

# Reich GmbH

## General Terms and Conditions of Sale July 2015



Precision to move

Applicable to business Transactions with companies, legal entities under public law and special funds under public law.

### I. General Provisions and Content and Conclusion of the Delivery Agreements

1. Our deliveries shall be exclusively subject to the present general terms and conditions.
2. Any terms and conditions of purchase and any other terms and conditions of the Customer shall not be binding to us, even if we do not explicitly contradict to them. Any differing terms and conditions of the contracting partner shall not apply, even if they are included in any letter of confirmation of the contracting partner following our order confirmation and we do not contradict to such letter; our silence shall be considered a rejection in any case.
3. Our offers shall be subject to change. The order shall not be deemed accepted before our written order confirmation has been received.
4. To the extent agreed upon, and by way of derogation from sentence 2, the order shall be deemed accepted upon receipt/registration in the remote data transmission system.
5. To the extent that we are unable to accept any order due to any capacity problems, the relevant competent dispatcher shall contact the customer within a maximum period of two working days.
6. The order confirmation shall be relevant for the content and scope of the order. Any information provided on technical data, as well as any documents, illustrations, drawings and brochures handed over to the Customer prior to and in connection with the order confirmation shall be binding only if this has been explicitly confirmed by us in writing.
7. Sentences 1 and 2 shall apply mutatis mutandis to the remote data transmission if the order has been accepted by receipt/registration in the remote data transmission system.
8. Any deviations from the present general terms and conditions of sale, any complementary agreements and ancillary agreements shall be effective only if they have been explicitly confirmed by us in writing. The same shall also apply to any subsequent modifications and amendments of any delivery agreements concluded on a binding basis.
9. The present terms and conditions shall exclusively towards companies, legal entities under public law or any special fund under public law.
10. We reserve the right to may any design changes, unless such changes prejudice any essential interests of the Customer of which we are aware with regard to the intended use at the time the order is placed.

### II. Order Acceptance

1. In the absence of any special arrangements, any agreement shall be deemed concluded with our written order confirmation and/or upon receipt/registration in the remote data transmission system or once the goods are delivered by us. The Customer shall be liable for the correctness of the documents made available by the Customer to us, such as drawings, samples, models, calibers or the like. If any drawings or the order of the Customer do not indicate any design-related tolerances in a clear manner, we shall perform our manufacturing activities in accordance with our experiences and standards customary in the industry and/or within the tolerance limits determined by the respective manufacturing process.
2. In case of any custom-built manufactures, we reserve the right to make over-deliveries and/or under-deliveries by 10% of the respective quantity.

### III. Provision Clause

Any offer and associated agreement, where applicable, shall be deemed placed in a binding manner only and shall thus become legally binding only if this is not precluded by any prohibition and/or any possibly required approval is granted by the competent public authority and/or the freedom of exportation is established in a binding manner.

### IV. Prices and Payment

1. The prices shall be subject to change and, in the absence of any special arrangements, shall apply ex works, excluding packaging, dispatch, insurance as well as customs and customs ancillary costs. In case of any postal and express consignments, any fees advanced shall be invoiced separately. Dispatch shall take place at the Customer's expense. The sales tax to be paid on the prices and to be specified separately on the invoice shall be added separately in its respective statutory amount.
2. In the absence of any special arrangements, the payment shall be made to one of our bank accounts without any deduction within a period of 30 days free of charge.
3. In case of any price increase in material or commodity prices as well as of the manufacturing prices between the conclusion of the agreement and the date of delivery, we shall be entitled to correct the agreed prices accordingly, unless anything to the contrary has been agreed upon.
4. The Customer shall have the right to withhold any payments or to set them off against any counter-claims only to the extent that the Customer's counter-claims are undisputed, have been legally established or else recognized by us or if the counter-claim is based on the same contractual relationship.
5. Any payments using bills of exchange of checks shall be accepted on account of payment following a special arrangement and only if they are rediscountable, calculating in any case the costs to be immediately paid by the Customer in cash, especially discount and bill of exchange charges, stamp costs and bank fees. To the extent that any bills of exchange or checks are accepted by way of payment, the amount shall be credited subject to their encashment.
6. In case of any default of payment, we shall invoice default interest in the amount of 9% above the respective base interest rate p. a. The assertion of any further damage caused by delay shall not be excluded in this respect.

