

## **§ 1 Preface**

1.1 The terms listed below are valid for all deliveries including future agreements.

1.2 The purchaser agrees to our sales terms unless he declares his dissent immediately after having received our acknowledgement of order. Incidentally, our terms become valid on acceptance of goods or performance by the purchaser at the latest. This applies also if we do not decline deviant purchasing specifications or terms of business explicitly.

1.3 If the purchaser is an entrepreneur in terms of § 24 AGBG our sales conditions apply exclusively. We do not recognize any terms of the purchaser which are opposed to or deviate from our sales conditions unless we give our explicit written consent. Our sales conditions apply in any case, even when we provide delivery/service without any reservation although we are aware that our purchaser works according to terms which deviate or which are opposed to our sales conditions.

1.4 All agreements made between the purchaser and Radler & Ruf in order to execute this contract shall be made in written form.

## **§ 2 Offer**

2.1 We are reserving our copyright for all pictures, drawings, calculations and other documentation. This applies also to such written documentation which is marked as "confidential". Before transferring it to any third party, the purchaser is obliged to ask for our explicit prior written consent.

2.2 In case the order can be qualified as an offer in terms of § 145 BGB, we may accept it within 4 weeks.

2.3 Conclusions of sale made with our representatives or salesmen as well as agreements made by phone are subject to our written confirmation and will thus become legally effective.

## **§ 3 Specification, performance, tolerances**

3.1 As far as technically possible, we shall avoid any deviations from patterns or former deliveries, however, we cannot exclude them fully. Deliveries with slight deviations which cannot be avoided shall be regarded as free from defects. Considerable deviations only allow for the right to cancel the contract or replacement delivery.

3.2 We shall not be obliged to review if industrial property rights or copyrights of third parties are infringed by posted drawings, patterns or sketches. This commitment to review applies exclusively to the purchaser who alone will be liable to full extent on any neglect of duty.

3.3 Information about particular weights, quantities and abrasiveness are estimated and approximate values. The same applies to colours and measurements. We shall not give any guarantee of compliance. For tolerances of measurements the currently legally valid DIN standards apply, provided that we do not confirm any other values explicitly. We reserve the right of deviation of up to 10 % upwards or downwards according to the kind of article.

3.4 The costs for set-up and the percentage of moulding and tooling costs stated in our offers are estimated and recommended prices. After completion they may be adjusted. The respective percentages of costs are due for immediate payment without deduction on receipt of invoice.

3.5 All parts the purchaser provides us with for further processing have to be delivered free to our plant. They must be in compliance with the drawing and in perfect condition. For possibly occurring spoil an agreed or adequate excess quantity has to be considered.

## **§ 4 Prices – Terms of payment**

4.1 Our prices are calculated "ex works" and without packaging, unless something else is stated in the confirmation of the order. Packaging will be charged separately and not taken back by us (see § 6).

4.2 Our sales prices as well as all information, sales and calculations are based on EURO.

4.3 As long as no fixed price has been expressly agreed, we reserve the right for non-commercial business transactions to adjust our prices for contracts with a delivery time of more than 4 months according to occurred cost increases due to new wage agreements or a rise of material prices (price at the day of delivery). On request, we will give proof of the rise to the purchaser. In case such a rise exceeds 5 % of the price, we are granting the purchaser a right to cancellation.

4.4 As long as no fixed price has been expressly agreed, we reserve the right for commercial business transactions to adjust our prices in case any rise of costs or reduction of costs occurs after conclusion of the contract, especially because of new wage agreements or a rise of material prices (price at the day of delivery). On request, we will give proof of the rise to the purchaser.

4.5 Our prices do not include the statutory VAT; the VAT is stated in the invoice separately at the applicable rate at the date of the invoice.

4.6 Unless agreed otherwise, our term of payment is 30 days after billing.

4.7 Our invoices have to be paid by transfer to one of our accounts free of postage and charges.

4.8 The acceptance of a bill of exchange or a cheque does not count as payment and shall only be regarded to be paid upon encashment. Any and all discounting and bill charges and collecting charges shall be borne by the purchaser. We are obliged to present bills of exchange and cheques in due time.

4.9 On payment within 8 days after the date of the invoice and provided, the purchaser is not in arrears with payment, we shall grant a discount of 2 %.

4.10 The purchaser is in default if he does not pay after being sent a demand from the seller for payment sent after the date the payment has become due. Independently from that, the purchaser will be in default if he does not pay at a certain payment date stated in the sales contract. The legal regulation that a purchaser gets in default automatically after 30 days after receipt of an invoice remains untouched.

4.11 When a purchaser is in default we are entitled to charge statutory default interest according to § 288, para. 1, p. 1 BGB. An enforcement of the actual interest cost remains untouched.

