

Terms and Conditions Rematec GmbH & Co. KG

(current version as of 20 March 2018)

Section 1 Applicability , Form

(1) The following terms and conditions apply to all our business relationships with our customers. The terms and conditions only apply if the customer is an entrepreneur (Section 14 of the German Civil Code BGB), a legal entity under public law or a separate public estate.

(2) The terms and conditions apply in particular to contracts concerning the sale and/or the manufacturing and delivery of movables (goods), regardless of whether we manufacture the goods ourselves or purchase from suppliers (Section 433, Section 650 German Civil Code BGB). Unless otherwise agreed, the terms and conditions apply which are valid at the time of the customer's placement of an order, in any case in the most current version communicated in textform, respectively, also as framework agreement for any similar future contracts, regardless of our notification thereof in each individual case.

(3) Our terms and conditions apply exclusively. Terms and conditions of the customer which are either differing from or inconsistent with or supplementary to these terms and conditions only then and in so far will become part of the contract to the extent that we have explicitly approved their validity. This approval requirement by **Rematec GmbH & Co. KG** applies at all times, for example even if, being aware of the customer's terms and conditions, we effect delivery to the customer without reservation.

(4) Agreements reached with the customer in each individual case (including additional agreements, amendments and notifications) prevail over these terms and conditions. For the contents of such agreements, subject to proof to the contrary, a written agreement or our written confirmation, respectively, will be decisive.

(5) Legally relevant declarations and notifications by the customer regarding the contract (e.g. setting a deadline, notification of defects, rescission or reduction) must be made in writing, i.e. in written or textform (e.g. letter, email, telefax). Statutory requirements concerning form and other documentation, in particular doubts as to the legitimacy of the person making the declaration, remain unaffected.

(6) Any references to the application of statutory provisions are for the purpose of clarification only. Even without such clarification the statutory provisions therefore apply insofar as they are not directly modified or explicitly excluded under these terms and conditions.

Section 2 Conclusion of Contract

(1) Our offers are subject to change and are non-binding. This also applies if we have provided to the customer catalogues, technical documentation (e.g. drawings, schedules, computations, calculations, references to DIN norms), other product descriptions or documents – including in electronic form – in which we reserve (see Section 10) ownership and copyright.

(2) The order for the goods placed by the customer constitutes a binding contractual offer. Unless otherwise stated in the order, we are entitled to accept this contractual offer within 4 weeks after receipt.

(3) Acceptance can either be declared in writing (e.g. by way of order confirmation) or by effecting delivery to the customer.

Section 3 Delivery Period and Default in Delivery

(1) Delivery must be agreed individually or be determined by us, respectively, upon acceptance of order.

(2) Insofar as we are unable to meet binding delivery deadlines, for reasons beyond our control (non-availability of performance), we will notify the customer thereof immediately and simultaneously communicate the expected new delivery date. If performance continues to be impossible within the newly determined delivery period, we will be entitled to rescind the contract in whole or in part; we will reimburse the customer without delay for any consideration already rendered. Late delivery by our supplier is deemed to be a particular case of non-availability of performance if upon conclusion of a suitable covering operation, neither our supplier nor we are responsible or if in an individual case we are not obliged to provide. The same applies if documents to be provided by the customer (e.g. schedules, approvals) are not provided in due time; in such case notification of extension of delivery period will not be required by us.

(3) Delay in delivery is determined pursuant to statutory provisions. In any case, however, a reminder by the customer will be required.

(4) The customer's rights pursuant to Section 8 of these terms and conditions and our statutory rights, in particular in case of exclusion of the obligation to perform (e.g. due to frustration or unreasonableness and/or supplementary performance) remain unaffected.

Section 4 Delivery, Passing of Risk, Default in Acceptance, Acceptance

(1) Delivery is effected as of our warehouse in Furth, which is also the place of performance and any subsequent performance. Upon request and at the customer's expense the goods will be shipped to a another destination (sales shipment). Unless otherwise agreed, we will be entitled to determine the way of shipment (in particular carrier, dispatch route, packaging).

