

# Terms and Conditions of Delivery and Payment

## A) Initiation and conclusion of contract

- The Customer declares a binding contract offer with his order. Rösler is entitled to accept the contract offer within a period of 4 weeks. The Customers order will only become valid after a written confirmation from Rösler, or, in the absence of written confirmation, if the goods have been delivered within the 4 week period.
- Offers made by Rösler are non-binding and may be withdrawn at any time until the conclusion of the contract.
- The order confirmation is binding for the scope of goods and services of the contract. Any objections to the confirmation must be made, in writing, within 10 days of receipt of the confirmation.
- Characteristics and qualities of the subject matter of the contract must be designated as such by Rösler, otherwise they are not deemed as being warranted. Rösler reserves title and intellectual property rights to all contract documents e.g. offers, estimates, drawings or other offer documentation. Any right of retention by the customer is hereby expressly excluded. All such documents must be returned immediately by the customer if the contract is not made. The customer is not authorised to make the documents provided available to any third parties.
- During the period of the contract, the customers financial circumstances give cause for concern, Rösler shall be entitled to demand, upon 14 days notice, the provision of security. Failure to comply with this demand will entitle Rösler to withdraw from the contract, or to demand damages for breach of contract which shall include possible consequential losses.

## B) Subject matter of contract (General)

- Rösler Terms and Conditions of Sale and Delivery contained herein will apply exclusively, even where the customer's terms and conditions of business are not expressly objected to, or where Rösler has made delivery with knowledge of the customer's terms and conditions of business. The customer's terms and conditions of business shall not be binding on Rösler and will only form part of the contract where Rösler has expressly acknowledged them in writing.
- The following documents, listed in order of validity, govern the contract between Rösler and the Customer:
  - The written and oral agreements, where the oral agreements have been confirmed in writing by Rösler
  - Rösler's order confirmation
  - The present Terms and Conditions of Sale.

## C) Terms of Delivery and Deadlines

- Terms of delivery and deadlines stated by Rösler shall, in all cases, be non-binding and shall only be observed where they have been stated in writing by Rösler.
- The start of the period for calculating terms of delivery and deadlines shall be when confirmation is issued to the customer, or when delivery takes place within 4 weeks, as per Section A. However, delivery dates and deadlines will not be set prior to receiving any or all documentation required from the customer to enable performance of the contract.
  - Where a binding deadline set by Rösler has been exceeded, the customer shall be obliged to set Rösler a reasonable period of grace for delivery, of no less than 3 weeks. If Rösler fails to meet this deadline, the customer may rescind the contract. The customer may only claim damages for breach of contract against Rösler only in events where Rösler has committed a grossly negligent breach of duty or if one of Rösler's authorized representatives or vicarious agents has committed a grossly negligent or intentional breach of duty or where Rösler has committed a fundamental breach of the contract. Any claim for damages shall be limited to the damage typically suffered by customers.
  - Where a stated non-binding deadline for delivery has been exceeded, the customer must set a grace period of corresponding length. Where such period expires to no avail Clause C2 a) hereof will apply analogously.
  - Damage or loss on the part of the customer shall be limited, even in cases of intentional acts or gross negligence, to a claim for compensation of 0.5% of the total delivery price for every complete week of the delay, with a maximum amount 5% of the total delivery price, or of that portion of the outstanding total delivery price.
- If Rösler cannot meet the delivery periods of deadlines in the event that Rösler's suppliers – without any fault of Rösler – fail to honour their delivery commitments, both parties to the contract may rescind the contract if the agreed deadline, or agreed delivery date has been exceeded by more than 4 months. In this case neither party will be entitled to claim damages against the other.
- Rösler shall not be held liable for any delay caused by *force majeure*, strikes, fire or other inability to perform outside of their control. Such events shall entitle Rösler to extend the delivery or deadline by a period equal to the length of time lost by the length of the inability. However, the customer shall be entitled to rescind the contract after a six month period, but with no claim for damages under any legal theory.
- When delivery or deadline is put at risk by the ultimately performance of the customer's obligations e.g. untimely provision of materials, drawings, plans, sketches, and samples etc., Rösler may, after granting a 2 week grace period, rescind the contract, or demand damages from the customer for breach of at least 15% of the contract value. Rösler reserves the right to demand a greater amount of damages, upon furnishing further evidence of loss. The customer may also furnish evidence to show that the damages were of a lesser amount.
- If amendments to the contract have been agreed which affect the deadlines for delivery, then the parties shall agree a new deadline or delivery period between them. The parties shall not be entitled to assert or enforce the original deadlines or term of delivery.

