

GENERAL TERMS AND CONDITIONS OF DELIVERY AND PAYMENT OF RHEINZINK GMBH & CO. KG, DATTELN



1. Order placement, deviating conditions

1.1 Deliveries and services are performed exclusively according to the following conditions and any special conditions notified to the customer.

1.2 The customer's General Conditions are only applicable subject to our explicit written consent. Neither the failure to raise objections nor the execution of delivery or service shall be interpreted as acceptance of the terms and conditions of a third party.

1.3 Where we have given consent to a change of our general terms of delivery or accepted the customer's conditions, the individual conditions of our general terms of delivery remain effective unless deviations have been defined by those changes or the customer's conditions, which means that in all cases which are not explicitly agreed otherwise, these general conditions of delivery remain effective. In cases where special conditions are agreed for particular orders, our general terms and conditions of delivery and payment are subordinate and in addition to them.

2. Prices

2.1 Our prices are "ex works" excluding packaging.

2.2 They are based on the cost factors (prices for materials and raw materials, wages and salaries, cost of production and transport at the place of manufacture) and the quantity particulars as per the date on which the contract was executed. If more than 4 months have passed since the time when the contract was executed and the agreed date of delivery and the overall cost have increased by a minimum of 5% during this time, we are entitled to increase prices accordingly to compensate for the aforementioned cost increases.

3. Delivery

3.1 Delivery in parts is permissible to the extent that it is reasonable for the customer.

3.2 Delivery time commences as soon as the customer has fulfilled all his duties of cooperation. A delivery date fixed as a calendar date can be postponed for the period during which the customer fails to meet the necessary conditions to enable the delivery to take place. This does not apply where we are responsible for the delay.

3.3 We shall be deemed to have complied with the delivery date and to be discharged from any liability for any delay upon receipt of our notice to the customer of our readiness to dispatch.

3.4 If, after conclusion of the contract, we or our sub-suppliers experience circumstances which are beyond our control or which were unforeseeable at that time, such as shortage of raw material or energy, faulty castings, loss of models, moulds, tins or machines required for production, labour disputes, cases of force majeure or any circumstances we are not responsible for, which fundamentally complicate delivery or make it impossible, the delivery time is extended or the date of delivery is postponed as appropriate in each case, and essentially for as long as the impediment remains. We shall notify the customer of the start and end of such circumstances as soon as possible.

3.5 In the case of delayed performance which is attributable to us as well as in the cases under clause 3.4 – but in such cases after 2 months at the earliest – the customer may assign a reasonable period within which delivery shall be made. If delivery is not executed within the period assigned or we declare our inability to deliver due to reasons referred to under clause 3.4 herein, the customer may withdraw from the contract, to the extent consistent with the mandatory requirements of the governing law of the contract in this regard. At our request, the customer shall be obliged to state within a reasonable period of time if he wishes to withdraw from the contract due to the delay in delivery or if he continues to require delivery.

3.6 If we are in default with regard to time in supplying the goods, the customer may claim compensation of 0.5% for each complete week of delay, up to a maximum of 5% in total of the price for that part of the delivery which could not be put into useful operation – provided he is able to make a plausible claim that he has suffered a loss. This amount shall be the only and exclusive damages for delay under the contract, and the only remedy for such delay, except that the customer may also exercise a legal or statutory right to withdraw from the contract, if any.

3.7 Any claim for compensation for late delivery, as well as claims for compensation instead of the service and going beyond the limitations described in provision 3.6, are excluded in all cases of late delivery, even after the expiry of a deadline set for us for delivery, unless we are compulsorily liable under the provisions of clause 15 of these conditions.

3.8 If a partial delivery is delayed or becomes impossible, the customer is not entitled to any claims concerning the remaining amount of the delivery unless a part performance is of no benefit to him. In such a case his rights are determined by the provisions of clause 3.5 herein.

