

## Standard Terms and Conditions of Delivery and Payment of Rauschert Distribution GmbH Steinbach am Wald, Business Unit Inopor

### I. Definition, scope

- The following standard terms and conditions shall not apply vis a vis consumers.
- The following standard terms and conditions shall apply exclusively; any conflicting or deviating terms and conditions of the orderer Rauschert Distribution GmbH Steinbach am Wald, Business Unit Inopor (here in after referred to as Inopor) will only accept if these are general terms of purchase that comply with the recommendations of the German Association of the Automotive Industry (Verband der deutschen Automobilindustrie, VDA) for General Terms and Conditions for the purchase of production material and spare parts which are destined for the automobile. The general terms mentioned before shall precede these conditions. Any other conditions of the orderer Inopor only accepts if it has expressly agreed to their validity in writing. The following terms and conditions shall apply even if Inopor makes the delivery to the orderer without reservation, in full awareness of conflicting or deviating terms and conditions of the orderer.
- Any agreements or ancillary agreements deviating from these terms and conditions shall not be valid unless they are confirmed in writing by Inopor.
- These terms and conditions shall also apply to future contracts within the framework of ongoing business relationships.

### II. Offers - offer documents, confirmation of orders

- If the order is to be qualified as a bid within the framework of § 145 German Civil Code (BGB), Inopor shall be entitled to accept it within 4 weeks.
- Inopor shall retain all property rights and copyrights for images, drawings, calculations and other documents. This shall also apply to written documents which are designated as "confidential". Any disclosure to third parties shall require the express written consent of Inopor.
- A delivery contract shall only be deemed to have been entered on a written confirmation of the order and no later than upon delivery. If Inopor can prove through the submission of a transmission report that it forwarded a declaration by fax or data transmission, it shall be assumed that the orderer received said declaration.

### III. Call orders

- If call orders have been placed, the period for taking delivery shall be 12 months from the day of confirmation of the order unless any deviating written agreement has been entered into.
- At the end of the term, the residual stocks may be delivered.
- In the event of call orders without any agreement on terms, manufacturing lot sizes and/or delivery dates, Inopor shall be entitled to request a binding scheme no later than three months after confirmation of the order.

### IV. Prices - terms of payment

- All prices quoted by Inopor shall be deemed to be ex-works Inopor plus value added tax applicable at the time of billing, without packaging, freight and transport insurance; the latter shall be billed separately.
- Price alterations shall be admissible if more than four months lie between the conclusion of the contract and the delivery date agreed upon. If salaries and wages, material costs or market unit prices increase there after up to completion of the delivery, Inopor shall be entitled to increase the price in a reasonable manner in line with cost increases. The orderer shall only be entitled to rescind the contract, if the price increase exceeds the increase in general costs of living between the order and the delivery dates in a considerable manner.  
If the orderer is a merchant, a public law entity or a special federal fund, price changes shall be admissible under the aforementioned provisions if more than six weeks lie between the conclusion of the contract and the delivery date agreed upon.
- Unless otherwise agreed upon
  - the proportional costs for tools and moulds as well as cash expenses and services shall be due for payment at the time of delivery of the service net without deduction. In the case of tools and moulds whose proportional value amounts to 2,500 EUR or more, an advance payment of 50% must be made upon confirmation of the order;
  - Costs shall become due upon delivery and no later than on receipt of the invoice. With reservation as to the rejection of credit granting, invoices must be paid within 10 days with a 2% discount based on the value of the goods. The same discount shall also apply to deliveries against cash in advance or cash on delivery. No discount can be granted for invoice amounts up to 100 EUR in connection with deliveries outside Germany and in respect of bills for filler blocks. The granting of a discount shall presuppose that all bills due at an earlier date have been paid.
- The day of receipt of payment shall be deemed for all means of payments to be the day on which Inopor or third parties, who have a claim against Inopor, may dispose of the amount. Payment by bill of exchange shall not be deemed to be a cash payment. Acceptance, also of so-called refinancing bills, shall be subject to special agreement. Cheques and rediscountable bills shall only be accepted on account of performance; all costs incurred shall be at the expense of the orderer.
- In the event of default of payment by the orderer, Inopor shall be entitled to retain all deliveries or services.

