

General Terms and Conditions of Business and Delivery of Rudolf Storz GmbH

I. Scope of application

1. Our general terms and conditions of business and delivery shall apply only vis-a-vis enterprises, as well as legal entities under public law and special public law funds. They do not apply vis-a-vis consumers within the meaning of section 13 of the German Civil Code (BGB).
2. Our offers, deliveries and other services are solely based on these general terms and conditions of business and delivery. Conditions of the buyer contrary to these general terms and conditions of business and delivery, or not included therein, shall not apply unless we expressly acknowledge them. The same applies even if we in the knowledge of such conditions make deliveries or render services to the buyer without reservation.
3. These general terms and conditions of business and delivery apply to all current and future delivery contracts, without any need of express reference thereto in each individual case.

II. Offers and conclusion of contract

1. Our offers are subject to change without notice. We shall have two weeks to accept orders or commissions, unless a definite term of acceptance has expressly been agreed on. Within this time period acceptance can also be effected by the unconditional delivery of the products ordered.
2. The illustrations, drawings and product specifications included in our brochures, advertisements and other offer documents are only close approximations, unless the specifications given therein have been expressly confirmed as binding; in any case they shall not constitute guarantee declarations. Modifications customary in the trade that have been made due to legal provisions, continuous product development or product improvement, as well as the replacement of components by parts of equivalent value are permissible, unless they affect the usability for the contractually agreed purpose.
3. We reserve rights of ownership and copyrights, as well as other intellectual property rights to illustrations, drawings, calculations, catalogues, price lists and similar information, whether tangible or intangible – also including electronic forms – belonging to the orders. Reproduction and/or disclosure to third parties, in particular competitors, without our express written consent is not permitted.

III. Prices and payment

1. Our prices are net prices in Euros (EUR) and shall apply Ex Works (EXW pursuant to Incoterms 2010). Unless explicitly agreed otherwise, legal turnover tax as well as packaging, insurance, delivery, dispatch, certification, translation and miscellaneous documentation costs, if any, are not included and will be stated separately.
2. The first three orders of new buyers will be delivered only against advance payment. Invoices for goods delivered to regular buyers are due for payment to the full amount within 30 days from date of invoice. We grant a two percent discount for payments made within eight days. Decisive for the granting of the discount shall be the day the payment is received by us, or the day the payment is credited to one of our bank accounts. The right to deduct the discount lapses in the event the buyer is in arrears with the payment of another due invoice. The discount shall be exclusively calculated on the basis of the net amount, i. e. without taking turnover tax and costs of delivery and so forth into account.
3. Invoices for repairs are immediately due for payment without deductions.
4. Any offsetting or retention of payment is only permissible under the provision that the legal claims of the buyer are recognized by us, uncontested, or established by a court of law.
5. In the event of late payments we will charge interest in arrears without further reminder to the amount of 9 percent above the relevant base interest rate in accordance with section 247 subsection 1 of the German Civil Code (BGB). This shall not affect the right to claim further damages. Notwithstanding provisions to the contrary by the buyer, payments shall first be credited against the oldest debt of the buyer. In the event that costs and interest have accrued the payment shall first of all be credited against the costs, then against interest, and finally against the primary obligation.

6. In case reasonable doubts in the solvency of the buyer arise after the acceptance of orders we shall be entitled to require the buyer to provide a security prior to the delivery or the performance of the service. If the buyer fails to meet this request within a period of two weeks after notification, or the debt is not paid, we shall be entitled to withdraw from the contract. In the event of withdrawal, we shall have the right to claim liquidated damages to the amount of 20 percent of the order total as a compensation. The buyer has the right to submit proof that no, or minimal, damage has occurred. This shall not affect the right to claim further damages, or rights from section 321 of the German Civil Code (BGB).

7. In case of orders or deliveries from abroad we reserve the right to make the contract execution dependent on the submission of a letter of credit issued by a bank.

