

TERMS OF SALE AND DELIVERY

1. Scope of Application

1.1 The present Terms of Sale and Delivery apply to any sale of goods or effecting of performances by the

**Reuss-Seifert GmbH Company located in
Wuppertaler Straße 77 · 45549 Sprockhövel · Germany (hereinafter „the Company“).**

1.2 Our terms do not apply to consumers. Any general terms and conditions of our customers shall not apply. The General Terms and Conditions of our customers do apply only if we do expressly confirm their application in writing.

1.3 The present Terms of Sale, Delivery, and Payment cancel and replace all previous terms issued by the Company.

2. Quotation and Purchase Order

2.1 Our quotations are without engagement and are only to be considered as request for the customer to tender. Contracts and other agreements shall become legally binding only upon our confirmation of the customer's order in writing or upon our delivery / performance. Purchase orders by the customer are binding.

2.2 All agreements between the Company and our customers are to be set down in writing when concluding the contract. Subsequent supplements, amendments, or collateral agreements are to be set down in writing, too. This also applies to any waiver of the requirement for written form. Should the order confirmation include errors and / or if the delivered article or the rendered service is obviously faulty, the customer shall notify us of the fault within three days. Otherwise the order confirmation, article(s), and / or service(s) is / are considered to be approved.

2.3 All customer's orders are subject to the customer's creditworthiness. The Company can alter the credit line of the customer or the terms of payment at its own discretion and at any time. Should the financial capacity of the customer be in doubt, the Company may stay delivery and / or make it conditional upon a banker's guaranty to be furnished by the customer.

3. Products and Performances

3.1 The products and performances are always of the specifications given at the time of contract conclusion. The Company has not to adapt, change, or take back products if any specifications of design, condition, or use of the product change after placing of the order. Product specifications may change in the course of time and the customer is obligated to collect information about changes on its own. Ongoing delivery of articles of the same specifications is not guaranteed.

3.2 Product specifications, advertising, or other public comments regarding the characteristics of the article are considered to be a stipulated condition only if expressly specified in a quotation or an order confirmation.

4. Prices, Price Increases and Payment

4.1 Our prices are net and always exclusive of the applicable VAT or turnover tax as well as exclusive of any other taxes, charges, and customs duties, etc. that are provided by law for the legal transaction and the fulfillment thereof. Our prices are subject to the applicable price list and the discount levels specified there. If not agreed otherwise, the prices in our quotations shall be valid for 30 days. If the customer does not purchase the quantities used as a basis for calculation of prices, the Company is allowed to correspondingly adjust prices.

4.2 If for contracts to be fulfilled later than four weeks after their conclusion or in case of a continuing obligation our purchase prices and / or transport costs and / or the wage or salary rate applicable to us do increase and / or costs due to exchange fluctuations, deliveries by third parties and / or other factors beyond the Company's reasonable control in the period of time between conclusion of contract and fulfillment of order, we shall be entitled to charge an adequately increased price or a corresponding surcharge.

4.3 Our invoices are due immediately upon receipt and within 30 days after date of invoice and net without discount unless otherwise specified or provided for in our quotation / our order confirmation.

4.4 The time payment is made shall be determined by the time the amount is credited to the specified bank account.

4.5 We shall be entitled to assign claims arising from the business relationship.

4.6 We shall be entitled to interest on default at 10% as from due date, without further reminder. We shall also be entitled, as appropriate, to assert a claim for greater loss subject to provision of evidence thereof. Claims of greater extent - in particular on grounds of

default by our customer - shall remain unaffected. If you are in default with a payment for more than 10 days, all outstanding invoices issued by us shall be payable at once.

4.7 It shall not be permissible to set off counter-claims which are disputed by us and not established at law. It shall not be possible to assert a right of withholding payment on grounds of claims which are not based on the same contractual relationship if the said claims have not been acknowledged by us and have not been established at law.

4.8 Our customer may only withhold payments on grounds of a complaint about defects if we have acknowledged that the said complaint is justified or if, on the basis of an objective assessment, there can be no doubt about the defect. Furthermore, payments on grounds of these defects may only be withheld to an amount that is commensurate with the defects that have occurred.

