

General Terms and Conditions of



Rosenberger Aktiengesellschaft

1. Scope of Application

The supply of all goods and provision of all services are subject to these conditions as amended from time to time, as well as any separate contractual agreements. Exceptions must be agreed in writing. Any conflicting purchase conditions of the customer shall not become part of the contract upon acceptance of the order. Other general terms and conditions shall not become part of the contract even where Rosenberger has not objected to them.

2. Offer and Offer Documents

Unless otherwise agreed, our offers shall be non-binding and subject to change. Documents associated with the offer, such as illustrations, drawings, weights and dimensions, are only approximations where not expressly described as binding. The supplier reserves all proprietary rights and copyright in any samples, cost estimations, drawings and similar information of both tangible and intangible kind – including in electronic form; these must not be made accessible to third parties.

3. Placing of Orders

Orders shall only be deemed to have been placed when the supplier has confirmed the order in writing; this shall also apply for any orders procured by agents. The supplier shall not be liable for any errors arising from documents (eg. drawings) submitted by the customer.

4. Prices

Unless otherwise agreed, prices shall in each case be deemed to be ex works, without packaging and without freight or shipping costs. The relevant amount of statutory VAT shall be added to prices. Where more than four months lie between the formation of the contract and delivery, the supplier reserves the right to pass on to the customer any increases in materials or labour costs. Regardless of this, the parties to the contract shall have the right to demand negotiations concerning a price adjustment in the case of any increases in materials or labour costs incurred between the formation of the contract and the fulfilment of the order. If the supplier informs the customer of any services not expressly quoted in the offer that are, however, required, these and any other services requested by the customer shall be remunerated separately. This shall especially apply for any work arising in relation to installation. Prices are valid for normal working hours and performance. Appropriate surcharges shall be added to the effective wages for overtime and hours worked at night, on Sundays and on public holidays, as well as for work under difficult circumstances.

5. Payment Conditions

Unless otherwise agreed in writing for an individual case, the following shall apply: Invoices are generally issued and sent immediately following the completion of an order. Invoicing thus also serves as notice that goods are ready for collection and/or have been shipped. Unless expressly agreed otherwise, payment shall be made in cash or by transfer of funds immediately, and without any discount. The customer shall only have the right to retain payments, or set-off payments with counter-claims, to the extent that the customer's counter-claims are undisputed or have been legally determined. Cheques, bills of exchange and any form of notes receivable shall only be deemed to have fulfilled payment when they have been honoured; the costs and expenses incurred in this process shall be borne by the payer. In case of default of payment, the supplier shall have the right to demand payment of default interest at a rate 8% above the base interest rate of the European Central Bank (ECB), in addition to any other damages for delay. In case of default of payment, the supplier shall have the right to retain goods and services (§§ 273, 320 of the German Civil Code [Bürgerliches Gesetzbuch]). The supplier shall have the right to terminate the contract, cease work and invoice any services rendered up to that point, and to assert any claims for damages compensation, after a reasonable grace period set by the supplier has passed with no result.

