

Rauschert General Terms and Conditions of Sale (GTCS)

As at 09/2023

1. Scope, form

1.1. These General Terms and Conditions of Sale (GTCS) shall apply to all business relationships with our customers ('Buyer'). The GTCS shall only apply if the Buyer is a trader (section 14 German Civil Code [*Bürgerliches Gesetzbuch, BGB*]), a legal entity under public law or a special fund under public law.

1.2. The GTCS shall in particular apply to contracts concerning the sale and/or the delivery of movable objects ('Goods'), regardless of whether we produce the Goods ourselves or purchase them from suppliers (sections 433, 650 BGB). Unless otherwise agreed, the GTCS in the version applicable at the time of the Buyer's order or, in any case, in the version last notified to the Buyer in text form shall also apply as a framework agreement for similar future contracts without us having to refer to them again in each individual case.

1.3. Our GTCS shall apply exclusively. Any deviating, conflicting or supplementary general terms and conditions of the Buyer shall only become an integral part of the contract if and to the extent that we have expressly agreed to their validity. This requirement of consent shall apply in any case, for example, even if the Buyer refers to its general terms and conditions in the context of the order and we do not expressly object to this.

1.4. Individual agreements (e.g. framework supply agreements, quality assurance agreements) and specifications in our order acknowledgement shall take precedence over the GTCS. In case of doubt, trade terms shall be interpreted in accordance with the Incoterms® published by the International Chamber of Commerce in Paris, France (ICC) in the version applicable upon conclusion of the contract.

1.5. Any legally significant declarations and notices by the Buyer in relation to the contract (e.g. the setting of a deadline, a notice of defects, rescission or reduction) shall be submitted in writing. The written form as defined by these GTCS includes written or text form (e.g. letter, email, fax). Statutory provisions regarding form and further proof, in particular in case of doubt about the legitimacy of the declarant, remain unaffected thereby.

1.6. References to the validity of statutory provisions shall only have clarifying significance. Even without such clarification, the statutory provisions therefore apply unless they are directly amended or expressly excluded in these GTCS.

2. Conclusion of contract

2.1. Our offers are subject to change and are non-binding. This shall apply even if we have supplied the Buyer with catalogues, technical documentation (such as drawings, plans, calculations, costings and references to DIN standards), other product descriptions or documents including in electronic form – in which we reserve ownership and copyright.

2.2. The ordering of Goods by the Buyer shall be deemed a binding contractual offer. Unless otherwise indicated in the order, we shall be entitled to accept the contractual offer within **4 weeks** of receipt by us.

2.3. Acceptance can take place either in writing (e.g. by an order acknowledgment) or by delivery of the Goods to the Buyer.

3. Delivery time and delivery default

3.1. The delivery time shall be individually agreed or indicated by us when accepting the order. If this is not the case, the delivery time is approximately **12 weeks** from conclusion of contract.

3.2. If we are unable to meet binding delivery times for reasons beyond our control (unavailability of performance), we shall inform the Buyer without undue delay, at the same time inform it of the expected new delivery time. If the performance is still unavailable within the new delivery time, we shall be entitled to withdraw wholly or partly from the contract; any consideration already paid by the Buyer will be reimbursed without undue delay. A particular instance of unavailability of performance in this respect is late delivery to us by our suppliers if we have concluded a congruent hedging transaction, in the event of other disruptions in the supply chain, for instance, due to force majeure, or if we are not obligated to procure in the individual case.

3.3. The occurrence of a delivery default shall be determined according to the statutory provisions. In all cases, however, a reminder by the Buyer is required.

3.4. The rights of the Buyer pursuant to section 8 and our statutory rights, in particular in the case of an exclusion of the obligation to perform (for example, due to impossibility or unreasonableness of performance and/or supplementary performance) shall remain unaffected.

3.5. Delivery times shall not commence before the Buyer has provided all the necessary technical information and has met its obligations to cooperate.

3.6. Delivery times shall in any case be suspended by any requests for changes on the part of the Buyer. They shall not start to run again until we have decided on any requests for changes within a reasonable period of time and the changes have been approved by the Buyer.

