



General Terms and Conditions of Sale and Delivery of ETU Rohr GmbH

Version 11/2022

I. Application / Conclusion of Contract

1. These General Conditions of Sale (Conditions) shall apply to all present and future contracts with commercial customers, with public legal entities as well as public trusts in regard to deliveries and other services, including contracts for work and services, contracts for the delivery of fungible and non-fungible goods to be manufactured or produced. The customer's purchase conditions shall not be binding even if we do not expressly object to them again after their receipt.
2. Our offers are subject to change and non-binding. Catalogues, advertising brochures, price lists and cost estimates are also non-binding. All documents relating thereto, such as illustrations, drawings, weight indications, etc., are to be regarded as approximate only, unless they are expressly designated as binding. We reserve all property rights and copyrights to catalogues, drawings, cost estimates and other documents; they may not be made accessible to others.
3. Oral agreements, promises, assurances, guaranties and statements about the designated use of our products made or given by our sales staff shall not be binding unless confirmed by us in text form.
4. Any trade terms shall, in cases of doubt, be interpreted according to the Incoterms as amended from time to time.

II. Prices

1. Unless otherwise agreed, the prices are ex works or ex warehouse plus freight, commissioning, VAT and import duties. Subsequently agreed changes to the order entitle us to charge the additional costs incurred as a result. The goods will be invoiced "gross for net".
2. If the sum of the costs arising outside of our business which are included in the agreed price changes later than four weeks after conclusion of the contract, we shall be entitled to adjust the prices to the corresponding extent on the first of the calendar month in each case.
3. In the event that the adjusted price exceeds the initial price by more than 10%, the customer shall have the right to withdraw from the contract with regard to the quantities affected by the price adjustment when the price adjustment takes effect. The right of withdrawal can only be exercised within one week of knowledge or the possibility of knowledge of the price adjustment.

III. Payment and Set-Off

1. Unless otherwise agreed or stated in our invoices, payment shall be made without cash discounts immediately upon delivery and in such a manner that we can dispose of the sum on the due date. This also applies if the test certificates according to EN 10204 are not part of the delivery or arrive late. Any payment transfer costs shall be borne by the customer.

2. Unless otherwise agreed, our invoices are due 14 days after the invoice date. If the payment deadline is exceeded, at the latest from the date of default, we shall charge interest on arrears at the statutory rate (Section 288 BGB), unless higher interest rates have been agreed. In addition, we shall charge a flat-rate default fee in the amount of € 40.00. We reserve the right to assert further damage caused by default.

3. The customer may retain or set off any counterclaims only in so far as such claims are undisputed or have become legally binding and as they are based on the same contractual relation with the Buyer and/or as they would entitle him to refuse the fulfilment of his contractual duties under section 320 BGB.

4. If after conclusion of the contract, it becomes apparent that our payment claim is endangered by the customer's lack of ability to pay or if the customer is in default of payment with a considerable amount, or if other circumstances arise which indicate a significant deterioration in the customer's ability to pay after conclusion of the contract, we may refuse agreed advance performance and exercise the rights under section 321 BGB. This also applies insofar as our obligation to perform is not yet due. We shall then also be entitled to demand payment of all claims not yet due from the current business relationship with the customer. A lack of ability to pay on the part of the customer is also deemed to exist if the customer is at least three weeks in arrears with a substantial amount (from 10% due), furthermore the substantial downgrading of the limit existing for him with our trade credit insurance.

5. We shall be entitled to set off payments against the customer's older debts first, despite the customer's provisions to the contrary, and shall inform the customer of the type of set-off. If costs and interest have already been incurred, we shall be entitled to set off the payment first against the costs, then against the interest and finally against the main performance.

6. The customer may retain or set off any counterclaims only insofar as such claims are undisputed or have become legally binding and as they are based on the same contractual relation with the customer and/or as they would entitle him to refuse the fulfilment of his contractual duties under section 320 BGB.

