



GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

THINKING STEEL. SINCE 1969



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A. General provisions

The terms and conditions of sale, delivery, and payment of Rolf Kind GmbH closely adhere to the recommendations of the Wirtschaftsvereinigung Stahl in Düsseldorf of 1 September 2010.

I. Conclusion of the contract

1. Our deliveries and services shall be governed exclusively by the following terms and conditions. Any terms and conditions of purchase of the buyer are hereby rejected.
2. Our offers are subject to change.
3. Offers made by the buyer shall only be considered accepted upon our explicit confirmation. Failure to respond to such an offer shall not constitute acceptance. The same shall also apply to commercial letters of confirmation transmitted in electronic form. However, it shall not apply if mutual electronic transmission was agreed upon and the notification is sent to the expressly designated address.
4. Our declarations for the conclusion, amendment or termination of contracts must be submitted in writing. No electronic signature is required unless otherwise agreed with the buyer.

II. Payment terms

1. The prices specified in our order confirmation shall apply. The prices, including all ancillary claims, are subject to turnover tax if payable in accordance with statutory requirements. The buyer shall bear any additional costs incurred due to necessary additional procedures.
2. The purchase price shall be due no later than the end of the agreed payment period.
3. We may invoice the goods when they are ready for dispatch if it has been agreed that our buyer will release the goods for shipping within a specific period after our notification of readiness (release order).
4. Payment is made without discount to ensure we can dispose of the amount on the due date. The buyer may only offset against undisputed or definitively established claims. Retention rights are granted only insofar as they are based on the same contract.
5. Should the payment deadline be exceeded, interest will be charged at 9% above the respective basic interest rate of the Deutsche Bundesbank (Section 247 German Civil Code (BGB)).
6. If, as a result of supervening events, there is a significant deterioration of assets which puts our payment claim at risk, we shall be entitled to make it due for payment.
7. In the cases referred to in point 6 and Section A IV 9, we may revoke the direct debit mandate (Section A IV 7) and demand advance payments for outstanding deliveries. The buyer can avert these legal consequences by providing security in an amount equal to our payment claim. Suppose the buyer fails to provide either advance payment or adequate security within a reasonable period in the cases referred to in point 6 or Section A IV 9. In that case, we shall have the right to withdraw from the contract, excluding any compensation claims of the buyer.
8. This is without prejudice to the statutory provisions on default of payment.

III. Securities

We shall be entitled to securities of standard type and scope for our claims, even if they are conditional and limited.

IV. Retention of title

1. We shall retain the title to all goods delivered (goods subject to retention of title) until all claims, including any balances receivable arising under the contract, have been met. The same shall apply to future and contingent claims.

2. Treatment and processing of goods subject to retention of title are carried out for us as manufacturers following Section 950 German Civil Code (BGB) without obligating us. The processed goods shall constitute goods subject to retention of title as defined in point 1.

3. Suppose the buyer processes, combines, or commingles the goods subject to retention of title with other goods. In that case, we shall be entitled to co-ownership of the newly created goods based on the invoice value of the goods subject to retention of title in proportion to the invoice value of the other goods used. Suppose our ownership ceases because of combining, commingling, or processing. In that case, the buyer hereby assigns title or prospective title to the new products or materials to the extent of the invoice value of the goods subject to retention of title, in the case of processing based on the invoice value of the goods subject to retention of title in proportion to the invoice value of the other goods used and shall store these on our behalf free of charge. Our co-ownership rights shall constitute goods subject to retention of title as defined in point 1.

4. The buyer may only resell the reserved goods in the ordinary course of business under his standard terms and conditions and only if he does not default. Provided that he reserves ownership and the claims from the resale are transferred to us following numbers 5 and 6. He is not entitled to dispose of the reserved goods in any other way. The use of the goods subject to retention of title for the performance of contracts for work and services is also considered a resale following A IV of this Section.

5. The buyer's claims from the resale of the reserved goods will be assigned to us. They serve as security to the same extent as the goods subject to retention of title following Number 1.

6. Suppose the buyer resells the goods subject to retention of title together with other goods. In that case, they shall assign the claim arising from the resale based on the invoice value of the goods subject to retention of title in proportion to the invoice value of the other goods. Suppose goods in which we hold co-ownership rights as set out in point 3 are resold. In that case, we shall be assigned a portion of the claims corresponding to our co-ownership share.

7. The buyer shall have the right to recover outstanding amounts from the resale unless we revoke the direct debit mandate in the cases referred to in Sections A II 6 and A IV 9. At our request, they shall promptly inform their customers of the assignment to us – unless we do so ourselves – and provide us with the information and documents required for recovery.

