

# **General Terms and Conditions of Sale of Rosenberger GmbH Brennwerk und Stahlhandel, Neuss**

**Version February 2024**

## **I. Application / Offers**

1. These General Terms and Conditions shall apply to all contracts and future contracts concluded with companies, legal entities under public law and special funds under public law for supplies and other services including service contracts and agreements on the supply of non-fungible items. In case of direct sales ("Streckengeschäfte"), the manufacturer's conditions as laid down in its price list shall apply in addition to these conditions. Any Buyer's purchase conditions shall not be binding even if we do not expressly object to them again after their receipt.
2. Our offers are not binding to us. Any oral agreements and assurances given by our sales staff before or at conclusion of contract shall not be binding unless confirmed by us in text form.
3. Any trade terms shall, in cases of doubt, be interpreted according to the Incoterms as amended from time to time.

## **II. Prices**

1. Unless otherwise agreed to, only such prices and terms shall apply as contained in our price lists effective at the time when the contract is concluded. Unless otherwise agreed to, our prices are based ex works or ex the place of warehouse plus freight, statutory VAT and import duties if any.
2. In the event our external expenses (duties, taxes or other third-party charges) included in the agreed price change or newly incur later than 4 weeks after the conclusion of the contract, we shall be authorised to modify the price accordingly with regard to the goods not yet delivered to the Buyer as of the beginning of each calendar month concerned.
3. In the event that the modified price surpasses the originally agreed price by more than 15%, the Buyer may, within one week after receipt of our price modification notice, withdraw from the contract with respect to the goods affected by the price modification.

## **III. Payment and Set-Off**

1. Unless otherwise agreed upon or stated in our invoices, the purchase price is due for payment immediately after delivery without deduction and payment shall be effected in such a way that we are able to dispose of the amount on due date. This also applies if any agreed test certificates according to DIN EN 10204 are not part of the delivery or arrive late. Any costs arising from the payment transaction shall be borne by the buyer. The Buyer may retain or set off any counterclaims only in so far as his claims derive from the same contractual relationship (claims for defects and claims for completion costs) or are undisputed or have become legally binding.
2. Should the Buyer exceed the payment term or default in payment, he will be liable to pay interest at 9 %points above the basic interest rate, unless higher rates have been agreed upon. Additionally, we charge a default allowance of EUR 40.00. We reserve the right to claim additional damages resulting from late payment.
3. The buyer shall be in default after 10 days from due date of our receivables. A formal overdue notice shall not be required.
4. Should it become evident after the conclusion of the contract, that payment is jeopardised by the Buyer's lack in financial means, or should the Buyer be in default with a not merely insignificant portion of the amount due or should other circumstances arise which show a material deterioration in the Buyer's financial position after the contract has been concluded, we shall be entitled to exercise the rights arising from sec. 321 BGB (German Civil Code), to refuse performance and to make due any and all of our not yet due accounts receivable deriving from the current business relationship. This also applies in case the performance of our contractual obligation is not yet due. A lack in financial means shall also be deemed to exist if the Buyer is at least three weeks in arrears with a substantial

amount (from 10% of the receivables due), as well as a substantial downgrading of the limit existing for him with our trade credit insurer.

5. Any agreed upon cash discount always relates to the invoiced value excluding freight and will only be granted if and in so far as the Buyer has completely paid all payables due at the time of the discount. Unless otherwise agreed to discount periods shall begin with the date of the invoice.