4. Delivery, transfer of risk, acceptance, default of acceptance

4.1. Delivery shall be ex works, which is also the place of performance for the delivery and any subsequent performance. At the request and expense of the Buyer, the Goods shall be sent to another destination (sales shipment). Unless otherwise agreed, we are entitled to determine the type of shipment (in particular, transport company, shipping route, packaging) ourselves.

4.2. The risk of accidental destruction and accidental deterioration of the Goods shall pass to the Buyer upon delivery at the latest. However, in the case of a sales shipment, the risk of accidental destruction and accidental deterioration of the Goods as well as the risk of delay shall already be transferred upon delivery of the Goods to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment. If acceptance has been agreed, this is decisive for the transfer of risk. The statutory provisions of the law on contracts for services shall apply analogously in other respects to an agreed acceptance. Default of acceptance by the Buyer shall be equivalent to delivery or acceptance.

4.3. If the Buyer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the Buyer is responsible, we shall be entitled to demand compensation for the damage caused including additional expenses (e.g. storage costs). In this case, we shall charge lump-sum compensation of EUR 100.00 per calendar day, starting with the delivery time or – in the absence of a delivery time – with the notification that the Goods are ready for shipment.

4.4. The right to prove that the damage is higher and our statutory claims (in particular reimbursement of additional expenses, reasonable compensation, termination) shall remain unaffected thereby; the lump-sum shall however be offset against any further monetary claims. The Buyer shall be entitled to prove that we suffered no loss at all or only a substantially smaller loss than the above lump-sum.

5. Prices and terms of payment

5.1. Unless otherwise agreed in the individual case, our current prices at the time of conclusion of the contract shall apply, ex warehouse, plus the statutory value added tax.

5.2. In the case of a sales shipment (section 4.1), the Buyer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the Buyer. The Buyer shall bear any customs duties, fees, taxes and other public charges.

5.3. The purchase price is due and payable within **30 days** from invoicing and delivery or acceptance of the Goods. We shall, however, be entitled at any time, even within the framework of an ongoing business relationship, to carry out a delivery wholly or partially only against advance payment. We shall declare a corresponding reservation at the latest with the order acknowledgement.

5.4. The Buyer shall be in default at the end of the aforementioned term of payment. Interest shall be paid on the purchase price during the period of default at the applicable statutory default interest rate. We reserve the right to assert further damage caused by default. With respect to merchants, our claim to commercial interest from the due date (section 353 German Commercial Code [*Handelsgesetzbuch, HGB*]) remains unaffected.

5.5. The Buyer shall be entitled to set-off and retention rights only if its claim has been finally established in law or is undisputed. In the event of defects in the delivery, the counter-rights of the Buyer shall remain unaffected in particular pursuant to section 7.6.

5.6. If, after conclusion of the contract, it becomes apparent (e.g. through a petition to open insolvency proceedings) that our claim to the purchase price is endangered by the Buyer's inability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and – if necessary, after setting a deadline – to withdraw from the contract (section 321 BGB). In the case of contracts for the manufacture of non-fungible Goods (custom-made products), we may declare our withdrawal immediately; the statutory provisions on the dispensability of setting a deadline remain unaffected.

6. Reservation of title

6.1. We reserve title to the Goods sold until all our current and future claims arising from the contract of sale and an ongoing business relationship (secured claims)

have been paid in full.

6.2. The Goods subject to reservation of title may not be pledged to third parties or transferred by way of security before the secured claims have been paid in full. The Buyer shall inform us without undue delay in writing if a petition to open insolvency proceedings has been filed or if third parties have access to Goods belonging to us (e.g. seizures).

6.3. If the Buyer acts in breach of contract, in particular if it fails to pay the due purchase price, we are entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the Goods on the basis of the reservation of title. The demand for return does not at the same time constitute the declaration of withdrawal; rather, we are entitled to demand only the return of the Goods and reserve the right to withdraw from the contract. If the Buyer does not pay the due purchase price, we may only assert these rights if we have previously set the Buyer a reasonable deadline for payment without success, or if such a deadline is dispensable according to the statutory provisions.

