

# GENERAL CONDITIONS OF SALE, SUPPLY AND PAYMENT OF RK KUTTING GMBH (STATUS: 27<sup>th</sup> MARCH 2023)

## 1. GENERAL INFORMATION

The following Conditions of sale, supply and payment apply with exclusive effect – even if no reference is made to them in an individual instance – for all supplies from RK Kutting GmbH, Egerten 9, 74388 Talheim. Other parties' (purchasing) conditions to different effect are hereby expressly contested. The following Conditions, together with the invoice, are deemed recognised no later than by the stage of receipt of the consignment. Any agreements made by telex, by telephone or verbally, where they deviate from the Conditions set out below, will be valid only if they are confirmed in writing.

## 2. DELIVERY

- a) Indicated delivery deadlines are non-binding and are only approximate.
- b) We reserve rights of ownership, copyright and other commercial protected rights over the products, illustrations, drawings and any other documents which we provide. They may not be made accessible to third parties and must be handed back promptly if the order is not issued.
- c) Any unforeseen problems with delivery, such as cases of force majeure, strikes, industrial disruptions in one's own works or in those of the subcontractor, transport problems etc will entitle us to extend the date of delivery according to the period of the problem issue and for a further reasonable period, or to withdraw from the Agreement if it has not yet been fulfilled.

## 3. DISPATCH AND PACKING

Unless agreed otherwise in writing, deliveries are sent ex-works plus the cost of packing. All risk transfers to the Purchaser when the dispatch process begins. If the Purchaser indicates preference for a particular dispatch route, then we are entitled to apply a separate charge for the additional costs.

## 4. PRICES AND PAYMENT CONDITIONS

- a) Unless agreed otherwise in writing, prices are defined in EUROS exworks and exclusive of VAT. The Customer bears the currency fluctuations risk.
- b) Our invoices are payable 30 days after the date of invoice, without any deduction.
- c) In the event of the agreed payment timeframe being overshoot, statutory interest in lieu of delay will be charged unless we are entitled to charge an even higher interest penalty. The right to claim further compensation for delay is reserved. The Customer is not entitled to claim a right of retention over our due payment claims nor to declare offset except for claims which are approved in Court, recognised or undisputed.
- d) In the case of delay in payment, all of our claims in place at the time will fall due immediately.

## 5. RESERVATIONS OF OWNERSHIP

- a) RK Kutting GmbH reserves ownership over the delivered goods in all cases until the purchase price has been paid in full (basic reservation of ownership).
- b) If the Purchaser has paid the purchase price for the delivered goods but further liabilities arising from the business relationship with RK Kutting GmbH have not been settled in full by the Purchaser, then RK Kutting GmbH also reserves ownership over the delivered goods up until payment of all liabilities in full (extended reservation of ownership).
- c) For purposes of the processing – by the Purchaser – of goods supplied by RK Kutting GmbH, RK Kutting GmbH stands as the manufacturer and directly acquires ownership over the newly produced goods. If processing is conducted in conjunction with any other materials, then RK Kutting GmbH acquires direct co-ownership over the new goods in proportion to the invoice value of the goods supplied by RK Kutting GmbH relative to the other materials (processing clause).
- d) If any goods supplied by RK Kutting GmbH are connected or combined with an item belonging to the Purchaser such that the Purchaser's item should be regarded as the main item, then it is hereby agreed that the Purchaser shall transfer co-ownership over the main item to RK Kutting GmbH: in proportion to the invoice value of the goods supplied by RK Kutting GmbH relative to the invoice value (or otherwise the market value if there is no invoice value) of the main item. The Purchaser will store the resultant sole property or shared property free of charge for RK Kutting GmbH (connection and combination clause).
- e) The Purchaser is entitled to dispose of goods owned by RK Kutting GmbH, in the normal course of business, provided that the Purchaser promptly fulfils its obligations arising from its business connection with RK Kutting GmbH. All claims arising from sales of goods over which RK Kutting GmbH has reserved ownership are hereby (no later than by the stage of the negotiation of the agreement with RK Kutting GmbH) assigned by the Purchaser to RK Kutting GmbH, which accepts such assignment; if RK Kutting GmbH has acquired co-ownership in the case of processing, connection or combination, then the assignment will be conducted in proportion to the invoice value of the goods supplied by RK Kutting GmbH under reserved ownership relative to the value of the goods subject to third-party reserved ownership (extended reservation of ownership).

## 6. LIABILITY

- a) To the legally possible extent, we exclude compensation claims against ourselves, against our employees and/or against our agents where the claims arise from moderate negligence and do not include compensation for loss of life, physical injury and/or damage to health. This is applicable irrespective of whether they arise from breach of contract or the infringement of subsidiary contractual obligations (e.g. §§ 280, 241, paragraph 2 BGB), from malpractice or from manufacturer's liability (on the grounds of design, production and information faults and faults in product monitoring, e.g. § 823 BGB). The obligation to provide replacement under product liability law is not excluded.
- b) In the case of culpable infringement of substantial contractual obligations (obligations whose fulfilment was a basic condition for the correct execution of the agreement and on whose fulfilment the other party to the agreement correctly relied and on which it was entitled to rely) liability will also apply in respect of negligence by a corporate body or by Management employees, albeit restricted to typical contractual, reasonably foreseeable losses. This restriction does not apply in the case of loss of life, physical injuries and/or damage to health; such cases are governed by law.
- c) In cases of admissible restriction of liability where the extent of negligence was not gross, the typical contractual, reasonably foreseeable claim will come to a maximum of 5% of the order value. This restriction does not apply in the case of loss of life, physical injuries and/or damage to health.
- d) Liability arising from German product liability law applies without restriction.

