

# General Terms and Conditions of Business

## Rudolf Gutbrod GmbH, Im Schwöllbogen 10, 72581 Dettingen/Erms, Germany

- As of December 2017 -

### 1 General – Scope of Application

- (1) Our Terms and Conditions of Sale shall apply exclusively; we do not recognise any terms and conditions from the customer that conflict with or deviate from our Terms and Conditions of Sale unless we have expressly agreed to their validity in writing. Our Terms and Conditions of Sale shall apply, without limitation, even if we render deliveries to the customer in the knowledge that the customer's terms and conditions conflict with or deviate from our Terms and Conditions of Sale.
- (2) All agreements made between us and the customer for the purpose of executing this contract are set out in writing in this contract.
- (3) Our Terms and Conditions of Sale shall only apply to traders within the meaning of Section 310 (1) of the German Civil Code (BGB).

### 2 Quotations – Quotation Documents

- (1) If a purchase order must be qualified with a quotation in accordance with Section 145 BGB, we are bound to accept this quotation for a period of 2 weeks.
- (2) We reserve ownership rights and copyrights to illustrations, drawings, calculations and other documents. This shall also apply to such written documents which are designated as "confidential". The customer requires our express written consent before passing these documents on to third parties.

### 3 Prices – Terms of Payment

- (1) Unless otherwise stated in the order confirmation, our prices are "ex works" and excluding packaging, which will be invoiced separately.
- (2) The statutory value added tax is not included in our prices; it will be shown separately in the invoice at the statutory rate applicable on the day of invoicing.
- (3) The right to deduct a discount requires special written agreement.
- (4) Unless otherwise stated in the order confirmation, the net purchase price (without discount) is due for payment within 14 days of the invoice date. The statutory provisions regarding payment default shall apply.
- (5) The customer shall be entitled to set off claims only if its counterclaims have been legally established, are undisputed or have been recognised by us. In addition, the customer is authorised to exercise a right of retention insofar as its counterclaim is based on the same contractual relationship.

### 4 Delivery Period

- (1) The delivery period stated by us begins only once all technical questions have been resolved.
- (2) Our obligation to deliver presupposes that the customer has fulfilled its obligations on time and in full. We reserve the right to the "refusal to perform" defence.
- (3) If the customer is in default of acceptance or culpably violates other obligations to co-operate, we shall be entitled to demand compensation for the damage incurred by us as a result, including any additional expenses. We reserve the right to assert further claims.
- (4) If the conditions of Paragraph (3) are met, the risk of accidental loss or accidental deterioration of the purchased item shall pass to the customer at the point in time at which the customer is in default of acceptance or performance.
- (5) We shall be liable in accordance with the statutory provisions insofar as the underlying purchase contract is for performance at a stipulated time or within a stipulated period within the meaning of Section 286 (2) No. 4 BGB or Section 376 of the German Commercial Code (HGB). We shall also be liable in accordance with the statutory provisions if, as a result of a delivery delay for which we are responsible, the customer is entitled to assert that its interest in further fulfilment of the contract has ceased to exist.
- (6) For contracts with an agreed delivery period of more than 4 months, we reserve the right to increase or decrease prices in accordance with our changing costs, in particular due to collective bargaining agreements or changes in material prices. If the increase amounts to more than 5% of the agreed price, the customer shall have the right to terminate the contract (right of termination or withdrawal).
- (7) We shall also be liable in accordance with the statutory provisions insofar as the delay in delivery for which we are responsible is due to a culpable breach of a material contractual obligation; in this case, however, the liability for damage shall be limited to the foreseeable, typically occurring damage.
- (8) Otherwise, in the event of a delay in delivery, we shall be liable for a flat-rate delay compensation of 1% of the delivery value for each full week of delay, but not more than 5% of the delivery value.
- (9) Further statutory claims and rights on the part of the customer remain reserved.

### 5 Transfer of Risk – Packaging Costs

- (1) Unless otherwise stated in the order confirmation, delivery "ex works" is agreed.
- (2) Any return of packaging shall be governed by separate agreements.
- (3) If the customer so wishes, we shall take out transport insurance to cover the delivery, with the associated costs being borne by the customer.

### 6 Liability for Defects

- (1) Claims for defects on the part of the customer presuppose that the customer has properly fulfilled its obligations to inspect the goods and give notice of defects in accordance with Section 377 HGB.
- (2) If the subject-matter of the contract is defective, the customer shall be entitled to assert a claim for subsequent performance either in the form of rectification of the defect or the delivery of a new, defect-free item, at the customer's discretion. If the customer chooses rectification of the defect, we shall be obliged to bear the expenses necessary to rectify the defect, in particular labour and material costs, but not transport and travel costs, insofar as these are not increased due to the subject-matter of the contract having been transported to a place other than the place of performance; in the event of rectification of defects, we shall only bear expenses up to the amount of the contract price.
- (3) If the subsequent performance fails, the customer shall be entitled to demand withdrawal from the contract or reduction of the contract price, at its discretion.
- (4) We shall be liable in accordance with the statutory provisions for claims by the customer for damage resulting from intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents. Insofar as we are not accused of intentional breach of contract, our liability for damage shall be limited to the foreseeable, typically occurring damage.
- (5) We shall be liable in accordance with the statutory provisions if we culpably breach a material contractual obligation; in this case, however, liability for damage shall be limited to the typically occurring damage.
- (6) Insofar as the customer is entitled to compensation for damage in lieu of performance, our liability shall be limited within the scope of Paragraph (3) to compensation for foreseeable, typically occurring damage.  
The limitation period for claims for defects is 12 months, calculated from the date of the transfer of risk.

### 7 General Liability

- (1) Any further liability for damage other than that provided for in Section 6 is excluded, irrespective of the legal nature of the claim asserted. This applies in particular to claims for damage arising from fault in conclusion of contract (*culpa in contrahendo*), other breaches of duty, or tortious claims for compensation for property damage in accordance with Section 823 BGB.
- (2) The limitation according to Paragraph (1) shall also apply if the customer demands, in lieu of performance, compensation for futile expenses instead of a claim for damage.
- (3) Insofar as our liability for damage is excluded or limited, this shall also apply with regard to personal liability for damage on the part of our employees, representatives and vicarious agents.
- (4) Our liability in individual cases is limited to a maximum of 3 million euros in accordance with our business liability insurance.

### 8 Retention of Title

To secure our remuneration claims, the customer hereby assigns to us its claims from the resale of the items processed/coated by us in the amount of our remuneration claims. We shall not disclose the assignment and shall not collect the assigned claims as long as the customer meets its payment obligations to us.

The customer agrees that we shall receive partial ownership of the coated objects, insofar as they are its property, in the ratio of the value of our service to the value of the object to be processed or coated.

### 9 Other Provisions

- (1) The contract shall remain binding even if individual points are legally invalid.
- (2) The contractual relationship shall be governed exclusively by German law.
- (3) Rights and claims arising from this contract may not be assigned or transferred in whole or in part without our prior written consent.
- (4) The place of performance and jurisdiction is 72581 Dettingen, Germany, insofar as this can be legally agreed.