



General Terms of Sale and Delivery of Roesys GmbH

GTD | Version: December 2016

§ 1 General, Scope

(1) These General Terms and Conditions of Sale and Delivery (GTD) apply to all our business relationships with our customers (“Buyer”). GTD shall only apply if the buyer is an entrepreneur (§ 14 BGB | German Civil Code), a legal entity under public law or a special fund under public law.

(2) GTD shall apply in particular to contracts for the sale and/or delivery and assembly of movable goods (“Goods”), irrespective of whether we manufacture the Goods ourselves or buy them from suppliers (§§ 433,651 BGB). Unless otherwise agreed, GTD in the version valid at the time of the purchaser’s order or, at any rate, in the version last notified to GTD in writing shall also apply as a framework agreement for similar future contracts without us having to refer to them again in each individual case.

(3) Our GTD apply exclusively. Deviating, conflicting or supplementary general terms and conditions of business of the buyer shall only become an integral part of the contract if and to the extent that we have expressly agreed to their validity. This requirement of consent shall apply in any case, for example even if we carry out the delivery to the buyer without reservation in knowledge of the GTD of the buyer.

(4) Individual agreements made in individual cases with the Buyer (including ancillary agreements, supplements and amendments) shall always take precedence over these GTD. Subject to proof to the contrary, a written contract or our written confirmation is authoritative for the content of such agreements.

(5) Legally relevant declarations and notifications which are to be submitted to us by the buyer after conclusion of the contract (e. g. setting deadlines, defect notifications, declaration of withdrawal or reduction) must be made in writing in order to become effective.

(6) References to the validity of legal regulations have only a clarifying meaning. Therefore, even without such clarification, the statutory provisions shall apply to the extent that they are not directly amended or expressly excluded in these GTDs.

§ 2 Conclusion of contract

(1) Our offers are subject to confirmation and non-binding. This shall also apply if we have provided the buyer with catalogues, technical documentation (e. g. drawings, plans, calculations, calculations, references to DIN standards), other product descriptions or documents - also in electronic form - to which we reserve the right of ownership and copyrights.

(2) The order of the goods by the buyer is considered to be a binding contractual offer. Unless otherwise specified

in the order, we are entitled to accept this contractual offer within 3 weeks of its receipt by us.

(3) The acceptance can be declared either in writing (e. g. by order confirmation) or by delivery of the goods to the buyer.

§ 3 Delivery period and delay

(1) The delivery period is agreed individually or stated by us upon acceptance of the order. If this is not the case, the delivery period is approx. 8 weeks from conclusion of the contract.

(2) If we are unable to comply with binding delivery periods for reasons beyond our control (non-availability of performance), we shall inform the purchaser thereof without delay and at the same time notify the prospective new delivery period. If the service is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall reimburse the buyer without delay for any consideration already rendered. In particular, the case of non-availability of the service in this sense shall be deemed to be the unavailability of the service in this sense if our supplier fails to deliver to us in good time, if we have concluded a congruent hedging transaction, if neither we nor our supplier are at fault or if we are not obliged to procure the service in individual cases.

(3) The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, an explicit reminder by the buyer is required.

(4) Our statutory rights, in particular in the event of exclusion of the obligation to perform (e.g. due to impossibility or unacceptability of the service and/or subsequent performance) remain unaffected.

§ 4 Delivery, transfer of risk, acceptance, default in acceptance

(1) Delivery shall be made ex warehouse, where the place of performance for delivery and any subsequent performance shall also be the place of performance. At the request and expense of the buyer, the goods will be shipped to another place of destination (sale by mail order). Unless otherwise agreed, we are entitled to determine the type of shipment (particularly transport companies, shipping route, packaging) ourselves.

