

General Terms and Conditions of Delivery and Payment of Rotec GmbH

Scope of validity

1. These terms and conditions of sale apply vis-à-vis contractors, legal entities under public law and special assets under public law. Our deliveries and services are done solely based on the terms and conditions below. Terms and conditions of business of the Partner that are not explicitly recognised by us do not apply.

General provisions

2. The contractual partners will specifically confirm verbal agreements immediately in writing.
3. Orders do not become binding until we have issued a confirmation of order.
4. The information and illustrations contained in prospectuses and catalogues are approximation values usual in the industry, unless they have been explicitly designated by us as binding.

Long-term and call-off contracts, price adjustment

5. Contracts for an indefinite period of time can be terminated with a period of notice of 3 months.
6. If a fundamental change in the wage, material or energy costs occurs in long-term contracts (contracts with a term of more than 12 months and contracts for an indefinite period of time), each contractual partner is entitled to demand an appropriate adjustment of the price, taking into account these factors.
7. If a binding order volume is not agreed, we will take the non-binding order volume (target volume) expected by the Partner for a certain period of time as a basis for our calculation. If the Partner purchases less than the target volume, we are entitled to increase the unit price accordingly. If it purchases more than the target volume, we will reduce the unit price accordingly if the Partner has announced the additional requirements at least 6 months before delivery.
8. Unless otherwise agreed, in the case of call-off orders, binding volumes are to be notified to us at least 2 months before the delivery date through call-off. Additional costs that are caused by a delayed call-off or subsequent changes to the call-off with regard to time or volume by our Partner will be charged to the latter's account; our calculation is decisive here.

Confidentiality

9. Each contractual partner will only use all documents (these also include samples, models and data) and know-how that it acquires from the business relationship for the jointly pursued goals and keep them confidential vis-à-vis third parties with the same care as it would for corresponding own documents and know-how if the other contractual partner designates them as confidential or has an obvious interest in their being kept confidential. This obligation commences from the receipt of the documents or know-how for the first time and ends 30 months after the end of the business relationship.
10. The obligation does not apply for documents and know-how that are generally known or that were already known to the contractual partner when it received them without it being obligated to non-disclosure, or that are communicated by a third party thereafter who is entitled to forward them or that are developed by the receiving contractual partner without using documents or knowledge of the other contractual partner that are to be kept secret.

Drawings and descriptions

11. If a contractual partner provides the other contractual partner with drawings or technical documents about the goods to be delivered or their production, they will remain the property of the submitting contractual partner.

Samples and production equipment

12. Unless otherwise agreed, the production costs for samples and production equipment (tools, moulds, templates, etc.) will be invoiced separately from the goods to be delivered. This also applies for production equipment that has to be replaced due to wear and tear.
13. The costs for maintenance and proper storage and the risk of damage or destruction to production equipment will be borne by us.
14. If the Partner suspends or ends collaboration during the production time of the samples or production equipment, it will be charged for all production costs incurred up to that point in time.
15. Even when the Partner has paid for the production equipment, they will remain in our possession at least until the supply contract has been completed. Thereafter, the Partner is entitled to demand the surrender of the production equipment, if an amicable regulation has been generated regarding the time of the surrender and the Partner has met its contractual obligations in full.
16. We will store the production equipment free of charge for three years after the last delivery to our Partner. Thereafter, we will request our Partner in writing to respond within 6 weeks with regard to its further use. Our obligation to store them ends, if no statement is given within these 6 weeks or no new order is submitted.
17. Customer-related production equipment may only be used by us for deliveries to third parties with prior written consent from our partner.

