

General Terms of Business of Rosenberger-OSI GmbH & Co. OHG

Rosenberger

Section 1 General scope

- 1) Our General Terms of Business hereafter apply to our contracts, deliveries and performance exclusively. The general terms of delivery for products and performance of the electrical industry ("Green Terms of Delivery") apply by way of supplementation in their respectively valid version.
- 2) Terms to the contrary or terms deviating from our General Terms of Business and from the "Green Terms of Delivery" of the customer are expressly rejected by us, unless we expressly agreed to their validity in writing. Our General Terms of Business and also the "Green Terms of Delivery" shall also be applicable if we, duly aware of terms to the contrary or terms deviating from our contractual terms of the customer, undertake the delivery/sale to the customer without reservation; our General Terms of Business and also the "Green Terms of Delivery" shall be regarded as recognised by the customer with the acceptance of the goods or performance at the latest. They shall also apply to future business relations with the customer.
- 3) All agreements which are concluded between us and the customer for the execution of this contract are recorded in writing in this contract.

Section 2 Offers and conclusion of the contract

- 1) Our offers are non-binding and without obligation in all parts, unless it was expressly agreed that such offers are binding.
- 2) Offers and details in catalogues, brochures, advertisements, etc. – also regarding price details – are without obligation and non-binding. We shall remain bound to specially drawn up offers for 30 days.
- 3) Deviations of the ordered or supplied articles from the purchase order, especially regarding material and design, are expressly reserved within the scope of technical progress.
- 4) Ancillary agreements, amendments and supplements shall only be valid if they are confirmed by Rosenberger-OSI in writing.
- 5) Drawings, illustrations, dimensions, weights and other performance data are only binding if this is expressly agreed in writing.
- 6) Security statement
The contractor declares that goods produced, stored, transported, delivered or taken over from or on behalf of the AEO a) are produced, stored, handled or processed and loaded at secure premises and places of transhipment.
b) are protected from unauthorized access during production, storage, processing, loading and transport, the staff employed for the production, storage, processing, loading, transport and acceptance of these goods is reliable. Business partners acting on behalf of the AEO are informed that they must also take precautions to secure the a. m. supply chain.

Section 3 Prices and terms of payment

- 1) The prices stipulated in the contract shall only be applicable provided not more than 5 months have elapsed between the conclusion of the contract and the agreed or actual delivery date. If a price increase thereafter occurs by more than 10 % due to circumstances caused by an increase in costs (labour costs, material costs, etc.) for which Rosenberger-OSI is not responsible, then the customer is entitled to withdraw from the contract.
- 2) Unless otherwise stated in the confirmation of order, our prices are valid ex works or ex warehouse or business premises within the Federal Republic of Germany, excluding packing. Packing shall be invoiced separately.
- 3) The statutory rate of value added tax is not included in our prices; it shall be indicated separately in the invoice at the statutory rate on the date of invoicing.
- 4) All invoices are payable immediately net without deduction.
- 5) If invoices are not settled within 30 days after receipt, default in payment shall occur without a reminder according to Article 286 III of the German Civil Code. We are also entitled to bring about default in payment before the expiry of the aforementioned deadline by issuing a reminder. In the case of default in payment, default interest in the amount of 8 % over the respective base interest rate must be paid on the invoice total and other losses caused by default must be reimbursed.
- 6) If bills or cheques are not credited on time by the drawee, then all other existing claims of Rosenberger-OSI against the customer shall fall due at this time. Other existing periods for payment shall lapse. The same shall apply if a claim is not paid on the due date. The customer can avert this if it furnishes proof that it is not responsible for the delay.
- 7) Rosenberger-OSI is not obliged to accept cheques or bills. Any acceptance shall only be regarded as payment after the cheque or bill has been honoured. Bill and discount charges must be borne by the customer. The furnishing of a bill cannot result in the granting of a prompt-payment discount. Instalment payments are only permissible if this was agreed at the time of ordering.
- 8) A retention of payment or offset due to any existing counter-claims of the customer is excluded, with the exception of undisputed claims or claims which have been recognised by declaratory judgment.
- 9) As long as our due claims have not been settled, we are not obliged to effect any further deliveries from any ongoing contract whatsoever. In such a case, after setting a deadline and notifying the customer, default issued by the customer shall have no legally binding effect during the suspension of our delivery obligation. We reserve further legal claims and claims for damages.
- 10) Payments are only legally valid if they are made to us. Payments to employees or representatives of our company are only legally effective if these persons present collection authority.

Section 4 Minimum order volume

The minimum order volume per order is € 500.00. If that value is not reached, € 65.00 shall be levied as a processing fee on the value of the goods.