IV. Execution of deliveries, delivery periods and dates

1. Our commitment to deliver is subject to our correct, timely and contractual self-delivery and in case of imported material additionally under provision of receipt of monitoring documents and import licenses, unless we are responsible for the incorrect or delayed self-delivery. In particular, we are entitled to withdraw from the contract if we have concluded a proper covering transaction, but are not supplied by our supplier for reasons for which we are not responsible, e.g. if our supplier is insolvent. The same shall apply insofar as the purchaser has specified the supplier to us but the latter does not fulfil its delivery obligations or fails to do so in a timely manner.

2. Any confirmation as to delivery times shall only be approximate and non-binding. Delivery times shall commence with the date of our order confirmation and are subject to the timely clarification of any details of the order as well as of the fulfilment of any of the customer's obligations, e.g. to produce official certifications, to provide letters of credit and payment

guarantees, to pay agreed down payments or to forward drawings approved by the buyer.

3. Any agreed delivery time shall be considered to be met if and in so far the goods have left the works or our warehouse at such time or date. If and in so far the goods fail to be dispatched at the agreed time for reasons not attributable to us, the agreed delivery time shall be considered to have been met at the day on which the goods are notified to be ready for dispatch.

4. If a customer resident outside the Federal Republic of Germany or his agent collects goods and transports or dispatches them abroad, the customer must prove this to us by handing over receipts that meet the requirements of the VAT law of the Federal Republic of Germany. If this proof is not provided within 30 days after handover of the goods, the customer shall pay the value added tax from the invoice amount in accordance with the value added tax rate applicable for deliveries within the Federal Republic of Germany.

5. The customer must ensure smooth acceptance of the goods and notify us in good time of any difficult delivery conditions. The customer must unload immediately and properly and have crane assistance or a forklift ready for this purpose. If we or if third parties assist in the unloading, this shall be done without legal obligation and at the risk and expense of the customer.

6. Events of force majeure, in particular wars, natural disasters or political unrest and the associated effects, entitle us to postpone deliveries for the duration of the hindrance and a reasonable start-up period. This shall also apply if such events occur during an existing delay. Equal to force majeure are currency, trade policy and other sovereign measures (e.g. anti-dumping and compensation investigations, orders for customs registration, etc.), strikes, lockouts, operational disruptions for which we are not responsible (e.g. fire, machine and roller breakage, shortage of raw materials and lack of energy), pandemics and their effects, obstruction of traffic routes, delays in import/customs clearance, as well as all other circumstances which, through no fault of our own, make deliveries and services significantly more difficult or impossible or economically unreasonable. In this context, it is irrelevant whether the circumstances occur at our premises, at the supplier's works or at those of another sub-supplier. If, as a result of the aforementioned events, performance becomes unreasonable for one of the contracting parties, it may withdraw from the contract by means of an immediate declaration in text form.

7. If the delivery is delayed by our fault, the customer, after setting a reasonable grace period, may withdraw from the contract if and in so far as the goods have not been delivered by this date. Damage claims for delay and non-performance may be made in accordance with clause XI of these Conditions.

V. Retention of Title

1. The goods delivered to the customer shall remain our property until the full purchase price is paid. The customer shall take all measures required to preserve the retention of title – or of an equivalent security in the country of his branch or in a different country of destination -, and to provide the corresponding evidence upon our request.

2. To the extent permitted by the laws of the country, in which the goods are located, the following additional regulations apply:

a. All goods delivered to the customer shall remain our property (Reserved Property) until all of the customer's accounts resulting from the business relationship with him, in particular, any account balances have been settled (current account reservation).

This condition shall apply to any future as well as any conditional claims and such cases where the customer will affect payments on specifically designated claims. As soon as the customer has settled his accounts with us in full, he shall obtain title to those goods which were delivered to him before such payment was effected. The current account reservation applies not in prepayment or delivery vs payment cases.