8. The buyer may not assign the claims under any circumstances.

9. Suppose the buyer defaults on payment, indicating a risk to the ability to recover a significant portion of our claim. In that case, we shall be entitled to prohibit further processing of the delivered goods, to take back the goods and, where appropriate, to enter the customer's premises.

10. The buyer shall promptly notify us of any seizure or other action by third parties.

11. Should the total value of the existing securities exceed the secured claims by more than 10%, we shall release securities at our discretion at the buyer's request.

B. Execution of the delivery

I. Delivery periods, delivery dates

1. Delivery periods shall commence on the date of our order confirmation, but not before all details of the order have been fully clarified; the same shall apply to delivery dates. Delivery periods and dates are subject to unforeseeable disruptions in production and timely delivery of the required raw materials by our suppliers and, in the case of commercial items, subject to supply capability and timely delivery by our suppliers.

2. Suppose the buyer fails to fulfil contractual obligations, obligations to cooperate, or secondary obligations in due time, such as opening a documentary credit, providing domestic or foreign certificates, making advance payments, or suchlike. In that case, we may reasonably postpone our delivery periods and dates in accordance with our production process requirements without prejudice to our rights arising from the buyer's default.

3. As regards compliance with the delivery periods and dates, time of dispatch ex works shall be the determining factor. Suppose the goods cannot be collected without our fault. In that case, the delivery periods and dates shall be deemed to be met upon notification of readiness for shipment.

4. Each party's contractual obligations shall be suspended in cases of force majeure, and the dates and deadlines for meeting contractual obligations shall be postponed accordingly. Cases of force majeure shall include industrial disputes in our own and other companies, transport delays, breakdown of machinery, government measures, and other events beyond either party's control. The other party shall promptly be notified of the force majeure event. Each party may withdraw from the contract at the earliest six weeks after receiving such notification. This is without prejudice to the buyer's rights to withdraw from the contract as set out in point 6 and our rights to withdraw from the contract not connected to cases of force majeure.

5. Given the seller's industry-specific long production lead times, the buyer may only exercise the rights arising from Sections 281 and 323 of the German Civil Code (BGB) in the event of failure to comply with the delivery periods if the buyer has set us a reasonable period for delivery. By way of derogation from Sections 281 and 323 BGB, such period must be accompanied by a declaration that the buyer will refuse to accept performance after the expiry of the period. The claim for performance will be excluded after the period has expired without result. In the event of our final refusal of service, it will not be necessary to grant a grace period and provide a warning of refusal to accept delivery.

6. The buyer may withdraw from the contract without notice if we definitively cannot complete the full delivery before the transfer of risks. The buyer may also withdraw from the contract if the execution of a partial delivery for an order becomes impossible and the buyer has a legitimate interest in refusing such partial delivery. Otherwise, the buyer shall pay the contract price for the partial delivery. The same applies if we are unable to effect performance. Section C shall also apply.

II. Dimension, weight, quality

Deviations in dimension, weight and quality shall be permitted in accordance with DIN or existing practice. Weight shall be determined on our certified scales and shall be relevant for invoicing. The weighing record shall be submitted as evidence of weight. Except where individual weighing is customary, the total weight of the shipment shall be valid. Differences with respect to the individual weights shall be distributed proportionately across the whole shipment.

III. Shipment, packaging, and transfer of risks

1. We shall select the forwarding agent or carrier.

2. Suppose loading or carriage of the goods is delayed for a reason for which the buyer is responsible. In that case, we shall have the right, at our reasonable discretion and the buyer's risk and expense, to store the goods, take all measures as we may deem appropriate to preserve the goods, and invoice the goods as if they had been delivered. The same shall also apply if goods, which we have advised as being ready for shipping,

are not called up within four days. This is without prejudice to the statutory provisions on default in acceptance.

3. If customary practice, we shall supply the goods packaged and protected against rust; the buyer shall bear the costs. We will take back packaging, protective and/or transport equipment. We shall not bear the buyer's costs for the return transport or the disposal of the packaging. Packaging for purposes other than transport or other special protection, e.g., long-term storage, must be expressly agreed.

4. The buyer must promptly notify us of any transport damage so that we can agree on how to proceed (e.g., the type and extent of the official report).

5. The risk shall pass to the buyer as soon as the goods have passed into the custody of the forwarding agent or the carrier; however, no later than when the goods leave the factory or the warehouse.