Section 5 Delivery and delivery periods

- 1) The delivery dates stated by Rosenberger-OSI are non-binding, unless they have been expressly confirmed in writing as "binding delivery date".
- 2) The delivery date by Rosenberger-OSI is subject to due and orderly delivery to Rosenberger-OSI itself. Rosenberger-OSI shall inform the customer without delay if delivery to itself does not occur or belatedly takes place.
- 3) The compliance with our delivery obligation furthermore presupposes the due and orderly performance of the customer's obligations in due time. The defence of non-performance of the contract is reserved. In the case of delays in articles to be furnished by the customer, irrespective of their nature, a new delivery date shall be stipulated by us.
- 4) In the case of subsequent alterations at the customer's request, an extension of the delivery date is reserved. The delivery date shall be regarded as met if the subject-matter of the delivery has been made available in due time for acceptance as per the contract in one of our works or, if no acceptance is effected, if notification of the readiness for shipment has been made or if the subject-matter of the delivery has left our works.
Delays to delivery and performance due to force majeure and due to circumstances which make delivery considerably more difficult or impossible for Rosenberger-OSI not just on a temporary basis – this especially includes strikes, lock-outs, official orders, etc., even if they occur at suppliers of the seller or its subcontractors – shall not be the fault of Rosenberger-OSI, even in the case of deadlines and dates agreed in a binding manner. They entitle Rosenberger-OSI to postpone the delivery or performance by the duration of the impediment plus a reasonable start-up period or to withdraw from the contract in whole or in part with regard to the part which has not yet been performed.
- 5) If the customer is in default in acceptance or if it culpably infringes other cooperation obligations, then we shall be entitled to demand reimbursement of the loss thus incurred by us including any additional expenditure. More extensive claims are reserved.
- 6) If the prerequisites stated in Paragraph 5) are applicable, the risk of the accidental loss or of the accidental deterioration of the subject-matter of the contract shall pass to the customer at the time when it starts to be in default in acceptance or in debtor's default.
- 7) We shall be liable according to the statutory provisions in so far as the underlying contract of sale is a fixed-date transaction as defined by Article 286, Paragraph II, No. 4 of the German Civil Code or by Article 376 of the German Commercial Code. We shall also be liable according to the statutory provisions, provided as a result of the delay in delivery for which we are responsible the customer is entitled to assert that its interest in the further performance of the contract has ceased to exist. We shall furthermore be liable according to the statutory provisions, provided the delay in delivery is due to a willful or grossly negligent contractual infringement for which we are responsible; fault on the part of our representatives or vicarious agents shall be attributable to us. If the delay in delivery is not due to a willful contractual infringement for which we are responsible, then our liability for damages shall be limited to the foreseeable, typically occurring loss.
- 8) We shall also be liable according to the statutory provisions if the delay in delivery for which we are responsible is due to the culpable infringement of a fundamental contractual obligation; in this case, liability for damages is, however, limited to the foreseeable, typically occurring loss.

Section 6 Copyrights and other rights/confidentiality

- 1) All documents surrendered by us, such as samples, drawings, plans, estimates, illustrations and suchlike, are our exclusive, inalienable property; we shall be entitled to any such existing copyrights. These documents may not be used, duplicated, made accessible to third parties or otherwise put into circulation for other purposes and must be returned to us at any time on request. Similarly, a reproduction of our products by the customer or by third parties on behalf of or with the assistance of the customer is not permissible in so far as these products were not exclusively manufactured according to customer details and stipulations. Process rights which we have surrendered or notified to the customer in any form whatsoever may only be used for the purpose scheduled or specified in the contract; disclosure to third parties is not permissible without our express consent.
- 2) The customer is obliged to regard all knowledge arising or acquired in connection with a requested offer or a contract which is to be performed as well as all such related commercial or technical data, especially details regarding our production processes and production facilities which are acquired or presumed on account of negotiations and plant inspections, as our trade and business secrets and to treat this knowledge in strict confidence. The customer must commit its vicarious agents to maintain secrecy in a suitable manner.
- 3) In the case of infringements of Paragraphs 1) and 2), the respectively valid statutory provisions of the German Civil Code, the Copyright Act and the Unfair Competition Act shall be applicable. This may result in both claims for damages under civil law for Rosenberger-OSI and consequences under criminal law.
- 4) If we effect production on behalf of the customer according to drawings, models, samples or other technical documents surrendered by it or according to process wishes stipulated by the customer, then the customer shall assume the responsibility that third-party industrial property rights to process rights are not thus infringed. If third parties prohibit us especially from producing and supplying such products by invoking existing industrial property rights, then we shall be entitled, without being obliged to check the legal situation, to cease all further activity in the scope in question and to demand damages from the customer. With the surrender of such drawings, documents and suchlike as well as with the requested process results and the stipulated formulae and the specified materials to be used, etc., the customer indemnifies us against all third-party claims which arise in this connection.

