

Rohrwerk Maxhütte GmbH

Terms of sale, delivery and payment, status on: 01.10.2018

Scope of validity

These general conditions apply to all contracts concerning deliveries and other services, including those provided in the future, subject to any changes to these conditions, which must be agreed by the contractual partners expressly and in writing. Particularly conflicting verbal agreements which are made with the customer by employees and/or representatives of Rohrwerk Maxhütte GmbH (RMH) are also only valid if they have been confirmed by RMH in writing.

Any customer purchasing conditions which contradict or differ from these conditions are hereby expressly objected to, unless the validity thereof is accepted in writing by RMH. The fact that the contract is being fulfilled does not mean that we are waiving our right to this objection. This objection also applies in the event of the customer stipulating a special form for the objection. If an objection is ruled out in the customer's purchasing conditions, the non-coinciding conditions in the terms of purchasing and sale shall be replaced by the legal regulation.

However, these general conditions only apply if the customer is an entrepreneur, a legal entity under public law or a special fund under public law.

A. General conditions

I. Conclusion of the contract

1. Our quotations are non-binding.
2. We reserve the ownership rights and copyrights to illustrations, drawings, calculations and other documents. The customer requires express written approval from RMH before passing them on to third parties.
3. Customer quotations only apply if we have expressly declared that we have accepted them. If we do not respond to such a quotation, this does not mean that it has been accepted. The scope of the work shall be oriented exclusively to our written confirmation. Details of usability or fitness for use and reference to DIN regulations or other standards are descriptions of characteristics, and not a guarantee of the characteristics of the object or that the object will retain a certain characteristic for a certain period of time (service life guarantee), unless it is expressly designated as such in writing.
4. The 2010 Incoterms are decisive for sales that are based on one of the Incoterms contract formulas.
5. Unless otherwise stipulated in our order confirmation, the prices of RMH apply ex works excluding packaging, which shall be invoiced for separately. The prices do not include the statutory rate of sales tax; this shall be shown separately in the invoice at the applicable rate on the date of invoicing.

II. Payment conditions

1. All payments must be made by the customer **with discharge of liabilities, exclusively** to the bank accounts specified in our invoice. The withholding of payments due to customer counter-claims or offsetting with counter-claims is not permitted, unless the counter-claims are non-contested or legally binding; the customer is also only entitled to withholding rights if they are based on the same contractual relationship.
2. Unless otherwise stipulated in our order confirmation, the purchase price (without deductions) is due for payment within 30 days of the date of invoicing. If payment periods are exceeded, due date interest of 5% shall be charged, or greater amounts of lateness interest at the statutory level. Our right to assert greater damages because of the delayed payment remains unaffected.

3. If our claim for payment is at risk as a result of circumstances subsequently that arise and result in a deterioration in the customer's financial situation, we shall be entitled to declare the amount to be due, regardless of the term of any bills of exchange that have been accepted in payment.
4. If the customer is in arrears, we are entitled to refuse further processing of the goods supplied under **retention of title** (section A IV). **We are also entitled to withdraw from the contract by giving appropriate notice, regardless of our right to compensation, and** take back the goods, enter the customer's premises if necessary and take away the goods.

In the event of late payment, which is an indication that the customer has suffered a deterioration of assets, we are also entitled to withdrawal without notice. If the customer is late with a payment obligation, we are also entitled to make all existing claims due with immediate effect.

5. In cases of clauses 3 and 4, we can cancel the direct debit authorisation (clause A IV 7) and demand advance payment for outstanding deliveries.
6. The customer can avert the legal consequences mentioned in clauses 3 – 5 by making a security payment for the amount of our payment claim that is at risk.
7. The legal regulations concerning late payment also shall remain unaffected.

III. Securities

We shall have claim to securities for our receivables with the usual type and scope, even if they are conditional or subject to a time limit.

