

General Terms and Conditions of Rolf Meyer GmbH

1. Exclusive validity and acceptance of our General Terms and Conditions
 - 1.1 All our offers and quotations are based on our General Terms and Conditions. We accept orders exclusively on these terms and conditions. General terms and conditions of the Orderer or any provisions of the Orderer deviating from our General terms and conditions are not binding on us, notwithstanding our unconditional performance in face of our knowledge of such deviating terms and conditions, unless we recognized and accepted them expressly in writing.
 - 1.2 By placing an order or accepting performance the Orderer accepts the validity and applicability of our General Terms and Conditions with regard not only to the respective transaction but also all future business transactions.
2. Offers and quotations – ancillary stipulations – contents of contract – offer documents
 - 2.1 Our offers and quotations are not binding on us; i.e. a contract is created only after we have accepted the order. The Orderer's order is binding on the Orderer and entitles us to accept the order within two weeks by written order confirmation or delivery of the ordered good to the Orderer.
 - 2.2 Ancillary stipulations in connection with our offers, quotations and order confirmations as well as agreements with our field staff will only be valid if confirmed by us in writing. In case of doubt or ambiguity regarding the terms of the contract, our written order confirmation shall prevail.
 - 2.3 We reserve all copy rights and rights of ownership in all documents, if any, enclosed with our offers (such as illustrations, drawings, specifications of dimensions and weights, and similar documents). Such documents must not be made available to third parties and must be returned to us without delay upon our request or if the order is not placed with us.
 - 2.4 Unless otherwise agreed, the products delivered by us and their possible uses are conclusively described by our written or pictorial specifications in catalogues or other publications, such as descriptions, illustrations, or drawings. Any other specifications are not binding on us. Our specifications are based on our current knowledge and do not constitute a warranty of workmanship or durability. We do not assume any liability with respect to our products' fitness for a particular purpose, unless such particular purpose was explicitly specified by us. We reserve the right to amend our specifications based on technological advances. Illustrations, drawings, specifications of dimensions and weights, and similar specifications are only binding, if agreed to in writing.
 - 2.5 Information and advice with respect to our products are based on our experiences, and specifications provided in connection with such information and advice, in particular with respect to performance, are averaged. Such information and advice does not render unnecessary the observance of the processing instructions and the testing of products supplied with respect to their fitness for a particular purpose.
3. Prices and payment
 - 3.1 Unless otherwise agreed, our prices are for delivery ex works and do not include freight, packaging, insurance costs and turnover tax. We will charge the statutory turnover tax at the rate in effect at the date of performance.
 - 3.2 The prices agreed upon reflect the costs of wages, material and energy in effect at the date of the conclusion of contract. If there is an increase in such costs pending the date of performance, we are entitled to increase the agreed-upon price by a commensurate amount proportionate to the amount of the agreed-upon price constituting charges for wages, material and energy. Upon request, we will provide evidence of such increase in cost.
 - 3.3 Unless otherwise agreed, payments due to us must be made in full, without any deductions, within 30 days after our performance. The Orderer will be charged interests at a rate of 8% p.a. above the applicable base rate as provided by §247 of the German Civil Code for all overdue payments. We reserve the right to claim further damages or losses, in particular with respect to costs of legal enforcement and bringing of actions. Our field staff is not authorized to accept payment. Promises to grant a discount are binding only if the Orderer is not in delay with respect to the settlement of previous invoices.
 - 3.4 We are entitled to demand, at our discretion, advance payment or the furnishing of security if, after the conclusion of a contract, we become aware of circumstances that make the creditworthiness of the Orderer appear doubtful or if the Orderer fails to meet its payment obligation when payment to us becomes due. Upon occurrence of any of the foregoing events, all our accounts receivable with respect to the Orderer, including those from other transactions, shall become due immediately, and to the extent we have accepted any bills of exchange that have not yet matured, we can demand immediate payment against bills of exchange.