4.12 The purchaser shall only have a right of set off regarding those counter-claims that are not disputed or have been recognised by declaratory or have been recognised by us. Furthermore, he is entitled to practice his right of retention as long as his counterclaim is based on the same contractual relationship and is not disputed. Within commercial business transactions a right of retention exists only in cases of undisputed or recognised declaratory judgement of counterclaims. The commercial right of retention according to § 369 HGB is excluded.

## **§ 5 Time of delivery**

5.1 Time of delivery stated by us is due to prior clarification of all technical questions, receipt of the purchaser's entire documents and the clarification of content of all aspects of the delivery.

5.2 Compliance with the obligation to deliver by us further assumes the timely and proper fulfilment of the obligations of the purchaser. We reserve the right to object to any unfulfilled contract.

5.3 In case the purchaser falls into default of acceptance or he violates other obligations to co-operate we are entitled to demand compensation for any damage occurred including any additional expenses. Any further legal claims remain unaffected.

5.4 When there are preconditions according to § 5.3, the risk of accidental loss or accidental deterioration of the bought item shall pass upon the purchaser at that time, when he actually falls into default of acceptance or debtor's delay.

5.5 We shall be liable in accordance with statutory provisions insofar as the underlying purchase contract is a firm deal in the meaning of § 361 BGB or § 376 HGB. We shall also be liable in accordance with statutory provisions if the purchaser will have the right to assert his claim to have the purchase contract cancelled as a result of delay in delivery we are responsible for.

5.6 We shall be liable in accordance with statutory provisions insofar as the delay in delivery is based on intent or gross negligence on our side, including defaults of our representatives or agents. As far as the delay in delivery is not based on any intent on our side, our liability for damages is limited to the foreseeable typically occurring damages.

5.7 We shall be liable in accordance with statutory provisions insofar as the delay in delivery we are responsible for is caused by the culpable violation of an essential contractual obligation. In this case the liability for damages shall be limited to the foreseeable typical damage.

5.8 If the delay in delivery is merely based on a breach of a non-substantial contractual duty, the purchaser shall be entitled to demand a lump-sum for the occurred damage of 3 % of the value of delivery per complete week but not more than 15 % of the total value.

## **§ 6 Transfer of risk – Packaging costs**

6.1 As far as not stated otherwise in the order confirmation, we will deliver ex works.

6.2 The goods which are ready for dispatch have to be called off immediately; otherwise we are entitled to store them at purchaser's costs and risk.

6.3 Transport and all other packaging shall not be taken back pursuant to the provisions of the Packaging Ordinance. The purchaser shall be obliged to dispose of the packaging at his own cost.

6.4 We shall arrange transport insurance, insofar as the Purchaser requests this explicitly and accepts the associated costs. We shall be entitled to demand advance payment for these costs anytime.

## **§ 7 Guarantee against defects**

7.1 The precondition of guarantee for damage of the commercial purchaser is the properly conducted fulfilment of all due examination and obligations to report in accordance with the terms of §§377 and 378 HGB (Commercial law code). In non-commercial business the precondition of guarantee for damage is that obvious damages have to be reported in writing within 3 weeks after delivery.

7.2 In case one purchase contract is made for several goods, each item has to be taken separately from the legal side. Any defect on one item does not entitle the purchaser to refuse acceptance of the other ordered items or to refuse payment.

7.3 With respect to defects for which we are liable, it is in our sole discretion either to remove any such defects or to substitute all parts which cannot be used. In case we are removing any defects we shall be committed to bear all costs connected with this removal especially costs for transportation, travel expenses, labour costs and material costs but only to the amount of the purchase price, as long as these costs do not rise due to the circumstance that the damaged good was brought to another place but the place of performance.

7.4 If the rectification of the defect/replacement delivery should fail in any manner, the purchaser shall be entitled, at his option, to withdraw from the contract or demand a corresponding price reduction. In case a warranted property is missing, we shall be liable to pay damages on grounds of non-performance pursuant to the statutory regulations of §§ 463, 480 para.2 BGB. This will not apply if the purpose of the quality guarantee only extends to the contractual compliance of the delivery but not to the risk of consequential damages.

7.5 We shall be liable according to statutory regulations insofar as the purchaser claims damages on grounds of intent or gross negligence. This applies to intent or gross negligence of one of our representatives or agents. Insofar as we shall not be accused of intentional breach of contract, the liability for damages shall be limited to foreseeable and typically accruing damage.

7.6 We shall be liable according to statutory regulations insofar as we shall violate an essential contractual duty culpably. However, in this case, the liability for damages shall be limited to foreseeable and typically accruing damage.

7.7 In addition, the warranty for compensation claims is excluded in this respect, as we are not liable for defects which did not arise on the delivery item itself.

7.8 The mandatory regulations of the product liability law remain untouched.

7.9 The guarantee period shall be six (6) months and it shall run from delivery. This period constitutes a statutory period of limitation and is also valid for claims for consequential damages insofar as no claims are asserted from an illicit act. For those, the statutory limitation period shall apply.