5. Deterioration of the Customer's Assets

5.1 If one of the events mentioned below occurs or if we get to know only after conclusion of the contract of such an event that yet already existed at the time of conclusion of the contract, we may demand of our customer an advance payment amounting to the stipulated price, and, moreover, we may revoke stipulated or granted terms of payments, and / or return current bills / drafts and request immediate payment. This applies to the events below:

5.1.1 Judicial or extra-judicial insolvency proceedings have been instituted against the assets of our customer or opening of such proceedings is rejected for insufficiency of assets; or

5.1.2 we have a credit report by a bank or a credit inquiry agency on hand that shows the creditworthiness of our customer or a considerable deterioration of the customer's assets; or

5.1.3 a check or bill / draft of our customer we have accepted is dishonored or is considered as protestable, respectively; or

5.1.4 we get to know of objective circumstances that the customer's assets are such that it has to be feared that the customer cannot pay its payables at all or in due time.

5.2 If our customer does not comply with our justified request for an advance payment within a reasonable grace period set by us although we have set forth that we will reject further performance by the customer upon expiration of the grace period, we are entitled regarding that part of the contract that we have not fulfilled, so far, to rescind the contract or to claim damages instead of performance.

6. Packing, Shipment, Passing of the Risk, Insurance

6.1 The performance of the contract is effected Ex Works Germany. The applicable limit for CPT-delivery is to be gathered from the website www.reuss-seifert.de. This does not apply to tools as well as distance pieces and other pieces made of cast concrete and fibred concrete. (E.g. concrete tapers and cones.) For such pieces payment of the actually accruing transport costs is due.

6.2. Selection of the most advantageous transportation route is within our discretion. In case of an increased volume of freight, we have to charge the extra expenses incurred to our customers. If our customer asks for express shipment or similar, this is at the customer's expense. We do not pay the delivery charge in case of delivery by the postal service.

6.3 The articles can be delivered at list price only in their original packings (see information in our leaflets). We do deliver our goods in transportation packings, only.

6.4 The risk is passed to our customer in any case independent of the site where the goods are shipped and even in case of delivery CPT customer at the moment of delivery of goods to the carrier or when leaving the delivering plant at the latest. In case of a delay, for which our customer is responsible, the risk is already passed to our customer upon our notification that the goods are ready for dispatch.

6.5 Only upon our customer's request and at our customer's expense we will insure the item to be delivered against any insurable risk requested by our customer, particularly against theft and damage to goods in transit. If our customer asks for a proof of delivery, this will be at the expense of our customer.

7. Delivery

7.1 Delivery times and dates shall be binding only if expressly confirmed by us in writing before. However, delivery in due time always depends on due delivery (i.e. on time and correct) by our sub-suppliers.

7.3 A delivery time or a delivery date is considered to be kept if the goods are dispatched or - for those goods that cannot or are not to be shipped - our notification that the goods are ready for dispatch is sent until the end of the time limit.

7.4 Delivery times will be extended by the period of time corresponding to our customer's delay to fulfill its obligations; within a current business this also applies to obligations arising from other contracts. The customer shall furnish evidence of not being in delay.

7.5 Orders on call are accepted with specified times for taking delivery of the goods, only. If the time for taking delivery of the goods is not specified exactly, this shall expire 9 months after conclusion of the contract and complete delivery of the goods shall be taken at this time. On principle, delivery of approximately the same quantity per month of the goods is to be taken.

7.6 If the customer does not take delivery of the goods within the stipulated period of time, we shall be free to ship completed deliveries without further notice or to warehouse them at the customer's expense. Moreover, we shall be entitled to set a grace period for the customer to accept delivery together with the threat to refuse delivery of the goods for the case the grace period should expire without results. If in the following the grace period expires without results, we shall be entitled to cancel our obligation for delivery and to rescind the contract or to claim damages instead of performance.

7.7 If the customer does not quantify the shipments, which is incumbent on the customer, within one month upon expiration of the period stipulated for such quantification at the latest, or in the absence of such a stipulation within one month upon our request, we are allowed to quantify and deliver the shipments at our will. Moreover, we shall be entitled to set a grace period for the customer to quantify the shipments together with the threat to refuse delivery of the goods for the case the grace period should expire without results. If in the following the grace period expires without results, we shall be entitled to cancel our obligation for delivery and to rescind the contract or to claim damages instead of performance.

7.8 If the customer is - according to the rules and regulations above - in delay or if the goods are warehoused upon the customer's request, we will charge warehouse charges amounting to 1 % of the invoiced amount for every commenced month of delay but maximum 6 % of the invoiced amount. But we nevertheless reserve the right to assert an actual loss beyond this limit. Our customer reserves the right to furnish evidence that the warehouse charges have not accrued at all or that the demanded minimum amount has not accrued.

