

ROLEC Gehäuse-Systeme GmbH - General standard terms and conditions for deliveries and payments

1. Generalities

These general standard terms and conditions are valid for all present and future business relations between the other contracting parties and us. We herewith expressly object to deviating, contrary or complimentary general conditions of the other party. These will not become part of the contract, also not through the acceptance of the contract.

2. Exclusive validity of conditions, offer and concluding of contract

Offers and all other indications, especially concerning prices and dates of deliveries, are subject to changes without notice. Dimensions, weights and other performance data and figures are only approximate. We reserve the right to change our execution if this is due to technical developments or if the function of the contractual object is not significantly modified by such changes. The customer is bound to his order till reception of our acknowledgment, at the longest, however, for 2 months. We only will deliver under these business conditions. They will be deemed to have been accepted by the customer at the latest when the customer has received and accepted the goods and services.

We reserve the right to transfer orders for a value of less than 100 Euro to one of our subcontractors.

Verbal auxiliary agreements, assurances of characteristics and any changes to the contract must be expressed in writing to attain validity; this includes the cancelling of this clause referring to the written form.

For deliveries abroad, the customer will be responsible for any customs or other formalities.

3. Prices and payment conditions, offset

Our prices are net prices and are valid ex works, excluding freight, packaging costs, fees and transport insurance, plus the legally valid VAT. Supplementary costs for transport and delivery in foreign countries (customs duties etc.) must be carried separately by the customer.

Insofar as not otherwise specified in the order acknowledgment, prices are fixed when delivery has been agreed within a period of 3 months. Otherwise, the list prices valid on the date of delivery will be invoiced.

Our prices are based on present material and personnel costs. Should changes in these costs take place till the date of delivery, we expressly reserve the right to adapt our prices.

Payment of our invoices will be:

Parts: 10 days after date of invoice minus 3 % cash discount
or

Tools: 30 days after date of invoice, net
1/3 when the order is placed
1/3 when outturn samples are presented
1/3 10 days after first samples are presented,
in every case net, without any kind of discount.

For new customers, we reserve the right to effect shipment under the conditions of cash on delivery or payment in advance.

All payments to us will be in Euro, free of any expenses or fees. Payments to representatives will not be accepted.

In case of delays of payment, ROLEC is entitled to charge interests of 8 % above the basic rate of interests of the European Central Bank (EZB).

If the customer is in arrears by more than 10 days in case of agreed payment in instalments, the total amount still due will be due at once. Interests, collecting and bank fees must be paid cash, separately.

The customer may only offset against undisputable or legally determined claims.

Rights of retention may only be claimed on the base of the same contractual agreement, and only from customers, who are not traders.

4. Deliveries and dates of deliveries

Dates of delivery will be observed as far as possible. ROLEC will not be liable in case of delays of delivery due to force majeure or to any other reason, unless the customer can prove that ROLEC have been grossly negligent.

The date of delivery will become effective after all documents required for the implementation of the contract have been received (dimensioned drawings, films, etc.), when all questions relevant for the implementation of the contract have been agreed to, and after reception of an advance payment, if this has been agreed.

Subcontractors are not ROLEC's assistants; ROLEC cannot be made responsible for their attitude concerning the punctuality of deliveries.

If a date of delivery which had been agreed is delayed by more than four weeks, the customer must grant ROLEC an additional period of grace of three weeks.

Partial deliveries are admissible, as well as deviations from quantities of up to +/- 10 %.

In case of items made to order, that is, for all deviations from our standard programme, the customer must accept deliveries in excess of up to 20 %, even outside the 10 % standard deviations from quantities. In case of ordered quantities, for which no excess or lesser quantities of delivery are permitted, the customer must make this known at the latest when placing the order. In this case, ROLEC will reserve the right to apply a surcharge to the sales price.

In case of a blanket order, we require that the whole agreed quantity be delivered and accepted by the customer within the agreed delivery schedule. For parts which have been accepted till then, our written offer for delivery is sufficient for our claims to become due. If the remaining quantity has not been paid for within a period of 4 weeks, we reserve the right, but are not committed to, to realise the parts elsewhere, crediting possible payments obtained from this elsewhere realisation against our claims.