### V. Delivery Period

1. Any agreed delivery period shall start with the date of our order confirmation. Sentence 1 shall apply mutatis mutandis to the date of registration/entry in the remote data transmission system if the order has been accepted by registration/entry in the remote data transmission system. The period shall be deemed complied with if the delivery item is dispatched prior to the end of said period.
2. The delivery period shall be extended by the time until the Customer has provided us with any information and handed over to us any documents necessary for the execution of the order.
3. Any delivery periods agreed upon shall apply subject to the self-delivery effected in a correct and timely manner.

4. The delivery period shall be extended appropriately in case of any measures within the framework of any industrial disputes, especially strike and lock-out, as well as any case of any circumstances not attributable to us, such as mobilization, war, riot and operational disruptions, provided that such obstacles demonstrably delay the completion or delivery of the delivery item. We shall not be deemed to be responsible for the above-mentioned circumstances either if such circumstances occur during any already existing delay. In important cases, we shall communicate to the Customer the start and end of any such obstacles without undue delay.
5. The Customer must not reject any independent partial deliveries.

### VI. Delivery, Dispatch, Transfer of Risk

1. We shall be entitled to make partial deliveries, unless anything to the contrary has been explicitly agreed upon. With regard to any payment obligations, transfer of risk and warranty obligations, partial deliveries shall be considered as independent deliveries.
2. The mode of dispatch, the dispatch route and the company commissioned to perform the dispatch may be defined by us at our discretion, unless the Customer issues any specific instructions.
3. We shall perform deliveries in accordance with the Incoterms®2010. The same shall also apply in case that any own means of transport are used.
4. Dispatch shall take place at the Customer's risk.

### VII. Exportation

1. The contracting partner shall be obligated to provide in due time any and all information and documents required for the exportation/shipment/importation.
2. Any delays due to export examinations or approval procedures shall render periods and delivery dates inapplicable.
3. In the event that any necessary approvals are not granted, the agreement shall be deemed not concluded with regard to the parts concerned; any claims for compensation for damages to the extent and on the basis of any overrun of the aforementioned periods shall be excluded.
4. The deliveries and services (contractual performance) shall be subject to the proviso that there are no obstacles to the fulfillment of the agreement due to any national or international regulations, in particular export control provisions as well as embargoes or other sanctions. In this case, the contracting partner may not require any delivery of goods to be made by Reich GmbH in accordance with the contracting partner's respective national laws. The contracting partner shall not have any right to claim any compensation for damages.
5. If any obstacles arise during the implementation of the agreement due to any national or international regulations, Reich GmbH shall be entitled to invoice to the contracting partner any services already rendered.
6. To the extent that our contracting partner has his or her registered office in Germany, our contracting partner shall have the exclusive responsibility for the exportation of the subject-matter of the agreement into any third country. In particular, the contracting partner shall fully comply with any national and international export provisions. Furthermore, the contracting partner shall be obliged to obtain at his or her own expense any necessary approvals, where applicable.
7. Any additional certificates and declarations of conformity for any country-specific requirements shall not be considered part of our offer and shall be invoiced separately.
8. Any possible claim for compensation for damages on the part of Reich GmbH shall remain unaffected by the regulations in clauses 1-5.