b. With regard to processing or manufacturing of the Reserved Property, we shall be deemed as manufacturer within the meaning of section 950 BGB (German Civil Code) without committing us in any way. The processed or manufactured goods shall be regarded as Reserved Property within the meaning of clause 2 a of these Conditions. If the customer manufactures, combines or mixes the Reserved Property with other goods, we shall obtain co-ownership in the new goods in proportion to the invoiced price of the Reserved Property to the invoiced price of the other goods. If, by such combining or mixing, our ownership expires, the customer herewith transfers to us any rights which he will have in the new stock or goods in proportion to the invoiced price of the Reserved Property, and he will keep them in safe custody free of charge. Our co-ownership rights shall be regarded as Reserved Property within the meaning of clause 2a of these Conditions.

c. The customer may resell the reserved property only within the normal course of his business in accordance with his normal business terms and provided he is not in default of payment and provided also that any rights resulting from such resale will be transferred to us in accordance with clause 2d. - e. of these conditions. The customer shall not be entitled to dispose of the Reserved Property in any other way.

d. The customer hereby assigns to us any claims resulting from the resale of the Reserved Property. We hereby accept the assignment. Such claims shall serve as our security to the same extent as the Reserved Property itself. If the Reserved Property is resold by the customer together with other goods not purchased from us, then any receivables resulting from such resale shall be assigned to us in the ratio of the invoiced value of the other goods sold by the customer. In the case of resale of goods in which we have co-ownership rights pursuant to clause 2b. the assignment shall be limited to the part which corresponds to our co-ownership rights.

e. The customer shall be entitled to collect any receivables resulting from the resale of the Reserved Property. This right shall expire if withdrawn by us, at the latest if the customer defaults in payment; fails to honour a bill of exchange; or files for bankruptcy. We shall exert our right of revocation only if and in so far as it becomes evident after the conclusion of the contract that payment resulting from this contract or from other contracts is jeopardised by the lack of customer's ability to pay. The customer shall - upon our request - immediately inform his customers of such assignment and to forward to us any information and documents necessary for collection.

f. The customer shall immediately inform us of any seizure or any other attachment of the Reserved Property by a third party. He shall bear any costs necessary to suspend such seizure or attachment, to separate or to remove the Reserved Property, if and in so far as such costs are not borne by a third party.

g. Should the total invoiced value of our collateral exceed the amount of the secured receivables including additional claims for interest, costs etc. by more than 50 %, we shall - upon the customer's request - release pro tanto collateral at our discretion.

VI. Weights

- 1 The weight of the goods shall be determined on our or our suppliers' scales and shall be evidenced by the presentation of the pertinent weight ticket. Where provided by law, the weight may be determined without weighing in accordance with the applicable standards. We may calculate the weight without weighing on the basis of such standards ("theoretical weight") plus 2 ½ pct ("commercial weight").
2. Quantities, bundle numbers etc. stated in the dispatch note are non-binding for goods invoiced by weight. If no individual weighing has been agreed, the total weight of the delivery shall apply. Differences compared to the calculated individual weights shall be distributed proportionately among them.

VII. Inspection Certificates / Testing and Inspection

1. The provision with inspection certificates according to EN 10204 requires consent in text form. We are entitled to forward copies of such certificates. The fee for agreed inspection certificates shall be € 55 per certificate unless otherwise agreed.
2. Where testing and inspection of the goods has been agreed upon or where corresponding material standards provide for such testing and inspection, it can only take place in the supplying plant or in our warehouse immediately after notification of readiness. The customer shall ensure that we can commission the desired accepting company on his behalf and for his account or for his customer's. Unless otherwise agreed, this authorisation shall be deemed to have been granted if an accepting company is named in the order.
3. The customer shall bear his personal inspection costs, whereas the costs of inspection will be invoiced to him in accordance with our price list.
4. Should, through no fault of ours, an inspection of the goods fail or be delayed or be incomplete, we shall be authorised to dispatch the goods without prior inspection or to store them at the customer's expense and risk and to invoice the goods to him.