(2) Risk of accidental loss and accidental deterioration of the goods passes to the customer, at the latest upon transfer on to the customer. In case of sales shipment, risk of accidental loss and accidental deterioration of the goods as well as risk of delay, however, already passes upon delivery to the forwarder, the carrier or another person or institution determined for dispatch. If acceptance is agreed, then acceptance constitutes the passing of risk. Otherwise, moreover, the statutory provisions on contracts for work and services ("Werkvertragsrecht") apply to the agreed acceptance accordingly. This also applies to the transfer and acceptance accordingly if the customer is in delay of acceptance.

(3) If the customer is in default of acceptance or fails to fulfil its co-operation duties or if the delivery is delayed for reasons the customer is responsible for, we will be entitled to request compensation for any damage resulting thereof, including any additional expenditures (e.g. storage costs). For this we will charge a lump sum in the amount of 0.5 % of the net price per calendar week, a maximum of 5%, however, beginning from the delivery period or- if there is no delivery period – with notification that the goods are ready for shipment.

The proof of higher damage and our statutory claims (in particular compensation for additional expenditure, appropriate compensation, termination) will remain unaffected; however, the lump sum has to be charged against further monetary claims. The customer is allowed to produce evidence that no damage or significantly less damage than the lump sum mentioned above has incurred.

(4) The deadline for acceptance is deemed to be agreed as two weeks after delivery of goods. After the deadline acceptance is deemed granted, unless the customer, before expiration thereof, refuses acceptance due to a substantial defect of goods.

Section 5 Prices, Conditions of Payment and Default in Payment

(1) Unless otherwise agreed in the individual case, our prices current at the time of conclusion of the contract will be valid, namely from our warehouse plus statutory value added tax.

(2) In case of sale by shipment (in Section 4, Subsection 1) the customer bears the transport costs from the warehouse and the costs for transport and insurance, if requested. Any custom's duties, fees, taxes and public charges are borne by the customer.

(3) The purchase price is due and payable within 30 days from invoicing and delivery or acceptance, respectively. However, we are entitled at any time, even within the current business relationship, to effect delivery in part or whole by way of cash on delivery or settlement of other outstanding receivables, also of invoices for payments on account. Furthermore, we are entitled at any time to effect delivery of our goods subject to the customer providing a contract performance guarantee of a major bank licensed in the EU or any other security pursuant to Section 232 Subsection 1 German Civil Code BGB, for the whole outstanding payment (contractual sum plus supplements and supplementary agreements).

(4) Upon the expiration of the payment period, the customer will be in default. The purchase price bears interest at the applicable statutory rate during the period of default. We reserve the right to claim further damage caused by default. Our claim for commercial default interest (Section 353 German Commercial Code HGB) against merchants remains unaffected. For contracts regarding the manufacture of single items (custom-made products) we may either rescind or terminate the contract immediately.

(5) The customer will only have rights of set-off and retention to the extent that its claim has been established by a court of law or is undisputed. In case of deficient delivery the customer's counter-claims, in particular according to Section 7 Subsection 6, Sentence 2 herein remain unaffected.

(6) If after conclusion of the contract it becomes apparent that our claim for payment is jeopardized by the customer's lacking or uncertain ability to pay (e.g. an application for the initiation of insolvency proceedings), we will be entitled, under the statutory provisions relating to refusal of performance, - if applicable after setting a deadline - to rescind the contract (Section 321 German Civil Code BGB). For contracts regarding the manufacture of single items (custom-made products) we may declare rescission immediately; the statutory provisions regarding superfluous setting of deadline remain unaffected.

Section 6 Retention of Title

(1) Until full payment of all our current and future claims arising out of this contract and the current business relationship (secured claims) we will retain title of the goods sold.

(2) The goods subject to retention of title may neither be attached to third parties, nor be transferred as security until payment for the secured claims has been received in full.

The customer must immediately notify us in writing when an application for insolvency proceedings has been filed or insofar as third parties exercise rights (e.g. attachment) over the goods belonging to us.

(3) If the customer does not comply with the contract, in particular in case of non-payment of the purchase price due, we will be entitled to rescind the contract under statutory provisions and/or demand return of the goods due to retention of title.

The demand for the return of goods will not automatically constitute a declaration of rescission; rather we will only be entitled to claim return of the goods and reserve the right of rescission. If the customer does not pay the purchase price due, we may only exercise these rights if we have set the customer an appropriate payment deadline to no avail or if such a deadline is superfluous under statutory provisions.