IV. Claims for defects

1. The goods shall be in conformity with the contract if they do not deviate or deviate only insignificantly from the agreed specification at the time of the transfer of risks. The compliance and flawlessness of our goods shall be measured exclusively in accordance with the express agreements on the quality and quantity of the goods ordered. We shall only assume liability for a specific purpose or suitability if such liability has been expressly agreed. In all other respects, the risk of suitability and use shall be borne exclusively by the buyer. We shall not be liable for the deterioration or destruction or improper handling of the goods after the transfer of risk.

2. The contents of the agreed specification and any expressly agreed intended purpose shall not constitute a guarantee. A guarantee must be agreed in writing.

3. The buyer shall promptly inspect the goods upon receipt. Claims for defects shall only be valid if defects are promptly notified in writing. Hidden material defects must be promptly notified as soon as they are discovered.

Where goods are inspected as agreed, claims for defects which could have been detected during such inspection shall be excluded.

4. The buyer shall promptly allow us to inspect the contested goods in the event of complaints; upon request, the buyer shall place the goods concerned or samples thereof at our disposal at our expense. If the complaint is unjustified, we reserve the right to charge the buyer for the freight, handling, and inspection costs.

5. In the case of goods sold as substandard goods, the buyer shall not have the right to claim for defects regarding the stated defects and defects, which one would typically expect with such goods.

6. Where a product is defective, we shall, at our discretion, after considering the buyer's concerns, remedy the defect by replacement or repair. We may refuse to remedy the defect if such remedy is possible only at disproportionate cost. Suppose we fail to remedy the defect within a reasonable period. In that case, the buyer may set a reasonable deadline for us to do so. If this period expires without result, the buyer may reduce the purchase price or withdraw from the contract. Further claims, e.g., for damages or reimbursement of futile expenses, may only be asserted in accordance with Section C.

7. Except for cases of intentional fault or gross negligence, the limitation period for faulty deliveries shall expire one year after delivery. The limitation period shall not recommence upon repair or replacement.

8. The buyer's rights of recourse against us under Section 478 of the German Civil Code (BGB) shall be limited to the statutory scope of third-party claims for defects against the buyer and shall be conditional upon the buyer meeting their obligation to inform us of defects under Section 377 of the German Commercial Code (HGB).

9. The following general limitations of liability shall also apply.

C. General limitations of liability

1. Unless otherwise stipulated in these terms and conditions, we shall only be liable for damages resulting from a breach of contractual or non-contractual obligations or contract preparations caused by the wilful misconduct or gross negligence of our legal representatives or vicarious agents and for damages resulting from a culpable breach of material contractual obligations. In the event of a culpable breach of material contractual obligations, we shall only be liable for the foreseeable damage typical for that type of contract, except where such damage is caused by the wilful misconduct or gross negligence of our legal representatives or vicarious agents. Liability for loss of production and loss of profit shall be excluded.

2. The above limitations of liability do not apply in the event of a guarantee of quality or durability or injury to life, limb, or health.

3. Unless we are informed about the use of our products, we shall only be liable under the conditions mentioned above subject to the technical specifications and a specifically agreed purpose of use. Extraordinary risks, particularly the use in aircraft or shipbuilding, shall only be relevant for us if we were made aware of them in writing before the conclusion of the contract.

4. This is without prejudice to any claims for personal injury or damage to privately used items under the German Product Liability Act.

D. Other

I. Proof of export, confirmation of arrival for deliveries within the community

1. The buyer must provide us with the export certificate required for tax purposes if the buyer is domiciled outside the Federal Republic of Germany (external buyer) or if the buyer's agent transports or dispatches goods to the external territory. The buyer must pay the applicable VAT rate for deliveries within the Federal Republic of Germany from the invoice amount if the proof is not provided.

2. An improperly provided confirmation of delivery receipt within the community leads to a subsequent charge of the applicable tax rate.

II. Governing law

This agreement shall be governed by and construed in accordance with the laws of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 shall be excluded.

III. Place of performance and jurisdiction

1. The place of performance is the location of the executing plant. For the buyer's payment obligation, it is Lindlar/Kaiserlauter.

2. Both parties to the contract submit all their disputes arising out of or in connection with this agreement to the jurisdiction of the Courts of Cologne. We reserve the right to take legal action against the buyer at their general place of jurisdiction.

IV. Severability

If any provision of these terms and conditions and the agreements concluded should be held to be invalid for any reason, such invalidity shall not affect the validity of the remaining provisions. The parties will substitute for such provision a valid provision that most closely approximates the economic effect of the invalid provision, provided such provision is not superseded by legislation.

V. Penalties

We do not accept any penalties unless expressly agreed upon in writing

Following Section 33 of the Federal Data Protection Act (BDSG), we hereby inform you that the data required for transaction processing are processed and stored on a computer in accordance with Section 28 BDSG. We will keep all personal data confidential.