IV. Delivery and transfer of risk, partial delivery

1. The dispatch of the contractual item and the transfer of risk depend on the provision chosen by the contractual parties in accordance with Incoterms 2010. In the event that the parties have not agreed on the type of dispatch, delivery shall be conducted EXW (in accordance with Incoterms 2010) from the business premises of Rudolf Storz GmbH in D-78576 Emmingen, Germany. If the dispatch is delayed for reasons for which the buyer is responsible the risk is transferred to the buyer from the day of notice of the readiness for dispatch.
2. We shall be under no obligation to insure the delivery from transfer of risk against insurable risks.
3. Partial deliveries are permitted, provided that the buyer can reasonably be expected to accept them.

V. Delivery periods and delivery dates

1. Delivery periods are valid only if confirmed by us in writing. Unless expressly agreed otherwise, delivery periods shall not be deemed sales to be performed at a fixed point in time. The delivery period is extended by the time the buyer is in arrears with the agreed payment. Delivery periods are only binding if the buyer fulfills his contractual duties and obligations (e.g. procurement of required documents, approval of production specifications if any). In the event that the buyer issues a contract modification which prevents compliance with the original delivery period the delivery period will be reasonably prolonged.
2. The delivery period will be reasonably prolonged – even in case of default – in the event of delays due to circumstances beyond our control, particularly incorrect or late delivery by suppliers and measures taken in the context of industrial disputes, on condition that such impediments have a demonstrable effect on the contractually agreed performance. The same applies if these circumstances occur with preliminary suppliers. We shall communicate both the beginning and end of such impediments as soon as possible. If the impediment lasts for more than three months or it is certain that it will last longer than three months, both the buyer and the Rudolf Storz GmbH shall have the right to withdraw from the contract.
3. Irrespective of the shipping method chosen in accordance with Incoterms 2010 the delivery date shall be deemed kept if the contractual item has left the factory before its expiry or readiness for dispatch has been communicated.
4. In case of default of the delivery the buyer shall grant us an appropriate extension of at least two weeks in writing.

VI. Retention of title and other securities, demoware

1. WWwe reserve the title to the contractual item until the agreed purchase price has been paid in full including all accessory claims.
2. The buyer is obliged to treat reserved goods with due care and to insure them at his own expense against loss, damage and destruction. The buyer agrees to assign any claims that may arise from insurance policies to us with the conclusion of this contract, i. e. a first-priority part to the amount of the agreed purchase price of the reserved goods. We hereby accept this assignment. The buyer undertakes to immediately notify us of any damages and loss, as well as other third-party disposals.

3. The buyer shall have the right to process and sell the reserved goods in accordance with standard business practices of the industry; he may however neither pledge nor transfer ownership of the reserved goods as security.

4. With the conclusion of this contract the buyer shall transfer the rights from the resale, or the further processing, or any other legal grounds as regards the reserved goods including the accepted balance from a current account agreement to us. We hereby accept this assignment. The buyer shall be authorized to collect receivables assigned to us in his own name. The direct debit mandate may only be revoked in the event that purchaser does not fulfil his payment obligations as stipulated. This transfer of receivables is intended to secure all claims, including future ones, from the business relationship with the buyer.

5. In the event of further processing, combination or mixing with third-party goods we shall acquire co-ownership of the new products proportional to the value of the delivered reserved goods to the other processed goods at the time of such processing. The same shall apply for the item produced as for item delivered under retention of title.

7. We agree to release the securities to which we are entitled insofar as the realizable value of our securities exceeds the claims to be secured by more than 10%. We shall be at liberty to choose the securities to be released.

8. In the event that insolvency or out-of-court settlement proceedings are opened, the rights of the buyer to resell or use the reserved goods, as well as the authorization to collect transferred receivables, shall expire. This agreement does not affect the legal rights of a liquidator, including those of a preliminary liquidator.

9. In case of a delivery abroad the buyer is obliged to take all measures required to maintain the aforementioned retention of ownership, or serve a security interest equivalent under the applicable law.

VII. Duty of scrutiny of the buyer, notification of defects, warranty

1. The buyer undertakes to notify us of defects of the contractual item – except for hidden defects – within 8 days after discovery in writing, or else the contractual items shall be deemed approved. Hidden defects must be notified without delay, at the latest within 8 days, in writing after their discovery, or else the contractual items shall be deemed approved as regards these defects, at the latest however 12 months after transfer of risk. The obligations of the buyer from section 377 of the German Commercial Code (HGB) shall not be affected by this regulation. Negotiations about a complaint do not constitute a waiver of the defense of a late, insufficient or unjustified notification of defects.

