

# General terms and conditions for the supply of equipment



## I. General

- Our following terms and conditions of business and possibly separately agreed contractual arrangements form the exclusive basis of all our supplies and services, as well as such as arise from future conclusions of deals. Terms and conditions of business of the customer which differ from these do not become part of the contract, even if we do not expressly reject them and carry out the order without reservations. In the absence of special arrangements, an agreement comes about with written confirmation of the order by the supplier.
- The supplier reserves the right of ownership and copyright to all samples, estimates, drawings and similar information of a material and immaterial kind – including in electronic form; these may not be made accessible to third parties. The supplier undertakes to make information described as confidential by the customer available to third parties only with his agreement.

## II. Extent of the delivery

- The written confirmation of the order by the supplier is definitive for the extent of the delivery. In the event of a tender by the supplier which is of restricted duration and has a restricted acceptance period, the tender is deemed to be valid and to have been accepted if it is accepted within the period due, even if the acceptance is not confirmed by the supplier within the period due. Additional agreements, alterations and supplements require the written confirmation of the supplier.
- The subject matter of the contract is exclusively the sold product with the properties, characteristics and purpose as described in accordance with the accompanying confirmation of the order. Other or further properties and/or characteristics or purpose going beyond that normally specified apply as part of the agreement only if they are expressly confirmed in writing by the supplier. The right to make alterations during the course of the order is reserved and will be agreed with the customer as far as necessary.

## III. Price and payment

- In the absence of any special arrangement, the prices apply ex works including loading at the works, but excluding packing, insurance and unloading. The legal rate of value added tax prevailing at the time will be added to the prices.
- In the absence of any special arrangement, payment is to be made net within one week of the issuing of the bill.
- A price quotation is to be paid on the basis of a fixed price. The obligation to pay for the price quotation lapses if the work is commissioned.
- In the event of part-deliveries, partial bills are permitted.
- The customer is entitled to rights of offsetting or retention only in so far as his counter-claims were identified undisputed or to have legal force.

## IV. Delivery times – delays in delivery

- The delivery time results from the agreement of the contractual parties. The supplier's compliance with these is based on the condition that all commercial and technical questions between the contractual parties have been clarified and that the customer has fulfilled all the obligations to which he is subject, in particular the timely and orderly fulfilment of his contractual obligations and duty to co-operate, the production of the necessary authorisations, releases or other information and documents as well as the payment of an agreed deposit. If this is not the case, the delivery time will be extended accordingly. This does not apply in so far as the delay lies within the supplier's area of responsibility.
- Meeting the delivery deadline is subject to the supplier's own supplies being received correctly and in good time.
- The delivery deadline is met if the object supplied has left the works by the expiry of the period or notification has been given that it is ready to be sent. If acceptance (after inspection) has to take place, the deadline for the acceptance at the manufacturer's works or, alternatively, the notification that it is ready to be dispatched is – except in the event of justified refusal of acceptance – definitive.
- If the dispatch or the acceptance of the object supplied is delayed for reasons within the customer's area of responsibility, the expenses which arise through the delay will be charged to him starting one month after the communication that the goods are ready to be dispatched or inspected.
- The delivery period will be extended accordingly in the event of industrial disputes, force majeure, or the occurrence of other events which lie beyond the control of the supplier. This also applies if these circumstances arise in the case of subcontractors. The supplier will communicate the start and end of circumstances of this kind as soon as possible to the customer.
- The customer can withdraw from the contract without giving a time-limit, if it becomes conclusively impossible for the supplier to provide the full service before the transfer of risk. The customer can furthermore withdraw from the contract if the carrying-out of a part of the delivery of an order becomes impossible and he has a justified interest in declining a part-delivery. If this is not the case, the customer must pay the allocated contractual price on the part-delivery. Otherwise, Section IX. 2. of these terms and conditions applies.
- If the supplier is late in delivery, and damage to the customer arises as a result, the supplier's liability is limited as determined exclusively by Section IX 2 of these terms and conditions.

If the customer sets the supplier who is late in delivery an appropriate deadline for the performance of the service – taking into account the legal exceptions – and if the deadline is not met, the customer is entitled to withdraw from the contract within the framework of the legal provisions.