#### **IV. Execution of deliveries, delivery times and dates**

1. Our commitment to deliver is subject to our own correct, timely and contractual self-delivery, unless we are responsible for the deficient, late or non-contractual self-delivery. In particular, we are entitled to withdraw from the contract if we have concluded a proper covering transaction, but are not supplied by our supplier for reasons for which we are not responsible, e.g. if our supplier files for bankruptcy.
2. Any confirmation as to delivery times shall only be approximate. Delivery times shall commence with the date of our order confirmation and are subject to the timely clarification of any details of the order as well as of the fulfilment of any of the Buyer's obligations, e.g. to produce official certifications, to provide letters of credit and payment guarantees or to pay agreed instalments.
3. Any agreed delivery time or date shall be considered to be met if the goods have left the works or the warehouse at such time or date. If and in so far the goods fail to be dispatched at the agreed time for reasons not attributable to us, the agreed delivery time shall be considered to have been met at the day on which the goods are notified to be ready for loading.
4. In the event of late delivery the buyer is entitled to set to us a reasonable grace period and, upon unsuccessful expiry of this period, to withdraw from the contract insofar as the contract is not fulfilled. In such cases claims for damages are subject to the provisions set out in sec. XI of these terms and conditions.
5. An event of Force majeure shall entitle us to postpone the deliveries for the period of the hold-up and an appropriate start-up time. This also applies if such event occurs during a present default. Force majeure is the equivalent of monetary or trade measures or other acts of sovereignty (e.g. anti-dumping or countervailing investigations, registration of imports, or the like), breakdowns not caused by us (e.g. fire, machinery or roller breakdown, shortage of raw materials and lack of energy), obstruction of transport routes, delays in clearing the goods for import and in customs clearance, pandemic or flood disaster and their related impact, as well as of all other circumstances, that essentially impede or render the deliveries and performances impossible or economically unreasonable, without being caused by us. Thereby, it is irrelevant if the circumstances occur with us or with our relevant supplier. If performance becomes unacceptable for one of the parties due to the abovementioned events, the party concerned shall be entitled to withdraw from the contract by instant declaration in text form.

#### **V. Retention of Title**

1. The goods delivered to the Buyer shall remain our property until the full purchase price is paid. The Buyer shall take all measures required to preserve the retention of title – or of an equivalent security in the country of his branch or in a different country of destination –, and to provide the corresponding evidence upon our request.
2. To the extent permitted by the laws of the country, in which the goods are located, the following additional regulations apply:
  - a. All goods delivered to the Buyer shall remain our property (Reserved Property) until all of the Buyer's accounts resulting from the business relationship with him, in particular any account balances have been settled in full (current account reservation). This condition shall apply to any future as well as any conditional claims including accepted notes and such cases where the Buyer will affect payments on specifically designated claims. The current account reservation shall not apply in prepayment or delivery vs. payment cases. In these cases, the goods remain our property until the purchase price for these goods has been paid in full. As soon as the Buyer has settled his accounts

with us in full, he shall obtain title to those goods which were delivered to him before such payment was effected.

- b. With regard to processing or manufacturing of the Reserved Property, we shall be deemed to be manufacturer within the meaning of sec. 950 BGB (German Civil Code) without committing us in any way. The processed or manufactured goods shall be regarded as Reserved Property within the meaning of clause 2.a. of the present section. If the Buyer manufactures, combines or mixes the Reserved Property with other goods we shall obtain co-ownership in the new goods in proportion to the invoiced price of the Reserved Property to the invoiced price of the other goods. If, by such combining or mixing, our ownership expires, the Buyer herewith transfers to us any rights which the Buyer will have in the new stock or goods in proportion to the invoiced price of the Reserved Property, and he will keep them in safe custody free of charge. Such transfer is hereby accepted. Our co-ownership rights shall be regarded as Reserved Property within the meaning of clause 2.a. above.
- c. The Buyer may resell the Reserved Property only within the normal course of his business in accordance with his normal business terms and provided he is not in default of payment and provided also that any rights resulting from such resale will be transferred to us in accordance with clauses 2.d. and 2.e. below. The Buyer shall not be entitled to dispose of the Reserved Property in any other way.
- d. The Buyer hereby assigns to us any claims resulting from the resale of the Reserved Property. Such assignment is hereby accepted. Such claims shall serve as our security to the same extent as the Reserved Property itself. If the Reserved Property is resold by the Buyer together with other goods not purchased from us, then any receivables resulting from such resale shall be assigned to us in the ratio of the invoiced value of the other goods sold by the Buyer. In the case of resale of goods in which we have co-ownership rights according to clause 2.b. above, the assignment shall be limited to the part which corresponds to our co-ownership rights.
- e. The Buyer shall be entitled to collect any receivables assigned to which result from the resale of the Reserved Property. This right shall expire if withdrawn by us, at the latest if the Buyer defaults in payment; fails to honour a bill of exchange; or files for bankruptcy. We shall exert our right of revocation only if and in so far as it becomes evident after the conclusion of the contract that payment resulting from this contract or from other contracts is jeopardised by the lack of Buyer's ability to pay. The Buyer shall - upon our request - immediately inform his customers of such assignment and to forward to us any information and documents necessary for collection.
- f. The Buyer shall immediately inform us of any seizure or any other attachment of the Reserved Property by a third party. He shall bear any costs necessary to suspend such seizure or attachment or removal of the Reserved Property, if and in so far as such costs are not borne by a third party.
- g. Should the Buyer default in payment or should he fail to honour a draft and after expiry of a reasonable period of grace we shall be entitled to take back the Reserved Property and to enter, for this purpose, the Buyer's premises and to resell the Reserved Property best possible by crediting the proceeds to the purchase price. The same shall apply should, after the conclusion of the contract, it become evident that payment resulting from this contract or from other contracts is jeopardised by the Buyer's lack of ability to pay. If we take back the Reserved Property, this shall not be regarded as withdrawal from the contract. The provisions of the German Insolvency Code shall remain unaffected.
- h. Should the total invoiced value of our collateral exceed the amount of the secured receivables including additional claims for interest, costs etc. by more than 50 %, we shall - upon the Buyer's request - release pro tanto collateral at our discretion.

