

## **RST Rostock System-Technik GmbH**

### **General Terms and Conditions of Sale**

#### **1. Scope of Application**

- 1.1** Unless otherwise expressly agreed upon, all business actions provided by RST Rostock System-GmbH (hereinafter RST) shall be exclusively subject to the following General Terms and Conditions of Sale. These Conditions shall apply analogously to service contracts and mixed contracts.
- 1.2** The customer's deviating, contrary or supplementing general terms and conditions of supply shall only become part of the contract as far as RST has explicitly consented to their application. This consent requirement shall apply in any case, for example even if RST unreservedly delivered work or goods in knowledge of the customer's terms and conditions.

#### **2. Conclusion of Contract**

- 2.1** Offers by RST are made un-binding and constitute an invitation for the Customer to place an order with RST.
- 2.2** An order from the Customer constitutes a binding offer that RST can accept by written order confirmation within four weeks of receipt. The contract is concluded once this order confirmation is received by the Customer.
- 2.3** The scope of goods and / or services (hereinafter referred to as “delivery”) provided by RST is subject to the order confirmation and any related technical specifications.

#### **3. Documentation**

- 3.1** Any documents such as pictures, drawings, details of weights and dimensions, calculations, etc. that RST has transferred or made available to the Customer prior to conclusion of the contract shall not be deemed a constituent part thereof, unless expressly stated to this effect in the order confirmation. RST also reserves the right to undertake alterations to the technical concept on which the delivery is based provided there is no impairment to quality and specification profile.
- 3.2** All documents shall remain the sole property of RST, even when transferred to the Customer. They shall be treated as secret and confidential and shall not be disclosed to third parties or used by the customer for itself or for the benefit of third parties without RST's written approval. They must be returned to RST on request.

#### **4. Prices**

- 4.1** RST's prices are included in the order confirmation and are ex works in accordance with INCOTERMS 2010. They are exclusive of the applicable statutory rate of value added tax. Costs for packaging, loading and freight, including insurance costs, are calculated separately.
- 4.2** RST shall be entitled to pass on price increases to the Customer, where RST's cost factors in delivery increase over a period of more than four months between the conclusion of contract and delivery of the goods or services (particularly increases caused by collective wage agreements, wage rises and increases in material costs).

#### **5. Terms of Payment**

- 5.1** All payments must be made in Euros by the Customer in accordance with the individually agreed payment periods and are not subject to deductions (due net).
- 5.2** Unless separately agreed, payments must be made in Euros, due net, within 30 days of the invoice date to the RST account. The relevant date for meeting this deadline shall be the date of receipt of payment. The granting of a discount shall be subject to a separate written agreement.
- 5.3** Where there is a delay in payment on the part of the Customer, RST shall be entitled to levy interest on arrears at a rate of (8) percentage points above the applicable base rate (LIBOR). RST shall further be entitled to claim a higher rate of interest based on other legal grounds and / or to claim further damages.
- 5.4** The Customer shall not be entitled to offset counterclaims, unless the counterclaims are undisputed or have become res judicata. In addition, the customer shall be authorised to exercise a right of retention only insofar as his counterclaim is founded on the same contractual relationship.
- 5.5** Where a substantial deterioration in the Customer's financial circumstances occurs subsequent to conclusion of contract, or where circumstances become known to RST exposing the claim for remuneration to risk, RST shall be entitled to refuse to perform its obligation to deliver under the contract, until the Customer has performed its obligations under the contract or has provided security for such obligations.
- 5.6** RST shall be entitled to set a reasonable period of time during which the Customer must, at its choice, perform its contractual obligation in return or provide RST security for performance. Where on expiry of such period, no performance has been undertaken, RST shall be entitled to terminate the contract.