### V. Retention of title

- Inopor shall retain title to the delivery items until receipt of all payments under the business relationship with the orderer.
- The assertion of the retention of title and the pledging of the delivery items by Inopor shall not be deemed to be a rescission of the contract unless expressly declared in writing by Inopor.
- The orderer shall be entitled to continue to sell the delivery items in the ordinary course of business; however, it shall already now assign all accounts receivable to Inopor in the amount of the purchase price (including value added tax) agreed between Inopor and the orderer which arise for the orderer as a result of reselling, regardless of whether the delivery items are sold on with or without processing. The orderer shall be entitled to collect these accounts receivable after their assignment. The right of Inopor to collect the accounts receivable itself shall not be affected; Inopor undertakes, however, not to collect the accounts receivable as long as the orderer meets its payment obligations and is not in default of payment. If the orderer is, however, in default of payment, Inopor may require the orderer to disclose its assigned accounts receivable and their debtors, to make all information available which is necessary for collection, to submit the corresponding documents and to inform the debtors (third parties) about the assignment.
- The processing or transformation of the goods by the orderer shall always be for Inopor. If the delivery items are processed together with other items which do not belong to Inopor, Inopor shall acquire co-ownership of the new item in the proportion of the value of the delivery items to the other processed items at the time of processing.
- If the delivery items are mixed in an inseparable manner with other items which do not belong to Inopor, Inopor shall acquire co-ownership of the new items in the proportion of the value of the delivery items to the other mixed items. The orderer shall hold the co-owned items in safe custody for Inopor.
- The orderer may neither pledge nor transfer the delivery items to assign it to third parties for collateral. In the event of attachment or seizure or other disposals by third parties, the orderer shall inform Inopor without delay and provide it with all information and documents which are necessary for it to secure its rights. Enforcement officers and/or third parties must be informed of the property rights of Inopor.
- Inopor undertakes to release the collaterals to which it is entitled when requested by the orderer in so far as the realisable value of the collaterals exceeds by more than 20% the accounts receivable to be secured. Inopor shall select the collaterals to be released.

### VI. Deliveries, delivery period, delivery quantities, default in delivery

- Compliance with agreed dates of delivery and performance shall presuppose that all technical issues have been clarified and payments or other obligations of the orderer have been made and/or fulfilled in due time. If this is not the case, the period of time shall be extended in a reasonable manner. Delivery periods shall be interrupted by any changes in design and alterations of items requested by the customer. They shall resume as soon as the changes are released by the customer.
- Inopor shall deliver the contractual goods to the orderer in accordance with its delivery possibilities.
- Partial deliveries shall be admissible provided that they do not result in any disadvantages in terms of use.
- The delivery period shall be extended in the event of force majeure, strike, inability to perform without attributable negligence as well as unfavourable weather conditions for the period of hindrance.
- A 10% increase or decrease in quantities shall be admissible. The minimum purchasing quantity shall be one full packaging unit.
- If Inopor defaults in delivery, the orderer shall have a claim to payment of flat-rate damages. The latter shall be laid down at 0.5% of the purchase price for each full week of default without, however, exceeding 5%.
- If Inopor defaults in respect of a partial delivery, these flat-rate damages shall be calculated on the basis of the purchase price for parts not yet accepted.
- The assertion of any more extensive damage caused by delay in performance shall be excluded, unless such default is caused by Inopor intentionally or by gross negligence or if the damage caused by default is the consequence of an essential contractual violation or if a default causes injury to life, body or health.

### VII. Shipment - passing of risk

- Unless otherwise laid down in the confirmation of order, delivery "ex works" shall be deemed to have been agreed. Shipment shall be at the risk and for the account of the orderer. This shall also apply to return shipments.
- Packing material shall be selected with reasonably exercised discretion and invoiced at cost price. Container and wagon rents shall be borne by the recipient.
- If Inopor is obliged under the German Packaging Ordinance to take back the packaging used for transport and/or sale, the orderer shall bear the costs for the transport back and the reasonable costs of utilisation or, if this is possible and considered as purposeful by Inopor, the reasonable costs which arise in addition for the reuse of the packaging. The orderer undertakes and confirms upon the placement of its order vis-à-vis Inopor to direct any packaging, which is not sent back, to utilisations stipulated under the German Packaging Ordinance.

