

General Terms of Delivery and Sale

[Draft]

Doc **RL 09.05.004** Date **17.03.2017** Rev **00** Owner **OP-FPM**

of Rosendahl Nextrom GmbH, registered at the Commercial Register Number FN 74318d,
Graz Regional Court
domiciled in Schachen 57, 8212 Pischelsdorf am Kulm/Austria, Europe

These General Terms of Delivery have been drafted primarily for legal transactions between companies. If, in exceptional cases, they are used as a basis for legal transactions with consumers, as defined in § 1, item 2 of the Austrian Consumer Protection Act, as amended, they shall only apply to the extent that they do not conflict with the provisions of the first main section of the aforementioned law.

1. PREAMBLE

- 1.1 Unless the contracting parties have expressly agreed otherwise in writing, these General Terms of Delivery shall apply.
- 1.2 The provisions laid down below regarding the delivery of goods shall also apply, *mutatis mutandis*, to performances.

2. CONCLUSION OF CONTRACT

- 2.1 A contract shall be deemed to have been made if Seller has sent a written order confirmation upon receipt of an order. Such contract shall be subject to the terms and conditions referenced therein.
- 2.2 Any modifications of and amendments to a contract shall be made in writing in order to be valid. This also applies to any waiver of this written form requirement. Legal transactions shall only be valid if they are confirmed by the parties' corporate signature or by the signature of one of their representatives holding the appropriate written authorisation. Seller shall be bound by Buyer's conditions of purchase only if Seller has accepted them by separate written agreement.
- 2.3 In the event that import and/or export licenses or foreign currency permits or similar authorisations are required for the performance of a contract, the party responsible for obtaining such documents shall make every reasonable effort to obtain the necessary licenses or permits in due time.
- 2.4. In the event that an export license is required for the performance of the contract, the contract only enters into force after the necessary approvals of the respective authorities are available.

3. DRAWINGS AND DOCUMENTS

- 3.1 The data on weights, measures, content, prices, performances or alike, as contained in catalogues, brochures, circular letters, advertisements, pictures, price lists, the website of www.rosendahlnextrom.com, etc., shall only be definitive if the offer and/or order confirmation refers to them specifically.
- 3.2 Drawings, design drafts, cost estimates and other technical documents, which may also be part of the offer, as well as samples, catalogues, brochures, pictures and alike, shall always remain the intellectual property of Seller. Any use, copying, reproduction, dissemination and transfer to third parties, and any publication or presentation thereof, may only be effected with Seller's express approval. In particular, Buyer shall be obliged to safeguard Seller's patent rights and to protect them from any infringement by third parties.



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4. PACKAGING AND TRANSPORT

- 4.1 Unless the parties agree otherwise:
- a) the listed prices do not include packaging;
 - b) the goods shall be packaged according to normal trade practices in order to avoid, under normal transport conditions, any damage to the goods during transit to their agreed destination. Packaging shall be at Buyer's expense, and the packaging material will only be taken back if so agreed by the parties.

5. TRANSFER OF RISK

- 5.1 Unless otherwise agreed, the goods shall be deemed to have been sold "ex works" (EXW) (ready for collection) at Seller's premises.
- 5.2 In all other respects, the relevant INCOTERMS 2010 shall apply.

6. PERIOD OF DELIVERY

- 6.1 Unless the parties agree otherwise, the period of delivery shall commence on the date on which Buyer has complied with all technical, commercial and financial conditions for which Buyer is responsible under the contract;
- 6.2 Seller shall be entitled to make partial or advance deliveries.
- 6.3 If a delivery is delayed due to a circumstance on Seller's part that constitutes a reason for relief according to Article 15 hereof, a reasonable extension of the period of delivery shall be granted.
- 6.4 If Buyer does not accept the goods supplied under a contract at the contractually agreed place or at the contractually agreed time, and if the delay is not due to any action or omission on Seller's part, then Seller may either demand the performance of the contract or withdraw from the contract, granting a period of respite. If the goods have been split, Seller may store the goods at Buyer's cost and risk. Seller shall also be entitled to claim a refund of any justified expenses which were incurred by Seller in connection with performing the contract and which are not covered by the payments received.
- 6.5 Any claims of Buyer against Seller for Seller's delay other than those listed in Article 6 shall be excluded.
- 6.6 The indication of a date or period of performance shall not be construed as a fixed-date transaction (§ 919 of the Austrian Civil Code, ABGB).

