

# GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY



## 1. Scope of application

1.1 These General Terms and Condition of Sale and Delivery (GTCSD) shall exclusively govern the legal relations with RAPA's contractual partners (in the following, "the purchaser") with regard to the supply of goods or services under contracts for purchase, work and labor or services ("the product").

1.2 These terms and conditions shall also apply for future deliveries in the form of words agreed at the time of ordering without special mention by RAPA in each case. The currently applicable form of words can be retrieved from [www.rapa.com](http://www.rapa.com).

1.3 Terms and conditions which are contrary to or deviate from RAPA's GTCSD shall only become part of the contract if and to the extent that RAPA has expressly consented to this in writing. The present terms and conditions shall also apply if RAPA, in full knowledge of the contrary or deviating GTCSD, has performed delivery to purchasers without any reservation.

## 2. Offers

2.1 Offers by RAPA are made without obligation and are non-binding.

2.2 The order of a product by the purchaser shall constitute a binding offer.

2.3 Unless otherwise indicated in the order, RAPA shall be entitled to accept this contractual offer within four (4) weeks of receipt. Acceptance by RAPA shall be in text form. Single or repeated deliveries of the product to the purchaser shall in no case signify acceptance of the order under the purchaser's terms and conditions, in cases where these deviate from RAPA's offer.

## 3. Prices, terms of payment and set-offs

3.1 The prices in the order are fixed prices ex factory, unless otherwise agreed in writing. All prices shall be taken as excluding the applicable statutory VAT.

3.2 Payments by the purchaser shall unless otherwise agreed be made within 30 calendar days of receipt of the product and submission of a correctly made-out invoice. Following expiry of the payment deadline, the purchaser shall be in default, without any further deadline being set. In this case, RAPA shall be entitled to claim default interest at a rate of **8 (eight) per cent** over the basic annual interest rate. If RAPA is able to show greater damage caused by the delay, it shall be entitled to claim this.

3.3 The purchaser shall be entitled to set-offs and retention only to the extent that its claims are uncontested or legally established. In the case of non-delivery, the purchaser's rights shall not be affected.

## 4. Delivery periods and deadlines, delay

4.1 Delivery periods shall be individually agreed or indicated when RAPA submits the offer.

4.2 The delivery period shall begin once RAPA has received all necessary information for fulfilling its contract and the payment obligations agreed for supply have been fulfilled. The expiry date of RAPA's delivery obligations is subject to the purchaser having fulfilled its obligation to cooperate promptly and

correctly. RAPA shall be under no obligation to remind the purchaser of omitted or incorrectly performed obligations to cooperate. If the purchaser does not fulfill its obligations under sentences 1 and 2, the Parties must jointly decide on a new delivery period.

Further claims on RAPA's side - especially regarding compensation for losses and reimbursement of expenses - shall not be affected.

4.3 If RAPA is unable to meet its delivery obligations for reasons for which it is not responsible (non-availability of performance), RAPA shall inform the purchaser about the non-availability without delay and give a new, prospective delivery period. If the product is still unavailable at the end of the new delivery period, RAPA shall be entitled to withdraw from the contract, wholly or in part; any return service already provided by the purchaser shall be compensated without delay.

As an example of non-availability of the product, special attention is drawn to non-timely delivery by RAPA's supplier; where RAPA has concluded a matching cover transaction, neither RAPA nor RAPA's supplier shall be at fault, nor shall RAPA be under an obligation to supply in individual cases.

4.4 For it to be a case of default delivery on the part of RAPA, there must be a reminder by the purchaser.

4.5 The purchaser's rights under Article 7 of these Terms & Conditions and RAPA's legal rights, especially with regard to exclusion of obligation to perform (e.g. due to impossibility or unreasonableness of the performance and/or subsequent performance) shall be unaffected.

## 5. Transport and packaging, passing of risk, default of acceptance

5.1 Unless otherwise agreed between the Parties, delivery shall be FCA (Incoterms 2010) DE-95100 Selb, excluding packaging. At the purchaser's express request, RAPA will take out transport insurance, the cost of which is to be paid for by the purchaser.

5.2 Risk will pass to the purchaser no later than on handover of the product to the shipper, carrier or other third party specified for carrying out the forwarding of the products. If an acceptance inspection has been agreed, this shall determine when the risk is transferred. Any agreed acceptance inspection shall otherwise be subject to the law of works and service contracts

5.3 If an acceptance inspection is to be carried out, the product shall be regarded as accepted if a) the delivery has been concluded, b) RAPA has confirmed this to the purchaser, has mentioned the deemed acceptance and has demanded acceptance, c) twelve working days have elapsed since delivery (deemed acceptance) or the purchaser has begun to use the product, and d) the purchaser has failed to carry out the acceptance inspection during this period for a reason other than that of a defect notified to RAPA which makes use impossible or significantly impairs the use of the product.

5.4 If shipping or handover is delayed by a circumstance which lies with the purchaser, the risk shall pass to the purchaser from the day on which the product is ready for shipping and RAPA has notified this to the purchaser.

