

# General Conditions of Delivery and Performance of the Richter Chemie Technik GmbH firm

## § 1 Application

(1) All our deliveries, services and offers are made exclusively on the basis of these General Terms of Delivery and Performance. These are an integral part of all contracts which we conclude with our contract partners (hereinafter also referred to as the "Principals") regarding the deliveries or services offered by us. They are also valid for all future deliveries, services or offers to the Principal, even if they are not agreed again separately.

(2) All types of terms and conditions as well as "General Terms and Conditions" of the client or third parties do not apply, unless expressly agreed in writing. This also applies if we have not separately objected to their validity in individual cases. Even if we refer to a letter that contains or refers to the terms of business of the Principal or a third party, this does not constitute an agreement with the validity of these Terms and Conditions.

## § 2 Offer and Conclusion of Contract

(1) All our offers are free and without obligation, unless they are expressly marked as binding or contain a certain acceptance period. We can accept orders or commissions within thirty days after receipt.

(2) Solely the contract as concluded in writing, including these General Terms and Conditions of Delivery and Performance, shall be relevant to the legal relations between us and the Principal. The contract, including our General Terms and Conditions of Delivery and Performance, completely represents all agreements between us and the Principal regarding the object of the contract. Verbal commitments by us before the conclusion of this contract are legally non-binding and verbal agreements are replaced by the written contract, insofar as it is not expressly stated in them that they are binding.

(3) Additions and amendments to the agreements made, including these General Terms and Conditions of Delivery and Performance, need to be in writing to be effective. With the exception of managers or authorized signatories, our employees are not entitled to make any verbal agreements that differ from these. To observe the written form, a telecommunication transmission is sufficient, in particular one by fax or by e-mail, provided that the copy of the signed declaration is transmitted.

(4) Our information about the subject of the delivery or the delivery itself (e.g. weights, dimensions, performance values, load bearing capacity, tolerances and technical data) as well as our representations of these (e.g. drawings and illustrations) are only approximately normative, unless the usability for the purpose intended in the contract presupposes an exact agreement. They are not guaranteed condition characteristics, but descriptions or markings of the delivery or service. Any customary deviations and deviations, which are due to legal requirements or represent technical improvements, as well as the replacement of components by equivalent parts, are permissible insofar as they do not impair the usability for the contractually intended purpose.

(5) We reserve the right to property or copyright for all offers and cost estimates we submit, as well as for drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids provided to the Principal. Without our express consent, the Principal may neither make these objects accessible to third parties in terms of content, nor make them known, use them himself or have them used by third parties or reproduce them. At our request, he has to return these objects to us completely and destroy any copies produced, if they are no longer required by him in the normal course of business or when negotiations do not lead to the conclusion of a contract.

## § 3 Prices and payment

(1) The prices are valid for the scope of services and delivery as specified in the order confirmations. Additional or special services are charged separately. The prices are in EURO ex works / FCA excluding packaging, legal VAT, for export deliveries plus customs duties, fees and other public charges.

(2) Insofar as the agreed prices are based on our list prices and the delivery is to be effected more than four months after conclusion of the contract, our list prices at delivery will apply (each less an agreed percentage or a fixed discount).

(3) Invoices shall be paid within thirty days without any deduction, unless otherwise agreed in writing. Normative for the date of payment is the date of receipt. Checks will only be considered as payment after cashing. If the Principal does not pay at maturity, the outstanding amounts are to be paid as of the maturity date at 5% interest annually; the claim for higher interest rates and further damages in case of default shall remain unaffected.

(4) The compensation with counterclaims of the Principal or the retention of payments due to such claims is only permissible insofar as the counterclaims are undisputed or legally established.

(5) We shall be entitled to carry out or to deliver any outstanding deliveries or services only against advance payment or security performance if, after the conclusion of the contract, we become aware of circumstances which considerably reduce the creditworthiness of the Principal and due to which the payment of our outstanding debts by the Principal from the respective contractual relationship is jeopardized (including other individual orders for which the same framework contract applies).

#### **§ 4 Delivery and delivery time**

(1) Deliveries are made ex works.