6.4. Until revocation pursuant to section 6.4.3, the Buyer is authorised to resell and/or process the Goods subject to reservation of title in the ordinary course of business. In this case, the following provisions shall additionally apply:

6.4.1. The reservation of title shall extend to the full value of the products resulting from the processing, mixing or combining of our Goods, and we shall be deemed the manufacturer. If a third party's right of ownership remains in effect after processing, mixing or combining with Goods of a third party, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined Goods. Otherwise, the same applies to the resulting product as to the Goods delivered under reservation of title.

6.4.2. The Buyer hereby assigns to us as security the claims against third parties arising from the resale of the Goods or the product, in their entirety or in the amount of our possible co-ownership share in accordance with the above paragraph. We hereby accept the assignment. The obligations of the Buyer mentioned in section 6.2 shall also apply in consideration of the assigned claims.

6.4.3. The Buyer shall remain authorised to collect the claim in addition to us. We undertake not to collect this claim as long as the Buyer duly meets its payment obligations to us, there is no deficiency in its ability to pay and we do not assert the reservation of title by exercising a right pursuant to section 6.3. If this is the case, however, we shall be entitled to require the Buyer to supply us with details of the claims assigned and the debtors involved, provide all of the information needed for collection purposes, hand over the relevant documents and notify the (third-party) debtors of the assignment. Furthermore, in this case we shall be entitled to revoke the Buyer's authority to further sell and process the Goods subject to reservation of title.

6.4.4. If the realisable value of the security exceeds our claims by more than 10%, we shall release the security that we hold at our discretion at the Buyer's request.

7. Buyer's claims for defects

7.1. The statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title (including incorrect delivery or short delivery as well as improper assembly/installation or faulty operating instructions), unless otherwise specified below. In all cases, the statutory provisions on the sale of consumer Goods (section 474 et seqq. BGB) and the rights of the Buyer from separately issued warranties in particular by the manufacturer, shall remain unaffected.

7.2. Our liability for defects is primarily based on the agreement made on the condition and the anticipated use of the Goods (including accessories and instructions). All product descriptions and manufacturer information that are the subject of the individual contract or that were made public by us (in particular in catalogues or on our website) at the time the contract was concluded are deemed quality agreements in this sense. If the quality has not been agreed upon, whether there is a defect or not shall be assessed according to the statutory provisions (section 434 (3) BGB). Public statements by the manufacturer or on its behalf, in particular in advertising or on the Goods label, shall take precedence over statements by other third parties.

7.3. In the case of Goods with digital elements or other digital content, we are obligated to provide and, if applicable, update the digital content only if this can be expressly derived from a quality agreement pursuant to para. 2. We accept no liability for public statements by the manufacturer and other third parties in this respect.

7.4. As a matter of principle, we shall not be liable for defects which the Buyer is aware of upon conclusion of the contract or is not aware of due to

gross negligence (section 442 BGB). Furthermore, the Buyer's claims for defects are subject to it having complied with its statutory inspection and notification obligations (sections 377, 381 HGB). In the case of building materials and other Goods intended for installation or other further processing, an inspection shall take place in any case immediately before processing. If a defect becomes apparent during delivery, inspection or at any later point in time, we must be notified thereof in writing without undue delay. In each case, obvious defects shall be notified in writing within 10 working days from delivery and defects which are not detectable during the inspection within the same period from discovery. If the Buyer fails to properly inspect the Goods and/or notify of a defect, our liability for the defect not notified, not notified in good time or not notified properly is excluded according to the statutory provisions. In the case of Goods intended for incorporation, attachment or installation, this shall also apply if the defect became apparent due to the breach of one of these obligations only after the corresponding processing; in this case there are in particular no claims on the part of the Buyer for reimbursement of corresponding costs ('removal and installation costs').

7.5. If the supplied item is defective, we can initially choose whether to provide subsequent performance by remedying the defect (rectification) or by supplying a non-defective item (replacement). If the type of subsequent performance we have chosen is unreasonable for the Buyer in the individual case, the Buyer may reject it. Our right to refuse subsequent performance under the statutory requirements shall remain unaffected.

7.6. We are entitled to make the subsequent performance owed dependant on the Buyer having paid the purchase price due. The Buyer shall, however, be entitled to retain a reasonable part of the purchase price in relation to the defect.