IV. Retention of ownership

1. All supplied goods remain our property (reserved goods) until all accounts receivable have been settled, particularly also the respective outstanding balances which are owed to us within the scope of the business relationship. This also applies to future and conditional claims, e.g. from the current business relationship.
2. The reserved goods shall be processed for us as the manufacturer with the result according to number 3, without obligations. The processed goods are regarded as reserved goods in the sense of clause 1.
3. If the reserved goods are processed, combined or mixed with other goods by the customer, we are entitled to co-ownership of the new object in the ratio if the invoice value of the reserved goods to the invoice value of the other goods that were used. If our ownership ceases to exist due to combining, mixing or processing, the customer shall transfer the ownership or entitlement rights to the new inventory or the object to which he is entitled immediately to the level of the invoice value of the reserved goods, and in the case of processing as a proportion of the invoice value of the reserved goods in relation to the invoice value of the other goods that were used, and keep it safe for us free of charge. Our co-ownership rights apply as reserved goods in the sense of clause 1.
4. The customer may only resell the reserved goods in normal business dealings under his normal business conditions, and provided that he is not late with payment, provided that he reserves ownership and the claims from the resale in accordance with clauses 5 and 6 are transferred to us. He is not entitled to other disposals of the reserved goods. The use of the reserved goods for the fulfilment of factory contracts and factory delivery contracts is also regarded as reselling in the sense of this section.
5. The claims of the customer from the reselling of the reserved goods will now be assigned to us. They shall serve as security to the same extent as the reserved goods in the sense of clause 1.
6. If the reserved goods are resold by the customer together with other goods, the claim from the reselling shall be assigned to us as a ratio of the invoice value of the reserved goods to the invoice value of the other goods. When goods to which we have co-ownership shares in accordance with clause 3 are re-sold, a part of the claim that is appropriate for our co-ownership share shall be assigned to us.
7. The customer is entitled to collect claims from the resale, unless we withdraw the direct debit authorisation in the cases mentioned in clauses A II 3 and 4. By our request, he is obliged to notify his customers immediately about the assignment to us (unless we have done this ourselves) and provide us with the information and documents that are required for withdrawal. We are entitled to transfer claims from our business relationship.

8. The customer must notify us immediately of pledging or any other impairments by third parties
9. In the event of deliveries in other legal systems in which this ownership reservation regulation does not have the same security effect as in the Federal Republic of Germany, the customer shall ensure that we are granted equivalent security rights. The customer shall be involved in all measures such as registration, publication etc. which are necessary and beneficial for the effectiveness and enforceability of these kinds of security rights. Until proof of fulfilment of this obligation has been provided, we are entitled to retain the contractually agreed delivery.
10. If the value of the existing securities exceeds the secured claims by a total of more than 10 %, if requested by the customer we are obliged to release securities of our choice.

V. Place of fulfilment, place of jurisdiction and applicable law

1. The place of fulfilment for all claims from the business relationship with the customer is the headquarters of RMH, unless otherwise stated in the order confirmation or from clause 1 in section A II of these general conditions.
2. The exclusive place of jurisdiction for all disputes from or in connection with the business relationship between us and the customer (including international) is Amberg/Oberpfalz. We are also entitled to institute proceedings against the customer at his general place of jurisdiction.
3. The contractual relationship is subject to the laws of the Federal Republic of Germany with the exception of the collision law. The applicability of the uniform UN purchasing law is expressly excluded.

B. Performance of the delivery

I. Delivery deadlines, delivery dates

1. The delivery times that we specify are only regarded as approximate. This does not apply if a fixed delivery time has been agreed (delivery deadline or delivery date). Unless otherwise agreed, delivery deadlines start with the date of our order confirmation, but not before complete clarification of all details of the order; the same applies to delivery dates accordingly.
2. If the customer does not fulfil contractual obligations (including duty to cooperate or secondary obligations) such as the opening of a letter of credit, the provision of domestic or foreign certifications, provision of drawings, plans, tools, making a pre-payment or the like in time, we are entitled to postpone our delivery deadlines and dates, regardless of our customer lateness rights, for a period that is appropriate for these circumstances.
3. The point in time of dispatch from the factory is decisive for adherence to the delivery deadlines and dates. If the goods cannot be dispatched on time for reasons for which we are not responsible (such as Acts of God), the delivery deadlines and dates are regarded as adhered to when notification of readiness for dispatch is given.

II. Dimensions, weight, quality

Dimensional, weight and quality deviations are permissible in accordance with the DIN regulations or other standards or the applicable customs. Subject to any deviating express agreement, the applicable customs include partial deliveries on the one hand, and additional or reduced quantities of up to 10 % on the other. The weights shall be determined on our calibrated scales and are decisive for invoicing. The proof of weight takes place by presenting the weighing report. Unless individual weighing usually takes place, the total weight of the shipment applies. Differences compared to the calculated individual weights shall be distributed among these proportionately.

III. Shipping, packaging and transfer of risk

1. We are entitled to determine the shipping method (particularly the transport company and the shipping method) and the packaging (material and type) in accordance with our dutiful discretion.
2. If the customer is late in accepting the goods, particularly because he has not accepted the goods in the contractually agreed location or at the contractually agreed point in time, the customer must make the payments stipulated in the contract in spite of this, as though the delivery had been made. In this case, RHM is entitled to put the goods into storage (retention or external storage) at the customer's risk and cost. Other claims due to culpable infringement of involvement obligations of the customer remain unaffected by this.

3. Any insurance, transport, packaging and express goods surcharges and any other taxes and expenditure shall be borne by the customer, unless otherwise agreed. Packaging, protection materials and transport materials will not be taken back.
4. In the event of transport damage, the customer must immediately arrange for a statement of facts to be drawn up by the responsible authorities.
5. Unless otherwise stipulated in the contract, the customer shall bear the risk for the shipment; the risk is transferred to the customer when the delivered goods leave the factory. If shipping is being carried out by a haulage company, the risk is transferred when it is handed over to the haulage company. The risk is also transferred to the customer if he is late in accepting the goods.