 - 3.5 To the extent we accept checks or bills of exchange, such acceptance is on account of payment, but never with the effect of discharge, and we are not responsible for the timely presentation or protest. Discounting and collection are at the expense of the Orderer; and the Orderer must reimburse us for these amounts on request without delay. We are entitled to return bills of exchange if the German Federal Central Bank (*Deutsche Bundesbank*) refuses to accept such bills of exchange.
 - 3.6 The Orderer is not entitled to offset any amounts against our claims for payment or to effect a right of retention with respect to amounts due to us. The foregoing does not apply to offsetting with respect to undisputed claims or claims that are final.
4. Periods for and dates of performance
 - 4.1 Periods for and dates of performance are only approximate, unless confirmed expressly as binding.
 - 4.2 A period of performance determined according to its duration begins with the day immediately following the day on which full agreement regarding all specifics of the order was reached, at the earliest with the acceptance of the order by us, but in no case prior to the furnishing of all records, documents, permits, releases to be obtained by the Orderer and the receipt by us of the advance payment, if any, to be made by the Orderer.
 - 4.3 A deadline for delivery is regarded as having been met if the goods left our plant or warehouse before the expiration of such deadline or, in cases where the goods cannot be or are not to be dispatched, if notice of our supply readiness was dispatched by our plant or warehouse before the expiration of such deadline.
 - 4.4 The Orderer may grant us a reasonable grace period for performance with respect to any deadline not explicitly marked as "fixed", and we will only be deemed in default upon the expiration of such grace period.
 - 4.5 If our performance is delayed on account of circumstances or events beyond our control (such as war, fire, strike, lack of means of transportation, general lack of supplies, disruption of operations and similar events), the deadline for performance will be extended for the duration of such events and an additional reasonable start-up time. The same applies for delays due to our not being supplied correctly or on time without our own fault. The consequences of delay will remain excluded for the duration of such events, independent of whether we were already in default at the time such events occurred. Each party may withdraw from the contract if the duration of such events exceeds a reasonable time period. We will promptly inform the Orderer of the occurrence of such events and, in case of our withdrawal, return any payments already made by the Orderer with respect to the contract.
 - 4.6 If we are in delay with respect to the performance, the Orderer can withdraw from the contract, provided such delay is caused by our fault. Upon request, the Orderer is obligated to declare within a reasonable time period whether the Orderer has decided (i) to withdraw from the contract after the expiration of the deadline for performance due to our delay and/or to request damages or reimbursement for expenses in place of performance or (ii) to insist on our performance. If the Orderer does not make use of its rights within such time period, we shall not be obligated to deliver the ordered good or provide replacements.
 - 4.7 The Orderer shall not be entitled to damages if the date or period for performance has been exceeded or if we are in default with respect to performance, unless such delay or default is caused by our intentional or gross negligence, or that of our legal representatives or agents, or in cases of fatal or other injury to body or health. If delivery on or before a specific date is deemed an essential obligation under the contract, damages due to the delay will be limited to 5% of the sales price.
 - 4.8 If goods are not picked up within one month of dispatch of the notification of our supply readiness, we shall be entitled to levy warehouse charges for each month or partial month of such delay in an amount equal to 0.5 % of the invoice.
 - 4.9 We shall be entitled to compensation of our financial losses if the Orderer is in default with respect to the acceptance of supplied goods or fails to fulfill its other duties of cooperation; and after the expiration of a reasonable grace period and a corresponding warning, we shall be entitled to dispose of the goods.
 - 4.10 We shall be entitled to deliver goods in installments and to charge for each such installment separately.
 - 4.11 If the contract provides for the supply of goods or components according to drawing or sample, we will be entitled to deliver and charge, and the Orderer will be obligated to pay, for a quantity of goods or components deviating with a plusage or minusage of up to 10 %, and in any case by least two units, from the agreed upon quantity.
5. Insurance – dispatch – risk of loss – return of package material
 - 5.1 Upon request and at the expense of the Orderer, we will insure consignments, other than pick-ups, consignments to foreign countries, and consignments handled by forwarding agents or our own vehicles, against the usual transport risks.
 - 5.2 We dispatch the goods on the dispatch route that in our opinion is the most favorable dispatch route, unless we receive special dispatch instructions. The goods are dispatched at the expense and for the risk of the Orderer.