7. ACCEPTANCE TEST

- 7.1 If Buyer wishes to have an acceptance test performed, such test shall be agreed upon expressly in writing with Seller when entering into a contract. Unless otherwise agreed, the acceptance test shall be carried out at the place of manufacture or at a place to be indicated by Seller, respectively, during the normal working hours of Seller. In this connection, the general practice of the industry in question shall govern the acceptance test.
- Seller shall inform Buyer in due time of the acceptance test so that Buyer may be present during the test, or may be represented by an authorised representative, respectively.
- If the delivery item proves to be contrary to the contract during the acceptance test, Seller shall remedy any defect within a reasonable period of time which is in line with Seller's usual business practices, and shall produce the contractual condition of the delivery item. Buyer is entitled to request that the test be repeated only in cases of major defects.
- 7.2 An acceptance record shall be drawn up following the acceptance test. If the acceptance test has demonstrated that the delivery item has been manufactured according to the applicable contract and is in



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proper operating condition, both contracting parties shall confirm this at any rate. If Buyer or Buyer's authorised representative is not present during the acceptance test despite having been informed thereof in due time by Seller, only Seller shall sign the acceptance record. In any event, Seller shall send Buyer a copy of the acceptance record, the correctness of which Buyer may not contest, not even in those cases where Buyer or Buyer's authorised representative was unable to sign it for lack of attending the test.

- 7.3 Unless otherwise agreed, Seller shall bear the costs for performing the acceptance test. Buyer shall, however, bear any costs incurred by Buyer or Buyer's representatives in connection with the acceptance test, such as, for example, travel expenses, per diems or similar expenses.

8. PRICES

- 8.1 Unless otherwise agreed, all prices shall be in EURO, ex works (EXW) of Seller's premises, acc. to Incoterms 2010.
- 8.2 The prices shall be based on the costs at the time of the quotation, unless otherwise agreed.
- 8.3 In the event that during the period between conclusion of a contract and performance/delivery:
- legal requirements, ordinances, or collective bargaining agreements lead to increases in labour costs, or
 - recommendations issued by the Austrian Parity Commission for Wages and Prices or changes in the world market prices for raw materials lead to increases in the cost of materials,
- then Seller's prices, as influenced by these changes, shall be increased accordingly.

9. PAYMENT

- 9.1 Payments shall be made in accordance with the conditions of payment agreed upon. If no specific conditions of payment have been agreed, one third of the price shall be due upon receipt of the order confirmation, one third after half of the delivery period has lapsed, and one third before delivery, in immediately available funds, free and clear of any encumbrances. Irrespective of the foregoing, the value-added tax included in the invoice shall in all events be paid within 30 days after the invoice date at the latest.
- 9.2 Any set-off of Buyer's claims against Seller's claims arising out of the purchase price or other claims of Seller shall be excluded (prohibition of set-off).
- 9.3 If Buyer defaults on one of the agreed payments or any other aspect of performance, or if Buyer's economic position deteriorates to an extent that is likely to threaten the performance of Buyer's contractual obligations, Seller may either insist on the performance of the contract and;
- postpone the performance of Seller's own obligations until Buyer has paid the arrears in payment or provided any other performance,
 - implement a reasonable extension of the period of delivery, or
 - call for the payment of the full remaining purchase price,
 - or announce withdrawal from the contract, granting a reasonable period of respite.
- 9.4 In the event of default, Seller is entitled to charge default interest pursuant to § 456 of the Austrian Code of Business Enterprises (UGB). In any event, Buyer shall refund to Seller any and all costs incurred by Seller resulting from Buyer's default, especially any reminder charges and collection costs.
- 9.5 Buyer shall return to Seller, upon Seller's request, any delivered goods and shall compensate Seller for any reduction in the value of the goods that has occurred, as well as refund to Seller all justified expenses Seller incurred in connection with the performance of the contract. Regarding undelivered goods, Seller is entitled to make available to Buyer the completed parts, or the parts with incipient processing, respectively, and demand a prorated portion of the sales price.



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10. RESERVATION OF OWNERSHIP

- 10.1 Seller shall reserve the ownership to the object of purchase until such time as all of Buyer's financial obligations (such as purchase price payments, default interest, reminder charges, or collection costs) have been met.
- 10.2 Seller shall be entitled to document Seller's ownership on the outside of the object of purchase. Buyer shall comply with the required formal regulations to safeguard the reservation of ownership. In case of seizure or any other recourse, Buyer shall be obliged to claim Seller's ownership and to inform the latter without delay.
Furthermore, to maintain an adequate degree of publicity, Seller's title to the object of purchase shall be documented in Buyer's books.