Section 8 Passing of risk and packing costs

Unless otherwise stated in the confirmation of order, delivery ex works is agreed. Delivery shall be effected for the purchaser's account and risk. This shall also be applicable if delivery is effected by the seller's own means of transport. Transport insurance shall only be taken out by us on the instructions of the customer. The thus incurred costs shall be solely borne by the customer.

Section 9 Delivery volumes, delivery dimensions and terms of delivery

- 1) Unless otherwise expressly agreed, we are generally entitled to deliver up to 5 % more or less compared with the order volumes. The actual delivery volumes shall be authoritative for the calculation of the price. Part deliveries which are reasonable for the customer are permissible. Our goods are delivered within the scope of a merchandise collective shipment within the Federal Republic of Germany on a carriage unpaid basis to the supplier's building site on the ground floor or on a duty unpaid basis to the border.
- 2) The delivery periods always refer to delivery from our works. Correct delivery in due time to ourselves is reserved in this respect. Complaints must be sent to us in writing without delay, at the latest, however, 10 days after receipt of the goods.

Section 10 Liability for defects

- 1) The customer is obliged to examine the goods immediately after handover with regard to obvious defects and to notify Rosenberger-OSI of these defects without delay in writing, at the latest, however, within a period of 1 week from receipt. Obvious defects to which objection is belatedly raised contrary to the aforementioned obligation shall not be considered by Rosenberger-OSI and are excluded from the warranty.
- 2) Hidden defects which only become apparent in the course of time must be notified to Rosenberger-OSI by the customer without delay after discovery.
- 3) If, in case of a test of the goods carried out within the framework of the customer's complaint, it results that the customer's complaint is incorrect, we are entitled to bill for compensation, as usually applicable with regard to transport, for the testing of the goods, as well as the costs for the dispatch.
- 4) In the case that subsequent performance in the form of a new delivery is effected due to a legitimate complaint, the provisions on the delivery period shall apply accordingly. Rosenberger-OSI is to be granted a period of at least 3 weeks for the elimination of a defect by subsequent rectification.
- 5) The existence of a defect shall give rise to the following rights of the customer:
a) In the case of a defect, the customer firstly has the right to demand subsequent performance from Rosenberger-OSI. The option whether a new delivery of the article, a new creation of the work or a rectification of the defect takes place shall be decided by Rosenberger-OSI at its own discretion.
b) In addition, if an attempt at subsequent performance fails, Rosenberger-OSI has the right to undertake subsequent performance again, once again at its own option with regard to the manner and within a reasonable period. Only if the repeated subsequent performance also fails, shall the customer have the right to withdraw from the contract or to reduce the purchase price. The customer may exclusively in cases of the grossly negligent or willful infringement of the obligation to supply fault-free articles demand damages or the reimbursement of futile expenditure. It must furnish proof of the occurred loss on its merits and in terms of amount. The same shall apply to the futile expenditure.
c) Where the customer's claims for damages were excluded, this shall not refer to losses arising on account of death, physical injury or damage to health which are due to a negligent infringement of obligations by Rosenberger-OSI or to a negligent infringement of obligations by a legal representative or vicarious agent of Rosenberger-OSI and to losses which are due to a grossly negligent infringement of obligations by Rosenberger-OSI or to a willful or grossly negligent infringement of obligations by a legal representative or vicarious agent of Rosenberger-OSI. This shall also apply to the compulsory liability according to the German Product Liability Act.
6) Unless otherwise regulated above, liability is excluded, in particular, if the defect or damage can be attributed to inappropriate use or overstressing. In every case, liability is also excluded if there is natural wear present or if damage has occurred through incorrect handling and maintenance, or non-observance of the installation and use specifications, or as a result of the utilization of erecting tools which are not recommended.
7) The limitation period for claims based on defects shall be 1 year from handover to the customer for new articles and articles used 1 year from delivery or handover for used articles.
In the case of contracts for work and services, warranty claims due to defects, whereby success of a work lies in the production, maintenance or alteration of a movable article, shall be subject to a limitation period of 1 year. The limitation period shall commence with the acceptance of the work.

