

General Terms and Conditions of Supplies and Services / RP GmbH (Export)

General Provisions

The following provisions shall apply to all our supplies and services. All and any other terms and conditions shall only be binding on us if they have been accepted by us in writing. Separate service conditions shall apply to assembly and repair work. Separate software terms and conditions for the licensing of software shall apply additionally in respect of software supplied by us, even if the software is part of a product supplied by us.

I. Offer

1. Our offers are subject to change; cost estimates are not binding and have to be reimbursed except as expressly agreed otherwise. Measurements, packaging measurements, weights, illustrations, simulation results and drawings are only binding for the construction of the products if this has been expressly confirmed in writing.
2. We reserve the ownership rights and copyrights in cost estimates, drawings and other documentation. They may not be passed on to third parties nor may they be revealed to third parties otherwise.

II. Prices

1. If not agreed otherwise, invoices shall be based on the prices effective at the time of delivery.
2. Prices for supplies and services are understood as being ex works, excluding packaging, transport, insurance, assembly and commissioning, except as otherwise indicated in the offer, plus value added tax applicable at the time of delivery.

III. Delivery

1. Delivery periods are binding only if agreed in writing. In case of doubt the delivery periods indicated in the order confirmation shall apply. Upon the conclusion of the contract the delivery period shall start, however, in no case prior to the fulfilment of the customer's co-operation obligations, in particular the receipt by us of the documents and the materials to be procured by the customer, approvals, releases and, if applicable, after the customer has effected any down-payments agreed upon or opened a letter of credit agreed upon. The delivery dates agreed upon shall be deemed complied with upon notification that the goods are ready for shipment, even if the goods cannot be delivered on time or if services cannot be performed on time through no fault of us.
2. If non-compliance with delivery periods is due to force majeure or to any other occurrences we are not responsible for, e.g. war, terrorist attacks, import or export restrictions, labour disputes, including such occurrences affecting our subcontractors, the delivery periods agreed upon shall be extended appropriately. This shall also apply if such occurrences occur at a time when we are in delay.
3. In case of our delay in respect of a binding delivery period for reasons other than those indicated in paragraph III. 2, the customer may rescind the contract after expiry of a reasonable grace period set by him in writing.
4. Any further rights of the customer in case of our delay, in particular claims for damages, are excluded to the extent set forth in paragraph VII.
5. If shipment is delayed at the customer's request, we may charge the customer for the actual storage costs incurred or 1 % of the invoice amount for each month of storage starting one month after notification that the goods are ready for shipment (subject to proof that considerably lower costs were incurred). In addition we reserve the right to rescind the contract after the expiry of a reasonable period. In case we rescind the contract we shall invoice the customer for the costs incurred by us.
6. Part deliveries and corresponding invoices are admissible.

IV. Transfer of risk; Shipment

1. Delivery shall be effected "ex works" except as otherwise expressly agreed.
2. If at the customer's request the goods are sent to another location, the means of transportation shall be at our discretion, except where otherwise stipulated by the customer. Transport insurance shall only be taken out if so instructed by the customer and at the customer's expense.
3. Spare parts and products which have been repaired shall be shipped against a reasonable flat rate for shipping and packaging in addition to the price for the service rendered by us, except where these costs are to be borne by us due to our liability for defects. Products returned to us and products sent for repair work must be sent free our works, except where these transportation costs have to be borne by us due to our liability for defects.
4. If shipment is delayed for reasons we are not responsible for, the risk shall pass to the customer from the date of notification that the products are ready for shipment.