7.9 We are entitled to make partial deliveries or deliveries in installments and to invoice them separately.

7.10 Our customer is obligated to inspect the delivered goods and to give notice of defects regarding any damage, fault, missing article, wrong article, wrong quantity within 3 days and in writing. If the customer does not give notice of defects, the goods are considered to be approved unless it was impossible to detect any of the faults during proper inspection. Should such a fault occur later, the customer is obligated to give immediate notice thereof within 3 days in writing. If the Company upon the customer's request delivers the goods directly to a third party, a failure of the third party to fulfill the aforementioned obligations shall be attributed to the customer.

8. Delay, Exclusion of the Obligation to Perform a Contract

8.1 If we are in delay with delivery or performance or if our obligation to perform the contract is excluded as defined by § 275 BGB [*German Civil Code*], we shall be liable only on the conditions and to the extent as defined by § 12 Paragraph 4 of the conditions for compensation on hand while the following requirements have to be met:

8.1.1 If we are in delay with delivery and if this is due to a slight negligence, only, the claims for damages of our customer are limited to a lump sum compensation for delay amounting to 1 % of the value of the goods for each commenced week of delay but amounting to a maximum of 8 % of the value of the goods; however, we reserve the right to prove that the delay in delivery has not caused any loss or has caused only minor loss.

8.1.2 In case of a delay caused by us, our customer shall be entitled to damages instead of performance only if our customer has first set a reasonable grace period of at least 4 weeks for delivery; however, the customer reserves the right to set a grace period of less than 4 weeks if in a particular case a grace period of at least 4 weeks for delivery is unbearable for the customer.

8.1.3 The rights to rescind the contract and to claim for damages to which the customer is entitled are always restricted to that part of the contract that has not been fulfilled yet.

8.2 Claims for damages against us due to delay or exclusion of the obligation to perform a contract as defined by § 275 BGB [*German Civil Code*] become statute-barred after one year starting with the statutory commencement of the limitation period.

9. Cancellation of Orders, Taking Back of Goods, Damages instead of Performance

We can take back standard goods in particular cases upon the customer's request. In such a case we will only charge the transport costs to the customer. We will credit the purchase price for the goods taken back to our customer for future orders. If we take back goods we will also charge up to 15 % of the net value of goods as warehouse charges and for goods that are older than 4 months we will reduce the value of goods credited to our customer by at least 25 % of the net value of goods. Nonstandard goods shall be generally excluded from return.

10. Condition of Goods, Additional Performance and Insufficient Performance

10.1 Figures, drawings, dimensions, and other specifications of the condition of an article stated in catalogs, price lists, and other printed matters are only approximate values usual in the respective line of business. Our samples and specimens are only visual aids for quality, dimensions, and other properties. Our statements as to dimensions, properties, and intended use of our products serve a description only and do not include guaranteed properties. The customer has to ensure particularly that the articles are suitable for the intended use.

10.2 Should technology require this, we reserve the right to deliver ordered goods with deviations in condition, dimensions, and other properties. We will point out such modifications to the customer. Insofar our customer shall not be entitled to any claims based on defects if and as far as the modification does not considerably impair the usability of the products by the customer.

Our products are bulk articles. The contents of packing units are determined by weighing as usual in this line of business. This can lead to slight deviations in the number of items due to a varying density of the raw material. Therefore, deviations in the number of items of 5 % in both directions are considered to be in accordance with the contract.

11. Rights in Case of Defects

11.1 The goods are faulty if they after an examination in accordance with the customer's duty do not meet the applicable specifications by the manufacturer, and if they - in case of an adjustment by the Company - do not meet the customer's specifications as to this adjustment, or if - in case the Company renders services - these services do not correspond to the average quality in the market. If goods are faulty, the Company will choose to (i) take back the goods against reimbursement of the market price or to reimburse the service fee (but limited to the actual purchase price or service fee), (ii) remedy the defect complained about, or (iii) deliver goods in replacement on condition that the customer furnishes in all cases sufficient evidence of the faultiness and returns the faulty goods unless services rendered are concerned. Rectification of defects or replacement do not defer the limitation period for claims based on defects for this article.

11.2 The customer cannot assert any warranty rights if the customer has not completely met its obligation to make a complaint in respect of a defect. The duties to examine and to make a complaint also include that the customer notifies the Company immediately of any claims on the part of its customers against our customer itself along with a statement on the causes for such recourse.

11.3 The limitation period of any claim based on defects is 12 months from delivery on.

11.4 If goods are returned on the grounds of asserted warranty rights and should it turn out that the returned goods actually have not been faulty, the customer is obligated to make up for all costs the Company incurred by handling the alleged warranty claim.