(2) Time limits and deadlines for deliveries and services we indicate are only approximate, unless a fixed deadline or a fixed date has been expressly promised or agreed upon. If shipping has been agreed, the delivery periods and delivery dates refer to the date of handing over to the freight forwarder, freight carrier or another third party responsible for the transport.

(3) Without prejudice to our rights arising from the default of the Principal, we may require the Principal to prolong the delivery and performance periods or to postpone the delivery and performance deadlines with the period in which the Principal does not meet his contractual obligations towards us.

(4) We are not liable for the impossibility of delivery or for delays in delivery, insofar as these are caused by force majeure or other events unforeseeable at the time of the conclusion of the contract (e.g. operational disturbances of all kinds, difficulties in material or energy procurement, transport delays, strikes, legal exclusions, energy or raw materials, difficulties in procuring necessary regulatory approvals, governmental measures, or failure to supply suppliers in a proper or timely manner) which we are not responsible for. Insofar as such events make the delivery or service substantially more difficult or impossible and the hindrance is not only of temporary duration, we are entitled to withdraw from the contract. In the case of obstacles of a temporary duration, the delivery or performance periods are extended or the delivery or performance dates are postponed with the period of the hindrance plus an appropriate start-up period. If, due to the delay, the Principal cannot be expected to accept the delivery or service, he can withdraw from the contract towards us by sending an immediate written declaration.

(5) We are only entitled to partial deliveries if

- the partial delivery is usable for the Principal within the scope of the contractual purpose,
- the delivery of the remaining ordered goods is ensured and
- the Principal does not incur any substantial additional costs or additional costs because of it (unless the seller is willing to accept these costs).

(6) If we are in default with a delivery or service or if a delivery or service is impossible for any reason, our liability for damages shall be limited in accordance with § 8 of these General Terms of Delivery and Performance.

#### **§ 5 Place of Performance, Shipping, Packaging, Transfer of Risk, Acceptance**

(1) The place of fulfilment for all obligations arising from the contractual relationship is at our company headquarters in 47906 Kempen, unless otherwise specified. If we also owe the installation, the place of performance is the place where the installation is to be carried out.

(2) The method of shipping and packaging is subject to our dutiful discretion.

(3) The risk shall pass to the Principal at the latest upon delivery of the delivery item (in which the commencement of the loading process is decisive) to the freight forwarder, freight carrier or other third party responsible for the execution of the shipment. This also applies if partial deliveries are made or we have taken upon us other services (for example, shipping or installation). If the shipment or delivery is delayed as a result of a circumstance which is the cause of the Principal, the risk is transferred from the date on which the delivery item is ready for dispatch and the seller has indicated this to the Principal.

(4) Storage costs after the transfer of risk shall be borne by the Principal. When stored by the seller, the storage costs amount to 0.25% of the invoice amount of the delivered items to be stored per elapsed week. We reserve the right to claim and prove further or lesser storage costs.

(5) The shipment is insured by us only at the explicit request of the Principal and at his expense against theft, breakage, transport, fire, and water damage or other insurable risks.

(6) If an acceptance has to take place, the purchased goods shall be considered to be accepted if

- the delivery and, insofar as we owe the installation, also the installation is completed,
- we have communicated this to the Principal with reference to the acceptance inspection in accordance with this § 5 (6) and have requested him to take delivery,
- twelve working days have elapsed since the delivery or installation, or the Principal has started to use the purchased item (e.g. the delivered plant has been put into operation) and in this case [six] business days have elapsed since delivery or installation and
- the Principal has failed the acceptance within this period for a reason other than for a defect which has been indicated to us that makes the use of the purchased item impossible or substantially impaired.

## **§ 6 Warranty, material defects**

(1) The warranty period shall be one year from the date of delivery or, as far as acceptance is required, from the date of acceptance. For products used in single-shift operation, the warranty is 12 months from delivery.