V. Warranty (Liability for Defects)

1. Claims for defects shall become time-barred after a period of 12 months ("warranty period"). This warranty period shall not apply insofar as a longer warranty period is prescribed by statute pursuant to Section 438 para 1 (2) (building constructions and products for building constructions) and Section 634 a (construction defects) German Civil Code [BGB].
2. The warranty period for defects commences upon commissioning the product, in case of products for automotive equipment on the date on which the product is put into use, i.e. in case of original equipment on the date of first registration of the vehicle, in all other cases upon installation, but in any event no later than 6 months after delivery of the product or after notification that the products are ready for shipment from our works.
3. In case of defects within the warranty period, the cause of which already existed on the date of passing of risk, we may - at our discretion - either remedy the defect or deliver a new defect-free product. The defective product has to be sent for repair either to us or to the nearest customer service unit for the respective products determined by us. We shall bear the costs of the most economical shipment from and to the customer's domestic delivery address agreed upon for the original delivery, provided that the complaint proves to be justified. Defects shall be remedied by exchanging or repairing the defective products on our premises. Defects shall only be remedied at the point of installation if agreed by special agreements in accordance with our valid service conditions.
4. We are under no warranty obligation if the product is modified by third parties or if parts manufactured by third parties are installed, unless there is no causality between the defect and such modifications; we are also under no warranty obligation if our specifications for shipment, packaging, installation, handling, use or maintenance are not complied with, or in case of faulty assembly or commissioning by the customer or by a third party.
5. We are also under no warranty obligation in the following cases: Improper or inappropriate use, faulty erection and/or operation by the customer or third parties, improper equipment, normal wear and tear, faulty or negligent handling, inappropriate maintenance, improper operational means such as improper oils, cooling water etc., improper replacement materials, deficient building works, inappropriate foundations, vibrations (especially torsion vibrations), climatical, chemical, electro-chemical, electrical or other influences. We are not liable for defects which are due to faulty design or unsuitable material, insofar as the customer prescribed such design or material despite a prior warning by us. We assume no liability for parts provided by the customer.
6. The customer shall give us or any third party engaged by us to perform our warranty obligation sufficient time and the possibility to carry out the warranty work. The customer may only carry out such work itself if we have given our consent or if Section 637 BGB (German Civil Code) applies. We shall bear the costs necessary for this work to an extent which must be in a reasonable proportion to the value of the product in a defect-free condition, the significance of the defect and/or the possibility of obtaining a defect-free product by an alternative method; any costs in excess of this shall be borne by the customer.

7. The warranty period shall be interrupted for the period of time necessary for remedying the defective product or to deliver a new product. The warranty period shall not recommence anew after the completion of the remedy of the defect.
8. In case we are not able to remedy the defective product or to deliver a new product, the customer may rescind the contract or mitigate the payment due under the contract.
9. Further claims in respect of defects - in particular contractual or non-contractual claims for damages other than those affecting the products themselves - are excluded to the extent stipulated in paragraph VII.
10. If the complaint due to a defect should prove to be unjustified, we shall be entitled to charge the customer for all expenses incurred by us in this connection.
11. The provisions of this paragraph V. shall also apply in respect of defects in title which are not due to the infringement of third party industrial property rights.

VI. Industrial Property Rights

1. We shall only be liable for claims arising from an infringement of third party intellectual or industrial property right ("property right") or copyright if the property right or copyright is or was not owned by the customer or by an entity in which the customer holds or did hold, directly or indirectly, a majority of the shares or voting rights, if the customer advises us immediately of risks of infringement or of alleged cases of infringement of which it becomes aware and if the customer allows us at our request - as far as possible - to conduct the litigation (including non-judicial proceedings) and if, in case of industrial property rights, at least one industrial property right from the property right family has been published either by the European Patent Office or in one of the following countries: Federal Republic of Germany, France, Great Britain, Austria or the USA.
2. We are entitled, at our discretion, to obtain a licence for the customer for the product (allegedly) infringing a property right or copyright, or to modify it so that it no longer infringes the property right or copyright or to replace it by an equivalent substitute product not infringing the property right or copyright.
3. The liability pursuant to paragraph VI. 1. and 2. exclusively governs our liability for the infringement of property rights and copyrights of third parties and shall end five years after delivery of the respective product. This shall not apply and we shall be under no liability if the products were manufactured in accordance with the specifications of the customer or if the (alleged) infringement of the property right or copyright is due to the use of the product in connection with another product not produced by us or if the products are used in a manner which we were unable to foresee.