11. WARRANTY

- 11.1 The contractual warranty provisions set forth below shall entirely replace all provisions provided by the applicable law as to warranty and guarantee. Neither party will resort to any rights or duties derived from any legal or contractual provision as to guarantee or warranty other than those rights and duties set forth below:
- 11.2 Seller guarantees the fitness for use of the purchased items according to the contract.
- 11.3 The contracting parties agree on a period of warranty of 12 months starting from the date of acceptance protocol but maximum for a period of 18 months from the date of delivery according to Incoterms 2010. If the delivery time is delayed by the Buyer, the warranty period is starting from the contractual agreed date of delivery EXW Seller's premises, acc. to Incoterms 2010. In case the Seller has to replace some parts during the warranty period, the warranty time will then be twelve months for those replaced parts.
- 11.4 Buyer shall inspect the object of purchase upon delivery and shall notify Seller of any defects in the delivered item immediately, latest within a reasonable period of 7 days. If Buyer fails to comply with this duty of notification, any and all claims arising from the defect and any and all consequential damages arising therefrom shall be forfeited. The presumption rule if valid in the applicable law shall be excluded. Buyer shall be obliged to present proof of any defect in the object of purchase at the time of delivery. In the event of defects in Seller's delivered items, Seller shall remedy or rectify these within a reasonable period of respite, which is in line with Seller's usual business practices, or shall arrange for their replacement or exchange. If the defective items are not remedied, rectified, or replaced within the stipulated period of respite, Buyer shall be entitled to withdraw from the contract, granting another period of respite. In this case, the parties' performances already rendered and items already delivered shall be contemporaneously returned to the respective other party. Hidden defects, i.e. defects that are not immediately apparent despite thorough controls, shall likewise be notified immediately to Seller; otherwise, claims for warranty and compensation shall not be accepted.
- 11.5 If Seller arranges for the defective goods or parts to be returned to Seller for the purpose of reworking or replacement, Buyer shall bear the costs and the risk of the transport on the basis of CIP Seller's premises, acc. to Incoterms 2010, unless otherwise agreed. The reshipment of the reworked or replaced goods or parts to Buyer shall be at Seller's costs and risk on the basis of CIP Buyer's place of installation, acc. to Incoterms 2010, unless otherwise agreed.
- 11.6 The defective goods or parts replaced according to the provisions of this Article shall be at Seller's disposal.
- 11.7 Seller shall only refund those costs for remedying a defect undertaken by Buyer himself if Seller has agreed to this procedure in writing.
- 11.8 Seller's warranty obligation shall only apply to defects that appear when observing the applicable operating conditions and putting the item to normal use. Seller's warranty obligation shall, in particular, not apply to defects that are due to inadequate installation on the part of Buyer or Buyer's representatives, inadequate maintenance, inadequate repairs or modifications undertaken by other



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persons than Seller or Seller's representatives without the written agreement of Seller, or normal wear and tear.

- 11.9 Seller shall be liable for those parts of the goods that Seller obtained from subcontractors prescribed by Buyer only to the extent of Seller's own warranty claims vis-à-vis the subcontractor. If Seller produces items on the basis of Buyer's design data, drawings, or models, Seller's liability shall not extend to the accuracy of the design but as to whether the workmanship complies with Buyer's instructions. In such cases, Buyer shall indemnify and keep Seller harmless from any court action arising from any infringement of proprietary rights. When accepting repair jobs or reworking or modifying old as well as third-party goods, or when delivering second-hand goods, Seller shall not accept any warranty.
- 11.10 As of the commencement of the warranty period, Seller shall not accept any liability that extends beyond the scope defined in this Article.

12. INSURANCE

- 12.1 Buyer is obliged to conclude insurances in due form which cover every risk originating from the purchase, use or reselling etc. of Seller's products or services with a first-class insurance company accepted by the Seller.
- 12.2 Buyer is obliged to immediately conclude a valid public and products liability insurance including body and property damages or any consequential damage in due form, in any case amounting to EUR 10 Mio. for each occurrence of damage at least.
- 12.3 Buyer furthermore contracts into immediately concluding a valid all risk insurance including CAR (Construction All Risk) and potential damages or consequential damages of any kind of third parties. Minimum coverage must be at least the amount of all contract values aggregated.
- 12.4 Buyer is obliged to conclude a valid transportation insurance amounting to 110% of the contract value including war and strike risk up to final place of destination. Insurance coverage shall be ICC-A clause (Institute Cargo Clauses, All Risk).
- 12.5 In any case of damages of Seller which is covered or would be covered under the insurances of Buyer according to provision 1.-4., Buyer is obliged to make the relevant payment to satisfy Seller for his damages or loss.
- 12.6 Buyer may not lessen the coverage or terminate the insurance contract while potential liability of Seller. Buyer shall provide a copy of the insurance contracts within 14 days after Seller's request. If Buyer does not provide copies within the term set, Seller may terminate the contract immediately and without any cancellation period.
- 12.7 Coverage indicated in these provisions refers to Seller's loss only and do not include Buyer's or third party loss. Coverage for Buyer's loss shall be included separately by Buyer.

