

GENERAL TERMS AND CONDITIONS OF PURCHASE OPERATING EQUIPMENT AND OTHER GOODS



1. Scope of Application, Form Requirements

1.1 The legal relationship between the supplier and us shall be exclusively governed by our general terms and conditions of purchase. They apply to all orders placed by us, related amongst others to the supply of goods or the provision of services based on purchase or work contracts or contracts of employment (hereinafter together referred to as "service").

1.2 These terms and conditions shall apply in their respective version also to all future orders without any requirement on our part to refer to them again in each individual case. The respective current version is available at www.rapa.com.

1.3 Upon acceptance of the order these general terms and conditions of purchase shall become subject matters of the contract. Deviant conditions of the supplier and other differing agreements shall be applicable only if we have consented to them in writing. Silence or unconditional acceptance of the service on our part as well as payment by us shall not constitute a consent. A consent granted for one case shall be valid for the individual case exclusively, not to former or future contracts.

2. Order, Sub-contractors

2.1 Contracts (order and acceptance) and the calling off of the service as well as changes and amendments require the written form.

2.2 The supplier is required to immediately confirm our order. For the purpose of correction and/or completion the supplier shall inform us about obvious errors (e. g. typing or calculation errors) and incompleteness of the order before their acceptance, otherwise the contract shall be deemed not concluded.

2.3 If the supplier fails to accept the order within two weeks starting from the receipt, the orderer shall be entitled to cancel the order.

2.4 Services which are not based on a written order shall not be binding for us and will not be paid by us, even if these services are effected at the instigation of our staff.

2.5 The supplier shall not be entitled without our prior written consent to have third parties (e. g. sub-contractors) provide the service owed by him. The supplier bears the risk of procurement for his service, unless otherwise agreed in writing in the individual case.

3. Prices and Conditions of Payment

3.1 Unless otherwise agreed in writing, the prices stated in the order are fixed prices. All prices include the legal sales tax, unless this tax separately stated. In no case unilateral changes to the prices by the supplier shall be permissible.

3.2 Unless otherwise agreed in the individual case, the price stated when the order is placed shall include all services and ancillary services of the supplier (e. g. assembly) as well as all ancillary cost (e. g. proper packaging, transport costs including any possible transport and liability insurance).

3.3 Unless otherwise agreed, our payments are made within 30 calendar days and upon payment within 14 calendar days with a 3% discount on the net amount of the invoice. The period shall begin upon receipt of the complete provision of the service according to the contract (including any acceptance that may have been agreed) or, as the case may be, upon the provision of a service after receipt of the note giving evidence as well as after receipt of a proper invoice indicating the order number, supplier number, part number, quantity of pieces and unit price. In the case of acceptance of early deliveries the due date shall be based upon the agreed delivery date.

3.4 The supplier agrees to take part in a credit memo procedure upon our request. In the case of faulty delivery we are entitled to withhold the payment proportionately to the value until due performance has been rendered.

3.5 The supplier shall not be entitled to assign his claims against us or to have these claims collected by third parties, unless we have granted the prior written consent which shall not be unreasonably refused.

3.6 We are entitled to the rights of set-off and retention as well as to the defense of non-performance of the contract, to the extent provided by law. We are particularly entitled to withhold due payments as long as we are still entitled to other claims arising against the supplier from incomplete or faulty service. The supplier shall be entitled to the rights of set-off and retention only based on counterclaims which have been legally confirmed or uncontested.

4. Dates and Periods of Delivery, Delay

4.1 The time of performance of services stated by us in the order or in the delivery call-off is binding. The supplier is obliged to immediately inform us in writing in the event that he anticipates not being able to comply with the agreed times of performance of services for whatever reason.

4.2 The receipt of the goods or the performance of the service at our premises shall be decisive for the compliance with the date of performance of services. If the supplier fails to deliver or to perform a service or does not deliver or perform a service in due time or if he gets into delay for any reason whatsoever, we shall be entitled to assert the legal claims resulting thereof, without prejudice to the other regulations of these general terms and conditions of purchase.

5. Transport and Packaging, Passing of Risk, Default of Acceptance

5.1 Within Germany the delivery of goods shall be free domicile to the place stated in the order. If the place of destination is not stated and unless otherwise agreed, the service shall be provided at our registered office in Selb. The respective place of destination is considered to be the place of performance (obligation of performance at the creditor's domicile).

5.2 The supplier shall be obliged to ensure the quality of the goods by means of appropriate means of transportation and packaging. Any packaging and delivery note shall contain the following data: item number, name of the item, quantity (number), date of delivery. Separately of the delivery note a respective dispatch note with the same content shall be sent to us.

5.3 The packaging and the labelling of dangerous substances shall be carried out in compliance with the applicable laws; the corresponding safety data sheets shall be included in the delivery. The classification of the dangerous goods or the note "no dangerous goods" shall be indicated on the delivery note. The legal and official regulations applicable at the date of delivery shall be complied with upon delivery and performance of service. This refers in particular to EU regulations, legal acts based on EU directives, accident prevention and occupational health and safety regulations, the Equipment Safety Act as well as to the state of technology regarding safety and health at work.

5.4 The risk of accidental loss and of accidental deterioration of the item shall pass to us upon handover at the place of performance. As far as an acceptance has been agreed this shall be authoritative for the passage of risks. Apart from that, the acceptance is governed by the legal regulations on contracts for work and services.

