

RMW-Kabelsysteme GmbH Sale and Delivery Conditions

Last update 1/03/09

1. Scope

- 1.1 The following conditions apply exclusively to all deliveries by RMW-Kabelsysteme GmbH (hereinafter the User), including deliveries relating to future business transactions with the customer, except where different, exceptional conditions have been agreed to. The invalidity of any individual provisions shall not affect the validity of the remaining provisions. The same shall apply where individual provisions do not form an integral part of the contract. Only the user's General Terms and Conditions shall apply; any conflicting or deviating conditions on the customer's side are hereby expressly rejected. Such conditions shall apply only with the prior written consent of the user.
- 1.2 The user's General Terms and Conditions shall also apply in cases where the user makes the delivery to the customer unconditionally, in the knowledge that the customer has conflicting conditions.

2. Quotation

- 2.1 All quotations are subject to confirmation. We expressly reserve the right to make changes. Each quotation and each sale commitment made is subject to the right on our part to ensure punctual delivery ourselves.
- 2.2 Notwithstanding acceptance of a quotation by the customer, the contract shall come into effect only when the user has confirmed the order in writing.
- 2.3 The user shall be entitled to obtain information on the customer's credit standing from banks, information agencies, or the credit reference agency SCHUFA. The user shall also be entitled at its discretion to demand payment in advance or the provision of security before confirming the order in writing. If, after the order has been confirmed, doubts arise about the customer's credit standing, the user shall be entitled to withhold service or to withdraw from the contract at its discretion until full payment has been made or adequate securities have been provided. In addition, it shall be entitled to demand compensation for non-performance.

3. Prices

- 3.1 Prices are in euros plus the applicable statutory rate of VAT, and excluding costs for shipment, packaging and insurance.
- 3.2 If delivery is made more than four months after conclusion of the contract, the price that applies on the date of delivery shall prevail.

4. Delivery

- 4.1 Fixed transactions shall be carried out only after they have been confirmed as such in writing by the user. Other delivery dates shall be non-binding.
- 4.2 A condition for punctual delivery is that the required information and documents from the customer are received in good time by the user to allow the necessary purchases, designs, calculations and permits to be undertaken in the course of ordinary business operations.
- 4.3 If delivery is rendered impossible or excessively difficult as the result of acts of God, official measures, including factory closures, natural catastrophes, extreme weather (e.g. damage from hailstorm or thunderstorm) or similar circumstances - including situations affecting the user's suppliers, the user shall be exempted from the obligation to make delivery for the duration of the disruption and its after-effects. The user shall inform the customer immediately should such a situation arise. Such events shall also entitle the user to withdraw from the contract. In the case of non-delivery, or delivery of insufficient quantities to the user by its own suppliers, the user shall be fully or partly released from its delivery obligations. This shall apply only if it has taken the necessary precautions to ensure procurement of the goods it supplies and carefully selected its own suppliers. In such a case, it undertakes to assign its claims against the suppliers to the customer on request. In situations of this kind, compensation claims are mutually excluded, unless intent or gross negligence can be proven.
- 4.4 Should the user default on payment, the customer shall be entitled to withdraw from the contract only after giving the user a period of grace of at least 4 weeks, with the warning that it will reject performance of the contract after the expiry of the period in question.
- 4.5 The user shall be entitled to make partial performance. In such case, partial payments shall be made in line with the progress of performance.
- 4.6 Purchase of goods from stock shall be limited to 12 months at most after conclusion of the contract. Individual requests for goods from stock must be made at least 6 weeks before the delivery date, and at least 10 weeks before the delivery date in the case of high-tech products and special designs.
- 4.7 For mass-produced products, quantity deviations of up to 10% in the goods delivered shall be deemed to constitute delivery as contractually agreed. In the case of excess delivery quantities, the price of the actual performance shall apply. In the case of under-delivery, any claim to shipment of the balance is excluded.

5. Transfer of risk

- 5.1 The user shall not be liable for the risk of accidental loss of the goods.
- 5.2 The goods shall be shipped from the user's registered office. The risk of accidental loss shall transfer to the customer as soon as the goods have been handed over to the forwarding agent or any other party charged with performing delivery. The user shall not be liable for the expediency or suitability of the means of transport, or the transport route selected.
- 5.3 If a right of retention applies because the customer is in arrears with payment or is of insufficient credit standing, or if there are other circumstances to justify not delivering the goods, the risk of accidental loss of the goods shall transfer to the customer on notification that the goods are ready for dispatch.