### VIII. Property rights

- The orderer undertakes to inform Inopor immediately of property rights asserted by third parties concerning the supplied products and to let Inopor assume legal defence at its expense. Inopor shall be entitled to carry out the necessary alterations following property right assertions of third parties at its own expense, even for goods already supplied and paid.
- If Inopor is prohibited from producing or delivering by a third party invoking a property right belonging to it, Inopor shall be entitled – without examination of the legal situation – to suspend its work pending the clarification of the legal situation by the orderer or the third party. If Inopor cannot be reasonably expected to continue work in respect of the order because of the delay, Inopor shall be entitled to rescission.
- The orderer shall be liable to Inopor for services of third parties being free of property rights of third parties and shall indemnify Inopor against all corresponding claims of third parties.
- Inopor shall be entitled to the copyrights and possibly to the industrial property rights, particularly to all rights of use and exploitation for the models, moulds and devices, drafts and drawings.

### IX. Liability in case of delay

- Inopor shall be liable for delay according to the statutory provisions as far as the relevant purchase contract is an agreement of the parties making time of the essence of the contract ("Fixgeschäft" = "short selling") as provided by section 286 paragraph 2 # 4 of the German Civil Code ("Bürgerliches Gesetzbuch", "BGB") or section 376 German Code of Commerce ("Handelsgesetzbuch", "HGB"). Inopor shall also be liable according to the statutory provisions if the purchaser is entitled to claim that he is no longer interested in further fulfilment of the contract as a result of a delay for which Inopor is responsible.
- Inopor shall be liable for delay according to the statutory provisions if the supplier makes claims for damages due to intention or gross negligence of Inopor's agents or auxiliary persons. Should Inopor not be accused of deliberate breach of contract, the liability for damages shall be limited to typically occurring, foreseeable damages.
- Inopor shall be liable for delay according to the statutory provisions if Inopor culpably commits a fundamental breach of contract. As far as Inopor in this case is not accused of deliberate breach of contract, the liability for damages shall be limited to typically occurring, foreseeable damages.
- Claims for damages caused by delay regarding culpable infringements of human life, body or health shall remain unaffected.
- As far as nothing different has been stipulated beforehand, all claims for damages caused by delay shall be excluded.

### X. Liability for defects

- In case of a product being specified, it is free from defects if approved tolerances for fabrication have been complied with. The purchaser can invoke an intended purpose of application only if it was explicitly agreed upon in writing.
- Inopor has to be informed immediately of evident defects. Should Inopor be responsible for the defect, either rectification of defects or replacement delivery will be undertaken according to Inopor's choice. In case of rectification of defects ("Beseitigung des Mangels" in the sense of section 439 paragraph 1, 1st alternative BGB), Inopor is obliged to bear all necessary costs of supplementary performance, in particular costs of transport, travel, work and material, unless these costs are enhanced because the sold good has been brought to a place other than the place of performance.
- If supplementary performance fails, the purchaser shall be at his discretion entitled to either rescind from contract or to claim reduction of the purchase price as provided by section 441 German Civil Code ("BGB").
- Inopor shall be liable according to the statutory provisions to the extent that Inopor has willingly concealed a defect or accepted a guarantee for the constitution of the sold good.
- Inopor shall be liable according to the statutory provisions if the supplier makes claims for damages due to intention or gross negligence of Inopor's agents or auxiliary persons. As long as Inopor is not accused of deliberate breach of contract, the liability for damages shall be limited to typically occurring, foreseeable damages.
- Inopor shall be liable according to the statutory provisions if Rauschert culpably commits a fundamental breach of contract. As long as Inopor in this case is not accused of deliberate breach of contract, the liability for damages shall be limited to typically occurring, foreseeable damages.
- Claims for damages regarding culpable infringements of human life, body or health shall remain unaffected as well as the liability for the product liability law.
- As far as nothing to the contrary has been stipulated beforehand, all claims for damages shall be excluded.
- Claims according to section 437 German Civil Code („BGB“) shall be time-barred after the expiry of 12 months from passing of the risk unless goods are concerned

which have been used according to their common way of application for construction and which have caused the defectiveness of the building.

