

## General terms and conditions for deliveries and services

Status: December 2020

### • 1. Scope

- 1.1. These General Terms and Conditions for Deliveries and Services ("Terms and Conditions") shall apply to all - including future - deliveries and services provided by **Rota Verpackungstechnik GmbH & Co. KG, Öflingerstr. 118, 79664 Wehr, Germany** (hereinafter referred to as "ROTA" or "us") to companies, legal entities or special funds under public law (hereinafter referred to as "customer").
- 1.2. The customer's terms and conditions do not apply, even if ROTA does not separately object to their validity in individual cases. Even if ROTA refers in the course of business correspondence to a letter which contains or refers to the customer's terms and conditions and ROTA does not expressly object to their validity, this does not constitute tacit agreement with the validity of those terms and conditions.
- 1.3. Oral subsidiary agreements or promises made by our employees which go beyond the content of the written contract or change these terms and conditions to our disadvantage are only effective after written confirmation.
- 1.4. Individual agreements made with the customer in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these terms and conditions. A written contract or written confirmation by ROTA is decisive for the content of such agreements.

### 2. Offers, conclusion of the contract

- 2.1 Offers from ROTA are not binding. Unless otherwise agreed, ROTA shall be bound to its offers in this respect for a period of eight (8) weeks.
- 2.2 If the customer's order deviates from our offer, the customer will emphasize the deviation as such.
- 2.3 A contract is only concluded by written confirmation of the order or by execution of the order by ROTA and is exclusively based on its content.
- 2.4 Only the goods and service descriptions ("Services") of the offer, the order confirmation and these Terms and Conditions of Business constitute the subject matter of the contract. Unless otherwise agreed, the contractually owed quality of the goods shall be based exclusively on the respective applicable written product specifications. Illustrations, drawings, weight, color and dimensional data provided by us in connection with the conclusion of the contract are only approximate values unless they a) are expressly designated as binding or b) are essential.
- 2.5 Assurances or the assumption of guarantees with regard to the delivery and services require the express written confirmation by ROTA in any case to be effective.

### 3. Prices

- 3.1 Unless expressly agreed otherwise, our prices are net ex works Wehr plus statutory value added tax. All additional costs arising from packaging, transport, insurance and customs clearance will be charged separately or will be borne by the buyer.

3.2 We expressly reserve the right to change prices at any time if the material and/or labor costs on which the calculation is based have increased significantly > 5% since the acceptance of the order.

#### 4. Terms of payment, securities, assignment

4.1 Unless otherwise agreed, our invoices are due immediately and payable within 30 days without any deductions. Payments shall only be deemed made to the extent that we can freely dispose of them at our bank. We accept cheques and bills of exchange only on account of payment; bank charges are borne by the customer.

4.2 In the event of late payment, we charge the statutory interest on arrears, but at least 10% points.

4.3 If the customer has not paid ROTA a contractually due amount by the due date, ROTA may suspend performance of its obligations under the contract and under any other contract between ROTA and the customer or withdraw from the contract after unsuccessful expiration of a reasonable deadline under threat of refusal of performance or withdrawal. The assertion of further rights by ROTA remains unaffected. In particular, ROTA is entitled to offset any advance payments made by the customer against its claims for damages.

4.4 If circumstances exist which indicate a significant deterioration in the financial situation of the customer, ROTA is entitled to demand advance payments or the provision of security and to refuse to fulfil ROTA's obligations until advance payment or provision of security has been made. If the demand of ROTA is not fulfilled within a reasonable period of time set by ROTA, ROTA is entitled to withdraw from the contract or to terminate the contract without notice for good cause and/or to claim damages. Further rights of ROTA remain unaffected.

4.5 The withholding of payments or the offsetting of counterclaims is only permitted if the counterclaims are undisputed or have been legally established. The offsetting of payments made by the customer against claims for damages by ROTA in the event of declared withdrawal due to default of payment pursuant to Section 4.3 remains unaffected.

4.6 The assignment of claims of the customer against us to third parties is excluded; any attempted assignment in violation of this provision is invalid. § 354a HGB (German Commercial Code) remains unaffected.

#### 5. Delivery conditions, transfer of risk

5.1 ROTA is entitled to partial deliveries and services to a reasonable extent for the customer.

5.2 Unless otherwise stated in the order confirmation, delivery is agreed EXW Incoterms 2020, Wehr delivery plant.

5.3 The risk shall pass to the customer in accordance with the agreed Incoterms.

5.4 If the parties have not agreed on the applicability of Incoterms and have not made any deviating provision, the following shall apply: The risk shall pass to the customer as soon as we have handed over the goods to the transport company or, if the dispatch is delayed through no fault of our own, have notified the customer that the goods are ready for dispatch, even if we have also assumed other services, e.g. the shipping costs or delivery and installation, also by our own transport personnel.