4. Testing and Acceptance

4.1 The customer shall not delay any testing. If requested, tests shall be carried out at the customer's cost at our manufacturer plant or warehouse(s). The tests shall be carried upon our three days' notice to the customer within the reasonable period indicated in the notice. In this regard the notice shall advise the customer on possible consequences of not meeting this time-limit according to chapter 4.3.

4.2 If no complaint is made whilst testing, then no defects which could have been detected at the time of testing can be reported at a later date. The customer cannot refuse acceptance on account of an insignificant defect which does not affect the proper use of the goods.

4.3 If a date for testing was agreed and the customer does not keep this date for reasons within his responsibility, tests are considered to have been carried out without objection. If the customer is unable to carry out the tests due to circumstances as described in clause 3.4, he shall be granted a reasonable extension of the deadline. If testing is delayed for more than one month after notification of readiness to dispatch or carry out tests, for reasons within the customer's control, the customer may be charged storage costs amounting to 0.5% of the price of the objects to be delivered, for each month or part of a month, up to a maximum of 5% in total. The contracting parties are free to prove higher or lower storage costs.

5. Dispatch, transfer of risk

5.1 Our deliveries are executed "ex works" or "ex our warehouse(s)" unless agreed otherwise by individual contract.

5.2 Risk passes to the customer when we notify our readiness to dispatch but at the latest when the goods have left the manufacturing plant or our warehouse(s). This also applies if we carry out partial deliveries or if we have taken on additional obligations, particularly if we are responsible for the transportation.

5.3 Transport insurance will be obtained by us only subject to special agreement and at the customer's cost.

6. Packaging

Borrowed pallets shall be stored appropriately and carefully at the costs of customer until we take back the borrowed pallets free of charge for the customer. Shipment dates will be determined by us and notified to customer by at least 7 days' notice. Other packaging material (e.g. cardboard packaging) shall be disposed by purchaser at his costs and risk.

7. Provision of materials

In case of defective, incorrect or delayed provision of free-issue materials, the customer shall bear the cost and damages suffered by us.

8. Weights and delivery amounts

8.1 The customer is not entitled to any objections as long as we maintain industry-standard tolerances and unless the quantities or weight is changed by more than 5%.

8.2 The weights and delivery amounts stated in our delivery notes are relevant for the settlement of accounts.

9. Deliveries to ourselves

Our obligation to deliver is subject to correct and timely delivery to ourselves by our upstream suppliers, if this fails through no fault of our own. Other than that, the provisions of clause 3 herein are applicable.

10. Remedies for Defects

10.1 The customer shall examine the goods immediately and notify us in writing of any defects. Hidden defects must be notified in writing immediately after discovery. The same applies to goods other than those sold, or quantities other than those sold, are delivered.

10.2 Until settlement of the complaint, the goods forming the subject of the complaint shall neither be processed further nor treated or changed in any other way. We are to be given the opportunity to investigate the defects that have been reported on the spot; alternatively the goods forming the subject of the complaint shall be returned to us at our request.

10.3 Damages of the goods given to the customer are patterns. Nevertheless we shall still be entitled to deliver in accordance with German industry-standards and according tolerances.

10.4 There is no defects liability where there is only insignificant or reasonable deviation from the agreed quality, in particular deviations from our offers, samples or sketches, only insignificant or reasonable reduction of usefulness, natural wear and tear or damage arising after the transfer of risk due to incorrect or negligent treatment, excessive use, unsuitable production facilities or caused by special circumstances not provided for in the contract. If improper changes or repairs are carried out by the Customer or by third parties, there shall also be no defect liability arising from such work or as a consequence of it.

10.5 The customer may only withhold payment if defects have been notified about which there is no doubt that they are justified, especially in those cases where claims are not disputed, finally determined by court decision or ready for decision.

Payments by the customer may be withheld in proportion to the material deficiencies that have arisen. If the notice of defects is unjustified, we are entitled to claim reimbursement of expenses against the customer.

