

General Terms of Sale and Delivery of Rogelberg Getriebe GmbH & Co. KG, 49716 Meppen/Germany (version: July 2020)

I. General information - application

These Terms shall apply to all our deliveries and performances. Furthermore, they shall apply to the arrangement, conclusion, and execution of all transactions – present and future – with the Buyer. We do not recognise conflicting purchasing or order terms of the Buyer unless we have expressly consented to their application. These Terms shall also apply even if we, being cognizant of terms of the Buyer which conflict with or deviate from our own, unreservedly render deliveries or performances to the Buyer.

These Terms shall apply only vis-à-vis entrepreneurs, public-law entities, or a special fund under public law.

II. Written form requirement

To the extent these Terms require written declarations, telefax, computer printouts, or electronic declarations shall sufficiently fulfil – within the scope of customary practice – such written form requirement.

III. Formation of the contract

Our offers are non-binding at all times. Contractual relations shall be established only upon receipt by the Buyer of our written confirmation of order. Our sales representatives are merely authorised to arrange, but not conclude contracts.

IV. Delivery deadlines; partial delivery, default in delivery; passing of risk

(1) Delivery deadlines will be specified in the confirmation of order; they shall be binding only if we have consented to such in writing. The meeting of deadlines for deliveries and performances is conditioned upon timely receipt of all documents, required approvals, and clearances to be provided by the Buyer as well as fulfillment of all stipulated payment terms and other obligations by the Buyer. If these prerequisites are not met in a timely manner, the deadlines shall be extended by a reasonable amount of time.

(2) If failure to meet deadlines is attributed to a force majeure, labour disputes, or other events beyond our control, the delivery deadline shall be extended by a reasonable amount of time.

(3) The meeting of delivery deadlines is conditioned upon correct and timely supply.

(4) We shall have a right to render partial deliveries to a reasonable extent. In the event of the delivery of numerous fungible goods (unassembled goods, in particular small parts), we shall be entitled to derogate from the stipulated quantity by up to 10 percent. If delivery on call has been agreed, we must be granted reasonable production deadlines from the time of each delivery on call.

(5) We shall default in delivery or performance only if the delivery or performance is due and an express written reminder has been rendered. If we default in delivery or performance or if delivery or performance is impossible for us, regardless of the reason therefor, our liability shall be limited to compensation for damages as prescribed by IX of these General Terms of Sale and Delivery.

(6) The Buyer may withdraw from the contract only within the statutory scope to the extent the delay in the delivery is attributed to us. The above provisions shall not entail a change to the burden of proof to the disadvantage of the Buyer.

(7) The risk of accidental damage to or destruction of the deliverable or goods entrusted to us for processing on the basis of a contract for work (finishing) shall pass to the recipient - even if we ourselves or freight forwarders we engage perform transport - upon departure of the deliverable or goods from our establishment in Meppen.

V. Prices, due date for payment, transport costs, payment arrangements

(1) The purchase price or work wages shall be recorded in our confirmation of order; all domestic transactions shall be subject to sales tax. If, after a period of 4 months from the date the contract was concluded, but prior to full execution of the contract, any statutory charges or fees which are charged on merchandise movements or which make the performance of work more expensive (in particular sales tax, customs duties, compensatory amounts, currency, freight charges) or negotiated wage rates increase, we are entitled to raise prices to reflect the additional costs which we have demonstrably incurred; the same applies to the purchase of precursor materials required for contracts whose execution or partial execution is planned 7 months after the conclusion of the contract.

(2) Invoices shall be due for payment without deduction 30 days following the date of invoice; in the event of default, we shall charge interest amounting to 9 percentage points over the respective base rate. We reserve the right to assert further default damages. Commissioned processing transactions and repair work are immediately due and payable after receipt of invoice (without the granting of any discount).

(3) Our prices, unless carriage paid to the Buyer has been agreed - shall not include transport costs and insurance of the cargo, which shall be at the cost of the Buyer. In the absence of a special instruction from the purchaser, we shall select the means of transport. We shall insure the cargo only if the Buyer requests such and at its cost.

(4) Bills of exchange shall be accepted only if specially agreed; checks shall be accepted subject to their payment for the purpose of fulfillment. All bills of exchange and discount expenses are paid by the Buyer. We shall not be liable – except in the event of gross negligence – for the delayed presentation of bills of exchange or checks.

VI. Quality characteristics, consulting, material sample

(1) We shall agree that our delivery or performance exhibits certain quality characteristics only if such is expressly requested by the customer and such shall be guaranteed only if we have expressly stated such in our confirmation of order. References to technical product descriptions, material properties, DIN regulations, sales prospectuses, and similar shall not constitute a guarantee of the characteristics mentioned therein.