#### 6. Delivery period, default of acceptance

6.1 Agreed delivery periods or delivery dates are cumulative,

a) that the customer provides the documents, approvals or releases to be procured by him in good time

b) and all commercial details of the order execution and technical questions are clarified

c) and the customer opens letters of credit as agreed and/or makes agreed down payments.

6.2 If one of the above conditions according to item 6.1 is not fulfilled, the delivery time shall be extended appropriately, unless the parties expressly agree otherwise. This shall not apply if we are responsible for the delay.

6.3 Notwithstanding Clause 6.1, delivery and compliance with the delivery period shall be subject to correct and timely delivery to us, cf. Clause 7.

- 6.4 Customer change requests extend the delivery time until we have checked their feasibility and by the time necessary to implement the new requirements in production. If the change request interrupts an ongoing production, we can bring forward and complete other orders. We are not obliged to keep production capacities free during the delay.
- 6.5 If non-observance of the delivery date is due to force majeure, in particular strikes or labor disputes, operational breakdowns, shortages of raw materials, parts and components required for production, pandemics, official orders or other events beyond our control or that of our suppliers, the delivery period shall be extended accordingly. We will inform the customer of the beginning and end of such circumstances as soon as possible.
- 6.6 In the event of culpable non-compliance with the delivery date (delay in delivery), our liability shall be limited in the event of simple negligence to a flat-rate compensation of 0.5% per completed week, max. 5% of the delayed order value. The customer's right to claim damages instead of performance (especially after declared withdrawal from the order) is not affected by this. Liability is limited in accordance with clause 9 of these terms and conditions.
- 6.7 If the delivery of goods ready for dispatch or the agreed factory acceptance test of the delivery item (FAT) is delayed or omitted by the Customer or if dispatch is impossible for reasons for which we are not responsible, all risks and costs arising from this contract shall be borne by the Customer. In this case we will store the sold goods at our premises or elsewhere at the customer's expense. If impossibility or inability occurs during the delay in acceptance or if the customer is mainly responsible for these circumstances, he remains obliged to pay consideration.
- 6.8 If the customer is in default of acceptance and/or payment, we shall be entitled, after setting a reasonable grace period and express warning in the event of fruitless expiration, either to effect a ROTA cover sale by asserting the reduced proceeds and additional costs or to withdraw from the contract and claim damages instead of performance. If the covering sale does not succeed, the customer is still obliged to accept the goods, to pay the purchase price and to compensate us for the damage incurred.

## 7. Self-delivery

- 7.1 Our delivery is subject to timely and complete self-supply by our suppliers, unless we are responsible for the untimely or incomplete self-supply. In these cases we can withdraw from the contract.

## 8. Liability for defects, notice periods

- 8.1 The customer's claims for defects presuppose that the customer has properly fulfilled his obligations to examine the goods and make a complaint in accordance with § 377 HGB (German Commercial Code). Defects must be reported to us in writing immediately, but no later than 8 days after receipt of the goods, and in the case of hidden defects no later than 3 days after their discovery. If these deadlines are exceeded, the delivery shall be deemed to have been approved with regard to the defect and claims and rights arising from liability for defects shall lapse.
- 8.2 The claims for defects shall become statute-barred after one year from the statutory commencement of the limitation period. The aforementioned limitation period does not apply if ROTA has acted intentionally, has fraudulently concealed the defect and in the case of non-compliance with a quality guarantee.
- 8.3 The periods of limitation begin with the transfer of risk; for services with acceptance, alternatively with the final refusal of acceptance by the customer.
- 8.4 In case of justified complaints, we will, at our discretion, deliver a replacement or repair the goods. In the case of a replacement delivery, the customer is obliged to return the goods.
- 8.5 If a replacement delivery also shows defects or if the repair is unsuccessful, unjustifiably refused or delayed, the customer can demand a reduction of the price after the fruitless expiry of a reasonable grace period or - in the case of not insignificant defects - withdraw from the contract and demand damages instead of performance in accordance with these terms and conditions. Additional costs of subsequent performance which arise because the purchased item was taken to a place other than the customer's commercial branch after delivery will not be accepted.

- 8.6 Only our product description shall be decisive for the agreed quality within the meaning of § 434 (1) sentence 1 BGB (German Civil Code). Public statements, recommendations or advertising statements do not constitute a contractual description of quality.
- 8.7 In particular, no defects shall be deemed to be conditions resulting from unsuitable or improper use, faulty assembly by the Customer or third parties, natural wear and tear and normal wear and tear, faulty or negligent handling, excessive strain, unsuitable equipment, change of building or use, improper modifications or repair work carried out by the Customer or third parties without prior approval by the Contractor, external influences affecting the function of the plant (extraordinary changes in environmental conditions (e.g. temperature, humidity, chemical, electrochemical or electrical influences).

