

## **§ 1 General Applicability**

1. Orders, sales, deliveries and performances are rendered by us exclusively in accordance with the following General Terms and Conditions of Business. The customer's own terms and conditions of business are hereby expressly rejected.
2. The General Terms and Conditions of Business are part of all contracts concluded with the customer. They are accepted through the issuing of an order or acceptance of the delivery. They do not apply to the relationship with consumers as set out in Article 13 of the German Civil Code (Bürgerliches Gesetzbuch).
3. The General Terms and Conditions of Business also apply to all future business transactions with the customer.
4. "Customer" refers to the contract partner, irrespective of the legal nature of the respective contract.
5. Changes and/or additions to these General Terms and Conditions of Business shall be effective only if a written agreement exists.

## **§ 2 Quotation and quotation documents**

1. Our quotations are subject to change and are non-binding. We can accept orders within 30 days. To that extent the customer is bound to his order for at least this period.
2. Prices quoted in orders placed with us are deemed to be agreed only with our confirmation of order.
3. A handling charge of 35.00 EUR shall be applied to orders with a volume of less than 100.00 EUR net.
4. Delivery and invoice shall be regarded as confirmation of order at the same time.
5. We retain the ownership of and copyright to samples, illustrations, drawings, calculations, catalogues and other quotation documents. They may only be disclosed to third parties if they are intended to be passed on. Otherwise they must be returned on request.
6. The details, drawings, illustrations, technical data and specifications of weight, dimensions and performances contained in brochures, catalogues, circulars, advertisements, price lists or the documents belonging to the quotation are intended only to convey a general idea of the products described therein. They do not contain any explanations, other assurances or guarantees and do not become part of the contract. Deviations or changes that are customary in the trade and are made on account of legal regulations or represent technical improvements are permissible provided they do not impair the usability for the contractually foreseen purpose.
7. In the case of custom-made products we reserve the right to deliver higher or lower quantities in appropriate numbers customary in the trade.

## **§ 3 Terms and conditions of delivery and payment**

1. Discounts shall be given only if expressly agreed.
2. The deduction of a discount is in all cases impermissible if older and due claims have not yet been settled.
3. The prices do not include the statutory Value Added Tax; it shall be stated separately on the invoice at the legally stipulated rate on the date of rendering the invoice.
4. Our prices are ex works or ex stock if nothing different is agreed. Dispatch shall be on the customer's account and payment and at his own risk.
5. The packaging shall be invoiced to the customer at our cost price.
6. Payment by cheque is not possible.
7. If the customer is in default of payment of an invoice following a reminder, or if he becomes insolvent or suffers a reduction in assets, then all invoices still open shall be due for payment immediately.
8. An offset or retention against our payment claims is only possible in the case of counterclaims recognised by us or legally established.

#### **§ 4 Delivery time**

1. Delivery times stated in the quotation are non-binding. The delivery times begin with the receipt of the confirmation of order.
2. We shall not accept any liability for delivery delays for which we are not at fault. "Not at fault" means a delivery delay that is due to force majeure, war, revolt, strikes or lockouts or delayed deliveries from our suppliers for which we are not responsible. If it comes to our attention that the customer's financial situation has worsened, or if he is in default of payment of an open invoice, the agreed delivery time shall be extended by the period until the reason for the hindrance of the delivery has been resolved.
3. If we are late in making delivery for reasons for which we are responsible, the customer must set us an appropriate grace period. In this case the liability for compensation of damages in the case of normal negligence is excluded.
4. If, after we are already in default, the customer sets us an appropriate grace period with a threat of rejection, then he shall have the right after the fruitless expiry of the grace period to withdraw from the contract. In this case claims for compensation of damages due to non-fulfilment can only be asserted to the amount of the foreseeable damage if the delay was due to wilful intent or gross negligence.
5. Partial deliveries are permissible. Each partial delivery counts as a separate business transaction.

#### **§ 5 Provision of materials and waste products**

1. In the case where materials are provided by the customer, he shall bear the full responsibility for ensuring that the material corresponds in its properties and quality to the agreements reached, and in particular that it is equivalent to a possible sample.
2. If the delivery condition of the material does not correspond to the agreements reached, we shall have the right to reject the material without assuming any costs incurred.
3. The customer shall be informed if the delivery condition causes additional work. The additional costs shall be borne by the customer.
4. Chips and other waste products become our property.

#### **§ 6 Transfer of risk**

1. Unless the confirmation of order states otherwise, delivery "ex works" or "ex stock" is agreed.
2. We will secure the shipment by transport insurance at the customer's request; the customer shall bear the costs of this.