(2) The risk of accidental loss and accidental deterioration of the goods shall pass to the purchaser at the latest upon handover. In the case of a sale by delivery, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass to the freight forwarder, carrier or any other person or institution designated to carry out the shipment. Insofar as acceptance has been agreed, this is decisive for the passing of risk. In all other respects, the statutory provisions of the law on contracts for work and services shall apply accordingly to an agreed acceptance. It is equivalent to handover or acceptance if the buyer is in default of acceptance.

(3) If the buyer is in default of acceptance, if he fails to cooperate or if our delivery is delayed for other reasons for which the buyer is responsible, we are entitled to demand compensation for the resulting damage including additional expenses (e. g. storage costs). For this purpose, we charge a flat-rate compensation of 0.5% of the order value per calendar week, beginning with the delivery period or - in the absence of a delivery period - with the notification of the readiness for dispatch of the goods. The flat-rate compensation is limited to a maximum of 5% of the contract value. The proof of a higher damage and our legal claims (especially compensation for additional expenses, appropriate compensation, termination) remain unaffected; the lump sum is, however, to be counted towards further claims for money. The buyer is allowed to prove that we have suffered no or only a considerably lower damage than the above mentioned lump sum.

§ 5 Prices and terms of payment

(1) Unless otherwise agreed in individual cases, our current prices at the time of conclusion of the contract shall apply, ex warehouse, plus statutory value-added tax.

(2) In the case of a shipment purchase [§ 4 (1)], the Buyer shall bear the transport costs ex warehouse and the

costs of any transport insurance requested by the Buyer. Any customs duties, fees, taxes and other public charges shall be borne by the buyer.

(3) If we have not been commissioned with the installation, the purchase price is due and payable within 14 days of delivery of the goods.

(4) If we have been commissioned with both delivery and installation, a partial amount of 50% of the order total is due on delivery and the remainder after completion of the technical acceptance test, unless otherwise agreed in an individual contract. The technical acceptance test consists of the mechanical and electronic functional testing based on the specifications of the service manual.

(5) We are, however, also within the framework of an ongoing business relationship, entitled at any time to make a delivery in whole or in part only against prepayment. We declare an appropriate reservation at the latest with the order confirmation.

(6) The Buyer shall be deemed to be in default upon expiry of the aforementioned payment periods. The purchase price shall bear interest during the period of delay at the applicable statutory default interest rate. We reserve the right to assert further damages for delay. Our claim to the commercial maturity interest (§ 353 HGB | German Commercial Code) remains unaffected in respect of merchants.

(7) If it becomes apparent after conclusion of the contract (e. g. by filing for insolvency proceedings) that our claim to the purchase price is endangered by the Buyer's inability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and - if applicable after setting a deadline - to withdraw from the contract (§ 321 BGB | German Civil Code). In the case of contracts for the manufacture of unjustifiable items (custom-made products), we can declare our withdrawal immediately; the statutory provisions governing the dispensability of setting a deadline remain unaffected.

§ 6 Retention of title

(1) Until full payment of all our present and future claims arising from the purchase contract and a current business relationship (secured claims) has been made, we reserve title to the goods sold.

(2) The goods subject to retention of title may not be pledged to third parties or assigned as security or for resale (subject to the provisions of paragraph 4) until the secured claims have been paid in full. The buyer has to inform us immediately in writing if an application for the opening of insolvency proceedings is filed or if seizure of the goods by third parties (e. g. seizures) occurs.

(3) In the event of a breach of contract by the buyer, in particular in the event of non-payment of the due purchase price, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand return of the goods on the basis of the retention of title. The demand for surrender does not also include the declaration of withdrawal; we are rather entitled to only demand the return of the goods and reserve the right to withdraw from the contract. If the buyer does not pay the due purchase price, we shall only be entitled to assert these rights if we have previously set the buyer a reasonable deadline for payment without success or if such a deadline cannot be set in accordance with the statutory regulations.

(4) If and when the Buyer has been identified by us as an intermediary or reseller at the time of conclusion of the contract, the following provisions shall apply: The Buyer shall be deemed to have acted as an intermediary or reseller until revoked in accordance with § 4 of the German Commercial Code. (c) entitled to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition.

