

Rauch Spanplattenwerk GmbH - D-91477 Markt Bibart

General Terms and Conditions of Business of 01.01.2011

1. General

The following terms and conditions shall apply to all quotations and conclusions of purchase contracts, also for subsequent transactions, if they have not been effectively revoked by new terms and conditions. They shall be deemed acknowledged upon placement of an order. The purchase contract shall only become binding for us according to the provisions of our terms and conditions of sale, delivery and payment with our order confirmation.

2. Prices

2.1 The prices set in our order confirmation shall be deemed agreed. If the costs underlying our calculation increase between order confirmation and acceptance, provided the latter is longer than 4 months after the order confirmation, we shall be entitled to correct the prices stated in our order confirmation until final completion of the order placed with us, portraying the increases in wage, material and general business costs which have occurred since confirmation of the order.

2.2 Our prices shall be understood franco domicile within Germany (mainland border).

2.3 Dispatch shall be by lorry. Packaging shall be charged separately in railway dispatch.

3. Payment terms

3.1 The purchase price shall be due for payment within 30 days of the invoice date. Granting of discount shall be stated on our order confirmation and invoice.

3.2 Bills shall only be accepted following separate agreement by way of payment, even if they have been accepted and are federal bank capable. We shall charge bill tax and discount fees. The time between maturity of our claim and the expiry date of the bill shall be used as a basis. The discount rate charged by us shall be 3 % above the discount rate charged to us by the bank discounting the bill. Discount and bill tax charges shall be due for payment immediately.

3.3 In arrears in payment of more than 14 calendar days, all claims from further deliveries not yet paid shall become due immediately. This shall also apply to bills not yet honoured. Against return of the bill, we shall be entitled to demand immediate payment. If the bill has already been handed to the bank for discounting, the customer shall be obliged to immediate payment if we engage to hold it harmless against our claim secured by bill law.

3.4 In arrears in payment, we shall charge default interest according to the statutory provisions and the costs incurred by us as a result of the default. The right to claim further damages shall expressly remain reserved.

3.5 We shall be entitled to withdraw from the contract if, following its conclusion, an essential deterioration in the customer's economic situation occurs, as a result of which the claim to the consideration is endangered or if such a situation of the customer already existed at the conclusion of the contract and only becomes known subsequently; if no delivery has been made, we shall be entitled to demand advance payment in lieu of withdrawal.

4. Delivery times

4.1 Information on the delivery time shall be non-binding and subject to change without notice. It shall be calculated in such a way that we can comply with it according to our experience.

4.2 Agreements on binding delivery times shall require our express written confirmation. Section 2 shall apply accordingly. The start of the delivery period stated by us shall further presuppose prior clarification of all technical questions.

4.3 If call orders are not requested within 3 months, we shall be entitled either to insist on immediate acceptance or to withdraw from the contract if no call has been made despite setting of a subsequent period.

4.4 We shall be liable according to statutory provisions to the extent that the underlying purchase contract is a fixed-date purchase within the meaning of § 286 sub-section 2 no. 4 German Civil Code or of § 376 German Commercial Code. We shall also be liable according to statutory provisions to the extent that the customer is entitled to claim that its interest in further performance of the contract has been forfeited as a result of arrears in delivery for which we are answerable. To the extent that the arrears in delivery are to be put down to culpability of a freight forwarder commissioned by us, we shall be liable for the arrears in delivery occurring limited to the amount stated according to the directives of transport law, i.e. pursuant to § 431 III German Commercial Code and Art. 23 V CMR.

4.5 We shall further be liable according to statutory provisions to the extent that the arrears in delivery are based on a deliberate or grossly negligent breach of contract for which we are answerable; culpability of our representatives or vicarious agents shall be ascribed to us. To the extent that the arrears in delivery are not based on a deliberate or grossly negligent breach of contract for which we are answerable, our liability for damages shall be limited to the foreseeable damages typically occurring.

4.6 We shall also be liable according to statutory provisions to the extent that the arrears in delivery for which we are answerable are based on a culpable breach of a cardinal breach of contract; but in such a case, the liability for damages shall be limited to the foreseeable damage typically occurring.