Prices

18. Our prices are in EUR and exclusive of VAT, packaging, freight, postage and insurance.

Terms and conditions of payment

19. All invoices are due for payment within 14 days from invoice date.
20. If we have indisputably delivered faulty goods in part, our Partner is obligated nevertheless to pay for the fault-free part, unless the partial delivery is of no interest to it. For the rest, the Partner can only offset against legally established or undisputed counter-claims.
21. In the event of a deadline being exceeded, we are entitled to invoice arrears interest in the amount of the rate that the bank charges us for overdrafts, but at least in the amount of 8 percentage points above the respective base interest rate of the European Central Bank.
22. In the event of arrears in payment, we can, after a written notification to the Partner, suspend fulfilment of our obligations until the receipt of payments.
23. Bills of exchange and cheques will only be accepted after agreement and only for the sake of fulfilment and subject to it being possible to discount them. Discount fees will be charged from the date the invoice amount becomes due. A guarantee for the timely submission of the bill of exchange and cheque and for the protesting of a bill of exchange is excluded.
24. If it becomes discernible after the contract is concluded that our payment claim is at risk due to defective performance by the Partner, we can refuse performance and set the Partner an appropriate period in which it has to pay concurrently against delivery or has to provide security. In the event of refusal by the Partner or unsuccessful expiry of the deadline, we are entitled to withdraw from the contract and to demand compensation.

Delivery

25. Unless otherwise agreed, we deliver "ex works". The reporting of the readiness for dispatch or collection by us is decisive for compliance with the delivery date or delivery period.
26. The delivery period commences with the sending of our order confirmation and is extended appropriately, if the requirements of Clause 55 are met.
27. Partial deliveries are permitted to a reasonable extent. They will be invoiced separately.
28. Excess or reduced volumes for production reasons are permissible within a tolerance of 10 per cent of the overall order volume.

Dispatch and transfer of risk

29. Goods reported as being ready for dispatch are to be taken over by the Partner immediately. Otherwise we are entitled, at our own discretion, to send them or store them at the cost and risk of the Partner.
30. Unless otherwise agreed separately, we will select the means and route of transport.
31. Upon handover to the railway, the haulage operator or the freight forwarder or upon start of storage, but at the latest upon departure from the plant or warehouse, risk is transferred to the Partner, including if we have taken over delivery.

Delay in delivery

32. If we can foresee that the goods cannot be delivered within the delivery period, we will notify the Partner of this immediately and in writing, inform it of the grounds for this, and where possible stipulate the anticipated delivery date.
33. If the delivery is delayed as the result of a circumstance listed in Clause 55 or through an action or omission on the part of the Partner, an extension of the delivery period appropriate to the circumstances will be granted.

34. The Partner is only entitled to withdraw from the contract, if we are responsible for the non-compliance with the delivery date and it has unsuccessfully set us an appropriate subsequent period.

Retention of title

35. We retain title to the goods delivered until the fulfilment of all claims arising from the business relationship with the Partner.
36. The Partner is entitled to sell these goods in the ordinary course of business, as long as it meets its obligations from the business relationship with us in a timely manner. However, it may not pledge the goods under retention of title or transfer them as security. It is obligated to safeguard our rights in the event of a credited resale of the goods under retention of title.
37. In the event of breaches of obligation by the Partner, in particular in the event of arrears in payment, we are entitled, after the unsuccessful expiry of an appropriate period set vis-à-vis the Partner for performance, to withdraw from the contract and take back the goods; the statutory provisions regarding the dispensability of the setting of a period remain unaffected. The Partner is obligated to surrender. We are entitled to withdraw from the contract, if an application is made for the opening of insolvency proceedings over the Partner's assets.
38. All claims and rights arising from the sale or any leasing of goods permitted vis-à-vis the Partner in which we are entitled to ownership rights are already assigned to us by the Partner now for security. We hereby accept the assignment.
39. The Partner always carries out any treatment or processing of the goods under retention of title on our behalf. If the goods under retention of title are processed or inseparably mixed with other items not belonging to us, we acquire the co-ownership to the new item in the ratio of the invoice value of the goods under retention of title to the other processed or mixed items at the time of the processing or mixing. If our goods are combined or inseparably mixed with other movable items to form an integrated item and if the other item is to be seen as the primary item, the Partner will transfer to us proportionate co-ownership if the primary item belongs to it. The Partner will safeguard the ownership or co-ownership for us. For the rest, the same applies for the item resulting from the processing or combining/mixing as for the goods under retention of title.
40. The Partner must inform us immediately of enforcement measures by third parties regarding the goods under retention of title, the receivables assigned to us or other securities and hand over the documents necessary for an intervention. This also applies for other types of impairment.
41. If the value of the existing securities exceeds the secured claims in total by more than 20 per cent, we are obligated at our discretion to release securities at the Partner's request in this regard.