## V. Customer's duty to co-operate and supplementary provisions for the supply of equipment

- The equipment of RULAND Engineering & Consulting GmbH is specialist equipment which as a rule is manufactured specially for the customer and can be adapted to the individual requirements and conditions only after installation in the customer's works. The supplier accepts no kind of liability for the machine being immediately ready for use after delivery. The supplier accepts only the responsibility for the installation of the machine and adapting it to the production conditions of the customer as quickly as possible. If necessary, the customer must

undertake alterations and adjustments to existing equipment, machines, etc. by joint arrangement and to a reasonable extent.

- An orderly and timely development and construction of the equipment can be guaranteed only with the active support of the customer. For this reason the customer undertakes to co-operate in the developing, trying-out and setting of equipment and to make available to the supplier in good time all the appropriate information for orderly planning of the equipment.
- If it should emerge during the development and construction of equipment that this cannot be manufactured in accordance with the original basic conception, or can be manufactured only with substantial additional expenditure, and if this was neither known to, nor recognisable by, the supplier before the conclusion of the contract, he reserves the right to withdraw from the contract while charging for the expenditure he has incurred, if the customer does not agree to an alternative solution proposed by the supplier and/or does not take over the corresponding additional expense. Services already received are to be returned. There will be no other mutually arising claims. In particular, no forfeit is to be paid.

The same applies if the customer lets a reasonable deadline which he has been set to carry out the duties of co-operation to which he is subject or to remove other obstacles to the supplier's liabilities, and which are within his (the customer's) area of responsibility, pass without action. In this case the supplier has the right to claim the agreed payment, less, however, the expenditure saved as a result of the cancellation of the contract.

- For the purposes of development, a test-run and setting of the machine, the customer is obliged to make available relevant original material in good time and free of charge on demand by the supplier. The customer is to draw attention separately to particular qualities or behaviour of the product in the production process, in particular information concerning risks to health or relevant to safety, as well as particular climatic or other local or operating circumstances at the place of installation.
- The customer must make tolerance values (property characteristics) for the original materials or the materials to be used later.

- The performance of the equipment can be guaranteed by the supplier only for materials which correspond to the original samples presented for the development of the equipment within the given and agreed tolerance values. No liability is accepted for the later use of materials which do not correspond to the original sample or lie outside the given tolerance values. No responsibility is accepted for the sample material.

## VI. Transfer of risk – acceptance

- The risk is transferred to the customer at the latest with the dispatch of the object to be supplied and in fact also when part-deliveries take place or the supplier has taken over other services, e.g., the dispatch expenses or the delivery and installation.
- If the product has to be accepted, this must be carried out without delay by the acceptance deadline, or alternatively after the communication of the supplier that the item is ready for acceptance. The customer must support the supplier in this process as far as is reasonable. The customer may not refuse acceptance on the basis of the existence of a minor defect. Acceptance is deemed to have taken place at the latest, however, as soon as the customer takes the equipment into its intended use or production.

If the dispatch or acceptance is delayed or does not occur as a result of circumstances which are not to be attributed to the supplier, the risk is transferred to the customer from the day of the communication of the readiness for dispatch or of acceptance. The supplier undertakes, however, to conclude, at the wish and expense of the customer, insurances which the customer demands.

- Part-deliveries are permitted in so far as these are reasonable for the customer.

## VII. Reservation of title

- The object supplied remains the property of the supplier until the fulfilment of all the claims against the customer to which he is entitled from the business relationship. In so far as the value of all the security rights to which the supplier is entitled exceeds the value of all the secured claims by more than 20%, the supplier will release a corresponding part of the security rights at the request of the customer.
- The supplier is entitled by arrangement with the customer and at the customer's expense to insure the object supplied against theft, breakage, fire, water and other damage, provided that the customer himself has not provably concluded the insurance.
- During the existence of the reservation of title, the customer is prohibited from pledging or transferring the ownership by way of security, and resale is authorised only in the usual course of business on condition that the customer receives payment from his client or makes the reservation that the ownership will not be transferred to the client until he (the client) has completely fulfilled his payment obligations.
- a. If the customer resells the reserved goods, he assigns to the supplier at this stage his future demands with all subsidiary rights for the sake of security against the clients from the resale and indeed independently of whether the reserved goods were sold without or after processing, reconstruction or combination with other objects. There is no need for special later declarations.  
b. If the reserved goods are resold together with other objects, without an individual price having been agreed for the reserved goods, the customer assigns to the supplier, with precedence over the remaining asking price, that part of the total asking price which corresponds to the price of the reserved goods invoiced by the supplier.  
c. In furnishing prima facie evidence of a justified interest, the customer must give the necessary information to the supplier for the assertion of his rights against the client and hand over the necessary documents.
- Until revocation, the customer is authorised to collect the assigned claims from the resale. On presentation of an important reason, in particular in the event of arrears of payment, stopping of payment, opening of insolvency proceedings, protesting of a bill or comparable justified grounds, which suggest the customer's inability to pay, the supplier is entitled to revoke the customer's power to collect. Additionally, the supplier can disclose the assignment of a claim for security after previous warning of its disclosure or of the realisation of claims on the condition of meeting an appropriate deadline, realise the transferred claims or demand the disclosure of the assignment of a claim for security by the customer to the client.