In these cases, the customer shall bear the costs of the repair, including the costs of travel to and from the site.

## 9. General liability, statute of limitations

- 9.1 ROTA provides the contractual services owed with due care. A certain success is only owed with its express written assurance in a separate contractual agreement.
- 9.2 ROTA is liable in accordance with legal regulations in the case of intent and gross negligence.
- 9.3 Claims for damages - of any kind whatsoever - against us are excluded if we, our legal representatives or vicarious agents have caused the damage through simple negligence. This exclusion of liability shall not apply in the event of injury to life, body or health, nor in the event of the assumption of a guarantee, nor in the event of a breach of an essential contractual obligation, the fulfillment of which is essential for proper performance and on the fulfillment of which the customer relies and may rely. However, liability is limited to the amount of typically foreseeable damage. In the case of data loss, the liability of ROTA is limited to the replacement of the typically foreseeable damage, which would have occurred if the customer had made a proper data backup. In the case of an assumed guarantee, we are liable in accordance with the guarantee conditions.
- 9.4 In particular, ROTA shall in no case be liable for indirect damages, consequential damages, pure financial losses such as loss of profit or unrealized savings, interruption of operations, loss of earnings or sales and/or additional expenses, atypical and unforeseeable damages as well as for damages, the occurrence of which the customer could have prevented by reasonable measures - such as in particular data backup.
- 9.5 As far as the liability of ROTA is excluded or limited, this also applies to the personal liability of employees, workers, co-workers, representatives and assistants.
- 9.6 With the exception of claims under the Product Liability Act and for injury to life, body or health, claims for damages shall become statute-barred one year after the customer has become aware of the damage and his obligation to pay compensation or should have become aware of it without gross negligence.

## 10. Technical documentation

- 10.1 All documents made available by ROTA, such as drawings, technical descriptions, operating instructions, cost estimates, etc. are recognized by the customer as trade secrets of ROTA and remain the property of ROTA. They may not be copied, reproduced or otherwise made available to third parties in any form or made the subject of inquiries to third parties without written consent. They must be returned to us at any time upon request. We expressly reserve the right to make design changes due to the latest developments at any time.
- 10.2 Reproduction or reverse engineering from the contractor's documents are not permitted.

## 11. Retention of title

- 11.1 We retain title to the delivered goods until receipt of all payments and irrevocable crediting of accepted cheques and bills of exchange from the business relationship with the customer. If a current account relationship exists, the reservation of title shall extend to the acknowledged balance.

- 11.2 If the goods are mixed and combined with other goods, we shall acquire co-ownership of the new goods in the ratio of the invoice value of the reserved goods to that of the other materials.
- 11.3 If the customer no longer meets his payment obligations, we may revoke the authorization to resell the goods and demand that the customer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and notifies his debtors of the assignment. Taking back goods subject to retention of title does not constitute a withdrawal from the contract. If we declare withdrawal, we are entitled to dispose of the goods in the open market.
- 11.4 If the value of the securities exceeds our claims by more than 10%, we shall release our securities of our choice to this extent at the customer's request.

## 12. Software usage

- 12.1 Insofar as software is included in the scope of delivery, the customer is granted a non-exclusive right to use the delivered software including its documentation. It is provided for use on the delivery item intended for this purpose. Use of the software on more than one system is prohibited. The transfer of the source code is not owed.
- 12.2 The Customer may only copy, revise, translate or convert the software from the object code to the source code to the extent permitted by law (§§ 69 a ff. UrhG [German Copyright Act]). The customer undertakes not to remove manufacturer's details - in particular copyright notices - or to change them without the prior express consent of the supplier. All other rights to the software and the documentation including copies remain with ROTA or the software supplier. The customer may transfer these rights to his end customer or reseller. The granting of sub-licenses is not permitted.

## 13. Place of performance, place of jurisdiction, choice of law, severability clause

- 13.1 Place of performance for deliveries and payments is Wehr. The agreement of Incoterms of group F, C or D or of arrangements for the bearing of costs does not imply any change to the above rule of place of performance, unless expressly agreed in writing.
- 13.2 **For all legal disputes arising from the contractual relationship as well as about its creation and its effectiveness, regardless of the legal grounds, the court responsible for our registered office in Wehr shall have exclusive jurisdiction. However, we are also entitled to assert our claims at the buyer's place of business.**
- 13.3 **German law applies. The validity of the UN Convention on Contracts for the International Sale of Goods of 11.04.1980 is excluded.**
- 13.4 Should any provision of these terms and conditions be or become invalid in whole or in part, the remaining provisions shall remain in full force and effect. The parties are obliged to replace the invalid provision by a legally valid provision which comes closest to the economic sense and purpose of the invalid provision.