5. Sale to destination by instructions

5.1 If not agreed to the contrary, the commodities shall be dispatched from place of performance to the residence or business settlement of the customer (§ 447 German Civil Code). Risk shall pass to the customer as soon as the sold commodities have been supplied or handed over to the freight forwarder, haulage contractor or any other person or institution determined for implementation of the dispatch. This shall apply to all acts of dispatch to be considered, also for franco, franco domicile delivery or dispatch by own means of transport. In the latter case, liability pursuant to § 278 German Civil Code shall be ruled out.

5.2 The customer shall be obliged to examine the goods for transport damage immediately after receipt and to have it confirmed by the forwarder without delay and to notify us within 3 days.

5.3 Rejection of acceptance due to transport damage shall be inadmissible. All and any warehouse and freight costs shall be charged to the customer.

6. Warranty and notification of defects

6.1 The customer shall be obliged to examine the goods without delay within one week and to notify all and any defects within a further week. The date of the postmark shall be decisive for punctuality of the notification, which must designate the individual defects precisely and completely. If a part of the consignment is defective, the part giving rise to complaint must be stated.

6.2 No warranty shall be assumed for defects not notified in good time unless it is a question of defects which cannot be recognised to start with occurring within the period of barring by limitation of 12 months after delivery. If defects not recognisable from the outset occur during the period of barring by limitation, defects must likewise be notified without delay, albeit no later than one week after discovery.

6.3 We shall warrant for proper manufacture and flawlessly supplied goods, however not for improper use and treatment. Warranty claims against us shall be forfeited in the event of improper treatment or storage of the commodities following passage of risk. Information and guidelines of the manufacturer of the commodities shall be observed and shall be an integral part of these terms and conditions.

6.4 Under some circumstances, the raw materials used and the nature of their processing lead to certain deviations, e.g. in colour, surface quality, dimensions, strength, water absorption and similar. If the goods comply with the requirements of relevant standards or the deviations do not exceed the framework of what is customary in the trade, the customer cannot derive any rights from the deviation. The tolerances shall be governed by the EN standards, to the extent existent, unless we have made specific reference to corresponding deviations with a view to certain products.

6.5 Inconsiderable excess or short deliveries of quantity and number shall be admissible. They shall not entitle to a notification of defects.

6.6 If a notification of defects is acknowledged by us or judicially established as justified, we shall be obliged to warrant at our choice by remedying of defect or replacement delivery at our choice. Without our prior approval, the customer shall not be entitled to return defective commodities to us.

6.7 If subsequent performance fails, the customer can, as a matter of principle, demand reduction of the remuneration or cancellation of the contract (withdrawal) at its choice. In the event of only a slight breach of contract, in particular only slight defects, no right of withdrawal shall accrue to the customer.

6.8 If the customer selects withdrawal from the contract on account of a defect in quality or title following failed subsequent performance, no claim to damage on account of the defect shall additionally accrue to it.

6.9 As a matter of principle, only our product description shall be deemed agreed as properties of the commodities. Public comments, advertising or promotions shall not represent statements of properties of the commodities.

6.10 We assure compliance with the current EN standards for the commodities manufactured by us to the extent that no product-specific properties justify a deviation and we have made specific reference hereto.

7 Retention of title

Deliveries shall be subject to retention of title pursuant to § 449 German Civil Code with the following extensions:

7.1 Until complete payment of all the claims resulting from the business relationship, be they from previous or later deliveries, the commodities shall remain our property. Open bills shall not be deemed payment made.

7.2 The retention of title shall also extend to the products manufactured by machining, further processing or blending of our commodities. Accordingly, it shall be deemed agreed that the products manufactured in this way are transferred to us by way of security and the hand-over is replaced by the conclusion of a loan situation.