VIII. Dispatch, Passing of Risk, Packaging, Partial Delivery

1. We shall be entitled to choose the route and mode of dispatch as well as the forwarding agent and the carrier. Unless otherwise agreed in text form, our deliveries shall be made from our registered office.
2. The customer shall immediately request delivery of those goods which have been notified to him as ready for dispatch. Otherwise we are entitled, upon reminder, to ship such goods at the customer's cost and risk or to store them at our discretion and to invoice them to the customer.
3. Can, by reasons not attributable to us, the goods not be shipped or will it become significantly difficult to ship the goods via the designated route or to the designated place within the designated time, we reserve the right to ship them via a different route or to a different place. Any additional costs will be borne by the customer. In such cases we will ask the customer for his prior comments.
4. Unless otherwise agreed, we shall provide packaging, protective and/or transport aids in accordance with our experience at the customer's expense. Packaging shall be taken back in order to comply with the provisions of the Packaging Act after reasonable advance notice at

the place of our registered office. We shall not bear the customer's costs for the return transport of the packaging. Unless otherwise agreed, the customer shall bear the disposal costs.

5. In the case of call-off orders, the risk shall be transferred to the customer at the time of the provision of the goods for collection. Otherwise, the risk, including the risk of confiscation of the goods, shall pass to the customer upon transfer of the goods to a forwarding agent or carrier, at the latest, however, upon leaving the warehouse or the supplying plant, in all transactions, including pre-paid and free deliveries. We shall only provide insurance at the customer's instruction and expense. Unloading and its costs shall be borne by the customer.

6. We shall be entitled to make partial deliveries at reasonable quantities. We may also exceed or reduce the agreed quantities as appropriate. Where quantities are indicated as "circa", we may exceed or fall below the agreed quantity up to 10 %.

IX. Callable and Continuous Deliveries

1. In the case of contracts with continuous delivery, call-offs and grading for approximately the same monthly quantities shall be given to us; otherwise we shall be entitled to make the determinations ourselves at our reasonable discretion.

2. Call-off orders oblige the customer to accept the total quantity on which the call order is based. Unless otherwise agreed, call-off orders are to be processed within 365 days of conclusion of the contract. After expiry of this period, we shall be entitled to store the goods not called off at the expense and risk of the customer and to charge him for them.

3. If the individual call-offs exceed the contractual quantity in total, we shall be entitled but not obliged to deliver the excess quantity. We may charge for the excess quantity at the prices valid at the time of the call-off or delivery.

X. Warranty Provisions

1. The inner and outer properties of the goods, especially their quality, grade and measures are to be determined with priority by the agreed quality, namely by the standards or materials sheets agreed upon. References to standards and other sets of regulations, to test certificates according to EN 10204 and other attestations as well as particulars of qualities, grades, measures and use of the goods are no warranties or guarantees, the same shall apply to declarations of conformity and corresponding markings such as CE and GS.

2. We do not assume any liability for a specific use of the goods. Rather, it is the customer's responsibility to check the suitability of the goods for the intended use. Something else shall only apply if we were informed of the intended use by the customer in text form at the latest when the purchase contract was concluded and have expressly agreed to this use in text form.

3. Insofar as the goods have the agreed quality in accordance with Clause X.1, the customer may not rely on the fact that the goods are not suitable for normal use or do not have a quality which is usual for goods of this type and which the customer has expected.

4. The statutory provisions shall apply to the inspection of the goods and notification of defects with the proviso that the obligation to inspect the goods after delivery shall also extend to any test certificates in accordance with or pursuant to EN 10204 and that defects in the goods and test certificates must be notified to us in text form no later than 7 days after delivery of the goods. Any transport damage can only be taken into account if it is noted on the delivery note.

In this respect, in case of deliveries in Germany, the notification obligations of the General German Forwarding Conditions (AdSP) and in case of international deliveries, the notification obligations of CMR shall apply. Defects that cannot be discovered immediately after delivery, even with the most careful inspection, must be reported to us in text form immediately, however not later than 7 days after discovery.

5. If and in so far the customer's claim for defects is justified and has been made in time, we may, upon our discretion, remedy the defect (rectification) or deliver non-defective goods (subsequent delivery). Should we fail or should we decline the supplementary performance, the customer may resort to his statutory rights. In cases where the defect is only minor or where the goods have already been resold, processed or transformed, he may only reduce the purchase price.