6. Extent of Liability and Warranty

6.1 The supplier is aware of the intended purpose of the service; otherwise, he shall ask RAPA for this purpose. Unless otherwise provided in the following, the legal provisions shall apply to our rights concerning defects as to quality and defects of title (including wrong delivery and short delivery as well as improper installation, faulty assembly, operation and operating instructions) and to other violations of obligations.

6.2 By way of derogation from § 442 (1) sentence 2 of the German Civil Code (BGB) we are entitled to warranty claims for defects upon the purchase even in the case where we had not been aware of the defect upon conclusion of the contract due to gross negligence.

6.3 The legal provisions (§§ 377, 381 of the German Commercial Code HGB) shall apply to the commercial obligation of examination and notification of defects, subject to the following condition: our obligation of examination shall be limited to defects which become apparent upon visual check during our incoming goods inspection, including the delivery documents, as well as during our quality check in the context of the sample procedure (e. g. transport damages, wrong or short delivery). As far as an acceptance is agreed, there shall be no obligation of examination. In all other cases the examination shall depend on the extent to which an examination is feasible according to the proper business routine, with due consideration to the circumstances of the particular case. The obligation to give notice of defects discovered later remains unaffected. In all cases, our notification of defects (notice of defects) shall be deemed to be given without delay and in due time if received by the supplier within 10 working days.

6.4 If the supplier fails to meet his obligation of supplementary performance – at our option by rectification of the defects (subsequent improvement) or by delivery of an item free of defects (replacement delivery) – within a reasonable period defined by us, we shall be entitled to replace or mend defective parts at the cost of the supplier. If the supplementary performance by the supplier has failed or is unreasonable to us (e. g. because of particular urgency, risk to operational reliability or the imminent occurrence of disproportionate damages) does not require a preliminary period setting; we will inform the supplier without delay, and if possible previously, about such circumstances.

7. Manufacturer's Liability

7.1 If the supplier is responsible for product damage he shall indemnify us against any claims of third parties insofar as the cause lies within his area of control and organization and as he is liable for this in the external relationship.

7.2 The supplier shall take out and maintain a product liability insurance with a minimum sum insured of 10 Million EUR per incidence of personal injury or damage to property.

8. Limitation

8.1 Unless otherwise provided in the following, the reciprocal claims of the contractual parties shall become time-barred according to the statutory provisions.

8.2 By way of derogation from § 438 (1) no. 3 of the BGB und § 634a (1) no. 1 of the BGB, the general period of limitation for claims for damages shall be 3 years starting from the passage of risks and the acceptance as the case may be. This 3-year period of limitation also applies accordingly to claims arising from defects of title; moreover, defects of title will in no case become time-barred as long as the third party may assert the right against us, especially in the absence of limitation.

9. Reservation of Ownership

9.1 The transfer to us of the ownership of the goods shall be effected unconditionally and regardless of whether the price has been paid. If we should, in an individual case, accept an offer by the supplier related to the transfer of ownership with the condition of payment of the purchase price, the reservation of ownership by the supplier shall cease to exist upon the payment of the purchase price for the delivered goods at the latest. In the context of the normal course of business, we remain entitled to resale the goods prior to the payment of the purchase price and with the assignment in advance of the claim resulting therefrom (alternatively application of the simple reservation of ownership extended to the resale). Thereby all other forms of reservation of ownership are excluded, in particular the extended and the forwarded reservation of ownership as well as the reservation of ownership extended to the further processing.

10. Confidentiality

10.1 The contractual partners undertake to treat all commercial and technical details which are not commonly known and become known to them in the context of the business relations as business secret.

10.2 Electronical data, drawings, models, templates, samples and other documents shall not be transferred or made accessible to unauthorized third parties. The respective contractual party shall retain all rights of ownership and all copyrights of these electronical data, drawings, models, templates, samples and other documents. The reproduction of such items shall only be permissible within the limits of the operational requirements and the copyright provisions.

10.3 The obligation of confidentiality continues to exist for a period of time of 5 years after termination of the contract.

10.4 If sub-suppliers have been commissioned by the supplier with our consent, these sub-suppliers shall be committed accordingly to this obligation of confidentiality.

11. Place of Jurisdiction, General Provisions

11.1 Place of performance of the services is our registered office in Selb.

11.2 If the supplier is a merchant as defined by the Commercial Code, a legal entity under public law or a special assets under public law, the place of jurisdiction for all disputes arising from or in connection with this contract or these conditions shall – also internationally – be Hof (Bayern), provided no exclusive jurisdiction is indicated. Additionally, we shall be entitled to bring an action against the supplier alternatively at another court which is competent in relation to the supplier.

11.3 These terms and conditions and all legal relations between us and the supplier shall be governed by the law of the Federal Republic of German, with the exclusion of all international and supranational (contractual) legal systems and of the UN Sales Law (CISG) in particular.

11.4 This agreement and all rights and obligations of this agreement cannot be transferred to third parties without the prior written approval of the respective other contractual partner.

11.5 The ineffectiveness or infeasibility of single provision shall not affect the effectiveness of the remaining provisions of these terms and conditions. Ineffective or infeasible provisions shall be deemed to be replaced by such effective/feasible regulations which are appropriate to realize as far as possible the economic purpose of the omitted regulations. The same applies to a loophole.

11.6 Subsidiary agreements or changes to these agreements shall only be effective, if they have been confirmed in writing. The same applies to the waiver of this written form requirement.

11.7 The supplier shall use our business relationship for advertising purposes only with our prior written consent. This shall apply in particular to the use of the name RAPA and of the RAPA logo.