### VIII. Retention of Title

1. We retain title to the delivery items until all claims arising from the delivery agreement, including any ancillary claims (e.g. bill of exchange charges, financing costs, interest, etc.), have been paid in full.
2. In commercial business transaction, we additionally retain title to the delivery items until any goods deliveries and any other claims arising from the business relationship have been paid in full. The retention of title shall lapse upon full settlement of each account to the goods delivered up to that point in time.
3. The Customer must neither pledge nor assign the delivery items by way of security before any and all secured claims have been settled. The Customer shall inform us without undue delay of any pledges, seizures and any other threats to our title by third parties and shall hand over to us copies of the associated documents (seizure reports, etc.). The costs of any intervention shall be at the Customer's expense at any time.
4. The Customer shall be entitled to process and resell the delivery items within the framework of the ordinary course of business.
5. In the event that the Customer sells the delivery items before any and all secured claims have been settled, the Customer shall already assign to us his or her claims from the resale upon conclusion of the delivery agreement for the purpose of securing any claims secured by the delivery items. If the claim from such resale is included in any current account relationship between the Customer and his or her customer, such assignment by way of security shall cover the assignment of account balances in an equal amount. The Customer may collect the assigned claims, unless we revoke such authorization. We shall have a right of revocation if our secured claims are put at stake, especially if the Customer falls behind with his or her payments. The collection authorization shall expire without further ado at the point in time when the Customer ceases his or her payments or files any application for the initiation of judicial settlement proceedings or if any petition for bankruptcy with respect to the Customer's assets is filed. Following the revocation and/or expiration of the collection authorization, we shall be entitled and the Customer shall be obliged to notify the debtor of the assignment of the claims assigned. The Customer shall abstain from any collection and shall nevertheless keep separately for us any amounts received. At our request, the Customer shall communicate to us in writing at any time the name of those parties to which the Customer has resold the delivery items and shall provide us with any and all information and documents on the claim assigned.
6. The contracting partner shall be obliged to take out insurance for the item against any customary risks. The contracting partner's corresponding entitlements vis-à-vis the insurance company in the event of damage shall be assigned to us. We shall accept such assignment.
7. In the event that the value of the securities existing for us exceeds the secured claims by more than 20%, we shall be obliged, at the Customer's request, to release any excess securities. The selection of the securities to be released shall be at our discretion.

## IX. Warranty

1. We warrant that the delivery items are free of defects in accordance with the generally recognized codes of practice.
2. We shall not assume any warranty for any damage caused by any unsuitable or improper use, non-compliance with any instructions for use or any defective or negligent treatment. Our warranty shall not apply to any delivery items which have become the object of any unauthorized changes by the Customer without our approval. The Customer shall not be entitled to any warranty rights based on any insignificant defects in the goods.
3. Nevertheless, any obvious defects shall be notified to us in writing without undue delay, at the latest, however, two (2) weeks after receipt of the delivery; otherwise, any claims for defects in this respect shall be excluded. Within the framework of commercial business transactions, Section 377 German Commercial Code (*Handelsgesetzbuch, HGB*) shall apply additionally.
4. The Customer shall return to us any delivery items for which a notice of defect has been issued. If the notice of defect is issued in due time and also justified, we shall, at our discretion, either repair the delivery items or deliver other goods free of defects to fulfill our warranty obligation and shall bear any dispatch costs incurred by the purchaser. In the event that any such subsequent performance fails, the Customer may, at his or her option, either reduce the remuneration or withdraw from the agreement. Any claims for compensation for damages on the part of the purchaser based on such defect shall remain unaffected, notwithstanding clause X of the present general terms and conditions of sale ("claims for defects").
5. Any warranty claims of the purchaser in accordance with Section 437 German Civil Code (*Bürgerliches Gesetzbuch, BGB*) shall become time-barred within a period of one year from the statutory beginning of the period of limitation, unless any longer liability period is mandatorily prescribed by law.
6. Sections 478, 479 German Civil Code shall remain unaffected.