(2) Solely the Buyer shall be responsible for verifying the fitness of the deliverable or finished goods for the intended use or the selection of quality. Any consultation or recommendation provided by ourselves shall be subject to the preclusion of any liability; we shall not have any contractual duties to provide consultation in this respect.

(3) If the inclusion of a chemical analysis or technical-physical data of a material sample has been agreed contractually, we shall vouch for the reliability thereof only on the basis of the investigative capabilities of our company lab.

VII. Duties of reprehension, material defects, recourse claims, withdrawal, compensation for damages

(1) Following receipt of the deliverable or the goods processed by us, the Buyer shall inspect them and rephend in writing, without undue delay, any material or processing defects – no later than within 5 work days. Hidden defects must be rephended no later than 5 work days following the discovery of the defect. At our request, the Buyer shall authorise the inspection of rephended merchandise and not perform any modifications thereof by way of further processing, incorporation, or other operational use until it has been decided whether the rephension will be recognised/rejected. If the Buyer culpably breaches said duty, any claims based on defects shall be forfeited.

(2) We shall be liable for material defects which already existed at the point in time at which the risk was passed on, as follows:

a) Claims on the basis of material defects shall be subject to a period of limitation of 12 months from the date on which the risk was passed on.

b) Initially, we are to be given the opportunity to effect subsequent performance, at our option, within a reasonable period. If subsequent performance fails, the Buyer – notwithstanding any claims for damages – may withdraw from the contract or reduce the remuneration.

c) Claims for damages shall not exist in the event of a merely negligible deviation from the agreed characteristics, slight impairment of usability, natural wear or damage occurring after the passing of risk as the result of incorrect or careless handling, excessive stress, unsuitable operating material, inadequate construction work, unsuitable foundation soil, or due to external factors which are not foreseen by this contract. If the Buyer or third parties perform improper modifications or maintenance, there shall exist no claims based on defects for the consequences resulting therefrom.

d) Claims of the Buyer on the basis of expenses required for the purpose of subsequent performance, including, but not limited to transport, travel, work, and material costs shall be precluded to the extent expenses increase because the constituent of the delivery or performance was effected subsequently at a location other than the Buyer's establishment.

e) Recourse claims of the Buyer vis-à-vis ourselves as contemplated by Sections 445a, 478 of the Burgerliches Gesetzbuch (the Civil Code) where at all applicable shall exist only to the extent that the Buyer has not stipulated claims based on defects with its buyer that extend beyond the scope of the statutory claims.

(3) In the event of the Buyer's withdrawal, said party must pay compensation, also in the event of the deterioration of the deliverable resulting from contractually compliant use.

(4) Furthermore, Article IX shall apply to claims for damages. (Other claims for damages). Further claims or claims other than those provided for under this Article VII, which exist vis-à-vis ourselves and our agents, and are based on a material defect, shall be precluded.

VIII. Industrial property rights and copyrights; defects in title

(1) Unless agreed to otherwise, we shall be obligated only to render the deliverable or performance in the country of the place of delivery free of third-party industrial property rights and copyrights (hereinafter: Property Rights). Insofar as a third party asserts justified claims due to infringement upon Property Rights attributed to a deliverable or performance rendered by ourselves, which was used in a contractually compliant manner and exist vis-à-vis the Buyer, we shall be liable vis-à-vis the Buyer within the period set out in Article VII No. 2 as follows:

a) We will, at our option and cost, procure a right of use for the applicable deliverables and performances, modify such so as to not to infringe upon the Property Right, or to replace such. If we are unable to do so at reasonable terms, the Buyer shall be entitled to the statutory rights of withdrawal and price reduction.

b) Our duty to pay compensation for damages shall be governed by Article IX.

c) Our aforementioned obligations shall exist only to the extent that the Buyer advises us, in writing and without undue delay, of the claims asserted by the third party, has not recognised any infringement, and all measures of defence and settlement remain available to us. If the Buyer discontinues use of the deliverable or performance in order to minimise damage or for other substantial reasons, it shall be obligated to advise the third party thereof so as to ensure that the discontinuation of use does not constitute the recognition of any infringement upon a Property Right.

(2) Claims of the Buyer shall be precluded to the extent that it is responsible for the infringement upon a Property Right.

(3) Furthermore, claims of the Buyer shall be precluded to the extent that the infringement upon the Property Right is caused by special requirements of the Buyer, by use thereof which we could not foresee or through modification of the deliverable or performance by the Buyer or use thereof together with products not delivered by us.

(4) In the event of infringements upon Property Rights, the provisions of Article VII No. (2) b) and d) shall also apply, mutatis mutandis, to the claims of the Buyer provided for under (1) a).

(5) In the event of defects in title, the provisions of VII, shall apply mutatis mutandis.

