

## **General Terms and Conditions of Sale and Delivery (as of January 2016)**

### **§ 1 Scope of Application**

(1) All deliveries, services and offers of Rudolf Fuka GmbH (hereinafter referred to as the "Seller") shall be made exclusively on the basis of these General Terms and Conditions of Sale and Delivery. These shall apply exclusively vis-à-vis entrepreneurs, legal persons under public law or special funds under public law and are an integral component part of all contracts which the Seller concludes with its contract partners (hereinafter respectively referred to as the "Purchaser") related to the deliveries or services offered by it. They shall also apply for all future deliveries, services or offers to the Purchaser, even if these General Terms and Conditions of Sale and Delivery are not again agreed upon separately.

(2) General terms and conditions of sale and delivery of the Purchaser or third parties which are contrary to or deviate from these of the Seller shall not be applicable also in the case that the Seller fails to specifically object to their validity in the individual case unless the Seller has expressly consented to their applicability in writing. The General Terms and Conditions of Sale and Delivery of the Seller shall also apply if the Seller renders the delivery and service to the Purchaser with knowledge of the Purchaser's general terms and conditions which contradict or deviate from the present General Terms and Conditions of Sale and Delivery. Even in the case that the Seller makes reference to a document containing or referencing the Purchaser's general terms and conditions of sale and delivery or those of a third party, such shall not constitute any agreement to the application of those general terms and conditions.

### **§ 2 Offer, Conclusion of Contract and Offer Documents**

(1) Offers of the Seller are subject to change and are non-binding insofar as they are not expressly designated to be binding or include a definite term for acceptance. Orders or contract offers of the Purchaser can be accepted by the Seller within four (4) weeks.

(2) The written purchase contract concluded including these General Terms and Conditions of Sale and Delivery of the Seller shall exclusively govern the legal relationships between the Seller and the Purchaser. The purchase contract reproduces completely all of the agreements made between the contract parties regarding the contract subject matter. Verbal agreements of the Seller prior to conclusion of the contract are not legally binding and verbal agreements of the contract parties shall be replaced by a written contract insofar as not expressly stated therein that the agreements will continue to be binding in each case.

(3) Supplements and amendments of the agreements made including these General Terms and Conditions of Sale and Delivery must be in writing to be legally valid. With the exception of Managing Directors or *Prokurists* (persons vested with general commercial power of representation), employees of the Seller are not authorised to make verbal agreements in deviation herefrom. The requirement of written form shall be satisfied by transmission by telecommunication, in particular, per telefax or via e-mail, insofar as the copy of the signed declaration is transmitted.

(4) Details provided by the Seller relating to the subject matter of the delivery or service (e.g. weight, dimensions, usage values, load capacities, tolerances and technical specifications) as well as representations of the same (e.g. drawings and illustrations) are deemed to be only approximate unless the use for a contractually agreed particular purpose requires precise conformity. These are not guaranteed features but merely descriptions or designations of the delivery or service. Standard deviations and those resulting from legal provisions or technical improvements and the replacement of components by other parts of equivalent quality are permissible provided they do not impair the applicability of the product for the contractually agreed purpose.

(5) The Seller reserves property ownership and/or copyright of all offers and cost estimates given by it as well as of any drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids made available to the Purchaser. Without the express permission of the Seller,

the Purchaser is not permitted to make these items available to third parties, either as such or in terms of their content, to publicise them or to use or reproduce them itself or allow them to be used or reproduced by third parties; this is particularly the case when such are labelled "confidential". Upon the demand of the Seller, the Purchaser shall return these objects to the Seller and destroy any copies made if these are no longer required by it in the normal course of business or if the negotiations do not bring about conclusion of a contract.

### **§ 3 Delivery and Delivery Period**

(1) Deliveries shall be made ex works.

(2) The delivery period shall commence on the date of the order confirmation but not, however, prior to clarification and approval of the Purchaser with regard to all details necessary for performance and receipt of agreed advance payments. The delivery period shall also not commence or shall be interrupted for the time period in which the Purchaser fails to meet its contractual obligations vis-à-vis the Seller. The delivery periods shall also be extended by the time period in which the Purchaser is in default of its obligations from the contract or any other agreements.