7.7. The Buyer shall give us the necessary time and opportunity to carry out the subsequent performance owed, in particular hand over the item subject to a complaint for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective item to us at our request in accordance with the statutory provisions; however, the Buyer has no claim for a return. Subsequent performance includes neither the dismantlement, removal or disassembly of the defective item, nor the mounting, attachment or installation of a defect-free item if we were not originally obligated to carry out such services; claims on the part of the Buyer for reimbursement of the corresponding costs ('removal and installation costs') shall remain unaffected.

7.8. We shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, carriage, labour or material costs as well as, if applicable, removal and installation costs, in accordance with the statutory provisions and these GTCS if there is actually a defect. Otherwise, we may demand that the Buyer reimburses the costs incurred as a result of the unjustified demand for the rectification of defects if the Buyer knew or could have known that there was actually no defect.

7.9. In urgent cases, for example, if there is a risk to operational safety or to prevent disproportionate damage, the Buyer shall have the right to rectify the defect itself and to demand from us reimbursement of the expenses objectively required for this purpose. We must be notified of such self-remedy beforehand where possible. The right of self-remedy shall not exist if we would be entitled to refuse a corresponding subsequent performance under the statutory provisions.

7.10. If a reasonable period to be set by the Buyer for subsequent performance has expired unsuccessfully or is dispensable under the statutory provisions, the Buyer may withdraw from the purchase agreement or reduce the purchase price in accordance with the statutory provisions. However, in the case of an insignificant defect, there is no right of withdrawal.

7.11. Claims by the Buyer for reimbursement of expenses pursuant to section 445a (1) BGB are excluded unless the last contract in the supply chain is a sale of consumer Goods (sections 478, 474 BGB) or a consumer agreement for the provision of digital products (sections 445c sentence 2, 327 (5), 327u BGB). Claims by the Buyer for damages or reimbursement of futile expenses (section 284 BGB) shall also only exist in case of defects in the Goods in accordance with the following sections 8 and 9.

8. Other liability

8.1. Unless otherwise provided in these GTCS, including the following provisions, we shall be liable in accordance with the statutory provisions in the event of a breach of contractual and non-contractual obligations.

8.2. We shall be liable for damages – irrespective of the legal grounds – within the scope of fault-based liability in the event of intent and gross negligence. In the event of simple negligence, we shall only be liable subject

to the statutory limitations of liability (for example, diligence applied in one's own affairs; insignificant breach of duty)

8.2.1. for damage resulting from loss of life, personal injury or illness,

8.2.2. for damage resulting from the breach of an essential contractual obligation (an obligation the fulfilment of which enables the proper performance of the contract in the first place and on the fulfilment of which the other party to the contract usually relies and may rely); in this case our liability is, however, limited to the compensation of the foreseeable, typically occurring damage.

8.3. The limitations of liability resulting from section 8.2 also apply to third parties as well as to breaches of duty by persons (also in their favour) whose fault we are responsible for according to the statutory provisions. They do not apply if a defect has been fraudulently concealed or a warranty has been assumed for the quality of the Goods and for claims by the Buyer under the German Product Liability Act [*Produkthaftungsgesetz, ProdHaftG*].

8.4. The Buyer may only withdraw from or terminate the contract for a breach of duty which does not constitute a defect if we are responsible for the breach of duty. A free right of termination of the Buyer (in particular pursuant to sections 650, 648 BGB) is excluded. Otherwise, the statutory requirements and legal consequences shall apply.

9. Statute of limitations

9.1. Notwithstanding section 438 (1) No. 3 BGB, the general limitation period for claims based on material defects and defects of title shall be one year from delivery. If acceptance is agreed, the limitation period shall commence upon acceptance.

9.2. If the Goods are a structure or an item that has customarily been used for a structure and has caused the defectiveness of the structure (building material), the limitation period pursuant to the statutory provisions is 5 years from delivery (section 438 (1) No. 2 BGB). Other statutory special provisions regarding limitation (in particular, section 438 (1) No. 1, (3), sections 444, 445b BGB) shall also remain unaffected.