13. LIABILITY

- 13.1 Seller shall only be liable to Buyer for any damages to goods or financial losses that arise as a result of Seller's intent or significantly gross negligence. Seller's liability for slight negligence and ordinary gross negligence shall be excluded, as shall be the reversal of the burden of proof if valid in the applicable law. . Any liability shall be limited to the amount available under the insurance contract concluded by the Seller. Buyer shall assert any and all claims for damages against Seller in court within 6 months from the discovery of the damage, failing which the claim shall be forfeited. Claims for damages against Seller



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arising from production downtime, lost profits, and loss of use shall likewise be excluded. Neither shall Seller be liable for exemplary or punitive damages.

13.2. The object of purchase provides only that level of safety that may be expected on the basis of the registration provisions, the operating instructions, Seller's rules on the handling of the purchased object—especially with regard to any possible inspections—and other instructions given.

14. CONSEQUENTIAL DAMAGES

14.1 Unless otherwise provided herein, Seller's liability vis-à-vis Buyer shall be excluded with respect to any production downtime, lost profits, loss of use, loss of contract, or any other economic or indirect consequential damage.

15. REASONS FOR RELIEF

15.1 Seller shall be released in part or in whole from the timely performance of his contractual obligations if he is prevented therefrom by events of force majeure (including, but not limited to, strike, labour disputes, natural disasters, change of law, etc.)

16. TERMINATION OF THE CONTRACTUAL RELATIONSHIP

16.1 The contractual relationship terminates upon mutual performance of the parties' contractual obligations. The contractual relationship cannot be terminated before the parties' mutual contractual obligations have been fulfilled in their entirety.

16.2. However, termination of a contract on important grounds shall be permissible. Important grounds entitling Seller to the early termination of a contract include, but are not limited to:

- Buyer's total or partial default in payment for a duration of more than 14 days (a written reminder shall not be required);
- Opening of insolvency proceedings over Buyer's assets;
- Denial of a request to open insolvency proceedings due to lack of assets;
- Buyer's failure to indicate that the goods are subject to Seller's retention of title;
- Breach of the obligation to maintain secrecy (cf. Article 19);
- Buyer's infringement of Seller's intellectual property rights (cf. Article 3);
- Buyer's failure to accept Seller's delivery/performance in the contractually agreed manner.

16.3. If Seller terminates a contract for important grounds, Seller shall be entitled to claim, in addition to the purchase price, default interest and collection costs, Seller's actually incurred financial loss and loss of profit.

17. LEGAL SUCCESSION

17.1. The contracting parties shall assign their contractual obligations in their entirety to their individual and universal successors in title.

18. SEVERABILITY

18.1. If any of the provisions of the General Terms and Conditions or of a contractual relationship should be invalid or void, the validity and enforceability of the remaining provisions shall not be affected thereby. Invalid provisions shall be automatically replaced by provisions that best reflect the economic purpose of the invalid provisions. In this context, the primary focus should be on the purpose and intent of the agreement.



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19. DATA PROTECTION

- 19.1 Seller shall be entitled to store, communicate, process and delete personal data of Buyer in the context of their business relations.
- 19.2 The parties shall undertake to keep confidential, vis-à-vis third parties, any knowledge obtained in the course of their business relations.

20. PLACE OF JURISDICTION, APPLICABLE LAW, PLACE OF PERFORMANCE

- 20.1 Any disputes arising out of or in connection with this agreement shall be finally settled under the Rules of Arbitration and Conciliation of the International Chamber of Commerce by one or more arbitrators appointed in accordance with these rules. The place of arbitration shall be 8010 Graz. The language to be used in the arbitral proceedings shall be English. If the value at dispute exceeds € 1,000,000.00, the number of arbitrators shall be 3; in all other cases, the number of arbitrators shall be one.
- 20.2 The substantive law of Austria shall apply, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 January 1980, Federal Law Gazette BGBl. No. 1988/96 (CISG), and to the exclusion of the rules governing conflicts of laws (Austrian International Private Law, Convention on the Law Applicable to Contractual Obligations, etc.).