10.6 Where the notice of defects is justified, we shall at our discretion either remedy the defect, provide a substitute or credit the invoice value of the defective goods. This applies to all those parts of deliveries showing a material defect within the period of limitation in accordance with clause 10.8 if and to the extent that its cause was already present at the time of the transfer of risk.

10.7 Initially, the customer shall give us the opportunity to cure our performance within a reasonable period of time. If cure fails, the customer is entitled – regardless of any claim for damages under clause 15 of these conditions – to withdraw from the contract or reduce payment. Only in urgent cases of danger to the security of his plant or for protection against extremely large losses, and after immediate notification to us, shall the customer have the right to repair a defect himself or to have it repaired by third parties and to claim the necessary expenses from us.

10.8 Claims with regard to material defects become statute-barred after one year from delivery or performance, or, where a longer liability period has been agreed, they are statute-barred after the expiry of that period. This does not apply in the case of longer statutory periods or in cases of harm to life and limb or health, in cases of intentional or grossly negligent breach of duty by us or fraudulent concealment of a defect. The statutory periods particularly apply to defects in a building or where goods used in a building in accordance with their normal purpose have caused it to be defective. The statutory provisions for suspension of expiration of limitation, suspension and commencement of statutory periods remain unaffected.

10.9 Any right of recourse by the customer against us under the provisions for the purchase of consumer goods relating to recourse against the company shall only apply if the customer has not made any arrangements with his buyer beyond the statutory right to claim for defects.

10.10 Otherwise, clause 15 of these conditions (General Limitations of Liabilities) shall apply to claims for damages. More extensive claims or other claims by the customer against us and/or our subcontractors for a material defect are excluded.

10.11 In the event of any legal defects we shall be liable in accordance with the aforementioned provisions.

11. Advice, recommendation

Recommendations concerning processing or materials and other advice and recommendations are given to the best of our knowledge, but we accept no liability. Our liability under the provisions of clause 15 of these conditions (General Limitation of Liabilities) remains unaffected.

12. Terms of payment

12.1 If not agreed otherwise, our invoices shall be payable immediately upon receipt without deductions.

12.2 Any counterclaims by the customer including defects liability claims do not give him the right to offset or withhold payment, unless it has been recognized or it is included in a final and binding court decision.

12.3 If the payment by the customer is delayed, we shall be entitled to claim interest on arrears at the statutory rate, i.e., for traders the commercial rate of nine percent above the prevailing base rate, for non-traders the rate of five percent above the prevailing base rate, subject to further claims for compensation for losses suffered by us due to delayed performance in a particular case. The customer shall be allowed to prove lower losses due to delayed performance at any time.

13. Reservation of ownership / retention of title

13.1 Until payment of the price which is to be made in consideration of the supply of the goods has been made the ownership of the goods remains in the seller.

13.2 Without prejudice to Sub-Clause 13.1, until all current and future claims arising from the business relationship with the customer are satisfied, delivered goods shall remain our property (reserved goods).

13.3 If, in connection with payment of the purchase price by the purchaser, a liability by the seller arises under a bill of exchange, the reservation of ownership shall not expire before payment of the bill by the buyer as drawee. In the case of breaches of obligations by the buyer, especially in the case of late payment, and when an appropriate deadline set for the customer to pay has passed without success, we shall be entitled to withdraw from the contract and repossess the goods; the statutory provision that it is not essential to set a deadline remains unaffected. In this case the customer shall be obliged to return the goods.

13.4 Subject to Sub-Clause 13.5 set, the customer has the right of disposal or processing, joining, mixing or blending of and/or selling the reserved goods and to collect the related assigned claims. The customer is obliged to store and label reserved goods separately.

13.5 The customer will process or convert reserved goods for us without any obligations arising from this for us. If the customer joins, blends, mixes or processes our reserved goods with other goods, we shall be entitled to a proportional joint ownership of the resulting goods. The value of our joint ownership shall depend on the ratio between the invoice value of our reserved goods and the sales value of the goods created by joining, blending, mixing or processing which, according to these provisions, thereby also become reserved goods in this sense.

