

## General Terms and Conditions

### General Terms and Conditions of delivery of the company RheinComposite

**The conclusion of contract is subject exclusively to our General Terms and Conditions of delivery, which you can see on our homepage and download (<http://www.rheincomposite.com/pages/deutsch/agb/lieferung.php>).**

#### § 1 General

1. The conclusion of contract is subject exclusively to our General Terms and Conditions of delivery (hereinafter referred to as AGB); AGB of the customer will not be accepted, unless we have expressly given our consent in writing to the validity thereof. Our AGB apply even in cases where we fulfil our contractual obligations without any reservations, being fully aware of the AGB of the customer.
2. Our General Terms and Conditions apply solely to business persons (as defined in Section 310, Paragraphs 1 and 14 of the German Civil Code (BGB)) to public law entities and to funds created pursuant to public law.
3. All covenants agreed upon between our company and the customer to make amendments to the contract or in performance of this contract will be put down in writing for evidentiary purposes. The same applies to all supplements. The written form agreement for individual cases may be repealed only in writing.
4. Our General Terms and Conditions also apply for all future transactions with the customer.
5. Our registered office shall be the sole place of international and local jurisdiction for all disputes arising from this contract and its settlement. We may, however, proceed legally against the customer at the place of his legal domicile if we so choose.
6. Unless otherwise specified in the order confirmation, the registered office shall be the place of performance for all deliveries and services.
7. The contract is subject to German substantive law with the exclusion of the UN law on the international sales of goods.
8. The contractual language is German; in so far as the translation of the General Terms and Conditions in another language does not form an integral part of the contract, in case of any discrepancies in the text, the German version will be the authoritative one.

#### § 2 Offer and Offer documents

1. Our offer is subject to change, unless anything in the contrary has been agreed upon.
2. Any samples, patterns and other documents and data such as pictures, drawings, information on dimensions and weights submitted before the offer are not binding; they are subordinated to the details given in the offer, unless it has been expressly indicated that they are binding and have priority. If there is an inconsistency between the service description and the documents mentioned, then priority must be given to the service description stated in the offer. We shall retain the right to make changes with respect to the continual further development and improvement of our products.
3. Offers by the buyer can be accepted within 4 weeks, unless a shorter or longer period has been agreed in writing!
4. An order is treated as accepted only when we have confirmed the same in writing or when we begin execution thereof.
5. We reserve the right of ownership and copyright for quotations, drawings and other documents; they may not be made accessible to third parties. This applies particularly to written documents which are designated as "confidential"; passing on said documents by customer to third parties is subject to our explicit written consent. We are obliged to reveal to third parties the plans designated as confidential by the contractual partner, only with the consent of the contractual partner.

#### § 3 Prices

1. The prices apply ex works excluding packaging plus the statutory amount of VAT valid at the time of issuance of the invoice. Packaging is charged separately.
2. The minimum order value per order is 100.00 Euro (Net value of goods). For smaller orders less than the minimum order value, we shall apply a minimum quantity surcharge of 30.00 € plus VAT per order.

#### § 4 Delivery

1. The delivery period begins with the receipt of all documents necessary for the execution of the order, the advance payment as agreed and the timely availability of the material. Delivery deadlines are subject to the correct and timely delivery of supplies ordered, except in cases where we agree on delivery dates in writing and these dates are binding. The supply deadline is considered fulfilled upon receipt of the delivery advice note, even when the actual delivery is delayed or has become impossible for reasons we are not responsible for.

2. Reasonable part deliveries and deviations of up to  $\pm 10\%$  from orders are permissible.
3. In the case of call orders without expressly agreeing on call-off dates, we can demand an extension of the deadline for delivery of the remaining call-off quantities by up to three months from the date of the last partial delivery and this deadline shall be binding. If the customer does not comply with this demand within three weeks, we are entitled to set a respite of two weeks to call for delivery and withdraw from the contract after expiration of this term and claim compensation.
4. The delivery time is extended appropriately - even within a delivery delay - in the event of unforeseen impediments which, in spite of reasonable care according to the circumstances of the case, could not be averted by us - irrespective of whether they occurred in our works or to our suppliers. These include operational disruptions, regulatory interventions, difficulties in the energy supply, delay in the delivery of important raw materials or construction materials. The same shall apply in the event of strikes and lock-outs.
5. If the customer should suffer any loss on account of a delay for which we can be blamed he shall be entitled, under the exclusion of further claims, to demand a compensation for the delay. This compensation shall be 0.5 % for every full week of delay, but shall not exceed 5% of the value of that part of the entire delivery that can either not be used at the tight time or cannot be used in accordance with the terms of the contract. This limit does not apply if the delay is the result of intention or gross negligence on our part, or if it causes damage to life, limb or health. If the timely delivery is a contractual obligation, we shall even be liable in the event of ordinary negligence, but in this case our liability shall be limited to damage that is typical of and reasonably foreseeable with contracts of this kind.