(6) Further Buyer claims or Buyer claims other than those provided for under this Article VIII vis-à-vis us and our agents, which are based on a defect in title, shall be precluded.

IX. Other claims for damages

(1) Claims for damages or for the reimbursement of expenses of the Buyer (hereinafter: Claims for Damages), regardless of the legal reason, including, but not limited to the breach of duties resulting from obligations or a tortious act, shall be precluded.

(2) Such shall not apply to the extent that mandatory liability applies, e.g., under the Produkthaftungsgesetz (the Product Liability Act), in cases of wrongful intent, gross negligence, due to injury to life, limb, or health, due to the breach of cardinal contractual duties. The claim for damages for the breach of cardinal duties under contract shall be limited, however, to foreseeable damage typical of this type of contract to the extent that liability does not arise on the basis of wrongful intent or gross negligence is at hand or due to injury to life, limb, or health. The above provisions shall not entail a change to the burden of proof to the disadvantage of the Buyer.

(3) To the extent that the Buyer is, under this Article IX, entitled to claims for damages, they shall be actionable until the period of limitation as contemplated by Article IX No. (2) a) ends. In the event of claims for damages under the Product Liability Act, the statutory regulations regarding the period of limitation for claims shall apply.

X. Reservation of title

(1) All deliverables shall remain our property until full payment of our purchase price receivables or compensation for work receivables (including those arising from prior or subsequent transactions) vis-à-vis the Buyer and any ancillary receivables (e.g., default interest, reminder fees). The reservation of title shall also apply to receivables not yet due or postponed and receivables which we hold or acquire on a legal basis other than a purchase/work delivery/work contract vis-à-vis the Buyer, in particular, in the event the aforementioned receivables are replaced by abstract bills of exchange or check receivables. The Buyer shall have the right to dispose of the reserved goods only in the ordinary course of business, in particular, to the resale or further processing thereof until such time as we revoke such right.

(2) Any reworking or processing of the reserved goods on the part of the Buyer shall occur on our behalf without claims to compensation for such work accruing for the Buyer. If the reserved merchandise, through its combination with parts not owned by us, forms new merchandise or an aggregate thereof, we shall acquire co-ownership of the new merchandise in the proportion of the invoice value of the reserved merchandise to the production or purchase value of the third-party parts.

(3) The receivables accruing vis-à-vis the Buyer from the resale of reserved merchandise shall be assigned to us by the Buyer, in advance in the event of a co-owned item in the proportion of value contemplated in paragraph (2) sentence 2 (extended reservation of title). If the reserved merchandise has increased in value at the Buyer's establishment as a result of processing or other finishing, the assignment in advance shall be limited to an amount equal to our invoice value in addition to 10 percent thereof. The Buyer shall not assert, to our disadvantage, any portions of receivables not assigned. The Buyer shall remain entitled, in the ordinary course of business, to collect the receivables assigned to us in advance subject to the revocation of said entitlement to collect, which is possible at any time and without grounds, or notice of the assignment by us vis-à-vis a second buyer. If the Buyer has, for the benefit of third parties (in particular lending banks), assigned in advance the receivables arising from the resale of reserved (co-ownership) merchandise at an early time, such shall not constitute resale in the course of ordinary business.

(4) The Buyer shall inform us, without undue delay, of any distraint or other impairment by third parties of our reserved merchandise or the receivables (portions of receivables), which were assigned to us in advance, arising from their resale. The Buyer shall, upon request, grant its permission to enter its premises to assess, label, store separately or remove reserved merchandise. The Buyer shall be obligated to advise us of the assertion of receivables which have been assigned in advance vis-à-vis a second buyer, and to provide a copy of documentary evidence from its business documents in this regard.

(5) To the extent our rights arising from simple or extended reservation of title in combination with, e.g., other collateral security furnished to us by the Buyer exceed the value of receivables arising from our business relationship by more than 10 percent, we shall release, upon request by the Buyer, the security collateral we so choose.

XI. Right of setoff and lien

Any right to setoff against our claims to payment shall be precluded unless such constitutes counterclaims of the Buyer which we have recognised or which have been judicially established. The Buyer shall not be entitled to exercise a lien on the basis of counterclaims arising from a contractual relationship other than this one.

XII. Notice regarding data processing for our buyers

Our notice regarding data processing can be viewed at www.roegelberg-getriebe.de/privacy.

XIII. Applicable law, legal venue

(1) The law of the Federal Republic of Germany, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods, shall apply to the contractual relationships with the Buyer.

(2) If the ordering party is an entrepreneur, the exclusive legal venue for all disputes arising directly and indirectly from the contractual relationship is Meppen. We shall, however, have the right to lodge complaints before courts having jurisdiction over the Buyer's head office.