## **VI. Weight, origin, customs tariff**

1. The weight of the goods shall be determined on our or our suppliers' scales and shall be evidenced by the presentation of the pertinent weight check. Where provided by law, the weight may be determined without weighing in accordance with the standards. Deviations

in weight above or below the total quantity charged (trade weight) pursuant to the common practice in steel trading within the Federal Republic of Germany, shall remain unaffected. Any indications given in the delivery notes as to the number of pieces, bundles etc. are not binding if and in so far as the goods are invoiced by weight. Where, according to the contract, the goods are not weighed piece by piece, the total weight of the delivery shall prevail. Any difference with regard to the calculated weight of the single pieces shall be proportionally allocated to them.

2. In case we provide the Buyer with corresponding customs tariff numbers for goods to be delivered or supplied, we shall not be liable in any way. The same applies to information on the preferential or non-preferential origin of the delivered goods. The Buyer may refer to customs office in charge for any binding information on customs tariff numbers and / or on the preferential or non-preferential origin. It is the sole responsibility of the Buyer to determine the correct customs tariff number or the correct origin, e.g. via a "binding customs tariff information" or a "binding origin information".

#### **VII. Test certificates / Inspection**

1. Any supply of test certificates acc. to EN 10204 is subject to prior agreement in text form. We are entitled to hand over such document as a copy. In case the price for such documents has not been agreed within the contract, we will calculate it on the basis of our price list resp. the issuer's (manufacturer's) price list.
2. Where testing and inspection of the goods have been agreed upon, the goods must be inspected in the mill or in our warehouse immediately after the Buyer has been informed that the goods are ready for dispatch. The Buyer shall bear his personal inspection costs, whereas the costs of inspection will be invoiced to him in accordance with our or the mill's price list.
3. Should, through no fault of ours, the inspection of the goods fail or be delayed or be incomplete, we shall be authorised to dispatch the goods without prior inspection or to store them at the Buyer's expense and risk and to invoice the goods to him..

#### **VIII. Dispatch, Passing of Risk, Packaging, Partial Delivery**

1. Unless otherwise agreed, we shall be entitled to choose the route and mode of dispatch as well as the forwarding agent and the carrier.
2. The Buyer shall immediately request delivery of those goods which have been notified to him as ready for dispatch. Otherwise we are entitled, upon our reminder and after a reasonably fixed additional time period has elapsed, to ship such goods at the Buyer's cost and risk or to store them at our discretion and to invoice them to the Buyer.
3. Can, by reasons not attributable to us, the goods not be shipped or shall it become substantially difficult to ship them via the designated route or to the designated place within the designated time, we reserve the right to ship them via a different route or to a different place. Any additional costs will be borne by the Buyer. In such cases we will ask the Buyer for his prior comments.
4. In the case of a call-off order, the risk shall be transferred to the Buyer at the time of the provision of the goods for collection. In all other transactions, including freight prepaid and freight-free deliveries, the risk of loss or damage to the goods shall pass to the Buyer at the time where we hand them over to the forwarding agent or to the carrier, at the latest with their departure from our warehouse. We will buy insurance only if and in so far as requested to by the Buyer and at his cost. The Buyer shall unload the goods at his cost.
5. The goods will be delivered unpacked and not be protected against rust. Only where so provided by trade usage the goods will be packed. Any package, protection and/or transport device will be supplied according to our experience and at the Buyer's cost. Any packaging shall be taken back in order to comply with the provisions of the Packaging Act upon prior advance notice at the place of our registered. We will not bear any costs for their re-transport or disposal.
6. We shall be entitled to make partial deliveries with reasonable quantities. Where and in so far as allowed by trade usage, we may exceed or reduce the agreed quantities.