## **6. Delivery**

- 6.1** Delivery dates are specified in the order confirmation by RST. Delivery dates are met where the shipment is ready for shipping within the agreed period and appropriate notification is received by the Customer.
- 6.2** Unless otherwise agreed in the contract, all deliveries are effected ex works. Freight and packing costs are invoiced additionally where shipping is agreed. In such cases, RST shall conclude transport insurance at the cost of and for the benefit of the Customer. The Customer must notify, in writing, RST and the freight forwarder, carrier or collector carrying out the delivery of any claims relating to transport immediately after receipt of the delivery.
- 6.3** Compliance with the specified delivery periods by RST is determined by timely and proper performance of all contractual duties of cooperation by the Customer at its own cost, i.e. in particular the provision of all necessary documents, certificates and releases relating to delivery as well as all required material provided. Where the Customer experiences delays in performing its duties of cooperation, the delivery periods for RST shall be reasonably deferred or extended by the period of delay. RST reserves the right, after expiry of a reasonable period of time specified by RST, to withdraw from the contract, to demand damages in place of performance or in lieu of unnecessary expenditure. Further rights such as claims to damages, remain unaffected. The Customer fully recognises the aforementioned duties of cooperation as essential to delivery.
- 6.4** RST shall be entitled at any time to effect partial deliveries and render partial performance.
- 6.5** In cases of force majeure, RST shall be entitled to postpone the delivery for the duration of the event. Where, through force majeure, delivery by RST becomes impossible in total or for a period of at least six months, RST shall be relieved from the obligation to deliver. The term force majeure includes all circumstances beyond the control of RST and which make delivery impossible or unreasonably difficult for RST, e.g. strike, legal lock-out, civil war, acts of terror, unrest, natural disasters, prohibitions on import and export (if beyond the control of RST), shortage of energy and raw materials (if beyond the control of RST), and late self-delivery not falling within the responsibility of RST. The Customer shall be entitled to withdraw from the contract where RST is released from its obligation to deliver.
- 6.6** Where delivery is postponed beyond the agreed delivery date at the request of the Customer, RST shall invoice the Customer with costs arising from the date of the original delivery date; the amount shall be 0.5 % of the total invoice amount for each week or fraction of a week. The Customer shall be entitled to furnish proof that RST incurred lower expenditure or no expense at all.
- 6.7** Where RST delays in delivery, the Customer shall be entitled to demand damages amounting to 0.2% of the remuneration due on the delayed delivery for each complete week of delay, but at a maximum of 2 % of the contractually agreed total remuneration, unless RST furnishes proof that the Customer sustained a lower level of loss or no loss at all. Further liability on the part of RST resulting from delay shall be excluded, subject to the provisions of section 9.

## **7. Passing of Risk**

- 7.1** Risk shall pass to the Customer when the delivery is transferred to the freight forwarder, carrier or collector (including transport using the Customer's transport), at the latest, however, when the goods leave the RST warehouse.
- 7.2** Where shipment is delayed for reasons beyond RST's control, the risk shall be deemed to pass to the Customer when RST intimates readiness for delivery. RST shall be entitled to place the goods in storage and to take out insurance at the Customer's expense against the risks of storage.
- 7.3** Where the Customer delays in accepting delivery or rejects the same without justification, RST shall be entitled to claim damages. Damages shall amount to 10 % of the net contract total, unless RST proves higher loss or the Customer proves lower loss or absence of loss at all on the part of RST.