(3) Dates and deadlines for deliveries and services foreseen by the Seller shall always be deemed to be only approximate unless a firm date or firm deadline (fixed date) has been promised or agreed. Where shipment has been agreed, the delivery periods and delivery dates apply to the date of handover to the freight forwarder, carrier or third party commissioned with the transfer.

(4) The Seller shall not be liable for impossibility of delivery or delivery delays insofar as such are a result of force majeure or other unforeseeable events which are outside the Seller's direct scope of control, regardless of whether such occur in the Seller's plant or with sub-suppliers. Insofar as these events make it significantly difficult or impossible for the Seller to supply the goods or services and the delay is not only of a temporary nature, the Seller reserves the right to rescind the contract. If the delay is perceived to be of a temporary nature, the delivery or supply time period shall be deemed to be extended or postponed by the same period as the delay, plus a reasonable start-up period. If the Purchaser cannot, as a result of the delay, be expected to take delivery of the goods or services, it is entitled to rescind the contract by means of a written declaration without undue delay to the Seller.

(5) The Seller is only entitled to make partial deliveries if the partial delivery is usable by the Purchaser within the context of the contractually agreed purpose, the delivery of the remaining goods ordered is assured and the Purchaser does not accrue any major added effort or additional costs hereby (unless the Seller declares its readiness to assume these costs).

(6) Should the Seller be in default of delivery or service or should the supply of goods or service be impossible for whatever reason, the Seller's liability to pay damages shall be limited according to the regulation set forth in § 11 of these General Terms and Conditions of Sale and Delivery.

### **§ 4 Place of Performance**

The place of performance for all obligations arising from the contractual relationship is the Seller's place of business at Richard-Byrd-Straße 41, 50829 Cologne, insofar as not otherwise agreed. Should the Seller also be obliged to perform installations, the place of performance shall be the place where the installation is to be carried out.

### **§ 5 Shipment, Transfer of Risk and Packaging**

(1) Insofar as not otherwise agreed in writing, the choice of packaging, method and route of shipment as well as freight forwarder or carrier shall be in the professional discretion of the Seller.

(2) Risk shall be transferred to the Purchaser at the latest upon handover of the subject matter of the delivery (whereby the beginning of the loading procedure shall apply) to the freight forwarder, carrier or other third party engaged to perform the shipment. This shall also apply to partial deliveries and cases where the Seller has agreed to supply additional services (e.g. shipping or installation). If shipping or handover is delayed for reasons for which the Purchaser is responsible, risk is transferred to the Purchaser on the day upon which the delivery is ready for dispatch and the Seller has communicated this fact to the Purchaser.

(3) The shipment shall only be insured by the Seller against theft, breakage, transport damage, fire and water damage and other insurable risks if the Purchaser expressly requests such and at its cost.

(4) Transport packaging as well as all other packaging materials with the exception of pallets cannot be returned to us. The Purchaser is obligated to dispose of the packaging materials and agrees to assume the costs herefor.

### **§ 6 Acceptance**

Insofar as acceptance is to occur, the purchase object shall be deemed to be accepted when delivery is made and, insofar as the Seller is also obligated to perform installation, when the installation is completed, the Seller notifies this fact to the Purchaser with an indication that acceptance shall be implied pursuant to this § 6 and requests acceptance of delivery, twelve (12) business days have passed since the delivery or installation or the Purchaser has commenced using the purchase object and, in this case, six (6) business days have passed since delivery or installation and the Purchaser has failed to notify the Seller of acceptance during this time period for a reason other than a defect notified to the Seller which causes the use of the purchase object to be impossible or significantly impaired.

### **§ 7 Prices and Payment**

(1) The Seller's prices are net sales prices excluding statutory VAT applicable at the date of delivery and, unless otherwise agreed in the order confirmation, are for deliveries ex works and quoted in Euro (EUR). Additional or special services shall be charged separately, in particular, packaging costs. With export orders, customs duties and any other fees or charges of public authorities shall be added thereto.