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5. The processing, reconstruction or combination by the customer of the object supplied does not affect the ownership of the supplier. If the object supplied is processed, reconstructed or combined with other objects not belonging to the supplier, the supplier acquires co-ownership in the new object in proportion to the value of the object supplied to the other processed objects at the time of processing. The processed, reconstructed or combined object is deemed to be reserved goods.
6. In the event of seizure or confiscation or other disposal by a third party, he must inform the supplier of this without delay. The customer must if necessary arrange security measures in relation to third parties.
7. In the event of behaviour by the customer contrary to the contract, in particular in the event of delay in payment, the supplier is entitled after warning to take back the equipment and the customer is obliged to hand it over. The assertion of reservation of title as well as the seizure by the supplier of the object supplied, based on legal judgment, are not deemed to be a withdrawal from the contract.
8. An application to open insolvency proceedings entitles the supplier to withdraw from the contract and to demand the immediate return of the object supplied.

## VIII. Claims regarding defects

The supplier provides a guarantee regarding material defects and defects in title of the delivery with the exclusion of further claims – as provided in Section IX. – within 12 months of delivery as follows.

1. At the discretion of the supplier and free of charge, to rectify or supply new all those parts which turn out to be defective as a result of a circumstance existing before the transfer of risk. The ascertainment of such defects is to be communicated in writing to the supplier without delay. Replaced parts become the property of the supplier.
2. The customer must provide the necessary time and opportunity after agreement with the supplier for the carrying-out of all the repairs and replacement deliveries which appear necessary to the supplier otherwise the supplier is released from liability for the consequences which result from this. The customer has the right to remedy the defect himself or have it remedied by a third party and demand a refund of the necessary expense from the supplier only in urgent cases of danger to operational safety and for the purpose of preventing disproportionately large damage, in which case the supplier is to be notified immediately.
3. Of the immediate expenses arising from repair or supply of replacement, the supplier bears – in so far as the complaint turns out to be justified – the cost of the replacement part including dispatch within Europe, as well as the appropriate expense of the removal and installation, furthermore, in case this can be charged more cheaply in accordance with the state of things, the expenses of, for instance, the required provision of filters and auxiliary staff. The taking-over of these expenses by the supplier is excluded if the expenditure is raised because the object supplied has been subsequently transferred to a place other than the establishment of the customer, unless the transfer corresponds to his intended use.
4. Within the framework of the legal provisions, the customer has a right to withdraw from the contract, if the supplier – taking into account the legal exceptions – lets a reasonable deadline, which he has been set for repairs or the supply of replacement parts because of a defect, pass without action. If only a minor defect is present, the customer is entitled merely to a right to a reduction of the contractual price. The right to reduction of the subject matter of the contract is otherwise excluded.
5. In particular, no responsibility will be accepted in the following cases: unsuitable or improper use, defective installation or putting into operation by the customer or third parties, natural wear and tear, defective or negligent handling, maintenance not in accordance with the rules, unsuitable operating materials or substitute materials, faulty construction work, unsuitable foundations, chemical, electrochemical or electrical influences – in so far as these do not lie within the area of responsibility of the supplier.
6. If the customer or a third party remedies a defect improperly, no liability exists for the supplier for the consequences which arise from this. The same applies for alterations of the object supplied which are undertaken without the prior agreement of the supplier.
7. If the use of the object supplied leads to the infringement of commercial proprietary rights or copyright within Germany, the supplier will at his own expense always give the customer the right to further use, or modify the object supplied in a reasonable way for the customer in such a way that there is no longer an infringement of proprietary rights.  
If this is not possible on commercially appropriate conditions or in an appropriate period of time, the customer is entitled to withdraw from the contract. Furthermore, the supplier will release the customer from undisputed claims or claims established as legally valid of the affected holder of the proprietary rights.
8. The obligations of the supplier specified in Section VIII. 7. are conclusive, subject to Section IX. 2. in the event of an infringement of proprietary rights or copyright. They exist only if:
  - the customer informs the supplier without delay of infringements of proprietary rights or copyright which have been asserted;
  - the customer supports the supplier to an appropriate extent in defence against the asserted claims or makes it possible for the supplier to carry out the modification measures in accordance with Section VIII. 7.;
  - all measures of defence including out-of-court settlements remain reserved to the supplier;
  - the defect in title is not based on an instruction of the customer; and
  - the infringement of the right is not caused by the fact that the customer has altered the object supplied of his own accord or used it in a way not in accordance with the contract.