2. Insofar as the contractual item has a defect for which we are responsible we shall have the right to either remedy the defect (subsequent improvement) or deliver an item free of defects (replacement), in each case subject to subsection 3 below. In case we are not willing or able to remedy the defect or replace the defective item, or if subsequent improvement or replacement are delayed beyond reasonable deadlines for reasons for which we are responsible, or if they fail in other ways, the buyer shall, if other attempts at supplementary performance are not acceptable to the buyer, be free to either withdraw from the contract or reduce the purchase price. For an insignificant defect the buyer may however only withdraw from the contract with our consent.

3. Rights from material defects arise exclusively on condition that the contractual item has a material defect at the transfer of risk. Excluded from the liability for defects shall be rights due to poor or unprofessional storage, use, faulty assembly or use of the contractual item, natural wear and tear, or inappropriate conditions of use etc.

4. The limitation period for material defects claims shall on principle be one year from the transfer of risk.

5. In the event that the examination of a notice of defects reveals that there is no defect or the buyer is responsible for the defect we are entitled to charge the buyer with the costs incurred in the examination or removal of the defect, if any.

6. We shall only be liable for damages due to the defectiveness of the contractual item subject to the limits laid down in clause VIII.

VIII. Liability

1. We shall be liable pursuant to the provisions of the German Product Liability Act (ProdHaftG), as well as in cases of inability or impossibility for which we are responsible. Furthermore, we shall be liable for damages in accordance with the legal provisions in cases of intent, gross negligence, assumption of a guarantee, as well as a culpable injury to life, limb or health. In addition, if we due to simple negligence violate an essential contractual obligation (major obligation), i.e. an obligation whose fulfilment is a prerequisite for the proper implementation of the contract and whose observance the buyer may regularly rely on, our obligation to indemnify shall be limited to the foreseeable damages, which are typical for this contract. In all other cases of liability claims for damages due to the breach of an obligation from the contractual obligation, or due to unlawful acts shall be excluded, to the effect that we are not liable for lost profits or other financial damages of the buyer.

2. Insofar as our liability is excluded or limited in accordance with the aforementioned provisions, this shall also apply to the personal liability of our workers, employees, staff, representatives and vicarious agents.

IX. Third-party property rights

If the buyer provides us with samples or drawings, the buyer shall guarantee that in this respect no third-party rights, in particular copyrights and industrial property rights are infringed. The buyer is obliged to indemnify us from all third-party claims raised on account of this infringement, to support us in the defense of this infringement, and to reimburse all damages so incurred on our part including lawyer's fees and costs of lawsuits. The same applies in case that we design the contractual item according to specific requirements of buyer.

X. Non-disclosure

Our know-how as well as all other business and trade secrets, including the content of the contractual relationship with the buyer, must be kept strictly confidential by the buyer. The buyer shall make all appropriate and necessary arrangements to protect the aforementioned information from unauthorized access, unauthorized publication, reproduction, disclosure and other unauthorized use. The obligations stated in this section shall also apply beyond the termination of this contract.

XI. Applicable law, jurisdiction, severability clause

1. All legal provisions between Rudolf Storz GmbH and the buyer shall be governed by the law of the Federal Republic of Germany. The application of the provisions on the international sale of goods (CISG, UN Sales Convention) shall be excluded.

2. The place of jurisdiction for all rights and obligations of the contractual parties from business transactions of any kind shall be D-78576 Emmingen (Federal Republic of Germany). We shall however also be at liberty to open court proceedings against the buyer at the buyer's general place of jurisdiction.

3. If individual or several of the above provisions are, or will be held, void or impracticable the remaining provisions shall nevertheless continue in full force. In this case the invalid or impracticable provision shall be replaced by a valid and enforceable provision that comes closest to what the parties intended with the ineffective or unenforceable provision both in terms of meaning and purpose. The same shall apply to contractual loopholes.