7.3 The customer shall be entitled to resell the commodities to third parties in the course of normal business operations. Transfer of commodities under our right of retention to third parties shall only be in the course of normal business if the customer reserves title pursuant to § 449, German Civil Code, until complete payment of its claims from the purchase contract. To secure all claims against our customer, the rights and claims from said retention of title and from the resale are here and now assigned to us. If the commodities supplied by us are sold together with other commodities supplied by us, the assignment of the contractual claims from the resale shall only be to the amount of the conditional commodities supplied by us sold in this context. The assignment shall serve to secure our open claim from commodities in the case in question, regardless of whether they have been included in a current account or not. Notwithstanding the assignment, the customer shall be authorised to collect the claim against the final customer. We shall not make the claims assigned by us along as the customer properly complies with its payment duties. Upon request by us, the customer shall name the debtors, notify the assignment and inform us of the terms and conditions of the contract and the payments made. We shall at any time be entitled to demand that the customer keeps the yield from our resold conditional commodities separately and pays it to us without delay to the amount of our claims from commodities. If the customer fails to comply with its payment duties, if its economic situation deteriorates or if a deterioration is to be feared, we can, in lieu of the aforementioned general provisions on extended and prolonged retention of title, demand that the resale of our conditional commodities may only take place according to the provisions of our approval to be granted specifically in the individual case. In such a case, a simple written notification by us shall suffice.

7.4 If the commodities supplied by us have passed into the customer's complete ownership, but are still stored by it and if new commodities are supplied, the following shall be deemed agreed in order to secure our rights and in the interest of clarification of the ownership situation with the commodities supplied: the customer transfers the commodities which have passed into its ownership back to us. The transfer shall be replaced by the agreement of a loan situation. We for our part transfer the commodities transferred back to us to the customer under the suspensive condition of complete payment of all open debts on the commodities. For this retention of title, the provisions under sub-section 3 above shall apply accordingly.

7.5 If the value of the collaterals provided to our exceeds our claims from delivery by a total of more than 25%, we shall be obliged to re-transfer to this extent upon request by the customer. The customer shall make the request from case to case and also designate the collaterals in question in detail.

8. Catalogues, brochures and similar

Catalogues, illustrations, price lists etc. provided to the customer shall remain our property. They may not be forwarded or otherwise made accessible to other suppliers. They shall be returned to us without delay upon request.

9. General limitation of liability, barring by limitation

9.1 We shall be liable according to statutory directives to the extent that Customer makes claims to damages based on malice aforethought or gross negligence, including malice aforethought or gross negligence of our representatives or vicarious agents, or if we are answerable for a culpable breach of a cardinal contractual duty. Apart from this, our liability to damages shall be limited to the foreseeable damage typically occurring and affecting the commodities themselves. This shall also apply to Customer's claims to damage in lieu of performance.

9.2 Our liability on account of culpable injury to life, limb and health shall remain unaffected; this shall also apply to mandatory liability according to the Product Liability Act or other mandatory statutory situations of liability.

9.3 To the extent not regulated to the contrary above, our liability has been ruled out apart from this.

9.4 All the customer's claims on account of a defect shall be barred one year after delivery of the commodities, unless a case of §§ 478, 438 I no. 2 or § 634a I no. 2 German Civil Code exists or we have contractually granted a longer period of warranty in the individual case.

The aforementioned period of barring shall also apply to claims to damages of any kind, unless we can be accused of gross culpability or it is a question of a case of damages to be ascribed to us on account of injury to life, limb or health of the customer or from our product liability.

10. Applicable law, place of performance and place of jurisdiction

10.1 The legal relationships to our customers and the interpretation of the aforementioned directives shall be subject to German law, ruling out the United Nations Convention of 11.04.1980 on Contracts for the International Sale of Goods (CISG).

10.2 Place of performance for our deliveries and for all duties originating from the delivery transaction shall be Markt Bibart for both parties in commercial dealings.

10.3 Place of jurisdiction in commercial dealings shall be our registered office. We shall however be entitled to sue our contracting partner at the court at its registered office.

11. Miscellaneous

11.1 If one of the aforementioned provisions is cancelled by a written agreement or is legally ineffective for any other reason, the validity of all the other provisions shall remain unaffected.

11.2 The present terms and conditions of sale and delivery shall supersede all previous terms and conditions.