Shipment is carried out at the customer's risks and costs. He will also bear all auxiliary costs (customs duties, insurances etc.). Handing over to a third party will in any case transfer the risks to the customer. If, after making available has been announced, the customer is delayed for more than 14 days in the fulfilment of his commitment of taking delivery, of payment or of presentation of securities, ROLEC will determine another period of grace. If this also expires without results, ROLEC may at its own discretion either terminate the contract or claim compensation for damages for non fulfilment. In the last case, ROLEC may either claim compensation for the actual damage, or a lump sum amounting to 15 % of the contract value, unless the customer can prove that the actual damage was less, or that no damage was incurred by ROLEC.

The contract goods will also be at ROLEC's free disposal.

ROLEC may choose the shipping method freely, without incurring any liability due to this choice. If the customer indicates a definite transport company, or imparts definite shipping instructions, ROLEC will reserve the right to charge a handling fee.

5. Reservation of ownership

All delivered goods remain the property of ROLEC until total payment of the agreed price and of all claims existing at the time of delivery. The customer only receives the goods as a loan, till the reservation of ownership has been terminated.

As long as reservation of ownership is valid, further sales of the goods, their pledging, assigning as security, leasing or other assignment to third parties only are permitted with ROLEC's express authorisation.

At this point, the customer will transfer to ROLEC his claims due to otherwise utilisation of the goods or their assignment to third parties, up to a sum covering all of ROLEC's justified claims. In case of further utilisation together with goods which do not belong to ROLEC, the claims will be assigned to ROLEC according to the proportion of that which is owed to them.

If reselling has been authorised, the customer may collect the claims for ROLEC. ROLEC will not make use of their right to collect as long as the customer fulfils his commitments towards ROLEC.

If the customer uses the goods to make something new, or if he incorporates them into an extraneous object, he does this on behalf of ROLEC. Obtaining of ownership according to § 950 BGB through the customer will not be possible in this respect; according to § 947 BGB, ROLEC continues to exert joint ownership. The right of joint ownership acquired by ROLEC in these cases will be defined according to the proportion of the value of the goods delivered by ROLEC at the time of the relation on the one hand, and of the other goods on the other.

If ROLEC's claims have not been completely fulfilled after becoming due or after the definition of a period of grace, the customer's right to use the goods will expire and ROLEC will be entitled to retrieve the goods from the customer's safekeeping, without the assistance of a court of law.

6. Customer's complaint

Customer's complaints and other objections must be presented in writing directly to ROLEC within a compulsory period of one week after reception of the goods. In case of hidden defects, these will be reported in the same way within a compulsory period of one week after these defects were detected.

Traders can claim no right of retention, in spite of a presented customer's complaint.
Costs cause by unjustified customer's complaints must be reimbursed to ROLEC by the customer.

7. Warranty

If goods delivered by us present any defects, we will at our discretion either rework them or replace them.

If this definitely fails, our contractual partner may, at his discretion, either claim reduction of payment or the annulment of the contract (withdrawal from contract), at his discretion. This right of withdrawal from contract will, however, not hold in case of a slight infringement to the contract, and especially in case of slight defects.

Obvious defects must be reported in writing immediately after reception of the goods, otherwise any claim to warranty will be excluded.

Our contractual partner will carry the burden of proof concerning all conditions for claims, especially for the defect itself, for the existence of the defect at the time of the passage of risk and for the punctual filing of the customer's complaint.

If our contractual partner chooses to withdraw from the contract due to a legal or material defect after the post clearance has failed, he will have no supplementary claim to a compensation for damages due to the defect.

If our contractual partner chooses to claim compensation for damages after the post clearance has failed, the goods will remain at his premises at our discretion, if this can reasonably be expected from him. The compensation for damages will then be limited to the difference between the purchasing price or the compensation for work, and the value of the defective object, insofar as it cannot be proven that we acted with the intention to deceive.

The period of warranty will extend for two years after the delivery of the goods. If our product is used in multiple shift operation, the period of warranty will be of eight months after reception of the goods.

Basically, only the manufacturer's product description will be deemed to be agreed to as nature of the goods. Public statements, praises or publicity for the goods by the manufacturer are not contractual declarations of the nature of the goods.

We will grant our contractual partners no guarantees in the legal sense. Replaced parts will become our property.

We will concede no warranty, especially for cases of unsuitable or inadequate utilisation, of faulty mounting or taking into operation through our contractual partner or through third parties, for natural wear, for faulty or negligent treatment, for inadequate maintenance, for the use of inadequate operating materials, in case of chemical, electronic and other influences, etc.

If our contractual partner or a third party take inadequate corrective action by themselves, all warranty claims will expire.

