

General Terms and Conditions of Sale of ROMAI Robert Maier GmbH

§ 1 General, Scope

1. Our Terms and Conditions of Sale apply for all our quotations and contracts with enterprises. Enterprises are individuals or juristic persons or partnerships possessing legal personality acting for and transacting their business.
2. Differing, contrary or supplementary terms and conditions will not become part of the contract, unless their validity is expressly agreed.

§ 2 Quotations, Conclusion of Contract

1. As a rule, our quotations are subject to change and not binding and subject to our written order confirmation. A contract will be deemed concluded only with our written order confirmation, if no specific agreement exists or is entered into.
2. Any documentation relating to a quotation, for example illustrations, drawings, weight or dimensional information, is of approximate nature only, unless it is expressly identified as being binding.
3. We reserve all property and copyrights to all cost estimates, drawings and similar information of physical and non-physical nature – also in electronic form; they may be disclosed to third parties with our express consent only and, if an order is not placed, they must be returned immediately on request.
4. Design drawings will not be handed out prior to a binding order.
5. In case of an order, the purchaser will be liable for the correctness, completeness and preciseness of its order documentation and order data.
6. We reserve the right to change products to account for technological progress and for the purpose of product improvement.

§ 3 Prices and Terms of Payment

1. Our prices are to be understood ex works or warehouse, in Euros and plus the valid value added tax at the time of delivery, exclusive of packaging and other shipping and transport costs.
2. If an order is executed in several parts we will be entitled to bill the individual parts separately. In case of a default in payment, we are entitled to suspend delivery until payment is received.

3. We accept bills of exchange and cheques only if agreed expressly and only in payment. All and any costs and expenses incurred in this regard must be paid by the purchaser. Bills of exchange and cheques will be credited only upon unconditional receipt of the net proceeds and only in the amount of such.
4. All invoices are due within 30 days from date of invoice in full or within 10 days less a cash discount of 2%. Subject to differing conditions in individual cases.
5. Irrespective of any payment deadlines, extensions or terms of accepted bills or other instruments, all our receivables will become due immediately if we become aware of circumstances that are suited to reduce the purchaser's creditworthiness. In such case, we are entitled to demand immediate payment in advance and appropriate provision of security for any outstanding deliveries or services owed by us, or to withdraw from the contract after an appropriate period of grace.
6. Any right of retention on the part of the purchaser on grounds of disputed or appealable claims and any offsetting with disputed or appealable claims will be excluded.

§ 4 Delivery Dates

1. Delivery dates are to be understood as estimated dates always, even if this is not stated expressly. Delivery periods start only after all agreed conditions for delivery have been fulfilled (for example, documents supplied, samples released, agreed advance payments made) and after clarification of all and any technical issues relating to the subject matter of the contract. Fulfilment of our delivery obligation requires the timely and proper fulfilment of the purchaser's obligations.
2. Our delivery promise is subject to being supplied ourselves. We will not be responsible for any delays in delivery or performance due to events of force majeure or acts of god and due to events that make it extremely difficult or impossible for us to make delivery, for example difficulties in the procurement of material that have occurred after order placement, shortages in raw materials, governmental measures, strike, lockout, etc., also if those events occur at our suppliers or sub-suppliers, not even in case of bindingly agreed periods or dates. Such events entitle us to postpone delivery by the duration of the event, plus an appropriate lead time; if such event is not of temporary nature only, we are entitled to withdraw from the contract. We undertake to inform the purchaser immediately of any non-availability and to return any received consideration immediately in case of withdrawal.
3. If the purchaser is in default in acceptance or violates other duties to cooperate we will be entitled to demand compensation for any damage incurred by us, including any additional expenses. In such case, the risk of accidental loss or accidental deterioration of the delivery item will pass to the purchaser at the point of time it is in default in acceptance. Further, upon unsuccessful expiration of an appropriate period of grace, we will be entitled to withdraw from the contract and to demand damages for non-performance.

4. § 5 Passing of Risk and Shipment

1. Shipment will be made at the risk of the purchaser. With handing over the goods to the carrier, regardless of whether the carrier was ordered by the purchaser, the manufacturer or us, the risk will pass to the purchaser.
At the request of the purchaser, we agree to effect such insurance the purchaser demands, at the cost of such.
2. In case of damages in transit, it is in the responsibility of the purchaser to arrange for the taking down of the facts of the case with the responsible office; otherwise any possible claims against the carrier or insurer may be forfeited.
3. We will not take back any transport or other packaging. The purchaser is obliged to dispose them at its own expense.

§ 6 Retention of Title

1. All items delivered by us to the purchaser will remain our property until all of our receivables are paid in full, even if the purchase price for a specifically identified receivable was paid already.
2. We are the owners of the goods under retention of title; the purchaser will be the custodian. In his capacity as custodian, the purchaser is particularly obliged to safeguard and maintain the goods, taking care that property or persons will not be at risk. Any possible risks must be properly covered by insurance.
3. Handling and processing of goods under retention of title will be on our behalf as the producer, for the purpose of Section 950 BGB (German Civil Code), however, without any obligation for us. The processed goods will be deemed goods under retention of title.
4. If the goods under retention of title are processed, mixed, or joined with goods under retention of title delivered by other suppliers, the purchaser hereby assigns to us its title or co-ownership rights to the new product in the ratio of the invoice value of our goods under retention of title to the invoice value of the other goods and the processed value.
5. Until cancelled, the purchaser may sell the items produced in processing the goods delivery by us in the ordinary course of business.