## D) Scope of deliveries

- The scope of deliveries is governed by the subject matter of the contract, pursuant to Clause B hereof.
- In all cases delivery is ex-works. The customer is obliged to inform Rösler of the correct address for delivery.
- Rösler reserves the right to make changes to the design and form, as well as modifications to the scope of delivery, where the customer may be reasonably expected to accept them, or where such changes are due to technological developments.
- Documents submitted by Rösler, such as drawings, illustrations, weight and size data etc. shall be regarded as approximations only, unless Rösler has designated them as binding in writing.
- Packaging material shall be retrieved by Rösler to the extent provided by law.
- If shipment is made in Collico packaging or rail containers, rental for these containers are for the customer's account. Charges for rental are as per Rösler's rental price list.

## E) Shipment of Goods

- The risk of loss is transferred to the customer as soon as goods are transferred to the shipper, including Rösler's own vehicles. This shall also apply where freight is paid, FOB, CIF, or delivery and assembly free of all charges.
- The risk of loss of goods is also transferred to the customer if having been notified of the completion of manufacture, they fail to pick up completed goods by the deadline set by Rösler.
- All shipping costs are for the customer's account, unless Rösler has accepted the shipping costs in writing.
- Rösler will not be obliged to insure the goods to be shipped for theft, destruction, transport, and fire damage, unless the customer specifically demands this in writing. Cost of this insurance is for the customer's account. Rösler may demand that the customer takes out insurance against these risks prior to shipment. In the event of damage, the customer hereby assigns, in advance, all claims it may have against the insurer, and Rösler hereby accepts the declaration of assignment.

## F) Prices and terms of payment

- Rösler's prices are always quoted ex-works, exclusive of packaging. Auxiliary goods and services shall be separately invoiced. The legal rate of VAT in force at the time must be added to the quoted price.
- Where goods are not accepted, Rösler will be entitled to invoice demurrage fees, calculated as cubic metres required at a price of EUR 4.00 per cubic metre, commencing on the month of demurrage.
- Packaging is invoiced at cost price
- Payments shall be effected as follows, unless otherwise agreed:
  - Process tools and media: Net cash immediately upon delivery
  - Machines: 30% upon order confirmation, 60% upon notification of readiness to ship and 10% 30 days after delivery and assembly, net cash.
  - Services, "Ok-Pacs", repairs, spare parts and various other services: Immediately after provision of the services, strictly net in cash.
- The contract price agreed between the contract parties shall be payable where the subject matter of the contract is delivered within 4 months of the order confirmation being received. Where the 4 month period is exceeded, Rösler reserves the right to increase the price by a reasonable amount if production costs have risen in this time. The customer may rescind the contract if the price increase is greater than 10%. The customer must declare its intent to rescind the contract within 2 weeks of the written notice of such increase. In this case there would be no claims from either party against each other.
- If the customer fails to comply with the aforesaid payment deadlines, the customer shall be in default without the necessity of further reminders. The customer will be obliged to pay default interest to Rösler of 8% over the base interest rate of the European Central Bank in effect at the time. This is without prejudice to a claim for further interest damages, evidence of which must be furnished by Rösler. Rösler may also demand EUR 3.00 for each payment reminder issued.
- Where partial payments have been agreed, the entire remaining amount shall become due if the customer is in default for more than 14 days on the payment of any instalment, ceases to make payments, or where insolvency proceedings in respect of the customer's assets have been applied for.
- Payment orders, cheques and bills of exchange shall only be accepted by Rösler by special agreement, and only for payment purposes. Any and all Bank charges are for the customer's account and will be debited to their account.
- If the customer falls into arrears with payments, Rösler may, at its option, after 14 days grace, either rescind the contract or demand damages for breach, including indirect damages.

## G) Acceptance

- The customer is obliged to accept the goods immediately when a notification of readiness has been issued within 14 days and the goods are delivered to the customer. Where the customer fails to accept the goods immediately, Rösler will apply a grace period of 8 days, at the end of which Rösler may withdraw from the contract and demand damages for breach. No grace period will be granted where the customer has already refused to perform its obligations under the contract. In the amount of damages Clause C 5 shall apply analogously.
- If the customer discovers a material defect in the goods at the time of acceptance, they are obliged to set Rösler a reasonable grace period to rectify the defect. If Rösler fails to rectify the defect in this period, the customer may withdraw from the contract or demand damages for breach, but only in events where Rösler has committed a grossly negligent breach of duty or if one of Rösler's authorized representatives or vicarious agents has committed a grossly negligent or intentional breach of duty or where Rösler has committed a fundamental breach of the contract.
- If Rösler avails itself of the right to demand damages for breach, either for non-acceptance or non-payment by the customer, then Rösler shall be entitled to dispose freely of the subject matter of the contract - in

particular to dispose thereof by sale, at the customers cost and expense, on the best possible terms, after giving prior notice to the customer of the use of the intended sales proceeds, and on issuance of a credit note in the amount of the net sales proceeds.

