



Terms and conditions of purchase (As at: January 2009)

- 1. Ordering and the conclusion of the contract**
To the extent that no agreements to the contrary are confirmed by us in writing, deliveries made to us and the carrying out of work for us shall be exclusively subject to the following terms and conditions. Standard Terms & Conditions of Sale of the supplier shall not apply. Only orders and agreements which are in a written form or in the form of a facsimile shall legally bind us. Any order is to be accepted as we have issued it; any conflicting terms and conditions of sale of the supplier shall not apply. Acceptance of or payment for any goods shall not constitute an acceptance of the terms and conditions of the supplier.
- 2. The basis for the price**
Deliveries shall be made on the basis of previously agreed prices. Such prices shall be fixed prices and may not be modified in any way. To the extent that prices are not stated or determined when orders are issued, we shall be informed of the applicable prices before the order is processed. Such prices shall not become binding until we give our express written consent to them.
- 3. Delivery period and force majeure**
The agreed delivery dates shall be binding. Receipt of the complete and defect-free delivery of the ordered goods at the location stipulated by us for receipt or use shall determine compliance with the delivery date. Receipt of the goods shall not constitute acceptance of performance. The goods shall not be deemed to have been accepted by way of an acceptance of performance until a period of two weeks has elapsed from the date of their arrival during which we do not notify any complaint in relation thereto. The supplier must inform us of any delays immediately after it becomes aware of them and shall state the reasons and the probable duration of the delay. Any special steps which incur costs in order to comply with the stipulated delivery dates, which shall in all circumstances be borne by the supplier, shall also be notified. If the delay is attributable to reasons which are attributable to the supplier, we shall be entitled to demand from the supplier compensation which shall be fixed at 1% of the value of the delivery for each commenced week from the date on which the delay begins; the total amount of compensation shall however be capped at 5% of the value of the order. We shall not be obliged to reserve the right to demand such fixed amount of compensation on acceptance of the goods. The supplier shall in addition be required to reimburse to us any additional losses incurred by us pursuant to the delay.
Force majeure or circumstances which are not attributable to the supplier shall only operate to exonerate it from liability if it informs us of such circumstances without delay. We shall however be released from the obligation to accept the ordered delivery in full or in part and to this extent entitled to withdraw from the contract if we can no longer make use of the delivery – taking into account commercial issues – as a result of the delay which is caused by the circumstances referred to above. Any repositioning of undelivered volumes of goods which may become necessary must be complied with by the supplier if any market-related, economic or other unforeseen extraordinary circumstances arise which we cannot avoid oblige us to make such modifications. If we are unable to deliver to our end-customers in the country of destination because of an import ban, embargo or boycott, quota system or other circumstances which make exports or imports more onerous, we shall be entitled to refuse to take delivery of the goods and to pay for them until such state-imposed measures have been lifted, or to withdraw from the contract.
- 4. Delivery**
Shipping shall be at the expense and risk of the supplier, and goods shall be shipped in the manner stipulated by us. A copy of the bills of delivery and/or delivery notes stating the precise contents shall be enclosed with the shipment or sent separately by post; the order numbers shall be stated accordingly.
The supplier shall be liable for any damage caused by the defective packaging of the goods. The supplier's obligation to take back the packaging shall be in accordance with the statutory provisions. If a special agreement relating to packaging has been concluded with the supplier, we shall have the right to return this packaging at our own cost and shall subsequently be credited the amount applicable to this packaging.
Deliveries which are made more than two weeks ahead of the agreed delivery date shall only be possible with our prior written consent. In the event of an early delivery without our consent, the goods shall be stored by us at the expense and risk of the supplier; payment periods shall begin to run only from the agreed delivery date. Partial deliveries may be accepted subject to our express agreement. Deficient or excess deliveries shall only be permissible with standardised goods but shall require our consent to the extent that they exceed 10%.
- 5. Liability for defects, quality assurance and quality control**
In order to ensure the quality of its deliveries, the supplier must maintain a quality management system and must be accordingly certified. Only those items shall be delivered to us which have gone through, been checked by and of which the dimensions, quality and performance stipulated by us have been established by such quality assurance system. All quality control documentation shall be preserved by the supplier in accordance with the statutory provisions.
The supplier shall warrant that the delivery is free from defects, shall provide warranties in relation to durability and condition as well as in relation to the delivery's fitness for the purpose for which it is ordered and its compliance with the state of the art and with the stipulations of any regulatory authorities and professional associations and shall warrant that no rights of third parties are infringed. To the extent that no separate agreements are entered into, screws, nuts, threads and moulded parts as well as any connecting elements shall be delivered in accordance with the technical delivery conditions of the EN/DIN/ISO Standards. In the case of imperfect goods we may at our discretion and in accordance with statutory provisions demand a new delivery or the rectification of defects. Should any reasonable period which is stipulated expire, we may withdraw from the contract or demand a reduction in the price. In accordance with the statutory conditions, deadlines may exceptionally be dispensed with. Our right to demand in addition compensation for non-compliance with warranties or in the event of a wrongful breach of contractual obligations shall not be affected. In urgent cases, after the fruitless expiry of a reasonable period stipulated by us for the rectification of defects or a new delivery and the prior notification to the supplier we may ourselves take the necessary steps at the expense and risk of and without prejudice to the warranty obligations of the supplier.