#### **§ 5 Provision of materials**

1. When the customer supplies production materials, the said materials are to be delivered at the customer's own cost and risk, on time and in good order and in quantities in excess of at least 5%.
2. If this requirement is not met, the delivery period shall be extended accordingly. Except in cases of force majeure the customer also pays the extra cost arising from interruptions of production.
3. Our liability with regards to care and safekeeping of the materials provided is limited to the same care as in our own affairs (§ 277 of German Civil Code). The customer shall bear the costs of insurance.

#### **§ 6 Risk taking**

1. Even with freight-free delivery, the risk shall be transferred to the customer once the delivery item has been dispatched, even if this is a partial delivery or when we have taken on other additional obligations, e.g. the forwarding costs or undertaken the transport and assembly.
2. If despatch is delayed due to circumstances that the customer is responsible for, then the risk is transferred to the customer from the day on which the goods are ready for dispatch.
3. At the written request of the customer the goods will be insured against damage in storage, breakage and damage in transit and damage caused by fire.

#### **§ 7 Reservation of title**

1. We retain title of ownership to the delivered goods until the purchase price has been paid in full and until any and all previously existing claims from the business relationship and all claims closely related to the delivered goods including the claims that could arise in future have been paid. Inclusion of individual claims in a current invoice as well as statements of balances and their acknowledgement shall not affect the reservation of title. If the customer defaults payment, we shall be entitled to repossess the reserved-title goods after due warning and the customer will be obliged to hand them over.
2. Should reserved goods be processed to form a new moveable object by the customer, the processing shall be performed for us without we being obliged in any way, and the new object becomes our property. If it is processed together with goods not belonging to us, we shall acquire co-ownership of the new object in proportion to the ratio of the value of the goods subject to reservation of title to the value of the other objects at the time of processing. If any of the reserved goods are combined, mingled or admixed with other goods not belonging to us pursuant to sections 947, 948 of the German Civil Code, then we shall become the co-owner in conformance with the statutory regulations. If, as a result of the combining or mixing process, the customer acquires sole ownership, he automatically transfers co-ownership to us in the proportion which the value of the goods to which title has been retained bears to the value of the other goods at the time of combining, mixing. In this case, the customer shall store the items for which we retain ownership or joint ownership and which also constitutes a reserved commodity, free of charge.
3. If the customer sells the conditional commodity alone or along with other goods that do not belong to us, the customer automatically assigns the claims from the resale of the reserved goods to the extent of the value of the reserved goods along with all ancillary rights. We now accept this assignment. The value of the goods in which title is retained shall be the invoice amount plus a security premium of 10%, which however shall not be applied to the extent that the rights of third parties are enforceable against it. If we retain joint ownership of the resold reserved commodity, the assignment of the claims applies to the amount that corresponds to our share of joint ownership. Paragraph 1, Sentence 2 applies accordingly for extended reservation of title. The anticipatory assignment also extends to the balance claim in conformance with Para 1 sentence 1 and 3.
4. The customer is justified and authorized to resell, use or to install the reserved commodity only in the usual normal course of business and only under the condition that the demands as stipulated in paragraphs 3-5 are transferred to us. The customer is not entitled to any other dispositions about the goods under reservation of title, especially pledging and the transfer of ownership for security.
5. We authorise the customer, subject to revocation, to collect the assigned claims stipulated in paragraphs 2 and 3. We shall not exercise our right to collection of payments as long as the customer fulfils his payment obligations. At our request, the customer shall inform us about the assigned claim's debtor and notify the debtor of this assignment too. We are authorized to inform the debtors of the assignment.

6. The customer must immediately inform us about any enforcement proceedings of third parties initiated in respect of the goods which are subject to retention of ownership or the assigned claims, and must hand over the documents that are necessary to object to these proceedings. Investment costs arising out of that are in any case, to be borne by the customer.
7. If the outstanding debts assigned are collected by us, the customer undertakes to give us every assistance in collecting them, particularly in preparing accounts, providing information and supplying documents to the extent necessary for collection.
8. If the customer encounters financial difficulties, the right to resell, use or install the goods subject to retention and the authorization to collect the assigned claims shall be forfeited. In the event of a subsequent insolvency, we shall if required by the (temporary) insolvency administrator, approve the use of goods and the collection of any resulting claims by the (temporary) insolvency administrator to continue business operations.
9. If the value of the securities offered exceeds the claims by more than 20 %, we shall be obliged to reassign or release the securities as we choose. With the payment of all our claims that arise from the business relations, the title of the goods under reservation and the assigned claims shall be transferred to the customer.
10. If we, pursuant to the above regulations, exercise our reservation of property rights by taking back reserved goods, we are entitled to privately sell the goods or have them auctioned. The reserved goods shall be redeemed at the amount of the proceeds achieved; the maximum amount however shall be the agreed delivery prices. Further claims of compensation for damages, particularly the loss of profit incurred, remain reserved.