6. The purchaser hereby assigns the receivables from reselling to us by way of security, in the amount of our total purchase price claim until all our receivables are paid in full. To the extent the goods have been processed, mixed or blended, they are assigned in the ratio of the retention in title to the total goods value.

If the purchaser has sold its receivable under a non-recourse factoring agreement, it will assign its receivable due from the factor to us instead. In this case, the purchaser is obliged to notify us immediately and to inform us about the name of the factor.

7. The purchaser is authorised to collect assigned receivables as long as it fulfils all its payment obligations to us as agreed and does not collapse financially. In any case, it is not authorised to collect any longer if we revoke authorisation or disclose assignment. The purchaser will not be entitled to any other dispositions regarding the goods under retention of title (for example, pledging, transfer of ownership by way of security). At our request, the purchaser is obligated to provide information on all assigned receivables, including but not limited to a list of debtors including names, addresses, amounts of receivables, dates and numbers of invoices, and on any existing blanket assignments.
8. The purchaser's right to possess the goods under retention of title will be forfeited if it is in default in its obligations to us or if circumstances occur that entitle us to make the receivable due and payable immediately. On demand, the purchaser must return the goods under retention of title to us, at its own cost. Also, as the indirect possessor of the goods under retention of title, we are entitled to enter the premises of the purchaser and to remove the goods under retention of title to secure them; and this shall not be deemed a withdrawal from contract instantly. In addition, we are authorised to utilise assets of the purchaser that are actually under our control as security or to dispose them.
9. The purchaser must inform us without delay of any pledging or other impairment through third parties. In addition, it must point out the existence of the retention of title to third parties without delay.
10. If the value of the receivables assigned to us by way of security exceeds our total receivables by more than 10%, we will release securities insofar and at our option, at the customer's request.

§ 7 Warranty, Requirement of Inspection and to Give Notice of Defects

1. The items delivered by us must be inspected for defects without delay, also if samples had been supplied. Delivery or performance is deemed accepted if we do not receive notification in writing of any apparent defects or defects noticed at inspection, differences in quantity or delivery of the wrong goods within a preclusive period of 8 days from arrival of the goods at the place of destination, in any case however prior to joining, mixing or processing. Hidden defects or potential defects must be reported in writing no later than within a preclusive period of 8 days from their detection or occurrence.
2. In case of justified claims, the purchaser must give us the opportunity to remove the defect first, in the context of supplementary performance. If such supplementary performance fails, the purchaser will be entitled to either demand a reduction in price or to withdraw from contract. In case of only minor violations of contract, including but not limited to minor defects, however, the purchaser will not be entitled to withdraw from contract. If the purchaser chooses to withdraw from contract upon failed supplementary performance, it will not be entitled to any damages for the defect.
3. If the law does not provide longer warranty periods, for buildings and items for buildings and under a right of recourse, all and any warranty claims will become time-barred after 12 months from the passing of risk, in case of acceptance from acceptance.
4. Defects due to maintenance work or other actions on the part of the purchaser or by third parties are not subject to warranty. The same applies if the delivery item is used other than agreed or if the delivery item is used under extraordinary operating conditions that we have not been notified of at placement of order.
5. The title to replaced parts will pass to us.

§ 8 Liability, Damage Claims

1. If we or our employees have not acted negligently or wilfully, any damage claims of the purchaser against us will be excluded, irrespective of their legal basis. This does not apply if we are mandatorily liable subject to the product liability act, for personal injury, bodily harm or damage to health or for default. The same applies in case of violation of an obligation whose fulfilment is an essential prerequisite for the proper fulfilment of the contract as such and compliance with which the purchaser can rely on regularly (cardinal obligation).
2. In case of violation of a cardinal obligation, our liability will be limited to the damage typically resulting from the type of business transaction in question.
3. In case of default, the liability for damages will be limited to 10% of the value of the relevant part of delivery.

§ 9 Validity of Contract, Place of Jurisdiction and Governing Law

1. Any invalidity of an individual contractual provision does not affect the validity of the remaining provisions. Purchaser and supplier undertake to use their best effort, to the extent the law permits, to achieve the economic success intended by such invalid provision otherwise.
2. Place of jurisdiction for all rights and obligations, also from bills of exchange or cheques, will be our company's registered place of business if the purchaser is an enterprise (*Vollkaufmann* under German Commercial Code) or a legal entity under public law. The same applies for purchasers who do not have their general place of jurisdiction in Germany. In any case, however, we are entitled to take legal action at the purchaser's registered place of business, at our option.
3. The German laws shall apply exclusively; the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

§ 10 Data storage

1. Upon establishing of a business relationship, we will store data subject to the German data protection act.

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