#### **§ 7 Warranty**

1. In the case of defective goods, we shall at our own choice repair them or provide replacements.
2. If the repair or replacement fails, the customer can at his own choice demand either a reduction of the remuneration or the cancellation of the contract.
3. The goods must be inspected immediately upon delivery with regard to freedom from defects and completeness and any defects found must be notified to us without delay and at the latest within 14 days. If the customer fails to carry out the inspection or notify defects promptly, the goods shall be regarded as having been accepted unless the defect was not recognisable during the inspection. Defects discovered at a later time must also be notified to us without delay. Otherwise the goods shall also be regarded as accepted with regard to these defects. The notification of defect must be submitted in writing with a precise description of the defect. Apart from that, Articles 377 f. of the German Commercial Code (Handelsgesetzbuch) apply.
4. Warranty claims and claims for compensation of damages shall lapse one year after delivery of the goods.

## **§ 8 Retention of title**

1. We shall retain ownership of the purchase item until we have received all payments arising from the delivery contract. In the case of behaviour of the customer contrary to the contract, in particular default of payment, we shall have the right to take back the purchase item. In taking back the purchase item we also withdraw from the contract. After taking back the purchase item we shall have the right to sell it. The proceeds from the sale shall be offset against the customer's obligations, minus appropriate costs of the sale.
2. In the case of seizures or other third-party interventions, the customer must inform us immediately in writing so that we can take legal action according to Article 771 of the German Civil Proceedings Code (ZPO). If the third party is not able to reimburse us for the judicial and extra-judicial costs of legal action in accordance with Article 771 of the German Civil Proceedings Code (ZPO), the customer shall be liable for the losses incurred by us.
3. The customer is entitled to resell the purchase item in the normal course of business. However, he assigns to us here and now all claims due to him from his customer or third party as a result of the resale to the amount of the final invoice total (including Value Added Tax) of our claim against him, irrespective of whether the purchase item is resold without or after processing. The customer shall have the right to collect these claims even after the assignment. This does not affect our right to collect the claims ourselves. However, we undertake not to collect said claims as long as the customer complies with his payment obligations from the proceeds received, is not in default of payment and, in particular, no application for opening composition or insolvency proceedings has been filed or payments suspended. If this should be the case, however, we shall have the right to demand that the customer disclose the claims assigned and their debtors, provide all details required for their collection, hand over the associated documents and inform the debtor (third parties) of the assignment.
4. The combination or conversion of the purchase item by the customer always takes place on our behalf. If the purchase item is processed together with other items not belonging to us, then we shall acquire joint ownership of the new item at the ratio of the value of the purchase item (final invoice total, including Value Added Tax) to the other items processed at the time of the processing. Apart from that the same applies to the item created by the processing as to the conditionally delivered purchase item.
5. If the purchase item is inseparably combined with other items not belonging to us, then we shall acquire joint ownership of the new item at the ratio of the value of the purchase item (final invoice total, including Value Added Tax) to the other items combined at the time of the combination. If the combination takes place in such a way that the customer's item is to be regarded as the main item, then it is deemed to be agreed that the customer assigns proportionate joint ownership to us. The customer shall keep the sole or joint property safe for us.
6. To secure our claims against him, the customer also assigns to us the claims that arise against a third party through the connection of the purchase item with a real estate.
7. We undertake at the customer's request to release the securities due to us to the extent that the achievable value of our securities exceeds the claims to be secured by more than 10 %. We shall have the right to choose which securities to release.

## **§ 9 Goods return**

Goods returns shall not be accepted without our prior agreement. Custom-made products and goods that are no longer saleable are excluded from return.

## **§ 10 Place of jurisdiction, applicable law and place of fulfilment**

1. The substantive law of the Federal Republic of Germany applies to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.
2. If the customer is a businessman, a legal person under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising from this contract is Dortmund. The same

**General Terms and Conditions of delivery,  
sales and payment of Paul Rath KG**

Date 01.01.2017

**PAUL RATH KG**

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applies if the customer has no general place of jurisdiction in Germany. However, we shall have the right to take legal action against the customer at the court of law responsible for his place of business.

3. Place of fulfilment for delivery and payment is Dortmund.
4. If individual provisions of the contract between us and the customer, including these General Terms and Conditions of Business, should be or become partly or entirely ineffective, or if there should be a loophole herein, this shall not affect the validity of the remaining provisions.