## IX. Liability of the supplier

1. If the object supplied cannot be used by the customer in accordance with the contract through the fault of the supplier as result of the omission to carry out, or the defective carrying-out, of suggestions and advice given before or after the conclusion of the contract or through the breach of other additional contractual obligations – in particular instructions for the operation and maintenance of the object supplied – the regulations of Sections VIII. and IX. 2. apply accordingly with the exclusion of further claims by the customer.

2. The supplier is liable – for whatever legal reasons – for damage which does not arise at the object supplied itself only:
  - in the event of intent;
  - in the event of gross negligence of the owner/the executive body or leading employees;
  - in the event of culpable injury to life, body and health;
  - in the event of defects about which he has remained silent with malicious intent or whose absence he has guaranteed;
  - in the event of defects of the object supplied in so far as he is liable under the Product Liability Act for personal or material damage to privately used objects.

In the event of a culpable breach of essential contractual duties, the supplier is also liable in the event of gross negligence of non-leading employees and in the event of minor negligence, restricted in the latter case to contractually typical, reasonably foreseeable damage.

Further claims are excluded.

## X. Expiry of legal liability

All claims of the customer – for whatever legal reasons – expire in 12 months. In the case of intentional or malicious behaviour, and of claims under the Product Liability Act, the legal limits apply. They also apply to structural defects or to the object supplied, which were used in accordance with their usual method of use for a structure and which have caused the defect of the structure.

## XI. Use of software

In so far as software is included in the scope of a delivery, the customer is granted the non-exclusive right to use the software supplied, including its documentation. It is provided for use with the specified object supplied. Use of the software on more than one system is prohibited. The customer may duplicate, update or translate the software or convert from the object code into the source code only to the legally permissible extent (§§ 69a ff. UrhG [Copyright Act]). The customer undertakes not to remove, or without the previous express permission of the supplier, to alter the manufacturer's data, in particular, copyright entries.

All other rights to the software and the documentation including the copies remain with the supplier, or if applicable, the software supplier. The issuing of sub-licences is not authorised.

2. Software delivered by Ruland Engineering & Consulting GmbH to the customer within the scope of a project can be used by the customer as follows:

### a. Provided software, commercially available

Licenses from renowned software developers, like Siemens or Microsoft, that are delivered along with the plant control, are provided in their commercially available form and with the commercially available program- and source code documentation. This software may be used within the scope of the provided license.

### b. Software developed by Ruland Engineering & Consulting GmbH

The standard modules for programmable logic controls (PLC) developed by Ruland Engineering & Consulting GmbH are provided to the customer for program enhancements at the delivered plant. These modules may be copied and renamed.

The following applies to those standard modules, that were developed by Ruland Engineering & Consulting GmbH for PLC programming:

- they are locked
- they were tested intensively
- they are qualified
- they are documented

The qualification documents can be provided to the customer.

When the program code is altered, Ruland Engineering & Consulting GmbH cannot guarantee functionality without further testing. Hence, the modules are protected for warranty reasons.

All other modules, which are made exclusively for the customer and the customer's plant (like basic operations), are not protected and can be modified according to the wishes of the customer anytime.

### c. Software supplied by customer

If RULAND Engineering & Consulting GmbH is carrying out any software changes to the control unit or the software supplied by the customer, we conclude, that these software is the property of the customer.

Therefore all third party claims towards RULAND Engineering & Consulting GmbH is excluded.

## XII. Applicable law – court of jurisdiction

In all disputes arising from the contractual relationship, the law of the Federal Republic of Germany applies exclusively. The application of the unified United Nations Convention on the International Sale of Goods (CISG) is excluded.

If the customer is a merchant entered in the Commercial Register, a legal person in public law or a separate estate under public law, the court of jurisdiction is that which has jurisdiction at the business address of the supplier. The supplier is also entitled to make claims at the head office of the customer.