Where quantities are indicated as "circa", we are entitled to exceed or fall below the agreed quantity by up to 10 pct.

#### **IX. Call Orders, Continuous Delivery**

1. Where the contract provides for continuous deliveries, the buyer shall divide the quantities and grades of the goods into approximately equal monthly shipments. Otherwise we shall be entitled to specify them at our own fair and just discretion.
2. Where the single calls for delivery exceed the total contractual quantity, we shall be entitled, yet not committed, to deliver the surplus quantity and invoice it at the prices applicable at the time of the call or the delivery.
3. Unless otherwise agreed, callable deliveries shall be completed in full within 365 days from conclusion of the contract. Upon expiry of this period, we may store the uncalled goods at the Buyer's cost and risk.

#### **X. Liability for defects**

1. Any inner and outer properties of the goods, in particular their grade, classification and dimensions shall be determined in accordance with the agreed and, if not agreed, with the DIN and EN standards effective at the time the contract is concluded, or in absence of such standards, in accordance with trade usage. Any reference made to such standards and similar rules, to inspection documents according to EN 10204 and similar certificates as well as to grade, dimensions, weight and usability of the goods shall not constitute any warranty or guarantee. The same shall apply to declarations of conformity and similar markings such as CE and GS.
2. Insofar as the quality has not been agreed, the goods shall be free from defects if they are suitable for the use presumed under the contract. A use is contractually presumed only if we were informed of this use by the Buyer in text form at the latest upon conclusion of the purchase contract and have expressly agreed to this use in text form.
3. Insofar as the goods have the agreed quality in accordance with clause X.1. above or are suitable for the use assumed under the contract and confirmed by us in accordance with clause X.2. above, the Buyer is not entitled to invoke the goods may not be suitable for normal use or have a quality which is usual for goods of this type and which the Buyer expected. In this respect, our liability shall be excluded in accordance with section XI of these Conditions.
4. As to the Buyer's obligations to examine the goods and to notify us of any defects, the applicable statutory provisions shall apply, it being understood that the duty to inspect the delivered goods includes the inspection of eventual test certificates according to or correlating to EN 10204 and any defects of the goods and test certificates are notified to us without delay in text form.
5. In case the Buyer intends to install the goods into another object or attach the goods to another object, prior to installation resp. attachment, the Buyer has the obligation to inspect the goods with regard to the properties relevant for the installation or the application in question and to notify us of defects without delay. In case the Buyer fails to inspect the properties of the goods relevant for the designated end use at least at random prior to installation resp. attachment (e.g. by function tests or a trial installation), this represents a particularly grave disregard of the care required in the ordinary course of business (gross negligence) in relation to us. In such a case, the Buyer may assert any rights in relation to these properties only if the defect had been deliberately concealed or in case of a guarantee for the respective quality of the goods.
6. If and in so far as Buyer's claim for defects is justified and has been made in time, we may, upon our discretion, remedy the defect ("improvement") or deliver non-defective goods ("replacement", improvement and replacement hereinafter: "cure"). Should we fail or decline the cure, the Buyer may, upon the elapse of an adequate additional period of time set by him, withdraw from the contract or reduce the purchase price. In cases where the defect is minor, where the goods have already been processed or transformed, he may only reduce the purchase price.