(4) Until notice of revocation according to c) below, the customer may resell and or reprocess the goods subject to retention of title within the framework of regular business management. In this case the following provisions apply additionally.

(a) The retention of title extends to any products resulting from the processing, mixing or combining of our goods up to their full value, whereas we are deemed the manufacturer. In case of processing, mixing or combining our goods with products of a third party, the title of which is retained, we will acquire co-ownership at the ratio of the amounts invoiced for said goods. Furthermore the same applies to the resulting product as applies to the goods delivered under retention of title.

(b) The customer now hereby already assigns to us, by way of security, any claims against third parties resulting from the resale of goods or of the product in full or to the extent of our possible co-ownership share according to the subsection above. We accept the assignment. The customer's duties mentioned in Subsection 2 also apply with regard to the assigned claims.

(c) In addition to us the customer remains entitled to collect any receivables.

We agree not to collect any receivables as long as the customer fulfils its payment obligations and there is no limited liability to perform and as long as we do not declare retention of title by exercising a right under Subsection 3. In such case, however, we may demand that the customer disclose to us the assigned claims and the respective debtors, provide us with all documents required for collection and notify the debtors (third parties) of the assignment.

Furthermore we will be entitled in this case to revoke the customer's authorisation to resell or reprocess goods subject to retention of title.

(d) If the realised value of the securities exceeds our claims by more than 10%, then, at the customer's request, we will release securities according to our choice.

Section 7 Customer's Claims for Defects

(1) The statutory provisions apply to the customer's claims for defects of quality and title (including wrong and short delivery as well as improper assembly or deficient assembly instructions) unless otherwise determined in the following.

(2) Our liability for defects is primarily based on the agreement regarding the quality of goods. Only those product descriptions that are object of the individual contract are deemed agreements regarding the quality of goods. This also applies to the intended use of the goods. If the goods are required for a particular use, the customer must first check the suitability for that use and expressly state it in the contractual agreement.

(3) Insofar as the quality has not been agreed upon, the existence or non-existence of a defect must be determined in accordance with statutory provisions. We are not liable for any public statements made by the manufacturer of the individual components or by any other third parties (e.g. advertising statements).

(4) The customer's claims for defects are subject to the customer complying with its statutory obligation of immediate examination and notification of defects (Sections 377, 381 German Commercial Code HGB). Should such defect become apparent upon delivery, examination or at a later time, we must be notified in writing immediately. In any case, written notice of apparent defects must be given within five working days as of detection. This deadline also applies to any defects not detectable during examination. If the customer fails to carry out a proper examination and /or issue notification of defects, our liability will be excluded for defects that have not been notified appropriately or have not been notified in due time, respectively, or have not been notified properly in accordance with statutory provisions.

(5) If the delivered goods are defective, we may first choose to perform by way of remedying defects (rectification of defects) or by way of delivering goods free of defects (replacement delivery). Our right to refuse subsequent performance under statutory provisions remains unaffected.

(6) We are entitled to make subsequent performance owed dependent on the customer's payment of the purchase price due or on provision of security in accordance with Section 5 Subsection 3, Sentence 2 or Sentence 3. The customer, however, is entitled to retain a part of the purchase price appropriate in relation to the defect.

(7) The customer must give sufficient time and opportunity for subsequent performance, in particular, hand over for inspection the goods concerned or grant access thereto, respectively. In case of supplementary delivery the customer must return to us the defective goods according to statutory provisions.

(8) We will bear expenses which are necessary for the purpose of inspection and subsequent performance, in particular costs for transport, travel, work and material, if a defect actually exists. Otherwise we may claim full reimbursement for costs incurred due to unjustified demands for repair (in particular inspection and transport costs), unless lack of defectiveness could not be detected by the customer. If we meet the customer's demand for subsequent performance, this will only be considered as acknowledgement of defect if we expressly state such acknowledgement in text form.

(9) In urgent cases, e.g. where there is a risk to operational safety or in order to avert disproportionate damage, the customer is entitled to remedy the defect by itself and demand from us reimbursement for necessary expenditures. In such case we must be notified immediately, if possible in advance. The customer's right to remedy does not exist if under statutory provisions we were entitled to refuse said subsequent performance.

