

**General Sales and Delivery Terms and Conditions of
Rheinspan GmbH & Co. KG
Germersheim
(Last edited: August 2020)**

§ 1 Sphere of Validity, Form

- (1) These Allgemeinen Verkaufs- und Lieferbedingungen [General Sales and Delivery Terms and Conditions] (AVB) shall be valid for all our business relationships with our customers (“Buyer”). The AVB shall be valid only if the Buyer is an entrepreneur (§ 14 BGB [German Civil Code]), a juridical person under public law or a special foundation under public law.
- (2) The AVB shall be valid particularly for contractual agreements for the sale and/or the delivery of movable goods (“Goods”) without taking into consideration whether we create the Goods ourselves or purchase them from suppliers (§§ 433, 650 BGB). Insofar as nothing to the contrary has been agreed, the AVB shall be valid in the version, which is valid at the point in time that the Buyer’s order was made and/or in any case in the text form last provided to him, as the Framework Agreement—including for any similar future agreements without our having to make reference to them in each individual case.
- (3) Our AVB shall be valid exclusively. Any General Terms and Conditions of the Buyer which are deviating, opposing or supplemental shall only then and insofar become a contractual component if we have expressly approved their validity. This approval requirement shall in all cases be valid, particularly also then, for example, if we make the delivery to him without any conditions while being aware of the Buyer’s General Business Terms and Conditions.
- (4) Any individual agreements concluded in the individual case with the Buyer (including any ancillary agreements, supplements, and amendments) shall in each case take priority over these AVB. Subject to the submission of proof to the contrary, a written contractual agreement and/or our written confirmation shall be prevailing for the content of such agreements.
- (5) Any legally-relevant declarations and notifications from the Buyer with regards to the contractual agreement (e.g. the setting of a notice period, a notification of defects, rescission of the contractual agreement or a reduction of the purchase price) must be rendered in writing, i.e. in written or text form (e.g. letter, e-mail, or fax). Any legal form requirements and additional documentation requirements – particularly in cases of doubt regarding the legitimacy of the declaring party – shall remain unaffected.
- (6) References to the validity of the statutory directives shall be stated only for clarification purposes. Thus, even without such a clarification, the statutory directives shall be valid insofar as they have not been directly changed or expressly excluded in these AVB.

§ 2 Conclusion of the Contractual Agreement

- (1) Our offers/bids shall be non-binding and without obligation. This shall also then be valid if we have provided the Buyer with catalogues, technical documentation (e.g. sketches, plans, calculations, computations, or references to DIN Norms), or other product specifications or documents – even in electronic form to which we reserve our ownership rights and copyrights.
- (2) The ordering of the Goods by the Buyer shall be considered to be a binding contractual offer. Insofar as nothing to the contrary is stated on the order, we shall be entitled to accept this contractual offer within three weeks after our receipt thereof.
- (3) The acceptance can be declared either in writing (e.g. through an order confirmation) or through the outgoing delivery of the Goods to the Buyer.
- (4) In order to accept orders, we require the Buyer's solvency and, in individual cases, reserve the right to make the acceptance of the Buyer's order dependent on the supplying of a bank guarantee or a liquidity commitment from the Buyer's principal bank in the amount of the anticipated invoiced payment claim.

§ 3 Delivery Timeframe and Delivery Default

- (1) The delivery timeframe shall be individually agreed and/or stated by us upon the acceptance of the order. Insofar as this is not the case, the delivery timeframe shall amount to approx. four weeks after the conclusion of the contractual agreement. Any agreed delivery timeframes shall be subject to the proviso of timely delivery by our own suppliers.
- (2) The fulfilment of our delivery obligation shall require the timely and proper fulfilment of the Buyer's own obligations.
- (3) Delivery timeframes shall be extended owing to force majeure events and the occurrence of other unforeseeable events, which are out of our control and indeed also then if they occur at our factory and affect our own suppliers, for the duration of the hindrance. A force majeure event shall be considered to be particularly operational disruptions, strikes or lock-outs which affect us or our own suppliers or a delay in the delivery of essential raw materials. The documentation of a causal correlation between the aforementioned cases and the subsequent delivery may not be demanded.
- (4) Insofar as we cannot fulfil binding delivery timeframes owing to reasons out of our control (non-availability of the service/product), we shall promptly notify the Buyer of this and, at the same time, announce the anticipated new delivery timeframe. If the service/provider will also not be available within the new delivery timeframe, we shall be entitled, in whole or in part, to withdraw from the contractual agreement; we shall promptly reimburse any counter-performances already provided by the Buyer. A case of the non-availability of the service/product in this sense shall be considered to be particularly the untimely delivery by our own suppliers if we have concluded a congruent covering transaction, neither we nor our supplier is at fault or we are not obliged to make procurement in the individual case.

