



DR. WERNER RÖHRS GMBH & CO. KG

FABRIK FÜR STAHLVERFORMUNG

Conditions of Sale, Delivery and Payment Dr. Werner Röhrs GmbH & Co. KG

As of: January 2018

1. Applicability

- 1.1 All deliveries and services are carried out based on these conditions, unless expressly agreed otherwise in writing. These conditions override any conflicting terms or conditions, even if the latter have not been expressly rejected. By placing an order and/or accepting goods and services, the Purchaser waives the right to object and its conditions.
- 1.2 These Sales Conditions apply to all companies, legal entities under public law and special funds under public law.

2. Offers and Conclusion of the Contract

- 2.1 Our offers are subject to change and non-binding, unless we have expressly designated them as binding in textual form. Declarations of acceptance by the Purchaser shall, insofar as they constitute offers pursuant to Section 145 of the German Civil Code, become binding only through written confirmation on our part. We shall endeavour to accept orders by the Purchaser within 5 days of receiving the order.
- 2.2 We reserve unrestricted rights of ownership and copyright to cost estimates, drawings and other documents; they may not be made accessible to third parties. Drawings and other documents that are part of offers shall be returned immediately upon request if the order is not placed with us.

3. Pricing

- 3.1 Unless otherwise agreed, all prices are ex works, excluding packaging; packaging is invoiced separately.
- 3.2 VAT at the statutory rate is added to the price.

4. Payment

- 4.1 Invoices are payable starting on the date of the invoice and of its receipt. Unless otherwise agreed in writing, they are payable within 30 days of the invoice date, strictly net. Discounts require special written agreement.
- 4.2 Default interest will be calculated at 9% above the basic interest rate of the European Central Bank. Default occurs as defined by § 286 German Civil Code. The right to claim a higher amount of damages caused by default remains reserved.
- 4.3 If payments are suspended or if an application for insolvency proceedings is filed over assets of the Purchaser, we are entitled to demand advance payments or the provision of security. In such cases, we are entitled to withhold outstanding services or to withdraw from the contract.
- 4.4 The Purchaser shall only have a right of set-off where its counter-claims have been legally established, are undisputed or are acknowledged by us. Furthermore, the Purchaser is only entitled to exercise the right of retention if the counter-claim pertains to the same contractual relationship.

5. Call-Off Orders

- 5.1 Unless otherwise agreed, all call-off orders shall be accepted within 3 months after expiry of the contract period at the latest, without requiring acceptance to be prompted; if this deadline expires, we shall at all times be entitled to invoice the goods upon simultaneous shipment or to withdraw from the contract immediately. If a contract period has not been agreed upon, we shall be entitled to the aforementioned rights one year after conclusion of the contract.

6. Transfer of Risk and Shipping

- 6.1 The risk shall be transferred to the Purchaser at the latest upon dispatch of the parts to be delivered, even if partial deliveries are made or if we provide other services, e.g. shipping costs or delivery.
- 6.2 If dispatch is delayed due to circumstances for which the Purchaser is responsible, the risk is transferred to the Purchaser on the day that the delivery is ready for dispatch.
- 6.3 At the Purchaser's request, the shipment will be insured by us at the Purchaser's expense and according to its instructions.
- 6.4 Partial deliveries and deviations of order quantities up to +/- 10% are permitted.

7. Delivery Time/Delays

- 7.1 In principle, delivery times are non-binding and approximate. In the event of uncertainty, the delivery period begins with dispatch of the confirmation of order by us. For delivery times to be complied with, the Purchaser must submit all required documents in a timely manner, we must receive any necessary authorizations and releases punctually, and all contractual obligations must be met by the Purchaser, in particular the agreed terms of payment. If these requirements are not fulfilled in time, the delivery deadline shall be suitably extended. This does not apply if we are responsible for the delay.
- 7.2 Partial deliveries are permissible, insofar as they are reasonable for the Purchaser.
- 7.3 In cases of force majeure and any other event beyond our control and influence, such as natural disasters, mobilization, war, insurgency, strikes and lockouts, official restrictions on imports and exports, unforeseen obstacles to production or deliveries - on our premises or those of our subcontractors - the delivery period deadline shall be reasonably extended. We will inform the Purchaser of the beginning and end of such circumstances as promptly as possible.