## **§ 8 Payment terms**

1. Invoices are payable within 14 days from the date of the invoice to the nominated bank without any deductions.
2. Essentially, all assembly works, commissioned work, repairs and other services must be paid immediately without any deductions.
3. Payment for tools must be made in three parts with no deductions, the first one-third to be paid on receipt of the order confirmation, the second one-third after production of the model or the tool and the final one-third after receiving the contractual pattern. Any deviations from this must be stated in writing in the offer or the confirmation of order. Payment for modifications to the tools must be made on receipt of the invoice.
4. Default in payment or the emergence of circumstances that could reduce the credit rating of the customer could result in the immediate settlement of all our claims. Besides, we have the right to perform any further deliveries to the customer against advance payment only, make due each and every outstanding and even deferred invoice amounts with immediate effect and demand against the return of the bills of exchange, cash payment or security deposit as well as to withdraw from the contract following a suitable notice period and demand a compensation for damages. In addition we are entitled to prohibit the customer from reselling goods and to take back any unpaid goods at the cost of the customer.
5. In the event that the customer defaults payment, the statutory regulations of the German Civil Code and the Commercial Code apply. Pursuant to § 288 Para 4 of the German Civil Code, a flat amount of 7% of the net invoice amount is due as compensation for damages caused by defaulted payment and the flat rate is worked out on the basis of this as stipulated in § 288 Para 5 sentence 1 of the German Civil Code. The customer can demonstrate that we have suffered a lesser damage; we reserve the right to prove that we suffered a greater damage.
6. In addition, §§ 366 of the German Civil Code are also valid.

## **§ 9 Tools**

1. The customer will cover the cost of tools produced by us or by a third party on our behalf. The one-off sampling costs, the costs for testing and processing equipment and the modifications requested by the customer must be added to the price of the tool.
2. The purchase price of the tool ordered by and paid for by the customer does not include the equivalent value of the know-how that we provided when designing and the construction. When selling the tool to the customer, an appropriate additional amount must be charged for this too.
3. The parties to the contract agree that the customer – to the extent that nothing else is agreed – will be the owner of the tools after payment has been made in full (Para 1 and 2) and on fulfilment of the delivery contract for which the tools were produced and the period of retention (Para 7) has elapsed.
4. We are obliged - without prejudice to item 6 – to use the tools exclusively for the orders of the customer.
5. We are entitled to the exclusive and direct ownership of the tools till such time the transfer of ownership comes into effect.
6. If the customer fails to fulfil his obligation of payment for the cost of the tool or has defaulted on payment for parts that were supplied to him by using the tools, we have the right of retention of the tools, and are also entitled to use these tools in whichever way we like, particularly by marketing the components produced using the tools, until all the claims from the customer have been settled. In this case our obligation to use the tools exclusively for the order of the customer becomes void. As long as the tools are covered by the industrial property rights of the customer, he grants us a license free of charge for production and marketing of the tools throughout the period for which he has delayed payment.
7. We are obliged to keep the tools carefully and maintain them for subsequent orders from the customer. Our obligation to store the tools will cease if no repeat orders have been received from the customer within a period of three years after the last delivery.
8. We are liable solely for the same care as in our own affairs (§ 277 of the German Civil Code) and not for damages that occur despite proper handling of the tools. We shall bear the costs of maintenance required during normal usage of the tools.
9. The customer shall bear the risk of accidental loss of the tools the same way as the total cost of insurance cover for the tools.
10. Once the obligation to store ceases in the case mentioned in § 9 point 7, we can set a deadline for the customer to collect the tools. If the customer does not meet this deadline, then we have the right to either store the tools at the cost of the customer or scrap them. In so far as we

have stored the tools beyond the two year period, because the customer has not responded despite requesting him to collect the tools, we are exempt from any and every liability with regards to the tools.

#### **§ 10 Acceptance**

As long as acceptance has been explicitly agreed upon or as long as we perform services under a work contract, these are treated as accepted, if

- the delivery and the installation, if we are liable for carrying out installation, have been completed.
- we have indicated this to the buyer under the provisions of notional acceptance as per this regulation and have called upon him to accept,
- 14 days have passed since the delivery or installation was done or the customer has begun using the object, in which case seven working days have passed since completion of the delivery or installation, or
- the customer refuses to take acceptance of delivery within the stipulated period because of a reason or reasons other than a defect indicated to us, that makes the delivered item impossible to use or impairs the working of the delivered item to a considerable extent.