(a) The retention of title extends to the products created by processing, mixing or combining our goods at their full value, whereby we are deemed to be the manufacturer. If, in the case of processing, mixing or combination with goods of third parties, we retain their ownership rights, we shall acquire co-ownership in proportion to the invoice

values of the processed, mixed or combined goods. In all other respects, the same shall apply to the resulting product as to the goods delivered under retention of title.

(b) The claims against third parties arising from the resale of the goods or product are hereby assigned to us by the buyer as security in their entirety or in the amount of our possible co-ownership share in accordance with the preceding paragraph. We accept the assignment. The obligations of the buyer mentioned in paragraph (2) shall also apply in consideration of the assigned claims.

(c) The buyer remains entitled to collect the claim in addition to us. We undertake not to collect the claim as long as the buyer fulfils his payment obligations to us, there is no defect in his performance and we do not exercise the retention of title by exercising a right in accordance with paragraph (3). If this is the case, however, we can demand that the buyer informs us of the assigned claims and their debtors, provides us with all information necessary for collection, hands over the associated documents and informs the debtors (third parties) of the assignment. In this case, we are also entitled to revoke the purchaser's authority to sell and process the goods subject to retention of title.

(d) If the realisable value of the securities exceeds our claims by more than 10%, we will release securities of our choice at the purchaser's request.

§ 7 Defect claims of the buyer

(1) The Buyer's rights in the event of material and legal defects (including wrong and short delivery as well as improper assembly or faulty assembly instructions) shall be governed by the statutory provisions, unless otherwise specified below. In all cases, the statutory special provisions remain unaffected in case of final delivery of the goods to a consumer (supplier recourse according to §§ 478,479 BGB).

(2) The basis of our liability for defects is above all the agreement on the quality of the goods. All product descriptions which are the subject matter of the individual contract shall be deemed to be an agreement on the quality of the goods; it makes no difference whether the product description originates from the buyer, the manufacturer or us.

(3) Insofar as the quality has not been agreed, it is to be assessed in accordance with the statutory provisions as to whether a defect exists or not (§ 434 Paragraph 1 Sentence 2 and 3 BGB | German Civil Code). However, we do not assume any liability for public statements of other third parties (e. g. advertising statements).

(4) The Buyer's claims for defects presuppose that he has complied with his statutory duties of inspection and notification of defects (§§ 377,381 HGB |German Commercial Code). If a defect becomes apparent during the examination or later on, we must be notified immediately in writing. The notification shall be deemed to be immediate if it is made within two weeks, whereby timely dispatch of the notification is sufficient to comply with the deadline. Irrespective of this obligation to inspect and give notice of defects, the buyer must report obvious defects (including wrong and short deliveries) in writing within two weeks of delivery, whereby the timely dispatch of the notification is sufficient to comply with the deadline. If the buyer fails to properly inspect and/or report defects, our liability for the undisclosed defect is excluded.

(5) If the delivered item is defective, we may first choose whether we perform supplementary performance by rectifying the defect (rectification of defects) or by delivering a defect-free item (replacement delivery). Our right to refuse subsequent performance under the statutory conditions remains unaffected.

(6) We shall be entitled to make the subsequent performance owed dependent on the purchaser paying the purchase price due. However, the buyer is entitled to retain a proportion of the purchase price commensurate with the defect.

(7) The Purchaser shall give us the time and opportunity necessary for subsequent performance owed, in particular to hand over the rejected goods for inspection purposes. In the event of a replacement delivery, the Buyer shall re-

turn the defective item to us in accordance with the statutory provisions. Subsequent performance does not include either the removal of the defective item or its re-installation if we were not originally obliged to do so.

(8) We shall bear the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs (not: dismantling and installation costs) if a defect is actually present. Otherwise, we shall be entitled to demand reimbursement from the buyer of the costs incurred by us as a result of the unjustified request to rectify the defect (in particular inspection and transport costs), unless the lack of defects was not apparent to the buyer.