(2) The goods delivered must be carefully inspected immediately after delivery to the Principal or to the third party designated by him. They shall be deemed to have been approved by the Principal in respect of obvious defects or other defects which would have been recognisable in the case of an immediate, careful examination, if we did not receive a written notification of defects within seven working days after delivery. With regard to other defects, the delivery items shall be deemed to have been approved by the Principal if the complaint does not reach us within seven working days after the date of the defect; if the defect was already recognisable at an earlier date for the Principal in normal use, this earlier date for the start of the complaint period is nevertheless decisive. At our request, a complained delivery item must be returned to us free of freight charges. In the case of justified complaints, we will reimburse the costs of the most favourable shipping route; this does not apply if the costs increase because the delivery item is located in a place other than the place of the intended use.

(3) In the event of material defects of the goods delivered, we shall be obliged and entitled to rectify or replace the goods within the reasonable time. In the event of a failure, i.e. the impossibility, unreasonableness, refusal or unreasonable delay of the repair or replacement delivery, the Principal can withdraw from the contract or reduce the price appropriately.

(4) If a defect is due to our fault, the Principal may demand damages under the conditions stipulated in § 8.

(5) In the case of defects of components of other manufacturers, which we can not remedy for licensing or actual reasons, we shall, at our discretion, assert our warranty claims against the manufacturers and suppliers at the expense of the Principal or pass them on to the Principal. Warranty claims against us in the case of such defects under the other conditions and in accordance with these General Terms and Conditions of Delivery and Performance shall only exist if the judicial enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or is futile, for example due to insolvency. During the duration of the legal dispute, the statute of limitations of the respective warranty claims of the Principal against us is inhibited.

(6) The warranty becomes void if the Principal changes the delivery item without our consent or has it changed by a third party and the remedy of the defect is thereby made impossible or unreasonably difficult. In any case, the Principal shall bear the additional costs arising from the modification of the remedy of the defect.

(7) An occasional delivery of used items agreed with the Principal is carried out under exclusion of any guarantee for material defects.

## **§ 7 Intellectual Property Rights**

(1) In accordance with § 7, we shall ensure that the delivery item is free of industrial property rights or copyrights of third parties. Each contractual partner shall immediately notify the other contractual partner in writing if due to the infringement of such rights he is faced with damages claims.

(2) In the event that the delivery item violates an industrial property right or copyright of a third party, we shall, at our discretion and expense, modify or exchange the delivery item in such a way that no further rights of third parties are infringed, the delivery item however still fulfils the contractually agreed upon functions, or by granting the Principal the right of use by concluding a license agreement. If he does not succeed in doing this within a reasonable period, the Principal is entitled to withdraw from the contract or to reduce the price appropriately. Any damages claims of the Principal are subject to the limitations of § 8 of these General Terms of Delivery.

(3) In the case of infringements of justice by products of other manufacturers delivered by us, we shall, at our discretion, assert or assign our claims against the manufacturers and suppliers at the expense of the Principal or pass these on to the Principal. In these cases, claims against us are subject to the provisions of § 7 only if the enforcement of the aforementioned claims against the manufacturers and suppliers was unsuccessful or is futile, for example due to insolvency.

## **§ 8 Liability for Damages due to Fault**

(1) Our liability for damages, irrespective of the legal basis, in particular from impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations in the case of contractual negotiations and unauthorized action, shall be limited in accordance with this § 8.

(2) We shall not be liable in the event of simple negligence on the part of our bodies, legal representatives, employees or other vicarious agents, insofar as this is not a violation of contractual obligations. Essential for the contract are the obligation to deliver and install the delivery item in good time, its lack of defects which impair its functionality or usability more than insignificantly, as well as advice, protection and custody obligations that should enable the Principal to use the delivery item in accordance with the contract or are intended for the protection of life or limb of the Principal's staff or the protection of its property against substantial damage.

- (3) Insofar as we are liable for damages according to § 8 (2), this liability is limited to damages which upon conclusion of the contract we have foreseen as a possible consequence of a breach of contract, or which we should have foreseen when applying customary diligence. Indirect damages and consequential damages, which are the result of defects of the delivery item, are also only substitutable, insofar as such damage is typically to be expected when the delivery item is used as intended.
- (4) In the case of liability for simple negligence, our liability to compensate for material damage and resulting further assets damages is limited to an amount of EUR 500,000.00 per damage case, even if it concerns a breach of contractual obligations.
- (5) The above exclusions and limitations of liability apply equally to the benefit of our bodies, legal representatives, employees and other vicarious agents.
- (6) Insofar as we provide technical information or act as advisors and this information or advice is not part of the contractually agreed scope of services, this shall be free of charge and without any liability.
- (7) The limitations of this § 8 shall not apply to our liability for intentional behaviour, for guaranteed condition characteristics, for injury to life, body or health or according to the Product Liability Act.