- 5.3 The risk of loss of goods, including goods shipped carriage paid and goods with respect to which we provide further services, such as installation, will pass to the Orderer upon the loading of the goods in our plant or – if it is not possible or not intended to dispatch the goods – with the dispatch of our notice of supply readiness.
- 5.4 To the extent we are obligated to accept returns of packaging material under the Packaging Act the Orderer shall bear the cost of such return.
6. Reservation of title
 - 6.1 We retain title to the goods supplied by us pending the complete settlement of all our claims arising from our business connection with the Orderer, including previous claims for payment subsumed into current invoices. Claims for which we accepted checks or bills of exchange are regarded only as paid when such checks or bills of exchange have been duly honored.
 - 6.2 If, due to the fact that goods we supplied to the Orderer are processed or transformed together with other goods of the Orderer, we do not acquire co-ownership in the goods of the Orderer, but lose our ownership rights, then the ownership or co-ownership of the Orderer in the new goods shall pass to us immediately upon the creation of such ownership or co-ownership. The Orderer hereby assigns to us all contingent rights that might result in the acquisition of such ownership or co-ownership rights by the Orderer. To the extent the handing over to us of the new goods is necessary for our acquisition of ownership or co-ownership rights, the goods shall be deemed to have been handed over to us by virtue of the Orderer's agreement to keep the goods in custody for us, like a borrower, or, in case the Orderer is not in possession of the goods, by the Orderer's assignment of all rights to recovery against the possessor, which assignment shall be deemed affected hereby. Goods with respect to which we thereby acquire rights of ownership or co-ownership shall be legally treated like the original goods.
 - 6.3 All claims of the Orderer arising from the resale of any goods in which we have a right of ownership or co-ownership ("reserved goods") shall pass to us immediately upon the conclusion of the sales transaction, independent of whether the reserved goods are sold to one or several buyers. To the extent the reserved goods are not completely subject to our ownership or are sold together with goods in which we do not have a right of ownership, the Orderer's claims shall be deemed assigned to us only with respect to an amount equal to the amount of our invoice for such reserved goods. The Orderer is allowed to collect the claims assigned to us. We shall be entitled to revoke this delegation of authority if the Orderer fails to fulfill any obligation toward us on time or if we become aware of circumstances which make our rights seem in jeopardy.
 - 6.4 We agree to release, upon request of the Orderer, the securities (goods and claims) to which we are entitled hereunder, to the extent their value exceeds the claims to be secured by more than 10 %. The selection of the securities to be released will be in our discretion. The assessment of the value of the securities shall be based on their realizable value.
 - 6.5 If our retention of title loses its validity due to shipment abroad or for any other reason, the Orderer shall grant us without delay a security interest in the goods shipped or provide other security for our claims, which security must be valid under the laws applicable at the Orderer's seat and match as closely as possible the legal concept of retention of title under German laws.
7. Quality defects - defects of title
 - 7.1 Our performance will reflect the state of the art technology at the time the order is placed, the applicable legal requirements and the care customary in our line of business. With respect to descriptions or specifications about the goods, their qualities or characteristics, and other specifications, including technical and commercial specifications, we will only grant a warranty regarding durability and specific quality if the particular description or specification is expressly marked as warranty as to durability or specific quality.
 - 7.2 To the extent our goods exhibit a quality defect or defect of title (each, a "defect") due to reasons already existing at the time risk of loss passed to the Orderer, the Orderer is entitled to rectification of defect or replacement, at our discretion. Necessary costs of such rectification or replacement, such as costs for labor, material and transportation, will be assumed by us to the extent these costs are not increased due to the transfer of such goods to another location than that of the Orderer, unless such transfer is customary for goods of that nature. Replaced components become our property and must be returned to us.
 - 7.3 In case of failure of rectification or replacement, the Orderer is entitled, at the Orderer's discretion, and without prejudice to the Orderer's possible entitlement to damages and reimbursement for expenses as described in Section 8 hereof, to reduce the purchase price or withdraw from the contract.