Material defects

42. The quality of the goods is based solely on the agreed technical delivery specifications. If we have to deliver according to drawings, specifications, samples, etc. of our Partner, the latter takes over the risk of suitability for the envisaged designated purpose. The time of the transfer of risk pursuant to Clause 31 is decisive for the contractual condition of the goods.
43. We are not liable for material damage caused by unsuitable or improper use, erroneous installation or putting into operation by the Partner or third parties, usual wear and tear, erroneous or negligent handling; nor are we liable for the consequences of improper changes or repair work carried out by the Partner or third parties without our consent. The same applies for defects that only insubstantially reduce the value or suitability of the goods.
44. Claims for material defects become time-barred after 12 months. This does not apply if the law stipulates longer deadlines as being mandatory, in particular for defects in a building and in goods that have been used for a building in accordance with their normal use and have caused the latter's defectiveness.
45. If acceptance of the goods or an initial check of samples has been agreed, the notification of defects that the Partner could have detected during a careful acceptance or initial check of samples is excluded.
46. We are to be given the opportunity to establish the defect that has been notified to us. Goods forming the subject of a complaint are to be returned to us immediately on request; we will pay the transport costs, if the notification of defects is justified. If the Partner does not meet these obligations or makes changes to the goods already forming the subject of a complaint without our consent, it will lose any claims arising from material defects.
47. If notification of defects is justified and given in a timely manner, we will improve the goods forming the subject of complaint at our discretion or will supply fault-free replacement goods.
48. If we do not comply with these obligations within an appropriate period of time, or not in compliance with the Contract, the Partner can set us a last deadline in writing within which we have to meet our obligations. After this deadline has expired unsuccessfully, the Partner can request a reduction in the price, withdraw from the contract or carry out the necessary subsequent improvement itself, or have this done by a third party at our costs and risk. A reimbursement of costs is excluded if the expenses increase because the goods have been brought to another place after our delivery, unless this corresponds to the designated use of the goods.
49. Statutory recourse claims on the part of the Partner against us only exist, if the Partner has not made any agreements with its customer that go beyond the statutory claims for defects. In addition, Clause 48 last sentence applies accordingly for the scope of the recourse claims.

Other claims, liability

50. Unless otherwise indicated above, other and further claims of the Partner against us are excluded. This applies in particular for compensation claims due to a breach of duties arising from the contractual relationship and from unauthorised action. We are therefore not liable for damage that is not caused to the delivered goods themselves. In particular, we are not liable for lost earnings or other financial damage of the Partner.
51. The liability restrictions do not apply in the event of wilful intent, gross negligence by our statutory representatives or managers or in the case of culpable breach of fundamental contractual regulations. Apart from cases of wilful intent or gross negligence on the part of our statutory representatives or managers, in the event of culpable breach of fundamental contractual obligations, we are only liable for the damage that is typical of such contracts and can be reasonably anticipated.
52. In addition, the liability restriction does not apply in the cases in which liability for personal injury or material damage to privately used items is according to the product liability law in the event of faults in the goods delivered. It also does not apply in the event of injury to life, body or health and if assured properties are missing if and to the extent that the assurance was aimed precisely at protecting the Partner against damage that was not caused to the goods delivered themselves.
53. If our liability is excluded or restricted, this also applies to the personal liability of our staff, workers, employees, statutory representatives and vicarious agents.
54. This does not affect the statutory regulations regarding burden of proof.

Force majeure

55. Force majeure, industrial action, unrest, regulatory measures, non-deliveries by our suppliers and other unforeseeable, unavoidable and serious events do not release the contractual partners from their performance obligations for the duration of the fault and in the scope of its effect. This also applies if these events occur at a point in time at which the respective contractual partner is in arrears, unless it has caused the delay with wilful intent or gross negligence. The contractual partners are obligated to provide the required information within the framework of that which can be reasonably expected and to adapt their obligations to the changed circumstances in good faith.

Place of performance, place of jurisdiction and applicable law

56. Unless otherwise indicated in the order confirmation, our registered office is the place of performance.
57. Our registered office is also the place of jurisdiction for all legal disputes, including within the framework of bill of exchange or cheque proceedings. We are also entitled to file legal action at the Partner's registered office.
58. The contractual relationship is governed solely by the law of the Federal Republic of Germany. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) dated 11 April 1980 is excluded.