6. In case the customer intends to install the goods into another object or attach the goods to another object, prior to installation resp. attachment, the customer has the obligation to inspect at least randomly the goods with regard to properties relevant for the application in question and to notify us of defects without delay. In case the customer, in the event of an installation of the goods into another object or attachment of the goods to another object, fails to inspect the properties of the goods relevant for the designated end use at least at random prior to installation resp. attachment, this represents a particularly grave disregard of the care required in the ordinary course of business (gross negligence) in relation to us. In such a case, the customer may assert rights in relation to these properties only if the defect had been deliberately concealed or in case of a guarantee for the respective quality of the goods.

7. In case the customer has installed the goods, in accordance with the goods' type and designated use, into another object or attached the goods to another object, he may claim reimbursement of his necessary costs for the dismantling of the defective goods and the installation or attachment of goods free from defects ("dismantling and installation costs") only in accordance with the following provisions:

- Necessary dismantling and installation costs are only those, which directly result from the dismantling resp. removal of the defective goods and the installation resp. attachment of identical goods, have accrued on the basis of competitive market prices and have been proven by the customer by appropriate documents in text form.
- Additional costs of the customer for consequential damages such as e.g. loss of profit, down time costs or additional costs for cover purchases are no dismantling and installation costs and therefore not recoverable under Sect. 439 para. 3 of the German Civil Code. The same applies for sorting costs and for supplementary costs resulting from the fact that the sold and delivered goods are at a place other than the agreed place of delivery.
- The customer is not entitled to request advance payments for dismantling and installations cost or other expenses required for the remedy of the defective delivery.

8. We will reimburse the customer for his expenditures in connection with the supplementary performance only in so far as such expenditures are reasonable and not disproportionate in relation to the value of the goods. Disproportionate expenditures are especially given in case the expenditures requested by the customer, in particular dismantling and installation costs, exceed 150 % of the purchase price of the goods invoiced by us or 200 % of the value of the defective merchandise. If the last contract in the supply chain is a consumer sale, the reimbursement of expenses shall be limited to the appropriate amount.

Costs of the customer related to the self-remedy of defects without the legal requirements being fulfilled, are excluded, the same applies for costs for disassembly of the defective and assembly of replacement goods, in case due to a transformation of the customer before the assembly, the assembled goods provide substantially different features than the original goods delivered by us. Expenditures accrued by delivery of goods to another place than that of the agreed performance, will not be accepted.

9. If and in so far the goods are subject to contractually agreed testing and inspection by the customer, such testing and inspection shall bar any claims for such defects which might have been determined by the agreed type of testing and inspection. Has the customer, by his own negligence, not learned of the defect, then he may claim only such defects which we have knowingly not disclosed to him or which are subject to a guarantee.

10. If the customer does not immediately give us the opportunity to convince ourselves of the defect, in particular if he does not immediately make the rejected goods or samples available for testing purposes upon request, all rights due to the material defect shall lapse.

11. No warranty shall be given to goods sold as declassified material with regard to such defects either specified in the contract or to those normally to be expected. Goods classified as "Ila-Ware" ("secondaries") are not subject to any warranty, subject to XI no. 2 of these terms.

12. Our further liability is subject to Section XI of these Conditions. Any of the customer's rights of recourse according to section 445a BGB (German Civil Code) are excluded, unless the last contract in the supply chain is a consumer sale. Section 478 BGB (German Civil Code) shall remain unaffected.

XI. General Limitation of Liability and Limitation Periods

1. Our liability for breach of contractual or extra-contractual obligations, in particular for non-performed or deferred deliveries, for breach of duties prior to the contract ("Verschulden bei Vertragsanbahnung") as well as for tortuous acts - including our responsibility for our managerial staff and any other person employed in performing our obligations - shall be restricted to damages caused by our wrongful intent or by our gross negligence and shall in case of gross negligence not exceed the foreseeable losses and damages characteristic for the type of contract in question. In all other respects, our liability, also for damages caused by defects and consequential damages, is excluded.