(9) In urgent cases, e. g. in case of endangering operational safety or to prevent disproportionate damage, the buyer has the right to remedy the defect himself and to demand reimbursement of the objectively necessary expenses from us. We are to be informed immediately, if possible beforehand, of such a self-execution. The right of self-execution does not exist if we would be entitled to refuse a corresponding supplementary performance in accordance with the statutory provisions.

(10) If the supplementary performance has failed or if a reasonable period of grace to be set by the buyer for the supplementary performance has expired unsuccessfully or is unnecessary according to legal regulations, the buyer can withdraw from the contract of sale or reduce the purchase price. In the event of a minor defect, however, there is no right of withdrawal.

(11) The Purchaser's claims for damages or reimbursement of futile expenses shall only exist in the case of defects in accordance with § 8 and are otherwise excluded.

§ 8 Other liability

(1) Unless otherwise provided for in these GCUs, including the following provisions, we shall be liable for a breach of contractual and non-contractual obligations in accordance with the statutory provisions.

(2) We shall be liable for damages - irrespective of the legal basis - within the scope of liability for culpable intent and gross negligence. In the case of simple negligence, we are only liable subject to a milder standard of liability in accordance with statutory regulations (e. g. for care in our own affairs) for.

(a) for damages resulting from injury to life, limb or health,

(b) for damage resulting from the not inconsiderable breach of a material contractual obligation (obligation, the fulfilment of which makes the proper execution of the contract possible in the first place and on whose observance the contractual partner regularly relies and may trust); in this case, however, our liability is limited to the compensation of the foreseeable, typically occurring damage.

(3) The limitations of liability resulting from paragraph 2 shall also apply to breaches of duty by or for the benefit of persons whose fault we are legally responsible for. They do not apply if we have fraudulently concealed a defect or if we have given a guarantee for the quality of the goods and for claims of the buyer according to the product liability law.

(4) Due to a breach of duty which does not consist of a defect, the buyer can only withdraw from the contract or terminate the contract if we are responsible for the breach of duty. A free right of termination of the buyer (especially according to §§ 651,649 BGB) does not exist. In all other respects, the statutory requirements and legal consequences apply.

§ 9 Limitation

(1) By way of derogation from § 438 (1) No. 3 BGB | German Civil Code, the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. Insofar as acceptance is agreed, the limitation period begins with acceptance.

(2) However, if the goods are a building or an object that has been used in accordance with its normal use for a building and has caused its defectiveness (building material), the period of limitation according to the statutory regulation is 5 years from delivery (§ 438 Paragraph 1 No. 2 BGB). Other special statutory provisions on the statute of limitations (in particular § 438 Paragraph 1 No. 1, Paragraph 3, §§ 444,479 BGB | German Civil Code) remain unaffected.

(3) The above limitation periods of the purchase law also apply to contractual and non-contractual claims for damages by the buyer which are based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195,199 BGB | German Civil Code) would lead to a shorter limitation period in individual cases. Claims for damages of the buyer according to § 6.1. However, § 8 (2) sentence 1 and sentence 2 (a) as well as in accordance with the Product Liability Act are subject to the statute of limitations.

§ 10 Choice of law and jurisdiction

(1) For this GTD and the contractual relationship between us and the Buyer, the law of the Federal Republic of Germany shall apply to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the buyer is a merchant as defined by law The place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our registered office in 32339 Espelkamp | Germany. The same shall apply mutatis mutandis if the buyer is a businessman within the meaning of this § 14 BGB | German Civil Code is. In all cases, however, we shall also be entitled to institute legal proceedings at the place of performance of the delivery obligation in accordance with these GTDs or a priority individual agreement or at the Buyer's general place of jurisdiction. Priority statutory provisions, in particular with regard to exclusive responsibilities, shall remain unaffected.

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