12. Liability

12.1 The Company is fully liable only (i) for own, intentional or grossly negligent tort, (ii) for fraud, or (iii) for personal injury or injury to health caused negligently by the Company or by persons belonging to the Company, or (iv) in case of other imperative regulations under law.

12.2 Furthermore the Company is not liable - for any cause in law whatsoever - for indirect loss and lost profit; this includes inter alia reduced sales volume, costs for shutdown, production costs, loss of customers, and loss of reputation. In such cases the claim is limited to the amount of € 50,000.00.

12.3 The aforementioned limitations on liability also apply to any claims for damages on the part of the customer against employees of the Company or any person hired by the Company.

13. Producer's Liability

Our customer shall exempt us from all claims for damages asserted by third parties against us on the basis of the rules and regulations covering tortious acts, product liability, or on the basis of any other provision due to defects or faults of the goods manufactured or delivered by us or by our customer, respectively, insofar as such claims would also be justified against our customer or are not justified anymore only because the limitation period expired in the meantime. On these conditions our customer also shall exempt us from all costs accruing from any legal actions brought against us due to such claims. If the asserted claims are justified against us, too, or are not justified anymore only because the limitation period expired in the meantime, there results a proportional right to exemption of us by our customer, the quantum and amount of which are defined in § 254 BGB [*German Civil Code*].

Our obligations to indemnify and to pay damages as defined by §§ 437 Sub-Paragraph 3, 440, 478, 634 Sub-Paragraph 4 BGB remain unaffected by the provisions above whereas they are in force only to the amount defined in Item 12 of the present terms and conditions.

14. Force Majeure

14.1 Unforeseen operational breakdown, exceeding of delivery time, or default by sub-suppliers, shortage of energy or raw material, disturbances of traffic, as well as strikes, criminal tort, lawful lock-out, government order, and other cases of force majeure relieve the party affected hereby for the time of the disturbance and within the scope of its effects from the party's obligation to deliver goods and / or to render services or to accept goods / services, respectively, if the disturbance is beyond such party's reasonable control. If this leads to a delay in the delivery of goods and / or rendering of services or the acceptance of goods / services, respectively, of more than 4 weeks, the Company is entitled to decide itself to withdraw from the contract as to the affected goods and / or service.

14.2 If the contract is cancelled - completely or in part - under such circumstances, the customer is obligated to pay for goods already delivered or services already rendered on a pro rata basis.

15. Reservation of Title

15.1 Until satisfaction of all present and future debts due from our customer to us, our customer shall provide the securities below, which we will release at our own choice upon request as far as their nominal value considerably exceeds our receivables by more than 20 %.

15.2 Until payment in full we retain title to the delivered goods.

15.3 The customer is entitled to sale the goods subject to the reservation of title in orderly business as well as to connect them with articles of other manufacturers or to process them. Already now, our customer shall assign to us the debts due to our customer resulting from sale. Subject to revocation, we authorize the customer to collect the sums due assigned to us. A revocation is possible especially if objective circumstances give rise to the expectation of considerable deterioration of the customer's solvency. Upon cessation of payments, request or initiation of insolvency proceedings, of judicial or extra-judicial composition proceedings, our customer's rights to resale, processing, connection, mixing, and installation of the goods subject to the reservation of title as well as the authorization to collect the sums due assigned to us shall expire even without our revocation.

15.4 The customer shall not, through processing of these goods, acquire any title to the wholly or partially manufactured items; the processing shall be done exclusively without charge for the seller. Should however the retention of title lapse due to any circumstances, the seller and the customer now herewith agree that title to the said items shall pass to the seller as of the said processing and that the seller shall accept the transfer of title. The customer shall remain the unpaid custodian of the said items. In the event of processing with goods still owned by a third party, the seller shall acquire co-ownership of the new items. The extent of this co-ownership shall be determined by the relationship between the invoice value of the goods delivered by the seller and the invoice value of the remaining goods.

15.5 The customer herewith assigns to the seller the claim resulting from a resale of the goods to which title is retained, including cases in which the goods have been processed. If the processed product contains, apart from the goods to which the seller retains title, only components which either belonged to the customer or were only delivered subject to the so-called simple retention of title, the customer shall assign the total purchase price claim to the seller. In a different case, i.e. a combination of advance assignments to a number of suppliers, the seller shall be entitled to a fractional part of the claim, corresponding to the relationship between the invoice value of its retained-title goods and the invoice value of the other processed items.