(2) Insofar as the agreed prices are based on the Seller's list prices and the delivery is not to take place until more than four (4) months after the conclusion of the contract of sale, the Seller's list prices valid on the date of delivery shall apply. In the event that the Seller has granted an agreed percentage or fixed discount, these shall be taken into account accordingly. Should the new price be more than 110 % of the original price, the Purchaser shall be entitled to terminate the contract. The termination must be received by the Seller within three (3) business days. The Seller reserves the right, however, to reduce the sales price independent of its current list prices. The new purchase price notified by the Seller to the Purchaser shall apply for the Purchaser's termination right.

(3) All invoice amounts including agreed advance payments are to be paid within fourteen (14) days after receipt of the invoice or a payment demand without deduction, free of charges, to the Seller's bank account. Any different terms of payment shall require a separate agreement.

(4) Should the Purchaser fail to make payment on the payment due date, any and all outstanding amounts shall accrue interest of 5 % p.a. as from the payment due date. Should the Purchaser be in default of payment, the Seller shall be entitled to demand default interest in the amount of 9 percentage points above the respective applicable base interest rate. The right to claim higher rates of interest and additional damages in the case of default remains unaffected.

(5) In the event of default of payment, the Seller reserves the right to interrupt the work owed and/or to withhold additional deliveries. Furthermore, the Seller is entitled to make performance of still-outstanding deliveries and services contingent upon advance payment or provision of security. The Seller can also prohibit resale and processing of the delivered goods and demand their return at the cost of the Purchaser.

(6) If, after conclusion of the contract, the Seller gains knowledge of circumstances which are suitable to substantially impair the creditworthiness of the Purchaser and which place at risk the payment of the Seller's outstanding claims by the Purchaser from the respective contractual relationship, the Seller shall be entitled to perform or render still-outstanding deliveries or services only upon advance payment or provision of security.

### **§ 8 Rights of Set-off and Retention**

The Purchaser shall only be entitled to rights of set-off and retention if its counterclaims are undisputed or finally determined with *res judicata* effect.

## **§ 9 Retention of Title**

(1) All of the goods delivered by the Seller remain the property of the Seller (hereinafter Goods Subject to Retention of Title) until full payment of all claims owed to the Seller, including future claims, in connection with the purchase object, in particular, also the respective current account balances, to which the Seller is entitled, regardless of the legal reason. Until this date, directly following the transfer of risk, the Purchaser shall treat the goods delivered with care and shall insure such against damage caused by fire, theft and water damage. The Purchaser shall hold the Goods Subject to Retention of Title for the Seller at no charge.

(2) The Purchaser is entitled to process and sell the Goods Subject to Retention of Title within the normal course of business until enforcement of the retention of ownership right (para. 7 hereof). Pledges and assignments for the purpose of security are not permitted.

(3) Should the Goods Subject to Retention of Title be processed by the Purchaser, it is agreed that the processing shall be undertaken in the name of and for the account of the Seller as the manufacturer and that the Seller shall directly acquire ownership or – if the processing occurs from materials of several owners or the value of the processed good is more than the value of the Goods Subject to Retention of Title – co-ownership (fractional ownership) of the newly created good in the proportionate relationship of the value of the Goods Subject to Retention of Title to the value of the newly created good. In the event that no such ownership acquisition should take place for the Seller, the Purchaser transfers already now to the Seller its future ownership or - in the above-stated proportionate relationship - co-ownership of the newly created good as security. Should the Goods Subject to Retention of Title be combined with other goods to form a unified object or inseparably commingled and one of the other objects is deemed to be the main object, the Purchaser transfers to the Seller, insofar as it owns the main object, pro rata co-ownership in the main object in the proportionate relationship stated in sentence one above.

