

GENERAL CONDITIONS OF BUSINESS ROCKSTER-WEB-SHOP

1. PREAMBLE

1.1. The present General Conditions of Business shall apply, save as varied by express agreement accepted in writing by both parties.

1.2. The following provisions concerning the delivery of goods shall also apply correspondingly to the performance of services.

2. CONCLUSION OF CONTRACT

2.1. The contract shall be deemed to have been entered into when the Vendor, upon receipt of an order accepting the general conditions, has sent a written acceptance of order.

2.2. Modifications of and amendments to a contract shall only be valid if confirmed in writing by the Vendor. Purchasing conditions of the Purchaser shall only be binding upon the Vendor where such purchasing conditions have been separately accepted in writing by the Vendor.

2.3. The Vendor's offers shall be valid without engagement. The Vendor reserves the right of prior sale.

2.4. In cases where import or export licenses, currency authorisations or similar permits are required for the performance of a contract, the party responsible for obtaining such permits shall be obliged to undertake all reasonable efforts so as to obtain the required licenses or permits in due time.

3. DOCUMENTS

3.1. Data concerning weights, dimensions, measures, capacities, terms of delivery, prices, and the like indicated in catalogues, leaflets, circulars, advertisements, illustrated matter, price lists, etc. shall not be binding save to the extent that they are expressly referred to in the acceptance of order.

3.2. Catalogues, samples, leaflets, illustrated matter and the like shall in any case remain the property of the Vendor. They may not, without the owner's express consent, be utilised, disseminated, reproduced, published, distributed or displayed.

4. PACKAGING

Save as otherwise agreed, prices shall not include packaging. Where the common type of packaging is provided so as to prevent transport damage under normal transport conditions during the shipment of the goods to the agreed place of destination, such packaging shall be at the cost of the Purchaser and returnable only if expressly agreed in a written form.

5. PASSING OF RISK

5.1. Where no indication is given in the contract of the form of sale, all goods shall be deemed to be sold "ex works".

5.2. The Vendor shall only be obliged to effect an insurance where and to the extent that such insurance cover has been agreed in writing.

5.3. In all other respects, the INCOTERMS valid at the date of conclusion of the respective contract shall apply.

6. PERIOD OF DELIVERY

6.1. Save as otherwise agreed, the period of delivery shall commence at the latest of

- a. the date of the acceptance of order;
- b. the date of fulfilment of all technical, commercial and financial preconditions on the part of the Purchaser;

6.2. The Vendor shall be entitled to make partial and advance deliveries.

6.3. Should a delay in delivery be caused by circumstances affecting the Vendor that discharge the Vendor from responsibility as indicated in Art. 9, the Vendor shall be granted a reasonable period of grace for delivery.

6.4. In the event of a delay in delivery caused by fault on the part of the Vendor, the Purchaser shall be entitled to demand specific performance or to terminate the contract after previously granting a reasonable period of grace. In the case of custom-made products, the fact that the Vendor may not be able to use

unfinished products for other purposes shall be taken into account when determining the length of the period of grace.

6.5. In the event that performance has, due to a fault on the part of the Vendor, not been rendered during the period of grace granted according to Art. 6.4, the Purchaser shall be entitled to terminate the contract, by notice in writing to the Vendor, in respect of all undelivered goods that cannot be properly used. In this case, the Purchaser shall be entitled to recover any payment which he has made in respect of undelivered goods or goods that cannot be properly used and, to the extent that the delay in delivery was caused by serious default on the part of the Vendor, to recover any expenses properly incurred in performing the contract and up to the date of termination. The Purchaser shall return to the Vendor products that although delivered cannot be properly used.

6.6 Any claims of the Purchaser against the Vendor exceeding the scope indicated in Art. 6 shall be excluded in the case of delay caused by the Vendor.