15.6 Our goods delivered subject to retention of title must be stored separately and marked as the goods of third parties. Our customer must inform us immediately about any access by third parties to the said goods and to the assigned claims. Any costs that may result from interventions or resistance thereto shall be borne by the customer. The customer shall be obliged to handle the said goods with due care, and in particular to insure them sufficiently at its own expense against fire, flooding and theft, at new value.

15.7 The customer shall be obliged to conclude arrangements with its own customers which give the same degree of protection to the company's rights set forth in this clause.

16. Molds and Tools

The price for molds also includes the costs for use but not the costs for test equipment and machining devices as well as any modifications upon the customer's request. If not agreed otherwise, payment of 50 % of the mold price shall be made at order confirmation whereas 50 % is payable upon presentation of the initial samples stipulated by contract. Upon confirmation of the customer's modification orders prior to completion of the mold, all costs accrued up to this time are to be repaid if beyond the advance payment. If not agreed otherwise, we are owner, now and henceforth, of the molds manufactured for the customer by us or by a third party hired by us. They shall be used for orders of our customer only as long as the customer meets its obligation to pay and to accept goods. We are obligated to replace molds free of charge only if the customer requires this to meet the output assured to the customer. Our obligation to keep the mold will expire after two years from the last partial shipment of goods resulting from this mold on and upon previous notice to the customer.

17. Samples, Drawings, Advice

17.1 The preparation of samples, sketches, drawings, and press proofs will be charged also if the order is not placed with us. The same applies to examinations and expert opinions requested by our customer. We shall retain title to samples, sketches, drawings, and press proofs provided by us; our customer is neither allowed to imitate them, to copy them, nor to disclose them to third persons or companies. The same applies to proposals elaborated by us.

17.2 Our advice rendered to the customer is to the best of our knowledge but does not discharge our customer from own examinations of the materials and qualities, which we propose, regarding their suitability for the intended purpose and observance of pertinent rules and regulations. The customer shall check manufacturing samples, proof sheets, etc. and return them to us marked with the note that they are ready for manufacture. Requests for changes must always be made in writing.

18. Title to Documents, Classification, Development

The customer undertakes to treat all business and technical details becoming known to the customer during the cooperation and not yet in the public domain the same as own business secrets and to observe absolute secrecy of such details toward third parties. We shall retain title to figures, drawings, estimates, samples, and models. Our customer undertakes never to disclose such things in no way to third parties without our express approval. For each case of culpable violation of the aforementioned obligations, our customer undertakes to pay a penal sum amounting to € 6,000.00 for each case. Our right to claim for compensation of an actual loss exceeding the penal sum shall remain unaffected.

19. Property Rights

19.1 If the goods are to be manufactured according to drawings, samples, or other specifications by our customer, our customer shall guarantee that all these do not infringe the rights of third parties, particularly patents, design patents or utility models, or other property rights and copyrights. Our customer shall exempt us from all claims by third parties resulting from a possible infringement of such rights. Furthermore, the customer takes over all costs incurred by us due to the fact that third parties assert the infringement of such rights, which requires our defense. This also includes the costs for an adequate legal defense.

19.2 Should our development work lead to results, solutions, or technologies, which can be subjected to any property right, only we shall be holder of the resulting rights and we reserve the right to file the corresponding application for a property right in our own name and for our own account.

20. Place of Performance, Place of Jurisdiction, Applicable Law, Miscellaneous

20.1 Place of performance and exclusive place of jurisdiction for deliveries, performances, and payments including actions arising out of checks and drafts / bills as well as all other litigations between the parties shall be Sprockhövel / Germany but we shall be entitled to bring a file against our customer at the customer's place of jurisdiction, too.

20.2 The relations between the contracting parties are exclusively governed by German Law (FRG) to the exclusion of the Uniform Law on the International Sale of Goods, particularly the UN Sales Convention and other conventions for the international sale of goods.

20.3 The seller shall be entitled to collect, store, process and use information and data on the customer and to pass same on to third parties for storage, processing and use, in particular for the purpose of collection of claims or of outsourced debtor management.

20.4 The customer may not transfer or assign its rights under the contractual relationship to third parties, either wholly or in part, without our prior consent.

20.5 Should individual provisions of these terms and conditions of sale and delivery be partly or wholly invalid, this shall not affect the validity of the remaining provisions.

20.6 No alterations to the terms and conditions of sale and delivery shall be legally valid except with written confirmation from the company. This shall also apply to an alteration of this requirement of written form.

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