(4) In the event of a resale of the Goods Subject to Retention of Title, the Purchaser assigns already now to the Seller by way of security the claims resulting herefrom against the purchaser – with co-ownership to the Goods Subject to Retention of Title, pro rata in accordance with the co-ownership share. The same shall apply for other claims which replace the Goods Subject to Retention of Title or otherwise accrue with regard to the Goods Subject to Retention of Title such as, e.g. insurance claims or tort claims resulting from loss or destruction (of secured goods). The Seller authorises the Purchaser (said authorisation is revocable) to collect the claims assigned to the Seller in its own name. The Seller may revoke this collection authorisation only in the case of enforcement of the retention of title.

(5) In no case is the Purchaser authorised to assign the claim to third parties. Upon the Seller's request, the Purchaser shall be obligated to notify its purchasers immediately of the assignment to the Seller and to give to the Seller all information and documents necessary for collection. The Seller shall only demand the disclosure of the assignment in the case of enforcement of the retention of title.

(6) Should third parties seize the Goods Subject to Retention of Title, in particular, by way of attachment, the Purchaser shall give notice without undue delay of the Seller's ownership and inform the Seller hereof in writing in order to make it possible for it to enforce its ownership rights. The Purchaser shall provide all relevant information and documents herefor. Insofar as the third party is not in a position to reimburse the Seller costs in connection with proceedings in or out of court which accrue in this connection, the Purchaser shall be liable for such costs to the Seller.

(7) The Seller shall be entitled to demand back the Goods Subject to Retention of Title if the Purchaser is in default with a contractual obligation incumbent upon it, with cessation of payment, insolvency proceedings or the opening of insolvency proceeding with respect to the property of the Purchaser or if reasonable doubts exist regarding its solvency or creditworthiness. The Seller taking back the Goods Subject to Retention of Title shall not be deemed to be rescission of the contract.

(8) The Seller shall release the Goods Subject to Retention of Title as well as goods or claims replacing such insofar as their value exceeds the amount of the claims secured by them by more than 20 %. The Seller shall have the right to select the objects to be released in this context.

## **§ 10 Warranty**

(1) The Seller warrants that the goods delivered by the Seller at the date of transfer of risk are free from defects in material and workmanship which would materially reduce the value or suitability of the items and that the goods have the quality warranted by the Seller. With coordination measures, the Seller's warranty only extends to new parts delivered by it. The Seller's technical data, specifications or descriptions of quality do not constitute any warranted quality unless such are expressly confirmed as such.

(2) The warranty period shall be one (1) year as from the date of delivery or, insofar as acceptance is required, as from the date of acceptance. The one (1) year warranty period shall not apply for damage claims of the Purchaser as defined in § 11 of these General Terms and Conditions of Sale and Delivery. The statutory limitation period shall apply for damage claims.

(3) The delivered goods are to be carefully inspected without undue delay after delivery to the Purchaser or the third party specified by it. With regard to apparent defects or other defects which would have been visible upon a careful inspection without delay, such shall be deemed to be accepted by the Purchaser if no written notification of defects is received by the Seller without undue delay after delivery. With regard to other defects, the delivered items shall be deemed to be accepted by the Purchaser if the notice of defects is not received without undue delay from the date in which the defect becomes apparent; should the defect have been visible with normal use already at an earlier point in time, then this earlier date shall apply, however, for the commencement of the notification of defects period. Upon the Seller's demand, the defective delivery items shall be returned carriage paid to the Seller. If the notice of defect is justified, the Seller shall reimburse the costs of the most cost-efficient shipping method; this shall not apply insofar as the costs increase because the delivery item is located at a place which differs from the place of the intended use.

(4) Should a warranty case pursuant to § 10, para. 1 exist which is notified and verifiable by the Purchaser in writing and without undue delay, the Seller shall have the option to render remedy at no cost or replacement delivery within a reasonable time period. Should the remedy or replacement delivery fail, i.e. due to impossibility, unreasonableness, refusal or unreasonable delay, the Purchaser can rescind the contract or reasonably reduce the purchase price.

(5) Should the defect be the fault of the Seller, the Purchaser can demand damages under the conditions stipulated in § 11 hereof.

