

ROWA Masterbatch GmbH

General Terms and Conditions of Sales and Delivery for business dealings with companies

1. General – Scope

1.1 All sales contract conclusions and deliveries are to be made exclusively on the basis of the following terms and conditions. These Terms and Conditions shall also be deemed to have been accepted for all subsequent business dealings even if we do not refer explicitly thereto in other contracts or during the course of orders by telephone. Should any other terms or conditions apply in an exceptional case - in particular the customer's terms and conditions of purchase - this requires our express written confirmation. If we supply goods, this does not mean that we acknowledge the buyer's terms and conditions; in contrast the buyer is deemed to have accepted our Terms and Conditions by accepting the goods.

1.2 Our Terms and Conditions of Sale only apply to transactions with contractors, legal entities of public law, and public law special assets.

2. Offer – Tender documents

2.1 Our offers are non-binding in terms of price, quantity, delivery periods and availability. Documentation belonging to the offer such as technical data sheets, data regarding weight and dimensions etc. are only indicative unless they are expressly stated as being binding. Contracts are only entered into once we have confirmed the order. Orders shall also be deemed to have been accepted if performed implicitly.

2.2 The object of the contract is solely the product sold with the properties and features as well as the purpose as per our offer. Public statements, plugs or advertising do not represent information as to the condition, quality or composition of the goods. Any or other properties and/or features or purpose require an express written agreement. Excess or short deliveries of up to plus/minus 10% are permitted as customary to the trade.

3. Prices

3.1 Should we generally reduce or increase our prices in the time between confirming an order and delivery, the price valid on the date of delivery shall apply.

3.2 Price increases are permissible if attributable to changes to price determinants that are unforeseeable following conclusion of the contract; the level of the price increase must be justified by the change to price determinants and pointed out to the customer within an appropriate period of time.

3.3 In the case of a price increase, the customer has the right to rescind the purchase contract. Neither of the parties is able to derive any rights, in particular any damage compensation claims.

3.4 Any changes to customs, other duties pertaining to the goods, and freight that occur following conclusion of the purchase transaction shall be credited or charged to the buyer.

4. Payment terms

4.1 Unless otherwise confirmed in writing, invoices are to be paid without deduction within 30 days of the date of invoice. Bills of exchange or cheques will only be accepted for the sake of fulfilment following express prior agreement. The buyer shall bear all expenses.

4.2 Upon delay of payment, the buyer shall pay default interest in the amount of 8 per cent above the base interest rate, unless the buyer can prove damage to a lesser extent or we can prove damage to a greater extent.

4.3 If there is reasonable doubt regarding the buyer's creditworthiness, in particular relating to a major deterioration of the buyer's financial circumstances following conclusion of a sales contract which could jeopardise the vendor's claims, there are bill and cheque protests, arrangement proceedings pertaining to the buyer's assets have been applied for, or the buyer becomes insolvent, we are authorised, irrespective of any granted payment terms, to only execute subsequent deliveries with advance payment or by furnishing some form of collateral. Notwithstanding other rights, following expiry of a reasonable period of grace for payment or furnishing of a form of collateral with threat of refusal, we are permitted to terminate the contract. All outstanding invoices are then immediately due for payment.

4.4 It is not permitted to offset our claims with contested or not yet legally binding counterclaims. The same applies when it comes to exercising rights to refuse performance and retention rights. The buyer's rights contained within this contract may not be assigned to third parties unless otherwise agreed in writing.

5. Delivery time

5.1 Any delivery periods agreed on an individual basis shall be subject to supplies being made to us correctly or in good time.

5.2 We are not responsible for delivery delays or non-deliveries if caused by circumstances beyond our control, in particular force majeure, fire, flooding, war, government-imposed measures, system failures, accidents, strikes, a lack of workforce, difficulties in procuring materials, packaging or transport capacity.

5.3 Due to such circumstances that have an effect on processing the purchase contract, we are entitled to postpone the delivery for the required period of time, or to rescind the contract if the circumstances are present for a prolonged period.

5.4 Item 9 applies to the buyer's damage compensation claims due to delay or impossibility.

6. Assumption of risk

Goods are delivered exclusively at the buyer's risk, irrespective of who bears the cost of freight.

7. Retention of title

7.1 All delivered goods remain our property until the customer has settled all existing claims and any accruing after conclusion of the contract which arise from any and all business relations, including settlement of a current account balance.