Section 11 Reservation of title

- 1) All goods supplied by Rosenberger-OSI shall remain its property until payment in full of the purchase price. In the case of entrepreneurs, the goods shall remain Rosenberger-OSI's property until satisfaction in full of all claims resulting from the business relationship (extended reservation of title). A disposition of the goods subject to reservation of title (for example by sale, pledging, transfer by way of security, gifting, transfer for use) by the customer is not permitted under any circumstances.
- 2) If the customer should have undertaken a disposition contrary to the terms of the contract of the object of sale, then the paid or payable purchase price or otherwise received or due performance of the purchaser shall take the place of the goods. The customer already now assigns to Rosenberger-OSI all claims arising from any sale. Rosenberger-OSI accepts the assignment. The customer is not authorised to collect these claims. Within the scope of the assignment, the customer must cooperate upon the disclosure of the assignment to the purchaser and must see that the purchaser makes payment or renders performance to Rosenberger-OSI. Taking the extended reservation of title (advance assignment of the respective purchase price claim) into consideration, an assignment to third parties, especially to a credit institution, is in breach of contract and therefore not permissible. Rosenberger-OSI is entitled at any time to check the customer's sales documents and to inform the customer's purchasers of the assignment.
- 3) In the case of an attachment of the goods at customers, Rosenberger-OSI must be notified immediately, duly sending a copy of the execution record and a declaration in lieu of an oath, that the attached goods are the goods supplied by Rosenberger-OSI which are subject to reservation of title.
- 4) If the customer is in default with its payment obligations or if it significantly infringes another obligation incumbent upon it or if an application is made for the institution of insolvency or composition proceedings in respect of its assets, then we shall also be entitled, without a further warning and without setting a deadline, at our option either to withdraw from the contract or to take back the supplied articles whilst maintaining the contract. In the case of this exploitation, we are not bound to the statutory provisions on the sale of pledged property, meaning that exploitation can be effected in the manner which is most likely to achieve the best possible exploitation.
In the case of default, the taking back of the supplied articles is possible in the manner that persons authorised by us may enter the customer's business premises and can take possession of the supplied articles themselves.
Already made payments on account shall be paid back on an interest-free basis, without compensation and with the deduction of costs for projecting, sale, transport, assembly, dismantlement, depreciation and use, superseeding by new models as well as lost profit. In the case of special models, the deduction of a correspondingly larger sum for depreciation is justified. If the total of these deductions exceeds the payment on account, then the orderer is obliged to pay the difference.
- 5) Resellers may resell the goods belonging to us, must, however, sell these goods subject to the same reservation of title and with a different invoice separate from other goods as long as these goods are still charged with our ownership claim. If the reseller on the basis of these or other business transactions is in default with its payments or other obligations, then a sale of the goods may only be effected with our express authorisation. The claim which has arisen shall be regarded as tacitly assigned to us and payments of the second purchaser to the reseller (first purchaser) shall be regarded as collected for us in trust. The assignment of the claim to us is only effected by way of security and shall not affect the first purchaser's payment and other obligations in respect of us. The first purchaser must notify the second purchaser in writing of the assignment of the claim as soon as it is in default with its obligations in respect of us. The resale of the goods may only be effected at a price which guarantees that our claim is covered in full.
- 6) The assertion of Rosenberger-OSI's rights from the reservation of title shall not release the customer from its contractual obligations. The value of the goods at the time of return shall merely be offset against the supplier's existing claim against the purchaser.
- 7) If the securities and assigned claims to which we are entitled exceed a security of 120 % of the claims of Rosenberger-OSI against the customer, then the securities in excess of this amount shall be released.

Section 12 Rosenberger-OSI's withdrawal right

Rosenberger-OSI is entitled to withdraw from the contract for the following reasons:

- 1) If it arises, contrary to the assumption in existence before the conclusion of the contract, that the customer is not creditworthy. A lack of creditworthiness can be assumed without hesitation in the case of a bill or cheque protest, of the cessation of payments by the customer or of an unsuccessful execution attempt at the customer's premises. It is not necessary that it refers to relations between Rosenberger-OSI and the customer.
- 2) If it emerges that the customer has given incorrect information regarding its creditworthiness and this information is of considerable significance.
- 3) If the goods subject to Rosenberger-OSI's reservation of title are sold other than in the customer's ordinary course of business, especially by a transfer by way of security or by pledging the goods. Exceptions to the aforementioned shall only exist if the supplier has given its approval to the sale in writing.

Section 13 Place of performance, place of jurisdiction and applicable law

- 1) Place of performance for all obligations arising from the contractual relationship is our place of business.
- 2) The place of jurisdiction shall be determined according to the statutory provisions. If the purchaser is an entrepreneur or a legal person under public law or a special fund under public law, then Rosenberger-OSI's place of business is the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship.
- 3) In all cases, especially also in the case of cross-border deliveries, the law of the Federal Republic of Germany shall be applicable. The application of the United Nations Convention of 11.04.1980 on Contracts for the International Sale of Goods (CISG) is excluded.

Section 14 Final provisions

- 1) If individual terms of the contract or of the provisions of these Terms of Business are ineffective in whole or in part, then the statutory regulation shall be applicable. The effectiveness of all other provisions and agreements shall not be affected.
- 2) No ancillary agreements have been concluded. Such agreements shall only be valid if stipulated in writing.