- The customer is obliged to inspect the subject matter of the contract immediately on receipt for defects. § 377 of the German Commercial Code shall apply thereto, provided that objections are received in writing by Rösler within 6 days, otherwise they are not considered to have been raised. If latent defects are discovered later, the foregoing sentence shall apply *mutatis mutandis*.

## H) Warranty

- Rösler warrants that the subject matter of the contract is fit for purpose as premised in the contract, warrants that the materials used are good and that the workmanship corresponds to the state of the art in question.
- This warranty is limited to a period of one year, provided that timely notice is given, calculated from the date of delivery or notice of readiness to ship.
- The customer shall initially have only a right to rectification of defects by Rösler, and must set a reasonable period of grace of at least 3 weeks. Where rectification has conclusively failed after 3 attempts at most, the customer may either withdraw from the contract or demand abatement of the purchase price. Compensation for non-performance shall be excluded unless Rösler has committed a grossly negligent breach of duty or one of Rösler's authorized representatives or vicarious agents has committed a grossly negligent or intentional breach of duty or it has been alleged that Rösler has committed a fundamental breach of the contract.
- Insofar as Rösler acts under the warranty terms, any compensation shall be limited to the damage typically suffered by customers. Rösler shall, however, not be liable for unusual damages, for damages that could not have been foreseen by either party at the time and for damages that could have been avoided by the customer.
- Rösler shall not bear liability where the defect is based on defective materials, tools, devices, and defective plans etc which were provided by the customer. Rösler shall likewise bear no liability where the defect is attributable to the fault of the customer or his vicarious agents.
- Where the customer, either on his own or with the aid of a third party, rectifies a defect, any and all warranty claims against Rösler shall be nullified.
- Where qualities and characteristics warranted by Rösler are lacking, the right of the customer to demand damages shall remain unaffected. However, the customer has no claim whatsoever for damages for indirect losses.
- Where defects in the subject matter of the contract are based on parts supplied by sub-suppliers. Rösler's liability to the customer is limited to the scope of the sub-supplier's liability to Rösler. In this case, Rösler's warranty shall be limited to rescission or abatement. Claims for compensation are not admissible unless Rösler has committed a grossly negligent breach of duty or if one of Rösler's authorized representatives or vicarious agents has committed a grossly negligent or intentional breach of duty or where Rösler has committed a fundamental breach of the contract.
- Rectification of defects by Rösler shall not extend the warranty period.
- Exchanged parts become the property of Rösler
- Any costs caused by the supplementary performance, specifically expenses for transport, shipping and handling, labour and material, shall be assumed by Rösler.

## I) Liability

- In the event of personal injuries and loss of life and limb, Rösler shall be liable for any culpable breach of duty (through either negligence, gross negligence or intention) of its own, its legal representatives and vicarious agents.
- In the event of any other damages, Rösler shall be liable for damages caused by a grossly negligent breach of duty of its own and for any grossly negligent or intentional breach of duty by one of Rösler's authorized representatives or vicarious agents. Rösler shall not be liable for damages caused through slight negligence of its own, its authorized representatives or its vicarious agents, unless a fundamental breach of the contract has been involved.
- Rösler shall not be liable for damages caused by gross negligence of its employees or vicarious agents who are not in a managerial or otherwise responsible position, unless a fundamental breach of the contract has been involved.
- Insofar as Rösler is in principle liable to pay compensation, clause H4 of the General Terms and Conditions of Delivery and Payment shall apply.
- Any claims of customers and third parties that are based on the Product Liability Act shall remain unaffected. The customer shall be obliged to inform Rösler at once, in writing, with respect to damage and losses, and to quantify their amount. If the customer breaches this obligation, it shall bear liability to Rösler for damages.