## **8. Retention of Title**

- 8.1** Until fulfilment of all claims due to RST within the overall business relationship with the Customer, RST shall retain the following securities that may be released pro-rata at RST's choice, as soon as their realisable value exceeds the claim against the Customer on a consistent basis by more than 10 %. The securities serve to secure the balance payable in the case of open accounts.
- 8.2** The delivery shall, unless otherwise agreed, remain the property of RST until payment has been fully effected. The Customer shall not be entitled to pledge the delivery or to assign it in security. Where a third party nevertheless acquires rights in the delivery, the Customer shall assign all subsequent rights arising over said delivery at this point to RST. RST shall accept the assignment. The Customer shall immediately inform RST when the delivery is pledged, is subject to seizure or any other third party rights of disposal.
- 8.3** Any processing, remodeling or combination it with other objects shall always be performed for RST. RST shall immediately become co-owner of the object processed, transformed or combined in due proportion to the value of the delivery (price inclusive value-added tax) in relation to the value of the other processed, transformed or combined object. Where, as a result, another part becomes the principal object, RST and the Customer agree that RST shall acquire co-ownership in the new object. The owner shall keep the new item for RST with the diligence of a prudent businessman. Retention of title shall extend to goods created by processing, transformation or combination.
- 8.4** The Customer shall be entitled to resell the delivery supplied by RST within the ordinary course of business. The Customer does hereby assign all claims prospectively arising from resale of the delivery to RST. RST shall accept such assignment. However, the assignment shall only be to the amount corresponding to the invoiced value of the delivery disposed of. RST's assigned share of the claim shall rank first.
- 8.5** Where the Customer duly performs its contractual obligations towards RST, it shall be entitled to collect the claims assigned to RST as security. At RST's request, the Customer shall intimate the retention of title to the third-party purchaser and shall provide all documentation required to assert RST's claims and furnish all requisite information. All costs of collecting claims by RST and the cost of any interventions shall be borne by the Customer.

**8.6** The Customer shall handle and maintain the delivery subject to retention of title with due care. In particular, he shall insure the delivery at his own expense for replacement value against fire and water damage, any other damage, theft and destruction. The Customer shall assign all claims arising from the insurance contract to RST with immediate effect. RST shall accept such assignment. RST shall be entitled to demand evidence of the existence of insurance cover.

**8.7** Where the Customer delays in making payment in whole or in part, is subject to excessive debt or suspension of payments or where a petition is submitted for institution of composition or insolvency proceedings, RST shall be entitled to withdraw from the contract and demand the return of all items constituting the delivery still subject to retention of title and to take immediate possession thereof. RST shall also immediately be entitled to assert additional rights arising from the retention of title; the same shall also apply to any other significant deterioration in the Customer's financial circumstances. The Customer shall grant RST or its

authorized representative access to all its premises during business hours. RST shall be entitled to realise the items subject to retention with the diligence of a prudent businessman and shall settle outstanding claims by offsetting revenues arising therefrom. Any rights of retention vested in the Customer shall be expressly excluded.

## **9. Rights of the Customer in case of Defects**

**9.1** Defects of quality and/or defects in title have to be notified in writing.

**9.2** RST shall have the right to opt between subsequent delivery or rectification of defects as subsequent performance. RST shall be entitled to make remedial action dependent on the Customer paying a reasonable proportion of the agreed purchase price, having regard to the defect.

**9.3** Where repair by RST fails to remedy the defect on two individual occasions, RST refuses to effect subsequent performance or where RST fails to provide subsequent performance within a reasonable time defined by the Customer, the Customer shall be entitled to reduce the purchase price or withdraw from the contract and demand reimbursement of unnecessary expenditure, or compensation for damages instead of performance. The Customer's rights of withdrawal and compensation for damages instead of performance are excluded in the case of minor defects.

**9.4** Warranty claims can only be asserted by the Customer against RST. An assignment of these claims to third parties is not permitted.

**9.5** The Customer is not entitled to any remedies as a result of defects that are due e.g. to incorrect storage, operation, maintenance or excessive or inappropriate use of the delivery, to the use of unsuitable tooling and resources, construction work and construction sites or improper changes, corrective maintenance work and damage to seals in the delivery or by other breach of contractual specifications and product regulations on the part of the Customer or a third party not in any way connected to RST. If the customer or a third party carries out repairs improperly, the contractor shall not be liable for the resultant consequences. The same shall apply to change to the supplied deliveries or services that have been made without the prior consent of RST.