#### **§ 11 Warranty**

1. Warranties are individually regulated together with the customer within a framework agreement or a blanket order. In the absence of these, the statutory regulations apply.
2. Immediately after receipt the customer must check the delivered goods for any defects or whether the goods delivered are different from those agreed upon.
3. Complaints mentioned in point 2 can only be considered, when they are communicated in writing within 14 days after receipt of the goods.
4. If there is a defect that is not recognizable upon immediate inspection, then on discovering the defect, the same should be complained within the statutory warranty period, maximum within a week.
5. Unless expressly agreed in a written document stating that a "warranty" has been granted, we grant no warranty. Reference to DIN standards contains a specific designation of the goods but does not establish a warranty promise.
6. Apart from defects and warranty promises that result from intentional or grossly negligent behaviour, the warranty claims lapse after one year from the date of delivery to the customer.
7. In case the notification of defects is founded and presented within the prescribed period, we are entitled either to rectify the defects or to send a replacement within an appropriate period. If the rectification of defects or replacement delivery fails, the customer has the right to demand a reduction in the purchase price, if he chooses to or withdrawal from the contract.
8. For essential third-party products, our liability shall be limited only to the assignment of the warranty claims accruing to us against the supplier of the third-party product. If the claims of the supplier fail owing to the fact that he is unable to pay his debts or if the claims are irrecoverable, the warranty claims against us revive once again. The period mentioned in Para 6 is suspended during the period the warranty claims are enforced against our suppliers.
9. Unqualified alterations or maintenance work executed by the customer or any third party without prior approval shall terminate all liability for any and all consequences resulting therefrom.
10. No responsibility can be accepted for unsuitable or improper use, incorrect assembly or set-up by the customer or a third party, natural wear and tear, incorrect or careless handling, unsuitable operating resources, replacement materials and chemical, electrochemical or electrical effects, unless these factors can be attributed to us.
11. From the direct costs arising from the warranty, we will bear the costs of the replacement part, including shipping, insofar as the complaint turns out to be justified. The costs of removing the defective part will not be borne, otherwise the customer bears the costs.
12. For replacement parts or repairs the warranty period is three months; it runs however at least until expiry of the original warranty period (Para 6) for the delivery item. The liability period for defective parts of the delivered goods is extended by the duration of the business interruptions caused by the remedial work.
13. Further claims on parts of the customer, in particular any claim to a compensation for damages not originating from the delivered item itself, have been excluded. This exclusion of liability however, does not apply to unlawful intent or gross negligence, and in cases where there is a damage caused to life, body or human health or cases in which the supplied item has defects, we are liable in accordance with the German Product Liability law for personal injury and property damage to items in private use. The exclusion of liability is also not valid in the absence of characteristics that are the subject of the promise of warranty, if the objective of this promise of warranty is to protect the customer against damages that did not affect the delivery item. In the event of an infringement of a material contractual obligation, we shall be liable even in case of slight negligence, but our liability is limited to the contractually typical foreseeable damages; even this limit does not apply when it comes to personal injury.

#### **§ 12 Liability**

Our liability is exclusively based on the agreements being met in these clauses. Claims of the customer for compensation of damages against us or our vicarious agents shall be excluded even if these are a result of culpa in contrahendo and infringement of contractually agreed secondary obligations, unless they are due to wilful intent or gross negligence, cause damage to life, body or human health or are mandatorily liable according to the Product liability law.

**§ 13 Trademark Rights**

The customer is liable for the fact that ordered deliveries or services that we perform in accordance with his instructions, plans or technical specifications are free from any rights of third parties and exempts us from all referring claims. Damages that are not caused by us, but which have been the result of using trademark rights by third parties, are to be reimbursed by the customer. We are entitled to cancel all deliveries and services when third parties assert claims due to conflicting property rights without examining the legal position; we shall inform the customer about this without any delay.

**§ 14 Data protection**

We are entitled to process and store data of the customer as obtained in the course of the business relationship or in relation thereto under the Data Protection Act.

**§ 15 Offsetting and Withholding payments**

Complaints that have not been acknowledged in writing do not relieve the customer from his obligation to pay. The same holds true when exercising his right of retention or when offsetting the asserted counterclaims, unless they are legally detected, acknowledged or when they are indisputable.

**§ 16 Assignment of claims**

The customer can assign claims arising from this contract only with our express consent.

**§ 17 Severability Clause**

Should a provision of this contract be or become invalid, the legal effectiveness of all other provisions shall remain unaffected. In so far as a provision in the individual contractual agreement becomes invalid, the contractual parties are under obligation to replace the invalid provision by a valid provision, the purpose of which is as close as possible to the original provision. The same shall apply if it is subsequently established that there is a loophole in the contractual agreement.