## J) Retention of title

- Vis-à-vis the customer, until all claims under the contract it has concluded are settled in full, Rösler shall retain title to the subject matter of the contract it has delivered. This retention of title shall also apply in respect of all claims to which Rösler is entitled vis-à-vis the customer in respect of the contract e.g. repairs, supplementary or replacement deliveries, auxiliary goods and services etc.
  - In the event that the customer sells the subject matter of the contract to a third party, the customer hereby assigns that proportion of any resulting claim of his against that third party to Rösler which is required to cover any claim that Rösler may still have against him at the time. Rösler hereby accepts this assignment.
  - Where the customer is a legal person of public administrative law, a special fund under public administrative law, or a merchant who forms the contract with Rösler as part of the operation of his commercial enterprise, the retention of title shall also apply with respect to all claims which Rösler may have against that customer on the basis of the ongoing business relationship.
- For as long as the retention of title exists in favour of Rösler, the customer may not, without the prior written consent of Rösler, undertake a pledge, collateral, rent or hire or any other disposition with respect to the subject matter of the contract, which may prejudice the interests of Rösler. The right of the customer to process or sell the subject matter of the contract in the ordinary course of business is unaffected. If, however, the customer fails to meet his payment obligations specified in this contract, Rösler shall be entitled – having instructed the customer accordingly – to reveal the preceding assignment of claims (1b and c) and to claim or confiscate the goods or claims in question.
- The use of the subject matter of the contract may only be undertaken by the customer himself. Provision of the subject matter of the contract to a third party shall require the prior written consent of Rösler, and the customer is obliged to give notice of the location of the subject matter of the contract. In the event of breaches thereof, Rösler shall be entitled to demand early release of the subject matter of the contract to it. The customer is hereby expressly denied any right of retention with respect here to.
- If, during the term of the retention of title, third parties interfere with the subject matter of the contract, in particular by way of liens, the customer must inform Rösler at once, and also inform the third party of Rösler's ownership rights. The customer will be liable for all costs incurred by Rösler in the event of interference, as well as the costs of recovery of the subject matter of the contract, to the extent that the customer is unable to demand them from the third party.
- For the term of the retention of title, both parties agree to a relationship in the nature of a loan, entitling the customer to have possession and use of the subject matter of the contract for as long as the customer complies with its obligations under the contract. If the customer is not keeping its payments obligations or is infringing other obligations arising from this contract with Rösler, Rösler may demand from the customer the return of the object of this contract after the expiry of a suitable deadline stipulated by Rösler. The customer is expressly denied and right of retention except where the customer is entitled to a right of retention under the contract pertaining to the subject matter of the contract.
- Where the subject matter of the contract is combined or commingled with other objects, within the meaning of §§ 947,948 of the German Civil Code, Rösler shall be entitled to co-ownership of the unitary object corresponding to the value of its claims under the contract. The parties are already in agreement at this time to the passage of title, and further agree that, for the duration of co-ownership the customer shall hold the Rösler's share of ownership on loan. The same shall apply with respect to the processing of the subject matter of the contract under §950 of the German Civil Code. If the subject matter of the contract becomes integrated, commingled or reprocessed within the meaning of the provisions of §§ 947, 948, 950 of the German Civil Code, and if the customer has agreed that a third party shall acquire a right of co-ownership, the customer, now and in advance, assigns its co-ownership share to Rösler. The parties are already in agreement at this time with respect to the passage of title, and further agree that for the duration of co-ownership of the parties, the customer shall hold the co-ownership share of Rösler on loan and shall act as an agent in providing Rösler with possession thereof, pursuant to §930 of the German Civil Code.
- If, due to the forging provisions, the value of collateral for Rösler on the basis of the simple, extended or augmented retention of title exceeds the total claims of Rösler by more than 20%, over a period of time, then Rösler undertakes, upon demand of the customer, to release the excess collateral to the customer. The value of the collateral shall be calculated by reference to the realisable sale value of the collateral.

## K) Erection of machines

- Rösler recommends that machines should be assembled/erected by Rösler's experienced fitters. Rösler will invoice for the assembly fitter, travel costs, freight expenses and tools required under the Rösler T & C for machines, assembly and commissioning.
- Where assembly/erection or commissioning is delayed because of conditions on site, and not through Rösler's fault, the customer will bear the cost of waiting times and any further necessary travel.

## L) General Provisions

- The contract parties hereby agree that it is mandatory for all agreements to be in writing. This will also apply to side agreements and representations, as well as subsequent amendments and addenda to the contract, unless both contract parties agree that oral agreements shall be valid.
  - The assignment to third parties of rights and duties, as well as customer claims under the contract concluded shall require the prior consent of Rösler. Such consent may not, however, be unreasonably withheld.
  - The customer may only exercise a right of set-off against a claim of Rösler where the claim has either been determined by final court judgement or has been acknowledged by Rösler.
  - The customer may only assert a right of retention where the claims arise under the present contract. The parties hereby expressly exclude the possibility of the customer asserting rights of retention for claims of the customer under another contract with Rösler
  - The parties hereby agree the place of performance is Rösler's registered office
  - The proper court of jurisdiction and forum for any disputes between the parties shall be the Lichtenfels Local Court or the Coburg District Court, including any cheque or bill of exchange matters.
  - This agreement is governed by the laws of the Federal Republic of Germany. Application of the UN Convention on the Sales of Goods (CISG) is hereby excluded.
  - Should a provision of the present contract be deemed invalid, the contract parties hereby undertake to replace that provision with a valid one which most closely conforms to the purpose of the contract.
- Rösler Oberflächentechnik GmbH, July 2008