IV. Liability for defects

1. In the event of a justified, immediate notice of defects, the customer is entitled to the statutory guarantee rights, subject to the restrictions in accordance with the following numbers.
2. In the event of justified, immediate notice of defects, we shall have the choice of rectifying the defect (repair) or delivering an object that is free of defects. If the **repair** is unsuccessful, the customer has the choice of reducing the purchase price or withdrawing from the contract. **A repair is only regarded as unsuccessful after an unsuccessful second attempt, unless anything else arises, particularly due to the nature of the object or the defect or the other circumstances.**
3. In cases in which we have given a guarantee for the character of the object or for the object retaining a certain character for a certain time (service life guarantee), we are only liable for compensation in addition to section C of these conditions to the extent that the guarantee was pursuing the purpose of protecting the customer from precisely the kind of damage that occurred.
4. If requested to do so, the customer must give us the opportunity to convince ourselves of the defect, particularly providing us with the goods which are the subject of the complaint or samples thereof.
5. After carrying out an agreed acceptance, complaints about defects which can be determined during this acceptance are ruled out.
6. For goods which have been sold as declassified materials, e.g. so-called II-a materials, the customer does not have any warranty rights with regard to the specified faults and faults which he would normally have to expect.
7. Claims for defects expire one year after delivery of the goods. This does not apply for an object which has been used to create a structure in accordance with its usual use and has caused its defectiveness; in this case the period of limitation is five years. The statutory period of limitation also applies for the case of fraudulent intent and assured characteristics (guarantees of quality).

C. General liability restriction

We are liable in accordance with the statutory regulations for wilful intent and gross negligence of our legal representatives and vicarious agents.

In the case of simple negligence, we are liable if an obligation has been violated whose adherence is especially important for achieving the purpose of the contract (material contractual obligation). In this case, our liability is limited to damage that can typically be expected to occur. The amount of our liability is limited to three times the agreed purchase price.

Our liability in the case of injuries to life, body and health and from the take-over of a guarantee or procurement risk, because of fraudulent silence about a defect and in accordance with the product liability law remains unaffected, irrespective of the previous conditions.

D. Miscellaneous

I. Proof of export

If a customer who is resident outside the Federal Republic of Germany (extraterritorial customer) or his agents collect, transport or send goods to the external territory, the customer must provide us with the proof of export which is required for tax reasons. If this proof is not provided, the customer must pay the rate of value added tax which applies for deliveries within the Federal Republic of Germany on the invoice amount.

II. Export control

The customer must adhere to the applicable export control and sanction regulations and laws of the Federal Republic of Germany (FRG), the European Union (EU), the United States of America (US/USA) and other legislation (export control regulations).

The customer shall inform us in advance and provide all information which is needed by us in order to adhere to the export control regulations, particularly if products, technology or other goods are ordered by us (RMH goods) for use in connection with

- a) a country or territory, a natural or juristic person which is subject to restriction or sanctions of the FRG, the EU, the USA or other applicable export control and sanction regulations, or
- b) the construction, development, production or use of military or nuclear goods, chemical or biological weapons, rockets, aerospace applications or carrier systems for these.

The contractual obligations are fulfilled by us with the reservation that this does not conflict with the applicable export control regulations. In such a case, we are entitled to refuse or refrain from fulfilment of the contract without any liability vis-a-vis the customer.

III. Additional conditions for toll manufacturing orders

The following supplementary or restrictive conditions apply to toll manufacturing orders:

1. The customer must provide the material to be processed and all technical documents which are required for processing in good time at his own cost.
2. The material to be processed must be in perfect condition, and must correspond with the specified values. The material must not have defects which make processing more difficult; it must have the normal allowance for the intended processing.
3. All additional costs and damage resulting from the material not corresponding to number 2 (e.g. with regard to porosity, sand inclusion, brittleness, hardness or other circumstances which make the work more expensive) will be billed for additionally. This also applies to additional costs and damage caused by defective technical documents (number 1). If the material is unusable for one of these reasons or otherwise through no fault of ours, we can also claim for the reimbursement of the work which we carried out before the defect was found.
4. We shall carry out the work which has been taken over with due care. We are not liable for damage or delays caused by defects in the material, errors in technical documents or other information or warping of the object during or after processing. If justified notices of defects are received in the proper form and on time, we will fulfil our obligation exclusively by means of repair. If the material becomes unusable for reasons for which we are responsible, we will bear the costs which we have incurred until the defect was found. We are also prepared to process replacement materials which we are provided with free of charge under the terms of this contract.
5. Unless otherwise agreed, scrap, chippings and other waste shall go into our possession.