

General Terms and Conditions for Deliveries and Services of RMIG Automotive GmbH

1 General, Scope

1.1

These general terms and conditions for deliveries and services (hereinafter also referred to as “terms and conditions”) apply to all offers and contracts of RMIG Automotive GmbH regarding deliveries and services.

1.2

These terms and conditions are deemed to be a framework agreement also for future contracts for the sale and/or delivery of movable property with the same buyer, without us having to refer to them again in each individual case.

1.3

Our terms and conditions apply only to an entrepreneur, a legal entity under public law or a special fund under public law in accordance with § 310 (1) (1) BGB (hereinafter referred to as “customer” or “buyer”).

2 Contract basis, conclusion of contract

2.1

The ordering of deliveries or services by the buyer is considered a binding contract offer. The acceptance of this offer is confirmed by a written order confirmation, unless the buyer has accepted a binding offer made by us.

2.2

Decisive for the legal relationship between us and the buyer, in particular for the scope and the obligation to provide deliveries and services, are the written order confirmation including these general terms and conditions for deliveries and services. If the buyer has accepted an offer made by us, this offer, including these general terms and conditions for deliveries and services, is decisive.

2.3

Our terms and conditions for deliveries and services apply exclusively. Deviating, conflicting or supplementary terms and conditions of the buyer shall only become part of the contract if and insofar as we have expressly consented in writing to their validity. This requirement of express written consent applies in any case, for example, even if we carry out the delivery unconditionally in the knowledge of conflicting or deviating conditions of the buyer or if we refer to a letter which contain the terms and conditions of the buyer or a third party.

2.4

Already in the offer stage, the buyer must point out any use to us which is beyond the scope of the contract, to applications of a special kind as well as to increased risks, which can arise with the use of our deliveries and services by the buyer.

2.5

If, in connection with the preparation of a contract, we have provided the buyer with drawings or other documents, these remain our property. As far as copyright potential exists, we reserve the copyright to these objects. They may not be made available to third parties by the buyer without our express written permission.

2.6

References to the validity of statutory provisions are only for clarification. Even without such clarification, the statutory provisions therefore apply unless otherwise agreed in these general terms and conditions for deliveries and services.

2.7

The written-form requirement is deemed complied with through the telecommunication of documents, e.g. by fax, computer fax or e-mail.

3 Prices, terms of payment, due date**3.1**

Compliance with agreed prices for our deliveries and services presupposes that the items on which the agreement is based remain unchanged and can be provided without hindrances for which the buyer is responsible. Subsequent additions and changes that lead to additional expenses shall be borne by the buyer in addition.

3.2

The stated final prices in principle include, unless otherwise indicated, packaging, freight charges, insurance and customs. Packaging, freight charges, insurance and customs are shown separately and do not apply when picked up ex works. The statutory VAT will be charged additionally. The amount of the prices depends on the written agreements. The preparation of projects including the preparation of plans, sketches and drawings will be invoiced separately, if we have to provide them additionally.

3.3

If we do not provide deliveries or services within the framework of continuing obligations, we shall be entitled to increase prices for deliveries or services that occur later than four months after the conclusion of the contract, if advance deliveries have become more expensive, agreed wages have changed or other costs have increased without us being able to avoid this or without us being able to change this through reasonable measures.

3.4

Payments are due at the latest upon delivery of the delivery or completion of the service, unless otherwise agreed. Agreed payment terms are upheld only if the amount to be paid is available to us unconditionally on the due date. In the case of work performed, we may demand payments from the buyer in the amount of the value of the services provided by us and owed under the contract.

3.5

Checks and bills of exchange are only valid as payment after redemption. Charges or other costs associated with the submission of the check or bill of exchange shall be borne by the buyer.

3.6

If it becomes apparent after the conclusion of the contract that our claim to payment is jeopardised by the buyer's inability to perform, we shall be entitled to provide our deliveries and services only against prepayment or cash on delivery or to make delivery dependent on a security deposit. Existing claims from services already provided are due immediately, even if deferred. A threat to our right to payment due to the buyer's inability to perform applies particularly in the event of material deterioration in the buyer's financial circumstances after conclusion of the contract, in particular if the buyer is already in default of payment, checks are returned, a check or bill of exchange protest takes place, application for opening insolvency proceedings is filed, or foreclosure proceedings are instituted. Such a threat due to lack of ability of the buyer to perform is also present if the financial circumstances of the performing party, already at the conclusion of the contract, were so bad that our claim to payment was thereby compromised, and this only becomes clear to us after conclusion of the contract, and we could not have recognised this previously in the careful examination of the of the buyer's ability to perform. If the buyer does not comply with our request to provide security within a reasonable period set for it, we have the right to withdraw from the contract.