- e) Unrestricted liability also applies in the case of the absence of characteristics which were guaranteed without exception if the specific purpose of the guarantee was to protect the Client against instances of loss or damage which has not arisen on the supplied product itself. Such cases are governed by law.
- f) In the case of assembly/manufacture by third parties whereby the Customer either appoints third parties or conduct such tasks itself, we accept no liability and/or risk for the correct assembly/manufacture. In such cases, liability/risk is borne exclusively by the independent manufacturer.
- g) The products of RK Kutting GmbH may be utilised in aerospace applications only subject to written approval from RK Kutting GmbH.

#### **7. GUARANTEE (LIABILITY FOR MATERIAL DEFECTS)**

Our liability for defects in supplies including the failure of expressly guaranteed characteristics is defined below: liability arising from German product liability law applies without restriction. This also applies in the case of the absence of characteristics which were guaranteed without exception if the specific purpose of the guarantee was to protect the Client from instances of damage which did not arise on the supplied product itself.

The following further provisions are applicable to the **CONTRACTOR** (not to the consumer):

- a) Defect claims expire in 12 months. The statutory period of expiry applies in respect of compensation claims arising from wilful intent and gross negligence and in the case of loss of life, physical injury and damage to health arising from the user's wilful or negligent breach of obligations.
- b) Where the law requires mandatory application of longer periods under §438, paragraph 1, clause.2, BGB (Building projects and items for building projects), §445b, BGB (Right of recourse) and §634a, paragraph 1, BGB (Construction defects), the following rules apply:
- c) Our consent must be secured before any goods are returned.
- d) The goods must be investigated without delay after their arrival at the destination address. The same is applicable to supplied specimens.
- e) The delivery is deemed approved if no complaint of visible defects reaches us within 5 working days after arrival of the consignment at the destination address.
- f) Similarly, concealed defects must be reported within 3 working days after their discovery.
- g) Hoses are wearing parts. Consequently, the guarantee period is determined and restricted by the regular industrial/customary component life (wear).
- h) Guarantee/liability for material defects is excluded if the Client has applied further processing to the goods or has sold them after it discovered (or should have discovered) the defect unless the Client can prove that the processing or sale is necessary in order to prevent an even more serious loss.
- i) No guarantee is accepted for damage suffered by the supplied product for the following reasons: unsuitable or inexpert utilisation, incorrect commissioning by the Client or by third parties, normal wear & tear, incorrect or negligent handling, unsuitable process media, replacement materials, chemical, electrochemical, electrical, thermal and comparable effects except where attributable to a fault on our part.
- j) The Client, at its own discretion, must devote the required time and must organise the prerequisites for applying any improvements and replacement supplies which we deem necessary at our reasonable discretion; furthermore we exclude liability for the resultant consequences apart from loss of life, physical injury and/or damage to health.
- k) In the case of assembly/manufacture for which the Client appoints third parties or for which it conducts such tasks itself, we accept no liability and/or risk for the correct assembly/manufacture. In such cases, liability/risk is borne exclusively by the third-party manufacturer.

In connection with guarantees, the provisions of law apply in relation to a **CONSUMER** in the capacity of a Client, together with the following:

- a) Any possible compensation claim is restricted to the scope of liability as per paragraph 6 (Liability).
- b) Otherwise, all compensation claims against ourselves are excluded.
- c) Hoses are wearing parts. Consequently, the guarantee period is governed and restricted by the regular industrial/customary component life (wear).
- d) In the case of assembly/manufacture by third parties whereby the Client appoints third parties or conducts such tasks itself, we accept no liability and/or risk for the correct assembly/manufacture. In such cases, liability/risk is borne exclusively by the third-party manufacturer.

#### **8. PLACE OF FULFILMENT AND JURISDICTION; CONSUMER ARBITRATION OFFICE**

- a) If the Purchaser is a contractor, then the following will apply: the exclusive place of jurisdiction is Talheim bei Heilbronn/N. Furthermore, RK Kutting GmbH is entitled to bring action against the Purchaser/Client in the jurisdiction of its place of business.
- b) Exclusively German law shall apply, to the exclusion of the law governing the conflict of legal systems and to the exclusion of the United Nations Convention of 11 April 1980 governing Contracts for the International Sale of Goods (UN purchasing law/CISG).
- c) The following reference is required under §§36, 37 VSBG (=Consumer arbitration regulations): the recognised general consumer arbitration centre is Allgemeine Verbraucherschlichtungsstelle des Zentrums für Schlichtung e.V. (=General consumer arbitration office at the Centre for Arbitration), refer <https://www.verbraucherschlichter.de>. However, we are neither obliged nor prepared to participate in arbitration proceedings at a consumer arbitration office.