(6) Warranty claims shall require proof of proper assembly and installation. The warranty claim shall be cancelled if the delivery item is altered, improperly assembled, installed, serviced, repaired, used or is exposed to environmental conditions by the Purchaser or a third party which do not comply with the Seller's assembly conditions unless the Purchaser proves that these conditions were not the cause of the notified defect.

(7) The delivery of used items agreed in the individual case with the Purchaser shall be made excluding any warranty for material defects.

(8) Should the examination of a notification of defect reveal that no case of warranty exists, the Seller's costs for the examination and repair shall be charged at the respectively applicable list price.

## **§ 11 Liability for Damages Caused by Fault**

(1) The Seller's liability for damages, regardless of the legal reason, in particular, due to impossibility, default, defective or incorrect delivery, breach of contract, breach of obligations during contract negotiations and tort, insofar as respectively fault is relevant in this context, shall be limited according to this § 11.

(2) The Seller shall not be liable in cases of ordinary negligence of its company organs, statutory representatives, employees or other vicarious agents insofar as such does not concern a breach of material contractual obligations. Material contractual obligations are the obligation to timely delivery and installation of the delivery item which is free of defects which would more than insignificantly affect

its functionality or suitability for use, as well as consulting, custodial and duty of care obligations which enable the Purchaser to use the delivery item in accordance with the contract or which have the purpose of protection of life and limb of the Purchaser's personnel or protection of its property from material damage.

(3) Insofar as the Seller is liable for damages on the merits pursuant to § 11, para. hereof, this liability shall be limited to damage which the Seller foresaw as a possible consequence of a breach of contract at the time of the conclusion of the contract or which it should have foreseen with the exercise of the customary duty of reasonable care. Indirect damage and consequential damage resulting from defects of the delivered item shall also only be eligible for compensation insofar as such damage can be typically expected with use of the delivery item as intended.

(4) In the case of liability for ordinary negligence, the compensation obligation of the Seller for material damage is limited to an amount of EUR 3,000,000.00 and additional property damages resulting herefrom to an amount of EUR 500,000.00 per claim and per year, even if the breach is a breach of material contractual obligations.

(5) The above-mentioned preclusions and limitations of liability shall apply in the same scope in favour of company organs, statutory representatives, employees and other vicarious agents of the Seller.

(6) The limitations of this § 11 shall not apply for the Seller's liability due to wilful conduct, gross negligence, warranted quality features, due to loss of life, physical injury or impairment of health or according to the German Product Liability Act (*Produkthaftungsgesetz*).

#### **§ 12 Cancellation**

The order which is placed is binding after the contract comes into effect. Cancellations which are made with the written agreement of the Seller shall be charged at 8 % of the order value plus statutory VAT. The Purchaser shall be allowed, however, to provide proof that no damage or a reduction in value occurred or that such is less than the flat rate. Should the Seller incur greater damage, it can claim greater damages insofar as the Seller provides proof of the increased costs.

#### **§ 13 Final Provisions**

(1) Should a provision of these General Terms and Conditions of Sale and Delivery be invalid, such shall not affect the legal validity of the remaining provisions hereof.

(2) Any and all amendments to the originally concluded these General Terms and Conditions of Sale and Delivery must be in writing. Cancellation of the written form must also be in writing.

(3) These General Terms and Conditions of Sale and Delivery are governed by the substantive law of the Federal Republic of Germany, with exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

(4) Insofar as the Purchaser is a fully qualified merchant, a legal person under public law or a special fund under public law, subject to a deviating exclusive jurisdiction, jurisdiction for all legal disputes arising from or in connection with these General Terms and Conditions of Sale and Delivery is agreed to be the registered office of the Seller - Cologne. The Seller shall retain the right, however, to file a lawsuit or to initiate any other court proceeding at a court having general jurisdiction or, respectively, at the place of the registered office of the Purchaser.

#### **Note:**

The Purchaser acknowledges that the Seller shall store data from the contract relationship according to § 28 of the German Federal Data Protection Act (*Bundesdatenschutzgesetz*) for purposes of data processing and reserves the right to transfer the data, insofar as necessary to perform the contract, to third parties (e.g. insurance companies).