4 Default of payment, offsetting, right to refuse performance, assignment

4.1

In case of default of payment, we are entitled to charge interest at the rate of 9% points above the respective base interest rate. The assertion of further damage is not excluded. For merchants our claim to the commercial maturity interest (§ 353 HGB) remains unaffected.

4.2

The buy can only withhold payments or offset them with counterclaims if these are undisputed, pending legal decision (undeniable for logical reasons) or legally binding. The buyer is not entitled to a right to refuse performance due to advance payments as long as we provide consideration or provide security. In case of deficiencies of the delivery, para. 7.3 remains unaffected.

4.3

The buyer may assign claims against us to third parties or have them collected by third parties only with our prior written consent, unless these are claims that are undisputed, pending legal decision or legally binding. § 354a HGB remains unaffected.

5 Delivery, place of fulfilment, transfer of risk, acceptance, delivery deadlines and dates, packaging

5.1

Delivery is ex warehouse, which is also the place of performance. At the request of the buyer, the goods will be sent to another destination (consignment purchase), in which case the ADSP in their respective version shall apply in addition to these general terms and conditions for deliveries and services. Unless otherwise agreed, we are entitled to determine the type of shipment (in particular transport company, shipping route, packaging). The packaging does not take place by item, but exclusively according to transport and production aspects. The larger size of the unit always determines the package length. We do not take back transport and all other packaging according to the Packaging Ordinance; they become the property of the buyer, except for Euro pallets, circulating packages, which are our property, as well as packaging, in which we expressly refer to them as our property.

5.2

The risk of accidental loss and accidental deterioration of the goods passes to the buyer at the latest with the transfer of the goods. Insofar as an acceptance has been agreed, this is decisive for the transfer of risk. In addition, the statutory provisions of service contract law apply accordingly to an agreed acceptance. If the buyer is in default of acceptance it is equivalent to transfer or acceptance. However, in the case of a consignment purchase, the risk of accidental loss, accidental deterioration of the goods and the risk of delay shall pass to the forwarder, the carrier or the person or institution otherwise responsible for carrying out the consignment. If the shipment is delayed as a result of a circumstance for which the buyer is responsible, the risk passes to the buyer from the day on which we are ready to ship and have communicated this to the buyer.

5.3

Agreed deadlines and dates for deliveries and services shall not commence until the buyer has performed all preparatory acts to be performed by it and fulfilled its duty to cooperate. If the buyer is in delay with performance to be provided by it, the deadlines and dates shall be extended by the duration of this delay. Deadlines and dates are only valid if they are bindingly stated or confirmed by us.

5.4

The delivery deadline is met if we have offered the goods to the buyer within the deadline or have asked the buyer to pick them up. In the case of a consignment purchase, the delivery deadline is met if we have delivered the goods within the delivery deadline to the freight forwarder, the carrier or the person or institution otherwise intended to carry out the shipment. If the delivery or handover is delayed as a result of a circumstance for which the buyer is responsible, the delivery deadline is also observed if we have notified the buyer of readiness for shipment within the delivery deadline.

5.5

If the non-observance of deadlines and dates is due to the occurrence of unforeseeable hindrances of temporary duration, which are beyond our control and for which we are not responsible, the deadlines and dates shall be extended by the duration of the hindrance or interruption plus a reasonable start-up period. This shall apply in cases of force majeure, strikes, lockouts, official orders, even if such circumstances occur at our suppliers and subcontractors, insofar as the hindrances demonstrably have a considerable influence on the execution of the deliveries and services to be provided by us. We will inform the buyer about non-compliance with the deadline or the dates without delay and at the same time notify the expected new delivery date. The statutory rights of withdrawal and termination on the part of the buyer remain unaffected.

5.6

If we nevertheless fall behind schedule according to the legal regulations, the buyer must grant us a reasonable period of grace, which as a rule amounts to at least 3 weeks. As long as this period has not expired unsuccessfully or was dispensable for other statutory reasons, the buyer cannot secure a replacement at our expense and cannot withdraw from the contract.

5.7

If the buyer incurs any damage due to a debt owed by us, it is entitled to claim compensation. In the event of slight negligence, it shall amount to 0.5% for each full week of exceeding the deadline, but not more than 5% in total of the net amount of the delivery which has not been delivered on time due to the delay. Without prejudice to para. 8 of these terms and conditions, further claims for damages due to delay in case of slight negligence are excluded.