- 7.4 If we incur a delay and cause the Purchaser to incur a loss as a result of this, the Purchaser is entitled to demand a flat-rate compensation for delay. It shall amount to 0.5% of the value of the part of the total delivery which cannot be used on time or in accordance with the contract as a result of the delay for every full week of delay, up to a maximum of 5% of the value.
- 7.5 Both damage claims by the Purchaser due to default in delivery and compensation in lieu of performance exceeding the limits specified at Article 7.4 are excluded in all cases of delayed delivery, even after expiry of any delivery deadline set for us. This will not apply in the event of mandatory liability for intent, gross negligence or injury to life, limb or health. The Purchaser may only withdraw from the Contract within the scope of statutory provisions, insofar as the delay to delivery is attributable to us.
- 7.6 The Purchaser undertakes to notify us, upon our request, within a reasonable period, as to whether it intends to withdraw from the Contract as a result of the delay or continues to require delivery.

8. Warranty and liability

- 8.1 The Purchaser is obliged to meet its obligation to inspect and submit complaints in compliance with Section 377 of the German Commercial Code as a pre-requisite for making any claim on the basis of defects. Here, it must examine the delivery immediately or, at the latest, one week from receipt, for any defects and notify us where defects are discovered. If there is a defect that is imputable to us, we are entitled to choose whether to rectify the delivery or to replace it. The precondition in this case is that the defect is not insignificant. Within the scope of supplementary performance, we are obliged to reimburse to the Purchaser the expenses required to remove the defective goods and for installation or fitting of repaired goods or subsequently delivered defect-free goods. Reimbursement of costs is excluded, insofar as expenses increase due to the fact that the goods are taken to another location after our delivery, unless this is in conformity with the intended use of the goods. If one of the two types of subsequent performance or both prove impossible or unreasonable, we are entitled to refuse them. So long as the Purchaser fails to meet payment obligations to an extent that reflects the defect-free portion of the performance, we are entitled to refuse subsequent performance.
- 8.2 If the rectification or replacement delivery do not occur within a reasonable period - in consideration of our delivery possibilities - or if the rectification and/or replacement delivery fail, the Buyer may demand a reduction of purchase price or withdraw from the contract.
- 8.3 Unless otherwise provided for below (par. 5), further claims by the Purchaser are excluded, regardless of their legal grounds (in particular claims arising from a breach of principal or subsidiary contractual obligations, reimbursement of expenses with the exception of that pursuant to Section 439 II of the German Civil Code, unlawful acts or other tortious liability); this applies in particular to damages not caused to the delivery item itself and to claims for loss of profit; claims which do not result from the defectiveness of the object purchased are also included.
- 8.4 The preceding provisions also apply in the event of delivery of another item or a lesser quantity.
- 8.5 The exclusion of liability regulated in paragraph 3 does not apply insofar as an exclusion or limitation of the liability for damages from injury to life, limb, or health has been agreed upon and said injury is caused by an intentional or grossly negligent violation of duties by the user or an intentional or grossly negligent violation of the duties by a legal representative or agent of the user; the exclusion of liability does not apply either insofar as an exclusion or limitation of the liability for other damages is agreed upon and said damages are caused by a violation of the duties by a legal representative or agent of the user. Insofar as we culpably breach a contractual or material obligation, liability is not excluded, but limited to foreseeable damages that are typical of the contract; it is otherwise excluded pursuant to par. 3. Furthermore, the exclusion of liability does not apply if under product liability law liability exists for personal injury or material damage to privately used objects. It also does not apply in the event of assumption of a guarantee and assurance of a feature, if a defect thereby covered triggers our liability. The above shall apply also to reimbursement of expenses.
- 8.6 Damages attributable to unsuitable or improper use, incorrect assembly by the Purchaser or a third party, normal wear and tear, incorrect or negligent treatment, improper modifications carried out without our prior consent or maintenance work performed by the Purchaser or a third party are not covered by the warranty.
- 8.7 Claims on subsequent performance, damages and reimbursement of expenses become time-barred one year after delivery of the purchased object. This does not apply to an object which has been used according to its usual purpose for a building and has caused its defectiveness; in this case, claims shall only lapse after 5 years. Claims on reduction and exercise of the right to withdraw from the contract are excluded, insofar as the subsequent performance claim has lapsed. The Purchaser may, however, refuse payment of the purchase price in the event of Clause 3 insofar as it would be entitled to do so based on withdrawal or reduction; in the event of exclusion of withdrawal and a subsequent refusal to pay, we are entitled to withdraw from the contract.
- 8.8 Claims arising from the manufacturer's right of recourse remained unaffected by this paragraph.