5.5 If the purchaser delays accepting the product, omits its cooperative actions or postpones the delivery for other reasons for which the purchaser is responsible, RAPA shall be entitled to demand compensation for losses arising from this, including extra expenditure (e.g. storage costs).

## 6. Material defects and defects in title

6.1 With regards to the purchaser's rights in the case of material defects and defects in title in the performance, the legal provisions shall apply, unless otherwise determined in the following.

No claims arising from supplier's redress shall be entertained where the defective product has been further processed by the purchaser or another contractor, e.g. by integration in another product.

6.2 The basis for defects liability shall be the agreement reached as to the properties and condition of the product. Agreements as to the properties and condition of the product shall be solely the product descriptions in the agreed specifications and drawings or product descriptions publicly communicated by RAPA. RAPA shall not be liable for public statements of third parties.

6.3 Defect claims by the purchaser shall be governed by the statutory duty to examine and complain under the German Commercial Code §§ 377, 381.

6.4 If the delivered product is defective, RAPA may decide whether subsequent performance is to be effected by remedying the defect (rectification) or by supplying a defect-free item (replacement). The right to refuse subsequent performance under the statutory conditions shall be unaffected.

6.5 The expenditure necessary for testing and subsequent performance shall be refunded by RAPA under the statutory provisions, in the event that a defect is actually present. Otherwise, RAPA may demand from the purchaser a refund of the costs arising from an unjustified subsequent performance claim (especially testing and transport costs), unless the lack of a defect was not discernible to the purchaser.

6.6 The limitation period shall be twenty-four (24) months and shall commence at the time of delivery of the product. If an acceptance inspection has been agreed, the limitation period shall commence with the inspection. In the case of compensation claims arising from willful or gross negligence, or from loss of life, bodily injury or harm to health, the statutory limitation period shall apply.

6.7 The warranty shall be void if the purchaser without RAPA's consent has changed the delivered item, or had it changed by third parties, thereby making rectification of defects impossible or unreasonably difficult. At all events, the purchaser must bear the additional costs of remedying the defect caused by the change.

6.8 Claims by the purchaser for compensation or refunding of unsuccessful expenditure shall only be entertained in the case of defects to the extent provided for in Article 7.

## 7. Liability

7.1 Unless otherwise provided for in these Terms & Conditions, including the following provisions, RAPA shall only be liable for the purchaser's losses,

- a) if loss of life, bodily injury or harm to health has been caused by RAPA or its legal representatives or agents;
- b) if RAPA's purchase or labor and services contracts expressly assume or fraudulently misrepresent a guarantee for the properties and condition or durability of the product;

c) which have arisen through violation of a duty by RAPA which is of material significance for achieving the contract aims (cardinal obligation);

d) if claims can be made under the German Product Liability Act;

e) RAPA or its legal representatives or agents shall otherwise only be liable for losses caused by willful or gross negligence.

7.2 For any kind of negligence in the case of Article 7.1 c) and for gross negligence in the case of Article 7.1 e), RAPA's liability shall be limited to foreseeable losses, typical for the contract; there shall be no liability for consequential damage, interruption of operations/line shutdown, consequential damage caused by a defect or loss of profits, assuming this is legally permissible.

7.3 If RAPA's liability is excluded, this shall also apply to the personal liability of RAPA's staff, employees, coworkers, representatives and agents.

7.4 In determining the amount of compensation claims to be paid by RAPA, the economic circumstances, the nature, extent and duration of the business relationship, any share in the cause and/or fault on the part of the purchaser under the statutory rules on shared liability and any particularly unfortunate location of integration of the product shall be appropriately taken into account, in favor of RAPA. If RAPA is to bear damages, costs and expenses under Article 7.2, these must be proportionate to the value of the product.

7.5 In damage settlement between purchaser and RAPA, the principles of shared liability and the obligation to limit damage shall be appropriately applied. The purchaser shall indemnify RAPA at first request from claims of third parties arising from damage based on requirements, specifications, information or instructions from the purchaser.

7.6 There shall be no duty to compensate if the purchaser has effectively limited its liability to its own customers. In so doing, the purchaser must strive to agree limitations on liability to the legally permissible extent which also favor RAPA.

7.7 The purchaser shall inform and consult RAPA, without delay and in all aspects, if it wishes to make a claim on RAPA under the above provisions. It must give RAPA the opportunity to investigate the damages claim. The contractual parties shall agree on the steps to be taken, particularly in settlement negotiations.

7.8 If RAPA provides technical information or acts as an adviser, and this information or advice is not part of the contractually agreed scope of supply to which RAPA is committed, this shall be done without any liability.