VII. Liability

Save as otherwise provided for in these General Terms and Conditions of Supplies and Services we are liable for damages and compensation of costs within the meaning of Section 284 BGB (German Civil Code) ("damages") due to the non-fulfilment of contractual and non-contractual obligations only in case of intent or gross negligence by our statutory representatives or our employees, in case of death, physical injury, in case of breach of a guarantee or procurement risk assumed by us, in case of a breach of a substantial contractual obligation, in case of compulsory statutory liability pursuant to the German Product Liability Act or on account of any other compulsory statutory liability. The damages for a breach of a substantial contractual obligation are, however, limited to the foreseeable damage, typical for the type of contract, except in the event of intent or gross negligence by our statutory representatives or employees or in case of death, physical injury or in case of breach of a guarantee or procurement risk assumed by us. The aforementioned provisions shall in no way change the burden of proof to the detriment of the customer.

VIII. Retention of Title

1. The supplied goods remain property of the seller until the complete payment has been received. The seller may or must, respectively retrieve the goods if they have not been paid.
 - a) Current account reservations:
In case of ongoing business relationship, the supplied goods remain property of the seller until all claims under the current account and/or business relationship have been completely paid.
 - b) Balance clause:
In case of a current account relationship, the reservation of ownership shall continue to exist even after adding to the current account and/or after balancing.
2. If the retention of title is not effective under the laws of the country in which the product is located, a respective security shall be deemed agreed upon which is as far as possible equivalent to the retention of title. If the co-operation of the customer is required for the enforcement of such rights and/or for the retention of title, the customer shall take all measures necessary for the enforcement and preservation of such rights and for the retention of title.
3. Insofar as it is enforceable under the laws of the country in which territory the products are located to agree upon a further-reaching retention of title (e.g. the assignment in advance of claims of the customer arising from the sale of the products delivered by us), the customer shall, upon our request, agree upon such a further-reaching retention of title with us.
4. The buyer shall be entitled to build in the supplied goods into a real property/building. The buyer assigns already now any claims arising due to that for remuneration or claims under the resale of the real property/building amounting to the invoice values of the goods supplied by us with all ancillary rights including such rights for granting of claim-securing mortgage ranking higher than the others.

IX. Payment

1. If not agreed otherwise in writing, payment shall be effected within 30 days of the invoice date or within 10 days in case of repair work or other work services, in cash with no deductions being effected, free place of payment. However, we can make delivery conditional upon concurrent payment (e.g. by C.O.D. or bank direct debit procedure) or on advance payment.
2. We have the right to offset payments against our oldest claim due.
3. Payment by bill of exchange is not admissible.
4. If the customer is in delay of payment we shall be entitled to demand immediate cash payment of all claims arising from the business relationship with the customer which are due and without objection. This right shall not be excluded by a respite for payment or by the acceptance of cheques. Furthermore we are then also entitled to perform outstanding deliveries only against payment in advance or against the provision of a security. If the financial status of the customer should deteriorate considerably following conclusion of the contract, we may also rescind the contract if the customer is not prepared to make contemporaneous payment or provide security despite being requested to do so.
5. The customer shall only be entitled to set-off payments if the customer's counterclaims are uncontested or have been confirmed by a final judgement.

X. Jurisdiction; Applicable Law

1. The courts having jurisdiction at the place of our plants executing the order shall be the competent courts insofar as the customer is a registered merchant, a public law legal entity or public law special fund. We are also entitled to sue the customer before the courts having jurisdiction at the place of its seat or its branch.
2. All legal relationships between us and the customer shall be governed by the substantive law of the Federal Republic of Germany excluding the United Nations Convention on the International Sale of Goods (CISG).