6. Due date and payment terms

- 6.1 The purchase price is payable immediately unless the parties have specifically agreed in writing on another date.
- 6.2 Cheques shall be accepted only as conditional payment.

- 6.3 The customer shall have the right to offset payment only if its counterclaims have been legally established, are not disputed, or have been acknowledged. The same shall apply for the exercise of any right of retention.

7. Reservation of title

- 7.1 The goods delivered, including the packaging, remain the user's property until the purchase price has been paid in full and all existing and future claims on the part of the user arising from the business relationship have been met.
- 7.2 If the reserved goods are inseparably amalgamated, mixed or combined with other goods, the user shall acquire co-ownership of the collective item in the same proportion as is represented by the value of its reserved goods in relation to the value of the amalgamated goods at the time of amalgamation, mixing, or combination. The user shall acquire ownership of the new item as the result of any processing or modification of the reserved goods; the customer shall hold the goods on the user's behalf.
- 7.3 Should the customer sell the goods in the normal course of business, the reservation of title shall be replaced by a claim for payment of the claims due to the customer against the purchaser. Disposal or sale of the reserved goods is not permitted outside the normal course of business. The customer hereby assigns to the user in advance all claims arising from the on-sale of the reserved goods, or of the goods produced from them by processing or modification. Furthermore, the customer hereby assigns to the user in advance a partial amount with preferential rights from the claims arising from the sale of the goods to which the user has acquired co-ownership as the result of amalgamation, mixing, or combination. Such partial amount shall correspond to the user's co-ownership share in the goods sold. If the customer sells goods that are owned or co-owned by the user along with other unrelated goods for an overall price, it hereby assigns to the user in advance a partial amount of this overall claim with preferential rights, corresponding to its share in the reserved goods. The assignment in each case shall encompass all ancillary rights and security interests. If the realisable value of the existing securities for the user exceeds the secured claims by more than 10% in total, the user shall be obliged at the customer's request to release securities to that extent selected at its discretion.
- 7.4 Subject to revocation at any time, the customer shall be entitled to collect the assigned claims from the on-sale. At the user's request, it must disclose the names of the debtors of the assigned claims, notify the latter of the assignment, or hand over notices of assignment to the user. The user undertakes not to disclose the assignment provided the customer meets its payment obligations. At the user's request, the customer is obliged to confirm in writing the assignment of its claims against third parties. The user is entitled to inform the third parties of the claim assignment carried out.

8. Warranty

- 8.1 Descriptions and representations of the goods are non-binding. We reserve the right to make any technical changes that do not affect the contractually specified purpose of the goods.
- 8.2 A precondition for warranty claims by the customer is that the latter immediately examines the goods supplied to it to ensure they are in satisfactory condition and free from defects, and makes any complaints immediately in writing.
- 8.3 If there is a defect for which the user is responsible, the latter shall be entitled at its discretion to arrange for remedial work to be carried out, or to provide a replacement delivery or a reduction in the sale price.
- 8.4 Otherwise, warranty claims are excluded. This shall not apply where reasonable attempts to carry out remedial work have failed, or where replacement deliveries are impossible. In such a case, the customer may demand a reduction in the sale price, or recession of the contract.

9. Liability

- 9.1 Compensation claims by the purchaser, irrespective of their legal basis, and in particular where they result from a breach of the duties arising from the contractual relationship or from tort, are hereby excluded. This does not apply where there is mandatory liability under the law, particularly in cases of intent or gross negligence involving injury to life, limb or health as a result of the assumption of a warranty covering the presence of a characteristic in the event of violation of fundamental contractual duties, or under product liability legislation.
- 9.2 The above provisions do not imply any change in the burden of proof to the purchaser's disadvantage.
- 9.3 Where the user negligently breaches a fundamental contractual duty, liability for damages to property or persons shall be restricted to the sum insured under product liability cover. The user undertakes to allow the purchaser to inspect the insurance policy on request.
- 9.4 Any further liability is excluded, irrespective of the legal nature of the claim asserted. This also applies for personal liability on the part of the user's employees and vicarious agents.

10. Final provisions

- 10.1 Place of performance and place of jurisdiction, including disputes concerning drafts and cheques, is Gera.
- 10.2 The laws of the Federal Republic of Germany apply exclusively for all legal relationships between the parties, excluding the provisions of the UN Convention on the International Sale of Goods.
- 10.3 Changes and additions to the present contract must be in writing to be legally valid. This also applies for any verbal collateral agreements or assurances, and for any waiver of the requirement for the agreed written form.
- 10.4 In the event that any individual sections of the present sale and delivery conditions are null and void, that shall not affect the validity of the other provisions of the contract.