## 8. Reservation of title

8.1 RAPA shall retain title over the product until the fulfillment of all claims existing between it and the purchaser under the business relationship. In the case of breach of contract - particularly culpable delays in payment - on the part of the purchaser, RAPA shall be entitled to recover the product. Recovery of the product does not imply withdrawal from the contract, as RAPA is merely entitled to demand the product back. Following recovery of the product, RAPA shall be entitled to sell it. However, the right to sale shall be dependent on RAPA previously declaring withdrawal from the contract. The proceeds of the sale are to be set off against any claims against the purchaser arising from withdrawal from the contract (damages, compensation, etc.) - less appropriate sales fees.

8.2 While the reservation of title is active, the purchaser shall be prohibited from making any pledge or transfer by way of security on the product. In the event of attachment, seizure or other actions or interventions by third parties, the purchaser

must inform RAPA without delay in writing and provide all defense documents necessary to allow RAPA to assert its rights of ownership. In the event of RAPA prevailing, if the third party is unable to compensate it for the legal and extra-legal costs, the purchaser shall be liable for the shortfall suffered by RAPA.

8.3 Retention of title shall extend to the products arising from processing, mixing or connecting the retained items, and to their full value, with RAPA being deemed to be the manufacturer. Where there is processing, mixing or connecting with goods from a third party, if the latter's property rights should persist, RAPA shall acquire the joint ownership in the ratio of the objective value of the retained item to the other items. The resulting product shall otherwise be subject to the same rules as the retained item.

8.4 The purchaser shall be entitled to resell the retained item in normal commercial trading. The receivables arising from this shall be assigned to RAPA as security, to the amount of the shared title. RAPA shall accept this assignment. The purchaser shall be authorized to collect the receivable alongside RAPA. RAPA shall not be entitled to collect the receivable if the purchaser is not in default of payment and is observing its payment obligations.

RAPA shall be obliged to release the securities it is entitled to at the purchaser's demand, if their value has risen more than 20% above the value of the receivables to be secured.

#### **9. Commercial property rights and copyrights**

9.1 Unless otherwise agreed, RAPA shall be obliged to make deliveries solely in the country of the delivery location which are free of commercial property rights and copyrights held by third parties (in the following: property rights). If a third party, on the grounds of breach of property rights by deliveries made by RAPA under this contract, raises justified claims against the purchaser, RAPA shall be liable to the purchaser, as follows:

a) In respect of the deliveries in question, RAPA shall, as it decides and at its own expense, either obtain a right of use over them, change them so as not to violate the property right, or make a substitution. If RAPA is unable to do this under appropriate conditions, the purchaser shall be entitled to the statutory rights of withdrawal or rights to reduction in price.

b) The above obligations shall only be binding on RAPA if the purchaser has informed it without delay and in writing about the claims being asserted by the third party, the purchaser has not itself acknowledged any violation and if all defensive measures and settlement negotiations remain reserved to RAPA. If the purchaser ceases the use of the delivery for reasons of minimizing losses or other important reasons, it shall be obliged to point out to the third party that the cessation of use is not connected with any acknowledgement of a breach of property rights.

9.2 No claims by the purchaser shall be entertained if it is to be held responsible for the breach of property rights.

9.3 Moreover, no claims by the purchaser shall be entertained if the breach of property rights has been caused by special requirements on the purchaser's part or by use which could not be foreseen by RAPA or by the delivery being changed by the purchaser or used with products not supplied by RAPA.

9.4 In the event of other defects in title, the provisions of Articles 6 and 7 shall be applied in similar fashion.

9.5 Further claims or claims not governed by this article made by the purchaser against RAPA and its agents arising from lack of legal title shall not be entertained.

#### **10. Non-disclosure**

10.1 The Parties undertake to treat all non-obvious commercial and technical details of which they become aware in the course of their legal relations as commercial secrets.

10.2 Electronic data, drawings, models, templates, patterns and other documents must not be passed to or made available to unauthorized third parties. Each Party shall retain all its property rights and copyrights. The reproduction of such items shall only be permitted in the context of operational necessity and copyright rules.

10.3 The duty of non-disclosure shall continue after the termination of the contract for a further five years, unless otherwise provided for in an individual contract.

#### **11. Data protection**

Personal data within the context of the legal relations shall be treated in accordance with the data protection regulations.

#### **12. Legal venue/applicable law**

12.1 The legal venue – including internationally – for all disputes or in connection with the legal relationship shall be Hof (Bavaria), unless another exclusive legal venue is prescribed by law. In addition, RAPA shall be entitled to sue the purchaser in any other competent court.

12.2 In all legal relations between RAPA and the purchaser, the law of the Federal Republic of Germany shall apply to the exclusion of international private law and international and supranational (contract) law systems, especially the UN Convention for the International Sale of Goods (CISG).

#### **13. General provisions**

13.1 This agreement and all rights and obligations in it may not be assigned to third parties without the prior written agreement of the other Party.

13.2 The ineffectiveness or impracticability of individual provisions shall not affect the effectiveness of the remainder of this agreement. However, the Parties will attempt to replace the ineffective agreement by an economically equivalent provision. The same shall apply to loopholes in the agreement.

13.3 Side-agreements or changes to these provisions shall only take effect when confirmed in writing. The same shall apply to the waiving of this written form rule.