

General Terms and Conditions of Delivery and Payment 04/2008 of ROFA-LehmerFörderanlagen GmbH

GENERAL TERMS AND CONDITIONS OF DELIVERY AND PAYMENT

I. General

1. The terms and conditions below apply to all our offers and all contracts with us including consulting services as well as other contractual work unless otherwise confirmed in writing. General terms and conditions of the customer are not valid and we expressly contradict them.
2. All parts of our offers are subject to confirmation. Our order confirmations and letters of confirmation are decisive for the contractual content. Statements made verbally or by telephone by our representatives and associates as well as subsidiary agreements are only applicable if confirmed in writing.
3. Figures, drawings, weights, descriptions, etc. in offers, price lists and other general printed media are produced and investigated in the best way possible. However they are only a rough guidance, unless explicitly marked as binding. For quotations, drawings and other documents we reserve property rights as well as copyrights. They must not be made accessible to third parties, in particular not to competing companies. At request they must be returned.
4. In any case we reserve the right to accept an order despite prior offer.

II. Delivery and delivery deadlines

1. Period of delivery begins with the date of our confirmation order, however not before all the details of the order have been clarified and not before all necessary documents, i.e. official authorization and other documentation to be provided by the customer, have been furnished. In this case the period of delivery begins with the date of receipt of the relevant documents. Without clarification and authorization of the design in due time and without adhering to the agreed payment terms on the part of the customer, we are not obliged to the delivery deadline agreed in the contract.
2. Subject to correct and punctual delivery to ourselves.
3. We are not responsible for delivery delays caused by force majeure, strike, lockout or other unforeseen circumstances, which could not be prevented despite having exercised reasonable care applicable, irrespective whether equipment failure, interventions by authorities, shortage of energy or raw materials occur in our company or at a supplier's company. In such cases the delivery deadline is extended appropriately. If due to such circumstances delivery subsequently becomes impossible or unacceptable for us, we reserve the right to partially or fully withdraw from the contract. Withdrawal from the contract by the customer is excluded in such cases.
4. On the customer's request we carry out part delivery including or excluding respective postage.
5. In case of delay in delivery, the customer must set a reasonable period of grace.
6. If a delay in delivery is caused due to our fault and if the customer suffers a damage due to the delay in performance, the customer can claim compensation, limited to the extent of the conceivable damage, for which he has to provide evidence and which would have been incurred at the time the contract was concluded, maximum 1/2 % for each complete week of the delay, at most however 5 % of the purchase price of such part of the delivery which could not be used to the purpose due to the delay in delivery.
7. If the delivery is delayed at the customer's request or due to his fault, we are entitled to charge the customer for storage costs incurred starting 10 days from notification of the goods being ready for shipment. In this case, having notified the customer of being ready for shipment, the risk of accidental loss or accidental damage passes to the customer.

III. Fulfillment

1. The delivery is fulfilled, when the items to be delivered are finished and ready for shipment, the goods comply with the contractual regulations and the customer has been notified of the goods being ready for shipment.
2. Alterations in the design of the item to be delivered requested by the customer after having issued the order confirmation can only be carried out free of charge as long as no additional costs are incurred by the alteration. We will charge without exemption for alterations carried out on request of the customer after fulfillment.

IV. Price, payment conditions and retention of title

1. Our prices are calculated ex delivery point plus the applicable value-added tax. For all orders proportionate delivery costs, i.e. postage, packaging and loading within the factory, are added separately to the customer's bill.
2. All payments must be made to our point of payment without deductions, unless other specific agreements have been made:

30 % of the order value at order confirmation
30 % of the order value at delivery or at start of assembly or at notification of readiness for delivery
30 % at commissioning
10 % at acceptance by the customer, latest however 30 days after commissioning

Deviant agreements are regarded as nonstandard conditions and must always be confirmed in writing.
3. The offsetting of our claims is admissible only with undisputed claims or legally binding claims. Rights of retention are excluded, unless they are part of the same contractual relationship. In case of a valid right of retention, payments of the customer can only be retained until counter claims have been satisfied to such an extent that is in due proportion to the counter claims.
4. For exceeding the payment deadline we charge interest of 1% per month without formal notification of delay in performance. In case of delay of payment on behalf of the customer or should, after conclusion of the contract, arise doubts about the customer's credit worthiness we reserve the right to mark due immediately all open claims including those, for which bills of exchange have been issued, and to carry out outstanding deliveries discontinuing the date of required payment but against advance payment or with proof of sufficient collateral security. Any further claims we are entitled to remain unviolated.