9. Retention of Title

- 9.1 The delivered goods shall remain our property until the purchase price, including all accessory claims, has been paid in full, along with all other claims arising from the business relationship. Until then, the Purchaser is not entitled to mortgage the goods or pledge them as security to third parties. The Purchaser shall store the goods that are under retention of title free of charge for us.
- 9.2 If the goods under retention of title are processed, combined or mixed with other goods by the Purchaser, we shall acquire joint title to the new item in the same proportion of the invoiced value of the goods under retention of title to that of the overall combined material entity. The ensuing rights of co-ownership are considered as goods subject to retention of title within the meaning of Clause 1.
- 9.3 The Purchaser is entitled to sell the goods subject to retention of title in the ordinary course of sale if payment of our purchase price claims is not delayed.
- 9.4 At this point in time, the Purchaser assigns to us all claims which the Purchaser accrues from third parties with the resale of the goods under retention of title. If the goods subject to retention of title are sold after processing, combination or mixing, the assignment of the claim from resale shall only apply up to the amount of the value of the goods subject to retention of title invoiced to the Purchaser by the Seller. This shall also apply if the goods under retention of title are resold together with other goods also not belonging to the seller.
- 9.5 The Purchaser is also entitled to collect the claim after the assignment. We can restrict the direct debit authorization due to legitimate interest and revoke it due to good cause, in particular in the event of payment default. We can require the Purchaser to



notify us of the receivables assigned to him and of the debtors and to provide us with all necessary information to collect the receivables and with accompanying documentation and to disclose the assignment to the debtor.

- 9.6 We undertake to release the securities to which we are entitled in accordance with the above provisions at our discretion on request of the Purchaser to the extent that their realisable value exceeds the claim to be secured by 20% or more.
- 9.7 The Purchaser hereby already declares its consent to the persons commissioned by us with the assignment of the goods under retention of title entering or driving onto the property or building in which the goods are located in order to take possession of the reserved goods.
- 9.8 The Purchaser must inform us immediately of any seizure, compulsory execution or other third-party intervention adversely affecting our rights of ownership. The Purchaser must bear the cost of all measures to eliminate third-party intervention, in particular the cost of any intervention proceedings.

10. Supply of Materials

- 10.1 If materials are supplied by the Purchaser, they shall be delivered on time and in perfect condition at its own expense and risk, and with an appropriate quantity surplus of at least 5%.
- 10.2 If these conditions are not met, the delivery deadline shall be suitably extended. Except in cases of force majeure, the Purchaser shall bear the additional costs, including those incurred for interruptions to the production.
- 10.3 Our liability with regard to the storage and care of the materials provided is limited to the same diligence that we apply in our own affairs; insurance costs are borne by the Purchaser.

11. Tools

- 11.1 If special tools are required to carry out the order, we shall be and remain the owner of the tools that are manufactured by us or by a third party commissioned by us. This shall also apply if the Purchaser pays pro rata for tool costs.
- 11.2 The pro-rata tool costs are listed separately in the offer and order confirmation. They are due after first delivery, without deductions.

12. Infringement of Third-Party Property Rights

If we have to deliver according to drawings, models or samples owned by the purchaser, the Purchaser must guarantee that the objects manufactured according to these designs do not infringe industrial property rights of third parties. If third parties initiate claims against us, the Purchaser undertakes to indemnify us against such claims upon the first written request; we are not entitled to come to any agreements with the third parties, in particular to reach a settlement, without the agreement of the Purchaser. The Purchaser's indemnity obligation pertains to all expenses inevitably incurred through or in connection with the claims asserted by a third party. The limitation period for these claims is 10 years, beginning with the conclusion of the contract in question.

13. Other provisions

- 13.1 The laws of the Federal Republic of Germany shall apply, excluding conflict-of-law rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 13.2 The place of performance shall be our business headquarters.
- 13.3 Insofar as the Purchaser is a merchant, a legal entity under public law or special fund under public law, the place of jurisdiction for all disputes arising from the contractual relationship shall be our business headquarters. We are also entitled to initiate claims at the Purchaser's registered office.