- 9.6** RST shall not be liable for defects that are attributable to measures or designs expressly demanded by the Customer or that occur in materials or products which have been provided by the Customer or whose use the Customer has expressly demanded contrary to the RST's advice.
- 9.7** RST shall also not be liable for failure to back up or inadequate backing up of data by the Customer; failure to check or inadequate checking of programs and data for computer viruses (as defined in Section 10.3) by the Customer, unusual effects of any kind (e.g. vibrations from other assemblies, ingress of foreign matter), chemical, electrochemical or electrical influences – unless RST is to blame for them.
- 9.8** Any and all complaints regarding recognizable deficiencies must be reported to RST in writing without undue delay after receipt of the delivery. Otherwise the delivery shall be deemed approved and accepted (Section 377 of the German Commercial Code (HGB)).
- 9.9** The Customer's claims, except of damage claims based on intent or gross negligence, shall be subject to a limitation period of two years subsequent to delivery.
- 9.10** Damage claims in addition to performance shall be governed by section 9.
- 10. Liability**
- 10.1** RST shall be liable in accordance with the relevant statutory provisions in the event of injury to life, body or health based on a wilful or negligent breach of duty on the part of RST.
- 10.2** For other damage, the following shall apply:
- a) RST shall be liable in accordance with the relevant statutory provisions for damage based on wilful or grossly negligent breach of duty on the part of RST.
  - b) RST's liability for damage based on a breach of material contractual duties (a contractual duty whose breach puts achievement of the contract purpose at risk) as a result of ordinary negligence on the part of RST shall be limited to foreseeable damage typical for the relevant agreement up to a maximum amount equivalent to the value of the amount of order.
  - c) Compensatory claims for damage based on the breach of accessory obligations or nonessential duties in the event of ordinary negligence shall be excluded.
  - d) In the event of default based on ordinary negligence compensatory claims for damage shall be limited to foreseeable damage typical for the relevant agreement; the Customer's statutory rights following the expiry of a reasonable grace period shall remain unaffected.
- 10.3** Restrictions or exclusions on liability shall not be applicable to statutory liability independent of fault (e.g. under the Product Liability Act), to liability under warranty that is non-fault related or if a defect was fraudulently.
- 10.4** Liability for loss of data shall be limited to the reproduction costs typically incurred if the purchaser makes regular data backups in relation to risk. In the event that the Customer should not fulfil his duty set forth under Section 10.3, RST shall not be liable for any damage resulting from it.
- 10.5** Insofar as RST's liability is excluded or restricted pursuant to this Section the same shall apply to the personal liability of its employees, representatives, and other persons engaged in the performance of its obligations.

## **11. Use of Software**

- 11.1** If software is supplied, the customer shall be granted a non-exclusive right of its use and documentation. It shall be provided for use on the intended delivery or service supplied. The software shall not be used on more than one system.
- 11.2** The Customer shall reproduce, revise, compile or translate the software or convert it from object code to source code only to the extent permitted by law (Sections 69 a et seq. of the German Copyright Law (UrhG)). The Customer undertakes not to remove manufacturer's data – in particular copyright notices – or to change them without the contractor's prior written consent. All other rights to the software and documentation, including copies thereof, shall remain with the contractor or the software supplier. Sublicensing of it shall not be permitted.
- 11.3** The Customer shall be obliged to back up data himself on a regular basis in order to prevent loss of it as a result of computer viruses. The Customer shall commit himself to preventing access by his employees and third parties to the delivered software and the accompanying documentation by means of appropriate preventive measures.

## **12. Miscellaneous**

- 12.1** All legal relationships between RST and the Customer shall be exclusively governed by German Law, excluding the UN Convention on Contracts on the International Sale of Goods (CISG).
- 12.2** Unless otherwise agreed, the place of performance for all obligations relating to delivery and payment obligations shall be RST's business premises in Rostock.
- 12.3** The exclusive place of jurisdiction for all disputes shall be Rostock.
- 12.4** Any changes and amendments to the contract and supplementary agreements must be made in writing. This provision shall also be applicable to any waiver to the requirement as to written form.
- 12.5** Should any of the above provisions become void, illegal or unenforceable, the validity of the remaining provisions shall not be affected. In such a case the void and / or illegal and / or unenforceable provision or provisions shall be replaced by such provisions that are as close as possible to the actual, legal and commercial purpose of the General Terms and Conditions of Sale in their entirety. The same shall apply where there is a gap in the General Terms and Conditions of Sale.