V. Retention of title

1. All delivery items remain the supplier's property until all claims of the supplier towards the customer or his allied companies resulting of our business relation including future claims resulting from contracts concluded at the same time or at a later point are satisfied.
2. If the supplier provides the customer with means to pay for the goods by making out a bill of exchange, which is accepted by the customer for endorsing the discounting (bills and checks procedure), the goods become the customer's property only once the bill of exchange is honored by the customer and we are thus freed of our liability under the bill of exchange.

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3. Machining or processing is carried out by the customer on the supplier's behalf without commitments resulting from this for the supplier. If the customer processes goods subject to retention of title with other goods, the supplier becomes co-owner of the new products proportionately to the value of the processed goods subject to retention of title in relation to the other goods at the time of the machining or processing. Fractional co-ownership to which the customer is entitled to due to connection, commingling or mixture of supplied goods with other materials is transferred by the customer to the supplier. The customer will own the products as depository for the supplier with due care and diligence of a prudent businessman.
4. At supplier's request the customer must provide the supplier at any time with information about stock and condition of the goods being in his possession.
5. The customer can only sell the delivered goods as well as the products hereof resulting from being machined or processed, connected, commingled or mixed in proper business under retention of title. The customer assigns claims, which he is entitled to due to resale, processing or other legal reasons regarding the goods subject to retention of title, to the supplier for the supplier's security in the amount of the value of the goods resold or of the proceeds hereof, if the proceeds are less than the value of the goods. At the supplier's request the customer is obliged to notify his buyers of the retention of title and to provide the supplier with the information and documents required for the assertion of his rights. As long as the customer fulfils his obligations, he is authorized to collect the assigned claims. If he is delayed in payment, he must immediately pay over incoming amounts resulting from the assigned claims to the supplier. All other claims of the supplier resulting from the customer's delay in payment are not affected by this. If the value of the securities exceeds the supplier's claims by more than 25 %, the customer is entitled to request the release of securities to such extent.
6. Transfer of property by way of security or pledging of the goods subject to retention of title and other dispositions jeopardizing the supplier's rights are inadmissible. The customer must notify the supplier immediately of actual or legal access of third parties to the goods subject to retention of title or to the assigned claims as well as the loss or damage of the goods subject to retention of title and provide him with the documents necessary for intervention. The customer must pay the costs for the intervention.
7. The customer is obliged to insure the delivered goods and the products hereof against accidental damage or accidental loss, including danger of fire and theft and to furnish the supplier at his request with proof of such an insurance.

In case of a violation of the contract on behalf of the customer or a substantial deterioration of the customer's financial situation or his inability to pay or as soon as he is delayed in paying for claims resulting from the business relation, the supplier can withdraw the authorization, according to number 5, to process, transform or connect the delivered goods with other movables as well as the right to resell the goods subject to retention of title and to collect assigned claims.

VI. Assembly

1. Should the assembly be carried out by us, our specific assembly terms and conditions apply.
2. Should we undertake the assembly as a part of an all-in rate, earthworks, masonry or carpentry work as well as the tools, hoisting devices, scaffoldings, materials, electricity and water required for such work are not part of our deliveries.

VII. Dispatch, Passage of risk

1. Dispatch is carried out as we see fit. At the customer's expense we will insure the goods against breakage, transportation damage and fire, unless otherwise confirmed in writing.
2. The customer starts to bear the risk, even if freight prepaid has been agreed, as soon as the goods leave our warehouse or another agreed dispatch location. If the dispatch of the goods is delayed by the customer's fault or his representatives' fault, the risk for damage or loss of the goods will pass to the buyer on the day of notification of the readiness of dispatch.

VIII. Methods of inspection, Quality

1. For the inspection of the delivery item our standard inspection methods are applicable, based on the German industry standards (DIN). Quality of our materials is assured by quality controls continuously carried out at our headquarters.
2. Certificates about material test regardless of which type will only be issued in case of a written agreement, based on quality controls continuously carried out at our headquarters. In case of doubt a "certificate of compliance" will be issued.
3. A completed quality control, does not exempt the other party from their duty of inspection and complaint. The other party is responsible for adhering to legal, official or other rules and regulations when applying our deliveries, performances etc.
4. The other party is obliged to use our deliveries, performances etc. duly, store them properly and protect them from detrimental effects. Wear and tear inherent to the contract exempts us from a violation of duties.
5. If the other party exports into other countries and processes the goods, we are not liable for our deliveries, performances, etc. being suited for exportation nor the freedom of authorization and import into the export countries, unless otherwise confirmed by us in writing.