#### **§ 9 Reservation of title**

- (1) The following retention of title serves to safeguard all our existing and future claims against the Principal from the business relationship existing between us and the Principal concerning the delivery of bellows, technical fabrics or wire bending parts (Including balancing claims from a current account relationship limited to this relationship).
- (2) The goods delivered by us to the Principal remain our property until full payment of all secured claims. The goods, as well as those which subject to the following provisions will replace them, shall be referred to in the following as "Reserved Goods".
- (3) The Principal shall store the Reserved Goods free of charge for us.
- (4) The Principal shall be entitled to process and sell the Reserved Goods in the ordinary course of business until the occurrence of the utilisation (paragraph 9). Hypothecations and security surrenders are not permitted.
- (5) If the Reserved Goods are processed by the Principal, it is agreed that the processing will take place on our behalf and at our expense as a manufacturer and we will directly acquire the property or — if processing occurs with substances of several owners, or the value of the processed item is higher than the value of the Reserved Goods - acquire the co-ownership (fractional ownership) of the newly created item in relationship to the value of the reserved commodity at the value of the newly created item. In the event that we should not acquire such property, the Principal will immediately transfer his future property or — in the aforementioned relationship — the co-ownership of the newly created item to us as a security. If the Reserved Goods are combined with other items to form one single item or are mixed inseparably, and if one of the other items is to be regarded as the main item, we thus proportionately transfer the co-ownership, insofar as the main item is his property, to the Principal in the proportion as specified in sentence 1.
- (6) In the event of the resale of the Reserved Goods, the Principal will already now assign to us the resulting claim against the purchaser — in the case of our co-ownership of the Reserved Goods in proportion to the co-ownership share. The same applies to other claims which are replaced by the Reserved Goods or otherwise arise with regard to the Reserved Goods, such as insurance claims or claims arising from tortious act in case of loss or destruction. We hereby revocably authorise the Principal to collect the claims assigned to us in his own name. We may only revoke this collection authorisation in the event of a utilisation.
- (7) If third parties access the Reserved Goods, in particular through hypothecation, the Principal shall immediately inform them of our ownership and inform us about this in order to enable us to enforce our proprietary rights. If the third party is not in a position to reimburse us for the judicial or extrajudicial costs arising in this connection, the Principal is liable towards us.
- (8) We shall release the Reserved Goods as well as the goods or claims that replace them insofar as their value exceeds the amount of the secured claims by more than 30%. The selection of the objects to be released afterwards is our responsibility.
- (9) If, in the case of a breach of contract by the Principal — in particular default of payment —, we withdraw from the contract (utilisation case), we are entitled to demand the Reserved Goods.

## **§ 10 Final provisions**

(1) If the Principal is a merchant, a legal person of public law or a public special fund or has no general court of jurisdiction in the Federal Republic of Germany, then the court of jurisdiction for all disputes arising from the business relationship between us and the Principal is at our own choice our registered office in 47906 Kempen or the registered office of the Principal. In such cases, however, our registered office in 47906 Kempen is the exclusive court for actions against us. Mandatory legal provisions regarding exclusive jurisdictions shall remain unaffected by this regulation.

(2) The relations between us and the Principal are exclusively subject to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) does not apply.

(3) In so far as the contract or these General Terms of Delivery contain gaps in the regulations, the legally effective regulations will apply which the contracting parties would have agreed upon in accordance with the economic objectives of the contract and the purpose of these General Terms and Conditions of Delivery and Performance, had they known of these gaps in the regulations.

Note:

The Principal acknowledges that the seller will store data from the contractual relationship pursuant to § 28 Bundesdatenschutzgesetz (German Data Protection Act) for the purpose of data processing and reserves the right to transfer the data to third parties (for example, insurance companies), insofar as necessary for the fulfilment of the contract.