 - 7.4 We will be liable for defects only under the following conditions:
 - a) The defects are not based upon, or attributable to, misuse, incorrect installation or operation, negligent handling, use of inappropriate equipment or material by the Orderer of third parties, natural wear and tear, electrochemical or chemical impact, unless such actions or events are attributable to our fault;
 - b) The Orderer fulfilled its obligations with respect to the inspection and making of complaints about defects under §377 German Commercial Code. Complaints about defects must be made in writing within eight days of receipt of the good at the agreed upon place of delivery, or, if such defects could not be discovered in the course of a proper inspection, within eight day of discovery of such defects; and
 - c) The Orderer is not in delay with respect to payments due to us, taking into account appropriate reductions of the purchase price as provided in Section 7.8 hereof.
 - 7.5 The Orderer must grant us, after consultation with us, the time and opportunity to effect all rectification and replacements we deem necessary in our reasonable judgment. We will not be liable for any damages resulting from Orderer's failure to grant us the necessary time and opportunity for such rectification or replacement. The Orderer has the right to remedy the defects or have the defects remedied by third parties and request reimbursement from us, only if we are in delay with respect to such elimination of defects or in cases where such defects endanger operational safety or might result in disproportional damages, in which case Orderer must notify us immediately.
 - 7.6 Claims for material defects become time-barred one year after delivery. Our liability with respect to replacement parts or rectification will expire at the end of the limitation period applicable to the goods delivered originally.
 - 7.7 The Orderer is only entitled to recourse under §478 German Civil Code to the extent the Orderer's arrangements with its purchasers do not provide such purchasers with rights regarding claims for defects exceeding the rights required by law. The provisions of the second sentence of Section 7.2 hereof shall be applicable. The Orderer shall, and shall cause its purchasers that are merchants to, inform us immediately if claims against the Orderer are brought with respect to defects on new goods delivered. We reserve the right to performance with respect to claims brought against the Orderer by its purchasers, and we shall be deemed as having satisfied the claims of the Orderer by having satisfied the claims of such purchasers.
 - 7.8 The Orderer's reduction in purchase price in connection with notifications of defects must be proportionate to such defects.
- Claims for damages and reimbursement of expenses
 - 8.1 We will be liable, to the extent provided by law, for claims for damages and reimbursement of expenses (collectively, "damages") brought by the Orderer resulting from our intentional or gross negligence or that of our agents and employees. We will also be liable, to the extent provided by law, for our culpable failure to meet essential contractual obligations, for fatal and other injuries to body or health, and to the extent we granted warranties.
 - 8.2 If we are deemed to have violated an essential contractual duty, the Orderer will only be entitled to foreseeable, typical damages, except in cases of intentional or gross negligence or with respect to claims for fatal or other injuries to body or health or warranties. In any case, such claims will become time-barred after one year.
 - 8.3 We hereby expressly disclaim liability for any other damages, independent of the legal nature of such claim. In particular, we will not be liable for any damages not constituting direct damages to the goods supplied, such as lost profits and other pecuniary losses of the Orderer.
 - 8.4 The specific provisions of these General Terms and Conditions shall be without prejudice to the mandatory provisions of the Product Liability Act.
 - 8.5 The Orderer shall not be entitled to reimbursement of expenses in an amount exceeding the Orderer's interest in the performance of the contract.
9. Place of performance – place of venue – applicable laws
 - 9.1 The place of performance for all duties arising from the contractual relationship, in particular regarding the performance, taking back of packaging material and payment, shall be Ahrensburg.
 - 9.2 Exclusive venue for all disputes relating to the contract, including actions in connection with checks and bills of exchange, shall lie in Ahrensburg. Notwithstanding the foregoing, we shall also be entitled to bring claims against the Orderer at any location where jurisdiction over the Orderer can be obtained.
 - 9.3 In the case of foreign country transactions, the entire contractual relationship shall be subject to the laws of the Federal Republic of Germany, unless the application of mandatory laws of another jurisdiction cannot be excluded. The application of the U.N. Convention on the Sale of Goods (CISG) is explicitly excluded.