6.7 Where the Purchaser does not take the goods at the place and time provided for by the contract for any reason other than an act or omission of the Vendor, the Vendor shall be entitled to either demand specific performance or terminate the contract after granting the Purchaser a period of grace to take the goods. In such a case, once the goods have been appropriated to the contract, the Vendor may arrange for their storage at the risk and cost of the Purchaser. The Vendor shall further be entitled to recover any expenses properly incurred in performing the contract and not covered by payments received.

7. PRICES

7.1. Save as otherwise agreed, prices shall be ex Vendor's factory and do not include packaging and loading. Where delivery including shipment is agreed, prices shall not include unloading of the goods and further transport to their place of use.

7.2. In the case of contracts concluded with prices left open, the purchase price valid at the date of delivery shall be charged.

7.3. Prices are quoted in EUR plus legally bound VAT.

8. PAYMENT

8.1. Payment shall be made in the manner and at the time or times of the agreed payment conditions. If not agreed other terms of payment confirmed in a written acceptance of order full payment has to be made in advance.

8.2. The Purchaser shall not be entitled to retain payments for reasons of warranty claims or other counterclaims not recognised by the Vendor.

8.3. Where the Purchaser delays in making any agreed payment or performing any other obligation, the Vendor shall be entitled to either insist on specific performance and

- a. postpone the fulfilment of his own obligations until such payment is made or such other duty is performed;
- b. set a reasonable extension of the delivery period;
- c. declare the entire open balance of the purchase price immediately due;
- d. in so far as the purchaser is not able to claim any grounds of release as provided for in Clause 9, recover interest on arrears at the rate of 9,5% over and above the bank rate charged at that time by the Austrian National Bank, such interest to be charged from the time fixed for payment. Additionally, the Vendor shall be entitled to recover all frustrated expenses incurred in performing the contract.

8.4. Should the purchaser after the period of grace specified in Clause 8.3. fail to make payment or to meet any other obligation, the vendor shall be entitled to terminate the contract by giving notice in writing. On being asked to do so by the vendor, the purchaser must return to the vendor any goods that have already been delivered and reimburse the latter for the depreciation of the goods in addition to defraying all expenses properly incurred by the vendor in the performance of the contract.

8.5. The Vendor retains legal title to the goods until full performance of the Purchaser's obligations. The purchaser is obligated to comply with all required formalities conducive to ensuring the retention of legal title by the vendor in case of attachment, seizure or other distraint, the purchaser is under obligation to file the vendor's retention of title to ownership of the goods and to notify him of same without delay.

9. WARRANTY AND LIABILITY

Warranty shall be limited to full compliance of the Purchaser with the terms of payment. The purchaser is obliged to inspect the goods immediately after delivery concerning quantity, transport damages and any

defects and at once to notify the Vendor about his claims. At receipt of the goods the Purchaser must get a written confirmation from the forwarder for missing quantities or obvious damages. Claims under warranty require that the purchaser follows the obligations of examination and rebuke proper. All claims of warranty against the Vendor are rejected, if the claims are not noticed to the Vendor latest within 7 days after receipt of the goods, at hidden faults after discovery, latest after limitation period in written. If no complaint relating to a defect is made in time, the goods shall be deemed approved. Goods defect at our discretion can be demanded to be replaced with new goods of same type. If goods are returned the purchaser is to cover the risk and the costs.

The liability of the vendor shall apply only to defects that become manifest under normal operating conditions. In particular his liability does not extend to defects arising from improper use.

The following shall be deemed grounds of relief if they intervene after the formation of the contract and impede its performance: industrial disputes and all other circumstances that are beyond the control of the parties, e.g. fire, mobilization, requisition, embargo, currency restrictions, insurrection, general shortage of materials and restrictions in the use of power.

10. VENUE, APPLICABLE LAW

Disputes arising out of or in connection with the contract shall be under the jurisdiction of the court in Linz / Austria. Austrian law shall apply. The place of performance of delivery and payment shall be the domicile of the Vendor. This also applies to transactions where goods are, according to the relevant contract, handed over at a different location. Application of the United Nations Convention on Contracts for the International Sale of Goods is hereby expressly excluded.