10. The period of prescription in case of regress to the supplier as stipulated by sections 478 and 479 German Civil Code ("BGB") shall remain unaffected. This period shall be 5 years, beginning with delivery of the defective good.

#### **XI. Total liability**

1. For further claims for damages Inopor shall be liable – regardless of the legal character of the asserted claim, in particular for default in conclusion of contract, other breaches of duty or tortious claims to compensation of damages according to section 823 German Civil Code ("BGB") – as stipulated above under X.5, 6 and 7. For all other claims liability shall be excluded.

2. As far as claims for damages against Inopor are excluded or limited as a result of this article XI, these exemptions and limitations shall also apply as far as personal liability of Inopor's employees, jobholders, personnel, agents and auxiliary persons is concerned.

3. All claims that are not subject to prescription in connection with a default of goods shall be time-barred after the expiry of 18 months. This period starts when the purchaser obtains knowledge of the damage and the person who caused it or with the time when the purchaser would have obtained knowledge of these circumstances without getting down to gross negligence.

#### **XII. Construction tools**

1. The trouble free suitability of the construction and the material of the parts to be manufactured by Inopor shall be determined by the tests and trials of the orderer. All proposals, construction drawings and other documents made available to the orderer by Inopor shall remain the property of Inopor and may not be disclosed to third parties without Inopor's written consent. Inopor shall have the sole right to use these construction drawings and any tools and/or equipment manufactured on their basis. The orderer shall be liable for the legality of the use of drawings, sketches, models etc. sent to Inopor.

2. Models, moulds, dies, extrusion tools, installations and other operating equipment shall be invoiced separately. Proportional costs shall be due immediately upon invoicing net without deduction. They shall also include the non-recurring sampling costs, but not the costs for test and processing equipment nor the costs for any changes requested by the orderer. Maintenance costs shall be borne by Inopor up to the agreed amount of application.

3. Any operating equipment shall remain the property of Inopor even if a portion of the cost was invoiced.

4. If within a period of 3 years after the last use of a tool orders are no longer placed for it, Inopor shall be entitled to destroy the corresponding operating equipment.

#### **XIII. Counterclaims, transferability**

1. The orderer shall only have offsetting rights if its counterclaims have been identified as legally valid and are uncontested or recognised by Inopor. Moreover, the orderer shall be entitled to exercise a right of retention in so far as its counterclaim is based on the same contractual relationship.

2. The orderer shall not assign any rights under agreements entered into with Inopor unless it has obtained the consent of Inopor.

#### **XIV. Spare parts**

After expiry of the defects liability period Inopor is only obliged to deliver spare parts if this has been agreed upon in writing between Inopor and the purchaser.

#### **XV. Inopor's right to rescind from contract**

In the case of eventualities for which Inopor is not responsible and which significantly change the meaning of fulfilment of the contract or which considerably affect Inopor's business and in case the fulfilment emerges as impossible without Inopor's fault in retrospect, Inopor shall be entitled to rescind from contract as a whole or in part unless rescindment in part cannot reasonably be expected of the purchaser. Further statutory rights to rescind from contract shall remain unaffected by this provision.

#### **XVI. Place of Performance, place of jurisdiction, applicable law, miscellaneous**

1. Unless expressly otherwise agreed, the registered office of Inopor shall be the place of performance.

2. If the orderer is a merchant, a public law entity or a special federal fund, the place of jurisdiction shall be the competent court at the place of business of Inopor. Inopor shall, however, be entitled to sue the orderer also at any other admissible court.

3. The present terms and conditions shall be exclusively governed by German law excluding the UN sales convention (CISG).

4. Should a provision of these terms and conditions or part of such a provision be or become invalid, the remaining provisions and/or the remaining part of the provision shall remain valid.

5. The contractual language shall be German. The German language shall take priority over any other language that may be used.

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