## X. Claims for Defects

1. Any parts which turn out to be defective as a result of any circumstance prior to the transfer of risk shall, at our option, either be repaired free of charge or replaced by a part free of defects. The detection of any such defects shall be communicated to us in writing without undue delay. Any defective parts replaced in this respect shall become our ownership.
2. Following mutual coordination, the Customer shall provide us with the necessary time and opportunity to enable us to perform any repairs and replacement deliveries apparently necessary in this regard. Otherwise, we shall be relieved of any liability for any consequences arising therefrom. The Customer shall have the right to either remedy the defect himself or herself or to have it remedied by third parties and require us to pay compensation for any necessary expenses only in urgent cases where there is a risk to operational safety and/or to avert any disproportionate further damage.
3. To the extent that the objections turn out to be justified, the portion of any direct costs incurred due to the repair or replacement delivery that shall be borne by us shall amount to the costs of the replacement part including dispatch.
4. Within the framework of the statutory regulations, the Customer shall have the right to withdraw from the agreement if we cause any reasonable deadline set to us for the repair or replacement delivery due to any material defect to expire without results, taking into account the legal exceptions. If the defect is only of an insignificant nature, the Customer shall solely have the right to reduce the contract price. In any other case, the right to reduce the contract price shall remain excluded.
5. In particular, no warranty shall be assumed in the following cases: unsuitable or improper use; lack of commissioning or use by the Customer or third parties; usual wear and tear; incorrect or negligent treatment; improper maintenance; replacement of unsuitable operating material; as well as chemical, electronic or electrical influences, unless we are responsible in this respect. We shall be liable for any defects in any materials delivered by the Customer only if we should have recognized the defects by applying due diligence and care.
6. In case of any manufacture according to the Customer's drawings, we shall be liable only for the execution in accordance with the drawings.
7. In the event that the Customer or any third party performs any improper repair, we shall not be subject to any liability for any consequences resulting from such repair. The same shall also apply to any changes made to the delivery item without our prior approval.

## XI. Liability and Claims for Compensation for Damages

1. Unless agreed upon otherwise, we shall be liable, also for our legal representatives or auxiliary agents, for compensation for damages, in particular for faults in case of contractual actions, for any other breaches of duties or based on any tortious claims for compensation for any material damage in accordance with Section 823 German Civil Code and any indirect damage or consequential damage, limited only to the sum insured in the amount of EUR 5,000,000.00.
2. In case of any slightly negligent violation of any material contractual obligations, the fulfillment of which is a prerequisite for enabling proper implementation of the agreement in the first place and on compliance with which the contracting partner may regularly rely on (so-called cardinal obligations), our liability for any further claims for compensation of the foreseeable damage typical for the type of agreement shall be limited.
3. Otherwise, we shall not be liable, except in case of intent and gross negligence, for any indirect damage or consequential damages, especially not for any loss of profit.
4. The aforementioned limitations of liability shall not apply to any case of intent and gross negligence caused by us, by our legal representatives or our auxiliary agents; likewise, the aforementioned limitations of liability shall not apply in any case of compulsory liability in accordance with the German Product Liability Act, in case of any culpable violation of life, body or health, as well as in case of any violation of any guarantee by us, by our legal representatives or our auxiliary agents either.

## XII. Documents and Confidentiality

1. We reserve the property rights and/or copyrights to any illustrations, drawings, calculations, quotations and other documents (hereinafter: documents) and machine components that have been handed over by us to the contracting partner.
2. The contracting partner shall keep strictly confidential any and all documents as well as information, facts and machine components received from us and shall not make them accessible to any third parties to the extent that they are neither obvious nor accessible to the general public, and provided that we have granted our written approval in this respect. The confidentiality obligation shall not apply either if and to the extent that any statutory disclosure obligations apply. In any case of doubt, the contracting partner shall be bound by an obligation of secrecy.
3. Any documents in accordance with para. 1 may be exclusively used within the framework of the initiation of the agreement as well as for implementing the respective contractual relationship. In the event that any contractual relationship does not come into existence or is terminated, the documents shall be returned to us without request.
4. The contracting partner shall not have any right of retention to the documents handed over to the contracting partner in accordance with para. 1.