IX. Warranty

Provided the customer has not altered or repaired the delivery item without consent, we are liable for defective deliveries, including failure to meet warranted characteristics, as set out below excluding further claims:

1. At our own option we replace or repair all such parts free of charge, which have become inoperative or the functionality of which has become considerably impaired within 6 months (in case of multi-shift operation within 3 months) after the risk has passed due to circumstances arising prior to the passage of risk due to defective design, defective materials or defective performance for all of which proof must be furnished. We must be immediately notified in writing of the discovery of such defects. There is no obligation for us to cover follow-up costs, i.e. costs for assembly or disassembly of such parts, costs for stoppage, etc. If we are not responsible for the delayed dispatch of the delivery item the warranty expires latest after 12 months after receipt of the notification of the goods being ready for dispatch. Replaced parts become our property. We do not warrant for other defects than those mentioned here.
2. Our warranty for any defects expires, if the customer does not fulfill his contractual obligations, in particular if he does not meet the agreed terms of payment.
3. In order to be able to carry out all arrangements required by the supplier as well as to deliver replacements or replacement parts, the customer must grant us the required time and opportunity. Should this be denied, we are exempt from the liability for defects.
4. The customer shall be entitled to withdraw from the contract or demand a reduction of the compensation, if we fail by our own fault to meet an appropriate period of grace or to provide replacement delivery or if remedy or replacement delivery has been irrevocably refused by us without authority or have definitively failed.
5. We do not guarantee that our goods are suited for a certain end use, if the precise application has not been described in written instructions provided with the goods or the suitability for a certain purpose has not been confirmed by us in writing. In any case the customer is obliged to check suitability of our goods for a certain intended use in detail in advance.
6. We do not warrant for damages, which occur after the passage of risk due to faulty or negligent treatment, extreme wear, faulty construction work, unsuitable operating resources as well as due to effects from temperature, weather, electro-chemical, chemical or electric source, as long as we are not guilty of causing these effects.

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7. We or our servants are only liable in case of intent or gross negligence on our behalf for damages occurring within the period of warranty resulting from contractual secondary obligations, consultation mistakes, unauthorized acts, culpable failure to meet remedy obligations or provide additional delivery for other legal reasons. In commercial business claims for compensation are excluded even in case of missing warranted characteristics, unless the warranty was intended to avoid consequential damage.
8. If we disclaim duly lodged formal complaints, the customer's right to assert claims resulting from a fault becomes time-barred from the point of time of having duly lodged a complaint within 6 months, however, soonest with termination of the period of warranty, if such a warranty is part of the contract.
9. We accept only such liability for chains, wire ropes, conveyor belts, engines, couplings and other third-party products which the producer accepts towards us. However, we accept liability for correct choice and calculation of these third-party products. We only accept liability for proper functionality of our plant, if erected by our specialized technicians.

X. General Liability

1. Any claims for damage against us or our servants - in particular due to failure to comply with contractual secondary obligations resulting from fault at conclusion of the contract, unauthorized act - are excluded, unless we are guilty of intent or if exclusion of liability is for other legal reasons not admissible.
2. In all cases, where liability cannot be excluded in commercial businesses in case of gross negligence or in these cases and not in commercial business without gross negligence, but where the measure of the liability can be limited, liability will always be limited to the recorded predictable damage at conclusion of contract, at most, however, to the sale price of the product delivered by us, to which the claims for compensation are attributed to or from which they result.
3. As far as the liability for claims towards us has been excluded or limited, this will also be applicable with regard to the personal liability for claims of our employees, workers, associates, representatives or other servants.

XI. Place of fulfillment and jurisdiction, applicable law, others

1. Place of fulfillment for delivery and payment is Kolbermoor.
2. We reserve the right to collect, store, change, transmit or use data of the customers resulting from our business relation, as far as the other party can dispose of them himself.
3. Place of jurisdiction for all disputes - including action on dishonored bills or checks - is Traunstein, as long as the customer is full merchant, legal person under private law or public-law special fund or has no other general place of jurisdiction. We reserve the right at our own option to take legal action at the customer's legal domicile.
4. The contractual relations are subject to German law. The application of the UN Convention on International Sale of Goods in its relevant version is excluded (UN law).
5. Legal nullity of individual parts of the contract or of individual contractual provisions does not affect the legal validity of the contract in all other parts. In this case the contractual parties are obliged to replace a null provision by such a provision, which comes closest to the commercial purpose of the null provision and is effective. This does not apply in case of nullity due to violation against §§ 305 to 310 BGB. In this case the legal provisions are applicable provided that supplementary interpretation of the terms of the contract exist in order to plug a gap.
6. The above terms and conditions apply to possible follow-up business, too.