payments or security deposits including for claims not yet due for payment, and to refuse further delivery until such time. If the customer in spite of a reasonable period of grace does not comply with our request, we have the right to opt for withdrawal from the contract or claim compensation for damages.
- 13.2 Furthermore, we are entitled to forbid the customer to resell the goods and subject to further rights under the reservation of ownership – reclaim any unpaid goods at the costs of the customer.

14. TOOLS

- 14.1 Tools manufactured by us or for us under a business relationship with the customer are our property as a matter of principle, if the customer is only invoiced for a part of the production costs. Tools are only used for orders of the customer as long as he meets his obligations of payment and acceptance. Our obligation to retain the tools expires after two years after the last supply of parts from the tools and previous notification of the customer.
- 14.2 If it is agreed in writing that the customer will become the owner of the tools, he shall be assigned ownership after full payment of the purchase price of the tools. In lieu of handing the tools to the customer they will be kept in stock for his benefit. Until termination of the contract we have the right to exclusive possession of the tools. If requested by the customer we undertake to mark the tools as third-party property and insure them at the customer's expense.

15. INDUSTRIAL PROPERTY RIGHTS

- 15.1 If we supply the customer in accordance with drawings, models, samples, and using parts provided by him, the customer shall be liable that no industrial property rights of third parties are violated in the countries of destination of the goods. The customer shall release us of all claims of third parties, fully indemnify us and compensate us for any damage caused. If we are denied production or delivery by a third party with reference to a property right belonging to such party, we shall without examination of the legal situation have the right to discontinue the work until clarification of the legal situation by the customer and the third party. If continuation of the order should be unacceptable to us because of the delay we have the right to withdraw from the contract.
- 15.2 Any drawings and samples handed over to us which did not lead to an order shall be returned upon request; otherwise we have the right to destroy them after three months after submission of the offer. This obligation shall also apply to the customer. The party entitled to destruction shall inform the other party in advance in due time of its intention to destroy.
- 15.3 Third parties shall not be given access to drawings, drafts, and construction proposals prepared by us and the drawings, drafts and construction proposals shall not be used in any other way without our previous written consent. This shall also apply even if they are not protected by copyright.

16. PLACE OF PERFORMANCE, JURISDICTION, APPLICABLE LAW

- 16.1 Exclusive place of performance for delivery and payment is for both parties the registered office of rotaform AG.
- 16.2 The competent court at the place of the registered office of rotaform AG shall have exclusive jurisdiction for all disputes and claims arising from or in connection with the contract, including its existence, validity or termination. We have the option to commence proceedings at the place of the registered office of the customer.
- 16.3 The contract is exclusively subject to Swiss law.