All of the costs which are incurred in connection with the liability of the supplier for defects, e.g. in connection with dismantling, assembly, shipment, packaging, insurance, customs costs and any other public charges payable, examinations, including the costs of experts and technical acceptance tests, shall be borne by the supplier.
The place of delivery and examination within the meaning of section 377 of the German Commercial Code shall be the final destination stipulated by us. Notification of a defect to the supplier within a period of four weeks after arrival at the destination shall be timely. In the event of concealed defects such period shall be two weeks from the date of their discovery. Due to the quality assurance and control carried out by the supplier, our obligation to carry out an examination in accordance with section 377 of the German Commercial Code shall be limited to an examination of whether or not the delivered products correspond to the volume ordered and the type ordered, whether or not any superficially visible damage has occurred during transport and whether or not superficially visible defects exist. Should the supplier after delivery of the goods discover discrepancies between the actual condition and what the condition of the products should be, it shall inform us thereof and of any remedial measures planned without delay. The statutory provisions relating to the limitation of claims based on defects shall apply, in which context the period of limitations shall begin in the case of contracts for goods on the date of the goods' delivery to their destination and in the case of contracts for works on the date of acceptance. Independently of the commencement of the period of limitations, the supplier shall indemnify us in respect of all claims which third parties may bring against us – on whatever legal grounds – on account of a material or legal defect or any other defect in a product delivered by the supplier, and shall reimburse to us the necessary costs incurred in the prosecution of any such matter.
In case of damages, that potentially result from the delivered goods, the supplier is obliged to grant Reyher and its employees, third parties which are obliged to secrecy and/or public authorities access to all documents that are of any relevance in respect of products and processes. The supplier is only obliged to grant access to the extent it is suitable for ascertaining the causality of damage and other risks that may emanate from the goods. The supplier is obliged to grant unrestricted access to production facilities to the abovementioned group of people within business hours and after previous notification.
- 6. Liability**
The supplier shall be liable in accordance with the statutory provisions. In addition:
If a claim is brought against us on account of a breach of any official safety regulations or on the basis of domestic or foreign product liability provisions due to a defect in the product, of which the delivery made by the supplier is the cause, the supplier shall be liable to compensate us for the damage which results therefrom, unless the defect is not attributable to the supplier. To the extent that faults in a product are attributed to a delivery made or services provided by upstream suppliers or sub-contractors of the supplier, these shall be deemed to be a defect in the product of the supplier.
The supplier shall be liable for the environmental safety of the delivered products and the packaging materials. He shall be liable for all consequent damage which results from any breach of its statutory waste disposal obligations, unless such breach is not attributable to it. Any further or ancillary claims shall not be affected by the provisions of this clause. At our request the supplier shall issue a certificate of inspection for the delivered goods.
- 7. Processing fees**
In the event of delivery of inaccurate volumes, of the wrong products, of defective or damaged goods or in the event of mistakes being made in calculations and errors with deliveries, processing costs are incurred. Depending on the amount of time and effort expended, these costs of between €30.00 and €130.00 shall be invoiced to the supplier. The right is reserved to make a claim in respect of a greater expenditure of time and effort or a larger loss. It is open to the supplier to prove lesser expenditure in terms of time and effort or a lesser loss.
- 8. Payment**
Should nothing be agreed to the contrary, we shall at our discretion make payment within 14 days from the date of delivery and receipt of the invoice subject to a discount of 3%, within 30 days from the date of delivery and receipt of the invoice subject to a discount of 2% or within 90 days at the full price. By making payment, we do not waive any notified defects and claims under any warranties. Our rights of offset and retention may not be limited.
- 9. Documents and models provided to suppliers**
All of the models, samples, designs and standard specifications sheets which are provided to the supplier for the purpose of processing the order shall remain our property and shall be sent back in a perfect condition after the enquiry has been dealt with or the order processed. All models, samples and designs shall be treated as confidential and may only be used to deal with enquiries or orders. The supplier expressly undertakes not to reproduce the models, samples and designs or to supply them to other companies and at our request to destroy any special appliances which were created for the purposes of production. The supplier shall be liable to us for all damages which result from any breach.
The warranties and guarantees of the supplier in relation to the subject-matter of the delivery shall not be affected by our approval of designs, calculations and other technical documentation. This shall also apply to any proposals and recommendations we make.
- 10. Place of performance, place of jurisdiction, applicable law**
The place of performance for all obligations pursuant to this contract is Hamburg. The place of jurisdiction for any disputes with merchants and persons who have no general place of jurisdiction in Germany shall be Hamburg. We may at our discretion also commence proceedings against a supplier before the court which has jurisdiction in the location of its registered office or before the Court of Arbitration of the German Institution of Arbitration (*Deutsche Institution für Schiedsgerichtsbarkeit, DIS e.V.*) / place of arbitration Hamburg.
German law shall apply to the exclusion of the UN Convention on the International Sale of Goods. The Incoterms 2000 shall apply.