6. Delivery and Installation

The delivery period shall be based on the agreements between the parties. The supplier's compliance with the delivery period is subject to the condition that all commercial and technical issues have been resolved, and the customer has met all obligations incumbent upon him or her, such as the payment of a deposit. Where this is not the case, the delivery period shall be extended by a reasonable period. Compliance with the delivery deadline shall be subject to the correct and timely delivery of supplies to the supplier. This shall only apply where a failure to deliver is not due to any fault of the supplier, in particular where a congruent hedging transaction has been entered into with our own supplier. The customer shall be immediately informed of the unavailability of the service. In such cases, any consideration already paid shall be returned immediately. The delivery deadline shall be deemed to have been complied with if the object to be delivered has left the factory of the supplier by the expiry of the delivery period, or if it has been indicated that the object is ready to be shipped. If performance or completion of works is delayed for reasons that are the fault of the customer, the supplier shall to that extent be released from the obligation to comply with the agreed delivery dates. If the customer does not immediately rectify the situation upon request by the supplier, the supplier shall have the right to claim compensation for damages or to set a reasonable grace period for performance of the contract, and declare that the supplier will terminate the contract if that period passes with no result. In the case of the termination of the contract, the supplier is entitled to compensation for any expenses incurred up to that point. The supplier reserves the right to assert any further claims pursuant to §§ 241, 280 to 288, 311, 311a, and 313 of the German Civil Code. If acceptance is to occur, the date of acceptance shall be decisive, and alternatively – except in the case of rightful refusal of acceptance – notification of readiness for acceptance. If shipping or acceptance of the object to be delivered is delayed for reasons which are the fault of the customer, the customer shall be billed for any costs incurred from the delay, commencing one month after the delivery object is ready for shipping or acceptance. Where a failure to comply with the delivery period is due to force majeure, labour disputes or other events that are beyond the control of the supplier, the delivery period shall extend accordingly; if any such event renders delivery or performance of the service impossible or unreasonable for the supplier, the supplier shall have the right to wholly or partially terminate the contract. In such cases, the supplier shall immediately inform the customer of the occurrence of the relevant event. Partial deliveries are permitted. The provisions regarding delivery, delivery period and delivery deadlines shall apply equally to any installation works. Where required, the customer shall be obligated to provide technical assistance for installation works at the customer's own expense (e.g. foundations, lifting gear, power and water connections).

7. Passing of Risk, Acceptance

Risk shall pass to the customer when the object to be delivered has left the factory, even where partial deliveries are made or where the supplier has contracted to provide additional services, such as shipping costs, or delivery and assembly. Where acceptance is required, this acceptance shall be decisive for the passing of risk and shall be performed immediately upon notification of completion. Where no acceptance date is determined for reasons which are no fault of the supplier, performance shall be deemed to have been accepted upon the expiry of twelve working days from written notification of the completion of the object to be delivered. The obligation to accept shall also apply for any completed partial performances or deliveries. For minor defects, sentence 2 of § 640(1) of the German Civil Code shall apply. If shipping or acceptance is delayed or not performed due to circumstances that are the fault of the customer, risk shall pass to the customer on the day of notification of readiness for shipping or acceptance. However, the supplier commits to take out any insurance requested by the customer at the customer's expense. If the customer has used or partially used the goods or taken delivery or partial delivery of the service, acceptance shall be deemed to have occurred.

8. Subsequent Performance (Warranty)

Claims based on obvious defects identified after acceptance has occurred shall not be enforceable. Otherwise, in the case of knowledge or grossly negligent lack of knowledge of obvious defects by the customer upon entering into the contract, §§ 651 and 442(1) of the German Civil Code shall apply. Any other notifications of defects shall be subject to the following expiry periods. In individual cases, any parts that turn out to be defective within one year of acceptance, due to an event taking place prior to the passing of risk shall be either repaired or replaced at no cost to the customer, at the discretion of the supplier. The supplier is to be notified in writing of the identification of such defects immediately, but at the latest within two weeks of receipt of the goods; otherwise, any warranty claims shall be excluded. The date of postage shall be decisive for compliance with this period. The customer shall bear the full burden of proof for any requirements of such claims especially with regard to the defect itself, the time the defect was identified and the timeliness of the notice of the defect. The supplier must be given the opportunity to conduct an inspection on site once notice of the defect has been received. After consultation, the customer is to accord the supplier the time and opportunity that appear necessary to the supplier in order to undertake the repair or replacement; otherwise, the supplier shall be relieved from any liability for the consequences. Of the costs incurred in the repair or replacement, the supplier – if the complaint turns out to be justified – shall bear the cost of the replacement part, including shipping, reasonable costs for dismantling and reassembling, and furthermore the costs of any necessary provision of technicians and assistants, if this can reasonably be required according to the circumstances of an individual case. Any replaced parts shall become the property of the supplier. If the supplier undertakes an inspection of the defect or its rectification, with the customer's consent, the warranty period shall be extended for the amount of time that elapses until the supplier informs the customer of the result of the inspection, or informs the customer that the defect has been rectified, or declines to continue the rectification. Otherwise, § 203 of the German Civil Code shall apply. The customer shall have the right to terminate the contract or reduce the price if the supplier allows any reasonable period for repair or replacement in relation to a defect for which the supplier is responsible to pass with no result, and the supplier is responsible for the delay. These rights shall also exist in other cases of failure to repair or replace, if the supplier is unable to rectify a defect for which the supplier is responsible in three attempts. In case of a minor breach of contract, especially for minor defects, however, the customer shall not be entitled to terminate the contract. Warranty claims shall be excluded in the case of inappropriate or improper use, incorrect installation or defective commissioning by the customer, modifications or attempted repairs undertaken without the supplier's consent, natural wear, improper or careless treatment, improper maintenance, use of unsuitable operating supplies, unsuitable foundations or instable setup location, and in the case of chemical, electro-chemical, electrical interference or interference from external machinery, such that is not the fault of the supplier.