5.8

If the buyer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the buyer is responsible, we shall be entitled to demand compensation for the resulting damage including additional expenses (in particular storage costs). For this we charge a flat-rate compensation of 0.5% of the respective net invoice amount per month, starting with the delivery deadline or- in the absence of a delivery deadline- with the notification of readiness for shipment of the goods. For unfinished months, the compensation will be calculated on a pro-rated basis according to the number of calendar days, whereby 1/30 of the aforementioned monthly amount will be charged per calendar day, irrespective of the specific calendar month. Proof of higher damages and our legal claims (in particular compensation for additional expenditure, reasonable compensation, termination) remain unaffected; the flat-rate compensation is, however, to be counted towards more extensive compensation claims. The buyer shall be entitled to prove that we have incurred no damage at all or only a significantly lesser amount than the aforementioned flat-rate compensation.

6 Retention of title**6.1**

Until full payment of all our current and future claims arising from the contract and an ongoing business relationship with the buyer (secured claims), we reserve the ownership of the delivered or manufactured goods (reserved goods). This also applies if individual or all amounts have been added to a current account and the balance has been drawn and recognised. Receipt of the value with us is equivalent to payment. If the buyer is not a merchant within the meaning of the German Commercial Code, we reserve the ownership of the reserved goods only until payment of all our present and future claims arising from the contract with the buyer.

6.2

In case of breach of contract by the buyer, in particular in case of non-payment of the due purchase price, we are entitled to withdraw from the contract according to the statutory provisions and to demand the goods on the basis of the retention of title and withdrawal. If the buyer does not pay the due purchase price, we may only assert these rights (withdrawal and subsequent surrender request) if we have unsuccessfully set a reasonable deadline for payment to the buyer or if such a deadline is dispensable according to the statutory provisions.

6.3

The buyer is entitled to resell and process the reserved goods within the framework of the proper course of business. A resale may only be made under retention of title, unless it takes place against immediate cash payment of the customer. Other dispositions, in particular pledging or transfer by way of security, are not permitted. If the buyer's assets deteriorate and become insolvent, the right to resell will expire. In this case, the buyer has to provide adequate security in advance.

6.4

The processing or transformation of reserved goods is always carried out by the buyer for us. If the property rights remain, in the processing, mixing or combination with goods of third parties, we acquire co-ownership in proportion of the invoice values of the processed, mixed or combined goods. The buyer maintains the property or co-ownership for us. In addition, the same applies to the resulting product as to the goods delivered under reservation of title. The buyer hereby assigns to us the claims arising from the resale of the goods or the product against third parties as a whole or in the amount of the value of our possible co-ownership share as security. We accept the assignment.

6.5

The buyer hereby assigns to us all claims and security rights which accrue to it from the resale against its customer or against third parties, irrespective of whether the reserved goods are resold without or after processing. We accept the assignment. If the reserved goods are resold with other goods that do not belong to us, the advance assignment shall only apply in the amount of the value of our co-ownership share.

6.6

The buyer remains authorised to collect the claims assigned to us even after the assignment. Our power to collect the claim ourselves is not hereby affected. However, we undertake not to collect claims, as long as the buyer duly fulfils its payment obligations to us, does not default in payment considerably, no application for the opening of insolvency proceedings is filed, and there is no other deficiency of its capacity. If this is the case, however, we can demand that the buyer notify us of the assigned claims and their debtors, provide all information necessary for collection, hand over the associated documents and notify the debtors of the assignment.

6.7

For payments by check, ownership of the check passes to us as soon as the buyer acquires it. If payment is made by bill of exchange, the buyer hereby assigns to us the resulting rights in advance. The transfer of these papers is replaced by the buyer keeping them for us; or, if they do not come into the direct possession of the buyer, the buyer will assign its claim for surrender against third parties to us in advance; it shall provide these papers with its endorsement and immediately deliver them to us.

6.8

Insofar as the value of the reserved goods is deducted, this results from our invoice amount (billing value). We undertake to release the securities to which we are entitled at the request of the buyer to the extent that their realisable value exceeds the claim to be secured by more than 10%. We have the right to select the securities to be released.

6.9

The buyer is prohibited from making agreements with its customer or a third party, which may in any way exclude or impair our rights. This applies in particular to agreements that negate or affect advance assignments. In the case of seizure or other interventions by third parties, the buyer must notify us immediately, handing over the documents necessary for an intervention.

7 Complaints and claims for defects

7.1

If there is a mutual commercial transaction, the claims of the buyer for defects presuppose that it has fulfilled its statutory inspection and complaint obligations (§§ 377, 381 HGB). If the buyer fails to properly inspect and/or report a defect, our liability for the non-indicated defect is excluded. If our delivery is not made to the buyer, but to a third party designated by the buyer, the same standard applies. In this respect, the buyer must ensure that the delivery is inspected immediately by the respective third party and a timely notification of the defect is made. Otherwise, the delivery is considered to be in accordance with the contract.