7.2 For us as a manufacturer within the meaning of Section 950 of the German Civil Code (BGB), further processing occurs without any obligation on our part. If, in the case of Sections 947 Para. 2 and 948 of the German Civil Code (BGB), one of the buyer's objects is the main component, the buyer already now transfers his co-ownership at a ratio of the invoice value of the semi-finished goods to the total value of the main component. If processing takes place together with other materials, we acquire co-ownership at a ratio of the invoice value of our goods to that of the other materials. The co-ownership acquired in this way is deemed as being reserved goods that the buyer keeps for us.

7.3 Reselling goods subject to retention of title is only permitted during the course of normal business and we can, in the case of item 5, prohibit this. The buyer shall immediately inform us if a third party gains access to goods and claims that belong to us. Claims from resales are hereby assigned to us in order to settle all of our invoices in their full amounts. We hereby accept this assignment. Should the value of existing collateral exceed the claims by more than 20% in total, we are obliged to release collateral of our choice at the buyer's request.

8. Warranty

8.1 The buyer is obliged to carefully inspect the sold goods for defects immediately upon arrival at their destination. Should the buyer discover a defect, he is to report it in writing to the vendor within ten working days of receipt of the goods at the destination at the latest, together with a precise description of the defect. Otherwise the goods are deemed to have been accepted. If the defect was not recognisable upon delivery despite careful inspection of the goods, the defect should be immediately reported upon discovery by way of complaint.

8.2 We are only liable for major defects to the sold item if the buyer notifies us thereof in writing within ten days of receiving the goods at the latest.

8.3 We assume no liability after processing the sold item and for consequences caused by incorrect use of the sold item.

8.4 At our choice we will remedy any major defects either by actually rectifying the defect or by supplying an item free of defects (subsequent fulfilment). If, after a second attempt to provide supplementary performance, the defect removal or subsequent delivery experiences unreasonable delays or becomes impossible or fails, the buyer can claim a discount, withdraw from the contract, or request compensation for damages instead of performance. If the buyer chooses to rescind the contract, he shall not be entitled to any compensation for damages due to the defect.

8.5 All warranty claims for defects are void if the buyer does not give us the opportunity to inspect in situ the goods which are the subject of the complaint and the described defects and does not immediately provide us with samples or specimens when requested to do so. Claims will also be void if goods processing is not stopped immediately after discovering the defect(s) or our goods are mixed or combined with goods of other origin.

8.6 The buyer's claims shall expire within one year, starting from the transfer of the purchased goods to the buyer.

8.7 Our oral and written application advice is non-binding – also in terms of any third-party trademarks - and does not release the buyer from inspecting the products we supply in terms of suitability for the intended purpose and process.

9. Compensation for damages

9.1 We are liable without limitation if the orderer asserts claims for damage based on intent or gross negligence as well as in cases of assuming a guarantee of characteristics and fraudulent concealment of defects.

9.2 We are also liable without limitation for culpable injuries to life, body or health as well as gross negligence on the part of our committees, legal representative or chief executive.

9.3 In cases of damage caused by our simple vicarious agents acting in a grossly negligent way, liability is limited to the damage typically foreseeable at the time of concluding the contract.

9.4 In other cases of negligence, we are only liable if an obligation is infringed the adherence of which is of major importance to achieve the purpose of the contract (cardinal obligation). The term cardinal obligation abstractly describes obligations the fulfilment of which are imperative to enable proper performance of the contract and on the compliance of which the contracting party may rely. In such a case of infringement of a cardinal obligation, liability is limited to the damages typically foreseeable upon conclusion of the contract.

9.5 Liability according to the German Product Liability Act (Produkthaftungsgesetz) shall remain unaffected.

9.6 Any liability extending beyond the above provisions is expressly excluded.

10. Final provisions

10.1 We are authorised to process buyer data in accordance with the Federal Data Protection Act (Bundesdatenschutzgesetz) which are received within the scope of or in connection with the business relationship, irrespective of whether the data comes from the buyer himself or from third parties.

10.2 As long as the buyer is a merchant, at our choice the place of jurisdiction for all disputes arising in connection with this contract is Hamburg or the buyer's company seat. The place of jurisdiction for lawsuits brought by the buyer shall be Hamburg exclusively. Statutory provisions on exclusive competences shall not be affected.

10.3 The relationships between us and the buyer are subject to the law of the Federal Republic of Germany. The United Nations convention on contracts for the international sale of goods (CISG) and any other international agreements, future or otherwise, even after being passed into German law, shall not apply.

10.4 Should one of the above provisions be ineffective, it shall not affect the effectiveness of the remaining provisions. The ineffective provision is to be replaced by a legal provision that from an economic perspective comes as close to the regulatory intent pursued with the ineffective provision as is legally permissible.