9. Liability

Liability claims against the supplier are excluded, unless such claims are on the grounds of wilful or grossly negligent breach of contract. There shall be no liability for simple negligence where the breach of merely insubstantial contractual obligations is concerned. The limitations of liability listed above do not apply to any product liability claims asserted by the customer. Furthermore, the limitations of liability shall not apply to any personal injury or damage to health, or loss of life, suffered by the customer or the customer's employees or subcontractors. Damages compensation claims of the customer on the grounds of a defect shall expire one year from acceptance/passing of risk. This shall not apply where the supplier is accused of bad faith.

10. Retention of Title

a. All goods delivered (goods subject to retention of title) shall remain our property until the satisfaction of all accounts receivable (claims) due to us by virtue of the commercial relationship, especially the relevant due balances (reserved balance), and any accounts receivable founded unilaterally by an insolvency administrator by way of selection of fulfilment. This shall also apply to any claims arising in future and to any conditional claims (eg. from bills of exchange of any kind), and also where payments have been made in relation to specific debts. This reserved balance shall expire permanently when all accounts receivable outstanding at the time of payment and included in this reserved balance have been settled.

b. Any handling or processing of the goods subject to retention of title shall be performed for us as manufacturer for the purposes of § 950 of the German Civil Code, without being binding upon us. The modified and/or processed goods shall be deemed goods subject to retention of title for the purposes of paragraph 1. If the goods subject to retention of title are processed, connected to or mixed with any other goods by the purchaser, we shall have proportional joint ownership in the new object, in the same proportion as that of the invoice amount for the goods subject to retention of title, to the amount invoiced for the other goods used. If our title expires by connection or mixing, the purchaser transfers to us his or her proprietary rights in the new supplies or object, in the proportion of the invoice amount for the goods subject to retention of title, as of now, and shall store them for us free of charge. Our joint property rights shall be deemed goods subject to retention of title for the purposes of paragraph 1.

c. The purchaser may only assign the goods subject to retention of title in the usual course of business, at the usual terms and conditions and only where the purchaser is not in default. This is subject to the condition that the accounts receivable from the assignment pass to us pursuant to paras. 4 to 6. The customer shall not be entitled to dispose of the goods subject to retention of title in any other manner.

d. Accounts receivable from onward sale of the goods subject to retention of title shall be assigned to us together with any and all securities the purchaser obtains for the accounts receivable, from this point forward. These shall serve as security to the same extent as the goods subject to retention of title. If the goods subject to retention of title are sold together with other goods not delivered by us, the accounts receivable from onward sale shall be assigned to us in the same proportion as that of the invoice amount of the goods subject to retention of title, to the invoice amount for the other goods sold. When goods in which we have joint title pursuant to paragraph 2 are sold, a percentage corresponding to our joint title shall be assigned to us. Where the goods subject to retention of title are used by the purchaser to fulfil a contract for work, the accounts receivable from the contract for work shall be assigned to us in advance, to the same proportion.