9.3. The aforementioned limitation periods under the law governing the sale of Goods also apply to the Buyer's contractual and extra-contractual claims for compensation based on a defect in the Goods, unless application of the normal statutory limitation period (sections 195, 199 BGB) would result in a shorter limitation period in the individual case. Claims for damages of the Buyer pursuant to section 8.2 sentence 1 and section 8.2.1 and under the German Product Liability Act shall become statute-barred exclusively according to the statutory limitation periods.

10. Partial deliveries, deviations in quantity

10.1. Partial deliveries are permissible as long as this does not result in any disadvantages for the use of the contractual items and the partial deliveries are otherwise also reasonable for the Buyer.

10.2. In the case of partial deliveries, excess or short quantities of up to 10% per partial delivery are permissible.

10.3. A minimum purchase quantity is one full packaging unit of the respective product.

11. Spare parts, replenishment

11.1. Without a separate individual agreement, we are not obligated to supply or hold spare parts in stock outside of concluded supply agreements.

11.2. Without a separate individual agreement, we are not obligated to make further deliveries or to hold contractual items in stock outside of concluded supply agreements.

12. Operating equipment such as models and tools

12.1. If we specially produce or modify models, moulds, pressing tools and equipment ('Operating Equipment') for the manufacture of contractual items, the customer shall compensate us for this separately. Unless a special price has been agreed, we are entitled to the acquisition and manufacturing costs.

12.2. These costs are due immediately upon invoicing.

12.3. These costs also include the one-time sampling, but not the costs for testing and processing devices and not the costs for changes initiated by the customer.

12.4. We shall bear the cost of maintaining and servicing equipment during the production of agreed quantities.

12.5. Special tools shall remain our property, even if the Buyer pays the costs.

12.6. If no more orders are therefore carried out within 3 years after the last use of the tool, we are authorised to destroy the equipment in question.

13. Documents, objects, rights

13.1. We reserve ownership, copyright and all industrial property rights in, to and arising from all drawings, illustrations, calculations, brochures, prospectuses, catalogues, models, tools and other documents and

resources provided by us to the Buyer.

13.2. The Buyer may not make such objects accessible to third parties, neither in terms of content or substance, disclose them, use them itself or through third parties or reproduce them without our express consent. At our request, it shall return such items to us in full and destroy any copies made if they are no longer needed by it in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. An exception to this is the storage of data provided electronically for the purposes of usual data backup.

14. Industrial property rights

14.1. We guarantee pursuant to this section 11 that the delivery item is free of industrial property rights or copyrights of third parties. Each contracting party shall notify the other contracting party in writing without undue delay if claims are asserted against it for the infringement of such rights.

14.2. In the event that the delivery item infringes an industrial property right or copyright of a third party, we shall modify or replace the delivery item at our discretion and our expense in such a way that the rights of third parties are no longer infringed, but the delivery item continues to fulfil the contractually agreed functions, or obtain the right of use for the client by concluding a licence agreement with the third party. This applies regardless of whether the contractual items have already been delivered or paid for. If we do not succeed in doing this within a reasonable period, the client shall be entitled to withdraw from the contract or reduce the purchase price appropriately. Any claims for damages by the client shall be subject to the restrictions of section 8.

14.3. The customer shall be liable to us for ensuring that the provided services or items are free of third-party industrial property rights and shall indemnify us against all corresponding claims by third parties.

15. Choice of law, place of jurisdiction, contractual language

15.1. These GTCS and the contractual relationship between us and the Seller shall be subject to the law of the Federal Republic of Germany to the exclusion of international uniform law, especially the United Nations Convention on Contracts for the International Sale of Goods (CISG).

15.2. If the Seller is a merchant within the meaning of the HGB [German Commercial Code], a legal entity under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising from the contractual relationship is our registered office. The same applies if the Seller is a trader within the meaning of section 14 BGB. However, in all cases, we shall also be entitled to bring an action at the place of performance of the delivery obligation in accordance with these GTCS or an overriding individual agreement or at the general place of jurisdiction of the Seller. Overriding statutory provisions, in particular those provisions concerning exclusive jurisdiction, shall remain unaffected thereby.