7.2

The precondition for claims for defects is the factual accuracy and completeness of the information provided to us for the execution of our deliveries and services as well as the proper and purposeful use by the buyer. We are not liable for defects resulting from data submitted by the buyer or other incorrect or incomplete information.

7.3

In the case of a justified notice of defects, we render supplementary performance at our own choice by replacement delivery or subsequent improvement or new production. The buyer must in any case give us a period of at least 14 days for this, calculated from notification of defects. If we fail to remedy the defect within a reasonable period of time or if we fail to do so, the buyer has the right to demand a reduction of the remuneration or to withdraw from the contract in the case of a not insignificant breach of duty. If only parts of the delivery are defective, the further rights of the buyer only relate to the defective part of the delivery, unless the partial delivery is objectively of no interest to the buyer. We are entitled to make the supplementary performance owed dependent on the buyer paying the due purchase price. However, the buyer is entitled to retain part of the purchase price which is reasonable in relation to the defect. Claims by the buyer for damages or reimbursement of futile expenses exist only in accordance with para. 8 of these terms and conditions and are otherwise excluded.

7.4

If defects are due to the fact that our processing instructions were not followed, the goods were incorrectly assembled or put into operation by the buyer or third parties, the goods were unsuitably or improperly used, changes were made without coordination with us, parts were replaced, or materials were used that do not correspond to the originals, we are not liable.

8 Liability, limitation of claims

8.1

Unless otherwise stated in these general terms and conditions for deliveries and services, including the following provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the relevant statutory provisions.

8.2

We are liable for damages – for whatever legal reason – in the case of intent and gross negligence. With simple negligence we are liable only a) for damage resulting from injury to life, limb or health, b) for damages resulting from a breach of a material contractual obligation (obligation the fulfilment of which makes the proper execution of the contract possible in the first place and the compliance with which the contractual partner regularly relies on and can rely on); however, in this case, our liability is limited to compensation for foreseeable, typically occurring damage.

8.3

The liability limitations from para. 8.2 above shall not apply if we fraudulently conceal a defect or have assumed a guarantee for the quality of the goods. The same applies to claims of the buyer according to product liability law.

8.4

For materials that are supplied to us by the buyer or its suppliers for processing, we assume no responsibility for their workability. Such materials are handled and processed by us professionally. We are not liable for damages resulting from the inadequate quality of this material, but only for damages in the context of our contract manufacturing work.

8.5

The limitation period for claims of the buyer amounts to one year from delivery or service. For damage claims according to para. 8.2 and 8.3, the statutory limitation periods apply. These limitation periods also apply in the case of claims according to § 438 (1) (2) BGB and § 634a (1) (2) BGB. The limitation period in case of delivery recourse according to §§ 478, 479 BGB and § 445b (1) BGB remains unaffected.

9 Provided materials**9.1**

Templates, raw materials and other reusable items such as semi-finished and finished products of the buyer are kept by us if they are no longer needed for delivery only by prior agreement and for a special fee. Our liability for them is governed by para. 8 of these terms and conditions.

9.3

The parties are aware that, due to the tolerances of the primary material (such as thickness tolerance and width tolerance), only theoretical, mathematical conversion of kilogrammes into meters and pieces can be carried out in advance by us. The buyer cannot derive any claims from the calculation communicated by us.

9.4

It is known to the buyer that due to the production process, approx. 4 m of the delivered material must be included as additional consumption per coil. This concerns the start and the end of the coils supplied by the buyer.

10 Tools, usage rights

10.1

The operating objects used by us for the manufacture of the deliveries, in particular tools, remain our property, even if we calculate their costs on a pro-rated basis, and are not delivered.

10.2

To the extent that we provide the buyer with drawings or documents for which we have the copyright, or a right derived from the rights holder, which entitles us to grant a simple right of use to third parties, we shall grant the buyer a simple right of use for the contractual purposes. The buyer undertakes not to remove manufacturer information from the deliveries or to change them without our prior express consent. All other rights remain with us or with the rights holder.

11 Place of performance, jurisdiction, applicable law

11.1

The place of performance for all deliveries and services of the contracting parties is our place of business.

11.2

The jurisdiction is our place of business, if the buyer is a merchant within the meaning of the Commercial Code, a legal entity under public law or a special fund under public law.

11.3

The law of the Federal Republic of Germany applies. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) is excluded.