The same will hold for any changes to the delivered objects without our previous authorisation.

If the utilisation of the delivered object causes infringements to protected rights of business or against copyrights within Germany, we will basically obtain the right to continue using the products for our contractual partners at our own costs, or we will change the delivered object in such a way that the infringement will no longer exist. If this is not possible within an economically reasonable period of time, our contractual partner or us will have the right to withdraw from the contract.

We will furthermore indemnify our contractual partner from indisputable or legally effective claims from the corresponding proprietors of the concerned protected rights. The above mentioned commitments are final, and only will be effective when our contractual partner informs us immediately about claimed infringements of protected rights or copyrights, supports us adequately when defending ourselves against these claims, or allows us to make necessary changes, when we are able to take all measures of defence, including out of court settlements, when the legal defect is not due to instructions imparted by our contractual partner, and when the legal infringement was not due to the fact that our contractual partner modified the delivered object by himself, without our authorisation, or has used it in a manner which goes against the contract.

We reserve the right to changes of design or shape, deviations of colour or changes of the scope of delivery, inasmuch as such changes or deviations are reasonable when taking the interests of both parties into account.

8. Liability and compensation

We only will be liable for damages which do not affect the delivered goods themselves, for any legal reason whatever, in case of intentional acts, of gross negligence of our organs or of our management, in case of culpable injuries to life, body and/or health, in case of defects which we fraudulently concealed, or for the lack of which we have extended our warranty, and in case of faults of the delivered goods, insofar as liability is valid for personal or material damages on privately used objects according to the law concerning product liability.

In case of culpable infringement of essential contractual commitments, we also will be liable for gross negligence of personnel not belonging to our management and in cases of slight negligence, in the latter case, however, limited to typical contractual and reasonably foreseeable damages.

Insofar as damages are covered by an insurance contracted by our contractual partner for the corresponding damage, we only will assume liability for disadvantages incurred in this respect, e.g. increased insurance policy costs or similar.

If our contractual partner is entitled to compensation for damages caused by delayed performances according to the above rules, this will be limited to 5 % of the agreed purchase price or compensation for work. If, according to the rules stated above, our contractual partner is entitled to compensation for damages instead of the contractual performances, his claims will be limited to 25 % of the agreed purchase price or compensation for work.

Further claims from the contractual partner will be excluded.

If we are entitled to compensation for damages from our contractual partner, this will amount as a lump sum to 15 % of the agreed purchase price or compensation for work, unless we can prove that the value of the damage was higher, or our contractual partner can prove that the value of the damage was lower.

9. Limitation of liability in time

All claims of our contractual partners, for any given reasons, will cease to be valid after twelve months, insofar as the law foresees no shorter time for limitation of liability. The legal periods will be valid in case of deliberate or fraudulent behaviour and for claims according to the law concerning product liability. They also are valid for defects of buildings or for delivered goods, which according to their usual utilisation are used for a building, and for the failure of which we are responsible.

10. Tools

The agreed tooling costs are participations in the costs. They do not cover the intellectual and constructive performance such as breaking in, running maintenance, care, insurance, storage etc. The tools remain the property of ROLEC. The customer will only be entitled to request the handing over of tools if this has been expressly agreed beforehand.

If the customer places no order for parts according to his purchase order, ROLEC will be entitled to charge also the difference between the agreed tooling costs and the actual tooling costs.

Basically, ROLEC is not obliged to keep tools after the last delivery for which the tools were used.

If larger quantities are ordered than those foreseen when the contract was concluded, the customer will assume the costs for the revision or new fabrication of tools.

If ROLEC must deliver according to drawings, models or samples, or using parts supplied by the customer, the customer will be responsible to make sure that no rights of third parties are infringed. The customer will hold ROLEC free from claims of third parties and will compensate damages which ROLEC might incur for infringing protected rights. If a third party prohibits fabrication or delivery through ROLEC due to a protected right, ROLEC will be entitled to stop work, without further consideration of the legal situation.

11. Final provisions

All legal relations between our contractual partner and ourselves will be exclusively handled according to German laws, excluding any UN legal rights of purchase.

The place of jurisdiction will be the locally competent court of law for our company headquarters.

Should single provisions of the contract between our contractual partner and us, including these general standard terms, be partly or totally null and void, or become null and void, the validity of all other provisions will not be affected by this. The provision which is partly or totally null and void shall be replaced by a provision, the economic performance of which shall be as similar as possible to the null and void provision.