13.6 Sale of the reserved goods shall be permissible in a regular business transaction as long as the customer ensures our extended reservation of ownership (assignment of receivables under clause 13.7), i.e., he receives payment from his customer or makes it a condition that the ownership shall only be passed to the customer after he has fulfilled his payment obligations. Other dispositions, particularly pledges and assignments of the reserved goods as security are not admissible.

13.7 The customer shall assign to us the full amount of any claims to which he is entitled due to resale of the reserved goods or on any other legal basis. In the case of joint ownership the assignment shall only apply to the part of the claim of our joint ownership under clause 13.5, regardless of whether the reserved goods have been resold before or after processing or if they have been resold to one or more customers. We herewith already accept the assignment. If the reserved goods are resold by the customer alone or together with other goods which are not owned by us, before or after any processing, the assignment of the claim arising from resale shall only apply to the amount of the reserved goods. If the aforementioned claims are brought into a mutual account relationship, the full amount of the mutual account claims are herewith assigned to us. After balancing out, it is replaced by the account balance that is assigned to us, up to the amount corresponding to the original mutual account claim; on termination of the mutual account relationship this shall apply accordingly to the closing balance.

13.8 The customer shall only be entitled to collect the assigned amounts receivable in accordance with correct business procedure and only with the right of revocation. If required by us, he shall notify the debtor of the assignment and we shall have the right to notify him at any time.

13.9 The authorization of the customer to have the right of disposal or processing, joining, mixing or blending of the reserved goods and to collect the assigned claims shall lapse and expire in the case of non-compliance with the

agreed terms of payment, unjustified dispositions, a significant deterioration in the customer's financial situation, a bill or cheque protest or if the customer becomes bankrupt or insolvent; goes into or applies for liquidation, administration, reorganisation, winding-up or dissolution; becomes subject to the appointment of a liquidator, receiver, administrator, manager or trustee; enters into a composition or arrangement with the customer's creditors; or any act is done or any event occurs which is analogous to or has a similar effect to any of these acts or events under applicable laws. In such cases we shall be entitled to take possession of the reserved goods after notifying our withdrawal from the contract, but without allotting a reasonable period in which to pay, and to enter the customer's company for this purpose, to demand relevant information and to obtain the necessary access to his books and records.

13.10 If the realizable value of the securities given to us exceeds our claims by more than a total of 10%, we shall release the excess securities on customer's demand and at our discretion.

13.11 The customer shall notify us immediately of any forthcoming or completed interventions by third parties, especially levies of execution, attachments and other dispositions affecting the reserved goods and any assigned claims. 13.12 If and to the extent that the registration and/or fulfillment of our requirements is a precondition for the effectiveness of the reservation of ownership, the customer shall undertake immediately to undertake all action necessary for this and to provide all notifications required. If and to the extent that the relevant jurisdiction does not permit the agreement of a reservation of ownership, the customer shall - in taking advantage of commercial credit - provide us with other suitable securities or effect the legally effective security of our rights as appropriate and co-operate with regard to the necessary measures.

14. Return of the goods

14.1 Standard goods supplied by us may be returned to us subject to agreement. The return consignment shall be at no charge for us.

14.2 Machined goods and customized goods cannot be returned.

14.3 Returned goods must be in a good and marketable condition. We reserve our right to object returned goods within three days after arrival at our premises. Objected goods must be picked up by ex works and at no costs for us.

14.4 We charge a 20% fee calculated from the relevant purchase price and possible additional costs for reconditioning (e.g. re-packing, cleaning, etc.), if any, to be deducted and set off against the credit note.

14.5 In respect of distance selling contracts the legal right of withdrawal applies to consumers in accordance with Section 13 German Civil Code in conjunction with Section 9 (1-3) German Civil Code.

15. General limitations of liability

15.1 Without prejudice to any rights arising out of Sub-Clause 10.6 and 10.7, possible customers' claims for damages and reimbursement of expenses regardless of its respective legal basis, particularly for breach of obligations arising out of the contract or in connection with it are excluded.