2. The aforesaid restriction shall not apply to such cases where we breach our fundamental contractual obligations and therefore the accomplishment of the purpose of the contract is at risk or where the non-fulfilment of the obligations the contracting party relies on renders the proper completion of the contract impossible. It shall neither pertain to damages to life, to the body or to health caused by our fault nor to any cases where we have guaranteed certain characteristics of the goods. Nor shall such clause affect our statutory liability laid down in the Product Liability Act (Produkthaftungsgesetz) of 15/12/89. Any statutory rules regarding the burden of proof shall remain unaffected by the aforesaid.

3. Unless otherwise agreed, any contractual claims which the customer is entitled to in connection with the delivery of the goods, including claims for damages for defective goods, shall fall under the statute of limitations within a period of one year after the goods have been delivered to the customer.

This restriction shall not apply to our liability and to the limitation of claims in connection with the delivery of goods which have been used for a building in accordance with their customary manner of use and which have caused its defectiveness and claims resulting from breaches of contract caused by our wrongful intent or by our gross negligence; neither to damages to life, to the body and to health caused by our fault, in cases of mandatory liability under the Product Liability Act, and to the limitation of statutory recourse claims. In these cases, the statutory limitation periods shall apply.

XII. Safeguard- measures

1. To the extent that we import the goods intended for the Buyer into the territory of the European Union, pursuant to the Implementing Regulation (EU) 2019/159 of 31.01.2019, as amended from time to time, tariff quotas shall apply to certain categories of goods, upon exhaustion of which an additional duty of 25% shall be assessed.
2. Our obligation to import the goods into the European Union as well as the agreed delivery date is therefore subject to the proviso that at the time of the intended import the relevant tariff quota is not exhausted or critical and that therefore no additional duty and no security are assessed. Otherwise we are entitled to postpone the delivery date by up to 3 months until the import is possible again without assessment of the additional duty, e.g. because new tariff quotas are opened.
3. If we import the goods and the tariff quotas are already exhausted, critical or overbooked on the day of import without this being recognisable to us on the day of import by inspection of publicly accessible documents, the customer shall bear any resulting additional duty (if applicable, the proportion attributable to him) or the corresponding security deposit. We are entitled to charge him the resulting additional costs in addition to the agreed purchase price.
4. The customer may demand delivery at any time against payment of any additional customs duty incurred.

XIII. Additional conditions for contract work

1. The General Conditions of Delivery and Payment shall also apply mutatis mutandis to contract work
2. A delivery note must be enclosed with the material handed over to us for processing. This must contain the following minimum information:
 - a. Designation of the material, number of pieces and net weight;
 - b. Desired processing;
 - c. Desired test procedures;
 - d. Other information or requirements necessary for the success of the processing.

If the required minimum information is missing or incomplete or incorrect, we shall carry out the processing to the best of our ability.

3. On account of our claim arising from the order, we are entitled to a contractual right of lien and retention on the material that has come into our possession on the basis of the order.

The contractual right of lien and retention can also be asserted on account of claims from work carried out earlier, replacement deliveries and other services, insofar as they are connected with the subject matter of the order. The contractual right of lien and retention shall only apply to other claims from the business relationship insofar as these are undisputed or a legally binding title exists and the object of the order belongs to the client.

4. In the event of excess or surplus deliveries of material handed over to us for processing, ownership of the excess material shall pass to us no later than 3 months after delivery, unless otherwise agreed and the customer collects this material immediately after execution of the order.

XIV. Place of Performance, Jurisdiction and Applicable Law, Data Protection

1. The place of performance for our deliveries and for the customer's payments is the place of our registered office. If the customer is a merchant, a legal entity under public law or a special fund under public law or has no general place of jurisdiction in Germany, the exclusive place of jurisdiction - including international jurisdiction - shall be the place of our registered office. However, we are also entitled to sue the customer at any other general or special place of jurisdiction.

2. All legal relationships between us and the customer shall be governed by the laws of the Federal Republic of Germany in addition to these terms and conditions, to the exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).

3. The data of our customers are stored and processed by us in accordance with the requirements of the DSGVO.

XV. Applicable Version

In case of doubt, the German version of these General Terms and Conditions of Sale and delivery shall prevail.