## **§ 8 Joint and several liability**

8.1 Any further liability for compensation other than intended by § 7 - without consideration of the legal nature of the asserted claim – is excluded. This shall apply in particular for compensation claims for damages resulting from us being at fault when the contract is signed, on account of other breaches of duty or on account of tortious claims according to § 823 BGB.

8.2 Claims for compensation due to impossibility or inability remain untouched.

8.3 The same shall apply insofar as liability shall be mandatory on grounds of the regulations of the law on product liability.

8.4 To the extent that the liability for damages of Radler & Ruf is excluded or restricted, this also applies to our staff – employees, representatives and agents.

## **§ 9 Securing of reservation of ownership**

9.1 We retain title of the goods until receipt of all payments from the contract. Within commercial business we retain title of the goods until the purchaser has completely fulfilled all his obligations to us. In case of a current account relationship we shall reserve ownership of the goods until the receipt of all payments under the existing current account relationship; this reservation shall relate to the acknowledged balance.

9.2 In case of breach of the obligations by the purchaser, in particular delay in payment, we shall be authorized to demand the return of or take back the delivered goods. Our taking back the sold goods does not constitute a cancellation of the contract unless we explicitly consented to it in writing. The garnishment of the goods purchased by us, however, does always mean a withdrawal from contract. After taking back the purchased goods, we are entitled to utilise it; after deducting the appropriate utilisation costs, the remaining administrative costs will be assigned to the liability of the purchaser.

9.3 The purchaser is obliged to handle the purchased goods with care and, in particular, the purchaser shall, at its own expense, adequately insure such goods against fire, water and theft damage. If maintenance and inspection work are required, the purchaser must carry this out at his own expense in a timely fashion.

9.4 In the case of garnishments or other actions by third parties, the purchaser shall immediately notify us thereof in writing so that we can contest such actions as per § 771 ZPO. To the extent to which the third party shall not be able to reimburse judicial and extra-judicial costs of an action according to § 771 ZPO, the purchaser shall be liable for our loss.

9.5 The commercial purchaser shall be entitled to resell the goods in the ordinary course of business. The purchaser assigns to us, however, all claims up to the value of the final invoice amount of our accounts receivable (including VAT) which accrue to the purchaser due to resale to his purchasers or third parties regardless of whether the goods supplied have been resold without or following procession.

The advance assignment of accounts receivable shall also refer to the acknowledged balance and, in the event of the bankruptcy of the purchaser, to the "causal" balance which then exists. The purchaser also remains entitled to collect this receivable even after the assignment. Our authority to collect the receivables ourselves remains unaffected therefrom; however, we shall be obliged to refrain from doing so, provided that the purchaser complies with his payment obligations arising out of the proceeds collected, does not run into default of payment and particularly when no

application for the opening of insolvency proceedings has been made or payments have ceased. Should this be the case, however, we shall have the right to demand that the purchaser informs us about the receivables assigned and the debtors, provide all the data necessary for collection, hand over all the related documents and inform the debtors (third parties) of the transfer.

9.6 The processing or modification of the purchased goods by the purchaser will always be carried out on our behalf. If the ordered item is processed with other objects not belonging to us, we acquire the joint ownership of the new resulting item in proportion to the value of the ordered good (final invoice value including VAT) in relation to the value of the added objects at the time of the processing. Apart from this the same shall apply for the good resulting through processing as for the good delivered under reserve.

9.7 If the goods are indivisibly mixed with other objects not belonging to us, we shall acquire part ownership of the new object in the same ratio as the value of the good (final invoice value including VAT) stands to the value of the other objects used at the time they were mixed. If the mixing takes place in such a manner that the good of the purchaser is to be regarded as the main item, then it is deemed to be agreed that the purchaser transfers co-ownership on a pro rata basis to Radler & Ruf. The purchaser shall preserve for us the sole or joint ownership.

9.8 The purchaser shall also assign to us the receivables for securing our receivables against himself that accrue against a third party by connecting the goods with real property.

9.9 On purchaser's request we undertake to release the securities to which we are entitled, as far as the realisable value of our securities exceeds the claims to be secured by more than 10 %. The choice of securities to be released is within our scope of responsibility.

## **§ 10 Place of performance and jurisdiction**

10.1 Where the purchaser is a fully qualified merchant, it is agreed that our business seat be the legal place of jurisdiction; however we are also entitled to sue the purchaser before the competent court at his place of residence.

10.2 Unless arising otherwise from the confirmation of order, our registered offices shall be the place of fulfilment.

## **§ 11 Applicable law, Severability Clause**

11.1 The legal relationship between us and the purchaser is exclusively determined by the laws of the Federal Republic of Germany.

11.2 Should individual terms of our general terms and conditions of sale and delivery be ineffective the purchaser shall be obligated to cooperate in agreeing on a valid replacement provision which comes as close as possible to the original, taking into account the relevant statutory provisions. Where any single provision of the contract is or becomes ineffective, this shall not affect the effectiveness of the remainder of the agreement.