15.2 The aforementioned shall not apply if liability is mandated, for example under the German Product Liability Act, in cases of willful intent, gross negligence, harm to life and limb or health or breach of substantial contractual obligations. However, a claim for damages for breach of substantial contractual obligations shall be limited to typical, foreseeable damages arising from the contract unless the liability arises from willful intent or gross negligence or from harm to life and limb or health. In any case consequential loss claims including loss of income and loss of contract claims or similar are excluded. The aforementioned provisions shall not be associated with any change to the onus of proof to the customer's disadvantage.

15.3 Where the customer is entitled to claim damages under the aforementioned conditions, these shall be statute-barred after the expiry of the period of limitation or prescription applicable for claims for defects according to clause 10.8 of these conditions. In the case of entitlement to claims for damages under the German Product Liability Act, the statutory limitation periods shall apply.

15.4 The aforementioned limitations of liability shall also apply to claims that are directly aimed at our salaried employees, labourers, collaborators, representatives and/or subcontractors.

15.5 The customer shall have made his mind in respect of his offer or acceptance regarding any delivery based on qualified advice. Any operation manuals, producer instructions, product descriptions, product line descriptions, specifications and similar representations issued by us and having been made available to the customer prior to or after contract execution shall not induce the customer to order any deliveries from us. Any liability resulting from any such aforementioned data or information shall be waived to the extent what is possible and permitted under the applicable laws.

16. Violation of rights of third parties

If deliveries are made based on drawings or other information provided by or received from the customer and this results in the infringement of the rights of third parties, particularly industrial and intellectual property rights, the customer shall indemnify and hold us harmless from any claims arising from it on first demand, unless we have contributed to claimed damage, loss or injury. In this case Sections 830, 840 and 254 BGB (German Civil Code) shall apply for the allocation and distribution of damages between the customer and us – without prejudice to the limitations of liability in clause 15 of these conditions (General Limitations of Liability).

17. Models, tools, other forming devices

17.1 Tools, moulds, tins and forging dies and suchlike shall remain our sole property, even if the customer partly remunerates us for their utilization.

17.2 If the customer makes tools, moulds, tins or forging dies available to us, they shall be delivered to us free of charge. We shall only accept liability for their loss or deterioration and any damages resulting from this if they are insured by us or if we are liable due to gross negligence or willful intent.

18. Place of performance and jurisdiction, applicable law

18.1 Place of performance for the customer's payment obligations shall be Datteln, for our obligations the place of performance shall be the location of the manufacturing plant in Germany.

18.2 The relevant courts of Germany will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement. Place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship, also in respect of legal proceedings related to bills of exchange or cheques, shall be the relevant court for Datteln or the relevant court at seller's warehouse(s), provided the customer is a merchant according to the German Commercial Code (or similar), a legal person under public law or a special public entity. Without prejudice to the foregoing, we shall also be entitled to pursue claims at the customer's general seat of jurisdiction.

18.3 With regard to all and any legal or factual relationship and in connection with the contract including non-contractual obligations arising out of tort/delict and arising out of unjust enrichment the applicable law shall be the governing law of the contract or the presumptive governing law of the contract.

The governing law of the contract shall be the substantive law of the Federal Republic of Germany, with the exclusion of the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (UIF) and the Convention relating to a Uniform Law for the International Sale of Goods (UIIS) and the Vienna Convention on the International Sales of Goods (CISG). If the conflict of law provisions of the Federal Republic of Germany refer to the law of another state or jurisdiction, to supranational or international law, for example to the above UN Convention on the International Sale of Goods (CISG), this referral is waived explicitly. The INCOTERMS in the respective current valid version shall apply to the interpretation of delivery clauses.

19. Partial invalidity - Severability

In case any provision in these general conditions shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

20. Storage of data

We store data in accordance with the latest version of the German Data Protection Act.