(10) If subsequent performance has failed or if an appropriate deadline for subsequent performance to be set by the customer has fruitlessly expired or is superfluous under statutory provisions, the customer may rescind the contract or reduce the purchase price accordingly. In case of an immaterial defect, however, there is no right to rescission.

(11) The customer's claims for damages or futile expenditure, respectively, also exist for defects according to Section 8, and are otherwise excluded.

§ 8 Any other Liability

(1) Unless otherwise provided by the terms and conditions and the following provisions hereof, we are liable under statutory provisions for any breach of contractual and non-contractual obligations.

(2) We are liable for damages – for any legal reason whatsoever - with regard to liability for fault in case of intent and gross negligence. In case of simple negligence, subject to a lesser degree of liability, we are liable under statutory provisions, e.g. (diligence in one's own affairs) only for

a) damage arising from injury to life, body or health,

b) damage arising from significant violation of a contractual obligation (an obligation the performance of which enables due performance of the contract in the first place and the contractual observance of which the contractual partner regularly relies on and may rely on); in such a case our liability is limited to compensation of foreseeable, typically occurring damage.

(3) The limitation of liabilities according to Subsection 2 also apply to any violations of duties by or in favour of persons whose fault we are liable for under statutory provisions. They do not apply if we have fraudulently concealed a defect or to any given warranty as to the quality of goods and for the customer's claims under the German Product Liability Act (Produkthaftungsgesetz).

(4) The customer may only rescind or terminate the contract for violation of a duty not resulting from a defect, if we are liable for said violation of duty. The customer's unrestricted right of termination (in particular pursuant to Sections 650, 649 German Civil Code BGB) is excluded. Otherwise the legal requirements and legal consequences are applicable.

§ 9 Limitation Period

(1) Contrary to Section 438, Subsection 1, No. 3, and Section 634 a, Subsection 1, No. 3 of the German Civil Code BGB the general limitation period for all claims for defects in quality and title is one year as of delivery and acceptance, respectively.

(2) If the goods are a building or an object that, in conformity with its customary use, has been used for a building which has caused it to be defective (construction material) the limitation period is 5 years as of delivery according to statutory provisions (Section 438 Subsection 1, No. 2 and Section 634a, Subsection 1, No. 2 German Civil Code BGB respectively).

Any other special statutory provisions concerning limitation, (e.g. Section 438, Subsection 1, No. 1, Subsection 3, Sections 444, 478, 639 German Civil Code BGB) will also remain unaffected.

(3) The above mentioned limitation periods for the sale of goods also apply to the customer's contractual and non-contractual claims for damages which arise out of defect of goods, unless the application of the regular statutory limitation (Sections 195, 199 German Civil Code BGB) may lead to a shorter period of limitation in the individual case.

The customer's claims for damages pursuant to Section 8, Subsection 2, Sentence 1 and Sentence 2 (a) and under the German Product Liability Act (Produkthaftungsgesetz) are solely subject to the statutory limitation periods.

Section 10 Drawings and Documents

(1) Our calculations, drawings, schedules and tender documents are solely determined for the customer and will remain our property even upon delivery. They may not be provided to third parties nor be made otherwise accessible. The customer therefore agrees to pay a contractual penalty in the amount of 5,000.00 Euros in the event of any violation.

Section 11 Choice of Law and Venue of Jurisdiction

(1) These terms and conditions and the contractual relationship between us and our customer are subject to the laws of the Federal Republic of Germany excluding international uniform law, in particular the UN Sales Convention (CISG).

(2) If the customer is a merchant according to the German Commercial Code (HGB) or a legal entity under public law or a separate public estate, the exclusive venue of jurisdiction, - also venue of international jurisdiction for all disputes arising directly or indirectly of this contract will be our registered office in Furth. This also applies if the customer is an entrepreneur pursuant to Section 14 of the German Civil Code BGB.

In all cases, however, we will also be entitled to take legal action at the place of performance for the delivery hereunder or according to an overriding individual agreement, respectively, or at the customer's place of general jurisdiction. Overriding statutory provisions, in particular those applying to exclusive jurisdiction, will remain unaffected.