7. In case the Buyer has installed the goods, in accordance with the goods' type and designated use, into another object or attached the goods to another object, he may claim reimbursement of his necessary costs for the dismantling of the defective goods and the installation or attachment of goods free from defects ("dismantling and installation costs") only in accordance with the following provisions:
  - Necessary dismantling and installation costs are only those, which directly result from the dismantling resp. removal of the defective goods and the installation resp. attachment of identical goods, have accrued on the basis of competitive market prices and have been proven by the Buyer by appropriate documents in text form.
  - Additional costs of the Buyer for consequential damages such as e.g. loss of profit, down time costs or additional costs for cover purchases are no dismantling and installation costs and therefore not recoverable under Sect. 439 para. 3 of the German Civil Code. The same applies for sorting costs and for supplementary costs resulting from the fact that the sold and delivered goods are at a place other than the agreed place of delivery.
  - The Buyer is not entitled to request advance payments for dismantling and installations cost or other expenses required for the remedy of the defective delivery.
8. In case, on an individual basis, the costs incurred by the Buyer for the remedy of the defective delivery are disproportionate, namely with regard to the purchase price of the goods being free from defects and under consideration of the importance of the infringement of the contract, we are entitled to refuse the reimbursement of such costs. Disproportionate costs are especially given in case the costs requested by the Buyer, in particular dismantling and installation costs, exceed 150 % of the purchase price of the goods invoiced by us or 200 % of the value of the defective goods. In case the last contract in the supply chain is a consumer sale, the reimbursement of expenses shall be limited to the appropriate amount. Costs of the Buyer related to the self-remedy of defects without the legal requirements being fulfilled, are excluded. The same applies for costs for disassembly of the defective and assembly of replacement goods, in case due to a transformation of the buyer before the assembly, the assembled goods provide substantially different features than the original goods delivered by us. Any expenditures accrued by delivery of the goods to another place than the place of the agreed performance will not be accepted.
9. If and in so far the goods are subject to contractually agreed testing and inspection by the Buyer, such testing and inspection shall bar any claims for such defects which might have been determined by the agreed type of testing and inspection. In case the Buyer, by his own negligence, has not learned of the defect, then he may claim only such defects which we have knowingly not disclosed to him or which are subject to a guarantee.
10. In the event the Buyer fails to give us the opportunity to immediately inspect the defect, or the Buyer, especially when asked to do so, fails to make the objected goods or samples therefrom available without delay, any warranty claims shall be void.
11. No warranty shall be given to goods sold as declassified material with regard to such defects either specified in the contract or to those normally to be expected. Goods classified as "Ila-Ware" ("secondaries") are not subject to any warranty.
12. In accordance with Section XI of these Conditions, additional claims are not acceptable. Any of the Buyer's rights of recourse according to sections 478, 479 BGB (German Civil Code) shall remain unaffected.

## **XI. Restriction of liability, limitation periods**

1. Our liability for breach of contractual or extra-contractual obligations, in particular for non-performed or deferred deliveries, for breach of duties prior to the contract as well as for tortuous acts - including our responsibility for our managerial staff and any other person employed in performing our obligations - shall be restricted to damages caused by our wrongful intent or by our gross negligence and, in case of gross negligence, shall in no case exceed the foreseeable losses and damages characteristic for the type of contract in question. Apart from that, our liability for damages resulting from defects including consequential damages shall be excluded.

2. The aforesaid restrictions shall not apply to such cases where we breach our fundamental contractual obligations and where such a breach of contract will endanger the contractual purpose; it shall neither pertain to damages to life, to the body or to health caused by our fault nor to any cases where we have guaranteed certain characteristics of the goods; nor shall such clause affect our statutory liability pursuant to the German Product Liability Act. Our contractual obligations shall be considered to be fundamental if they are required to safeguard the due performance of the contract and on which Buyer typically may rely on. Any statutory rules regarding the burden of proof shall remain unaffected by the aforesaid.
3. Should we default on a delivery or performance, the Buyer shall be entitled to damages due to this delay; in case of slight negligence, however, the claim of the Buyer is restricted to maximum 10 % of the agreed purchase price for the performance in default. The rights of the Buyer for damages instead of performance in accordance with the present sec. XI.1 and XI.2 remain unaffected by the aforesaid.
4. Unless otherwise agreed, any contractual claims which the Buyer is entitled to in connection with the delivery of the goods shall fall under the statute of limitations within a period of one year after the goods have been delivered to the Buyer. This shall not apply insofar as Section 438 para. 1 No. 2, Section 478, 479 or Section 634 lit a) para. 1 No. 2 of the German Civil Code (BGB) require longer limitation periods, further in cases of injuries to life, body and health, breaches of contract caused by our wrongful intent or by our gross negligence or in cases where a defect is fraudulently concealed. In the event of cure, the limitation period shall not start anew but shall instead be suspended until the end of a three-month's period following the cure.

## **XII. Place of Performance, Jurisdiction and Applicable Law**

1. The place of performance for our performances shall be, if applicable, the supplying work or our warehouse. The place of performance of the Buyer's payments is our seat. The place of jurisdiction is, at our discretion, the city of Neuss (Germany) or the Buyer's seat.
2. All legal relationships between us and the Buyer shall be governed by the laws of the Federal Republic of Germany. The provisions of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.

## **XIII. Applicable version**

In case of doubt the German version of these General Terms and Conditions of Sale shall be decisive.

**Rosenberger GmbH Brennwerk und Stahlhandel**  
**Duisburger Straße 24**  
**D-41460 Neuss**  
**Tel.: +49 (0) 21 31 - 709-0**  
**Fax: +49 (0) 21 31 - 709-100**  
**info@rosenberger-gmbh.com**