5. The obligation of confidentiality shall continue to exist even if no agreement comes into existence or if the contractual relationship is terminated. It shall cease to apply subject to the prerequisites specified in para. 2.

## XIII. Right of Termination and Withdrawal

1. We may refuse to render the service to which we are obliged if it becomes apparent, following the conclusion of the agreement, that our entitlement to the return service is jeopardized by any lack of performance on the part of the contracting partner. The right to refuse performance shall cease to apply if the return service is effected or any security is provided for it.
2. We shall be entitled to define a reasonable time limit during which the contracting partner shall, at his or her option, either effect the return service or provide a corresponding security on a concurrent basis against the service. Following the fruitless expiry of the time limit, we may withdraw from the agreement.
3. The setting of time limit in accordance with para. 2 shall not be required if the contracting partner has issued an affirmation in lieu of an oath or if any insolvency proceedings have been instituted with regard to the contracting partner's assets or any insolvency proceedings have been rejected for lack of assets.
4. The contracting partner shall be obliged to inform us without undue delay once the contracting partner has issued the affirmation in lieu of an oath or once any application for the institution of any insolvency proceedings has been filed on his or her assets.
5. Any termination of the agreement shall require written form.

## XIV. Property Rights

1. Unless agreed upon otherwise, we shall be obliged to only perform the delivery in the country of the place of delivery free of any industrial property rights and copyrights of third parties (hereinafter: property rights). To the extent that any third party raises any legitimate claims against the contracting partner based on any deliveries performed and used by us in accordance with the agreement, we shall be liable towards the contracting partner within the time limit defined in VII. para. 5 as follows:
2. We shall, at our option and at our expense, obtain a right of use to the relevant deliveries, amend them in such manner that the property right is not infringed or replace them. If we are unable to do so under reasonable conditions, the contracting partner shall be entitled to the statutory rights of withdrawal or reduction.
3. Our obligation to pay compensation for damages shall be determined by clause XI. of the present general terms and conditions ("Liability and Claims for Compensation for Damages").
4. The aforementioned obligations shall exist only to the extent that the contracting partner informs us in writing without undue delay of any claims asserted by the third party against the contracting partner, does not recognize any infringement and we reserve the right to any defense measures and settlement negotiations. In case that the contracting partner ceases to use the delivery on the grounds of any mitigation of damage or any other important reasons, the contracting partner shall be obliged to point out to the respective third party that the discontinuation of use is not associated with any acknowledgment of any property right infringement.
5. Any claims of the contracting partner shall be excluded, unless the contracting partner himself or herself is responsible for the property right infringement.
6. Any claims of the contracting partners shall further be excluded to the extent that the property right infringement is caused by any specific stipulations of the contracting partner, by any unforeseeable application or by the fact that the delivery is modified by the contracting partner or used together with any products to delivered by us.

## XV. Suspension

In case of any suspension of the execution of the order, Reich GmbH shall be entitled to invoice to the contracting partner any costs incurred at the point in time of such suspension.

## XVI. Applicable Law / Place of Jurisdiction / Miscellaneous

1. Any and all legal relationships between us and the Customer shall be exclusively subject to the laws of the Federal Republic of Germany that are decisive for the legal relationship between domestic parties.
2. The place of jurisdiction shall be the court competent for our registered office. However, we shall be entitled to file a suit at the Customer's headquarters. In the event that any deliveries and services have to be performed by us outside the national territory of the Federal Republic of Germany, German right shall likewise become applicable. The application of the UN Sales Law (United Nations Convention on Contracts for the International Sale of Goods (CISG)) shall be excluded.
3. Any arbitration agreement shall require our explicit written approval to become effective.

In the event that any provision of the present terms and conditions of delivery and payment is or becomes ineffective, this shall not affect the effectiveness of the remaining provisions.