e. The purchaser is entitled to collect accounts receivable from onward sales. This collection authorisation shall expire if revoked by us, but at the latest upon default of payment, failing to honour a bill of exchange, initiation of individual enforcement measures or where the purchaser files for insolvency. We shall only exercise our right of revocation if it becomes evident after entering into the contract that our claim for payment from this or any other contracts as against the purchaser is threatened by the purchaser's inability to perform. On our request, the purchaser shall immediately inform his or her customers of the assignment made to us, and submit to us any documents necessary for collection.

f. The accounts receivable from further sales are not assignable, except in an assignment by way of real factoring of which we are informed, and where the factoring revenue exceeds the value of our secured accounts receivable. Our accounts receivable shall become payable immediately upon the credit of the factoring revenue.

g. The purchaser shall immediately inform us of any seizure or other restriction caused by a third party, or the loss of the goods subject to retention of title. The purchaser shall assume all costs required for the cessation of the access of third parties, or for the return of the goods subject to retention of title, without prejudice to any possible compensation claims against third parties.

h. If the purchaser enters into default of payment or does not settle a bill when due, we shall have the right to take back the goods subject to retention of title and, where required, to enter the purchaser's premises for this purpose. The same shall apply where it becomes evident after entering into the contract that our claim for payment from this or any other contracts with the purchaser is threatened by the purchaser's inability to perform. The taking back of the goods shall not constitute rescission of the contract. Any legal provisions to the contrary, in particular provisions of insolvency law, shall not be affected.

i. If the invoice value of the existing securities exceeds the secured accounts receivable, including any collateral charges (interest, costs, etc.), by a total of more than 20 %, we undertake to release securities equal to this amount, at our discretion, upon request by the purchaser.

11. Use of Software

If the scope of delivery includes software, the customer shall be granted a non-exclusive right to use the software delivered, including its documentation. The software shall be transferred for use on the delivered object for which it is intended. Any use of the software beyond that, or on more than one system, is prohibited. The customer may only reproduce, process or translate the software, or convert the object code of the software to source code, in the scope permitted by law (§§ 69a ff. of the (German) Copyright Act [Urheberrechtsgesetz]). The customer undertakes not to remove manufacturer's information – in particular, information relating to copyright notes – or to change such information without the prior written consent of the supplier. Any other rights in the software and the documentation, including any copies, shall remain with the supplier or the supplier of the software. No sublicenses may be granted.

12. Place of Performance, Legal Venue, Applicable Law

a. The place of performance for our deliveries shall be the supplying factory for ex works deliveries, and the warehouse for all other deliveries.

b. The legal venue shall be either Apolda or Simonswald, or the location of the head office of the purchaser, at our discretion.

c. Any legal relationships between us and the purchaser shall be governed solely by the law of the Federal Republic of Germany, in addition to these conditions. The provisions of the Convention on Contracts for the International Sale of Goods of 11 April 1980, and any other international contracts or conventions, shall not apply.

13. Final Provisions

a. If any individual provision of the contract with the customer, including these general terms and conditions, are or become wholly or partially invalid, this shall not affect the validity of the remaining provisions. Any wholly or partially invalid provision shall be replaced by the provision that most closely reflects the commercial effect initially intended. Both parties undertake to cooperate in this matter.

b. These general terms and conditions shall apply as amended from time to time. The wording of these general terms and conditions can be viewed online at <http://www.rosenbergerag.com/de/pdf/AGB-Rosenberger-AG.pdf>.

Simonswald, 15/06/2009 Rosenberger Aktiengesellschaft, head office: Apolda