- (5) Whether we have committed delivery default shall be determined in accordance with the statutory directives. However, in each case, a warning letter by the Buyer shall be required. If we enter into delivery default, then the Buyer may demand lump-sum damage compensation for the delivery default damages which he has suffered. For each full calendar week of the delivery delay, the lump-sum damage compensation shall amount to 0.5% of the net price (delivery value), but nonetheless a total of at most 5% of the delivery value of the Goods delivered behind schedule. We reserve the right to document that the Buyer has suffered no damages at all or only substantially less damages than the aforementioned lump-sum amount.
- (6) The Buyer's rights in accordance with § 8 of these AVB and our own statutory rights – particularly in the event of the exclusion of the performance obligation (e.g. owing to the impossibility or unreasonableness of the performance and/or subsequent performance) – shall remain unaffected.

§ 4 Delivery, Transfer of Risk, Delivery Acceptance, Delivery Acceptance Default

- (1) The delivery shall be made ex warehouse (Germersheim) which is also the place of performance for the delivery and any subsequent performance. Upon the Buyer's request and expense, the Goods shall be sent to another delivery destination (sales shipment). Insofar as nothing to the contrary has been agreed, we shall be entitled to ourselves select the shipping method (particularly the transport company, the shipping route and packaging).
- (2) The seller shall be entitled to make partial deliveries only if:
 - a) The partial delivery is usable for the customer in accordance with the contractual usage purpose,
 - b) The delivery of the remaining goods that were ordered has been ensured and
 - c) By so doing, the customer incurs no substantial supplemental expenses or additional costs (unless the seller declares himself to be willing to assume these costs).
- (3) The risk of the accidental destruction and the accidental deterioration of the Goods shall be transferred to the Buyer by no later than upon the handover of the Goods. For a sales shipment, however, the risk of the accidental destruction and the accidental deterioration of the Goods as well as the risk of delays shall already be transferred upon the handover of the Goods to the carrier, freight forwarder or other person or institution who/which has been commissioned to implement the shipment. Insofar as delivery acceptance has been agreed, this delivery acceptance shall be prevailing for the transfer of risk. Otherwise, the statutory directives regarding contractual law for work and services shall also be correspondingly valid. It shall equate to the handover and/or delivery acceptance having been made if the Buyer enters into delivery acceptance default.
- (4) If the Buyer enters into delivery acceptance default, fails to fulfil his cooperation obligation or our delivery is delayed owing to other reasons for which the Buyer is responsible, we shall be entitled to demand compensation for any resulting damages including additional expenses (e.g. warehousing costs). For this, we shall charge a lump-sum

compensatory fee amounting to 5.00 EUR per calendar day, beginning with the delivery timeframe and/or – in the absence of a delivery timeframe – upon the sending of the notification of the readiness-for-shipment for the Goods.

The right to document higher damages and assert our statutory claims (particularly for the reimbursement of additional expenses, appropriate compensation, termination) shall remain unaffected; however, the lump-sum amount must be offset against any more extensive monetary claims. The Buyer shall remain permitted to document that we have suffered no damages whatsoever or only substantially less damages than the aforementioned lump-sum amount.

- (5) If the Buyer finds himself in delivery acceptance default for longer than 14 days, we shall be entitled, after the setting of an appropriate notice period, to withdraw from the contractual agreement and sell the Goods to someone else.

§ 5 Prices and Payment Terms and Conditions

- (1) Insofar as nothing to the contrary has been agreed in the individual case, our prices which are respectively current at the time that the contractual agreement is concluded shall be valid and indeed ex works plus the statutory VAT.
- (2) The purchase price shall become payable and must be paid immediately. However, we shall be entitled – including within the parameters of an on-going business relationship – to, at any time, implement a delivery, in whole or in part, only against advance payment. We shall declare such a corresponding reservation by no later than upon the confirmation of the order.
- (3) The deduction of a discount shall require a special written agreement. We shall accept bills of exchange and checks only based upon a special written agreement and only for payment satisfaction purposes.
- (4) The rebates granted to the Buyer are supposed to be granted only for a seamless implementation of the business transaction. Thus, they shall be forfeited particularly if a petition is filed for the opening of bankruptcy proceedings for the Buyer's assets, the Buyer does not settle the payment claim within the payment timeframe designated for him or a legal dispute is looming between the Buyer and us arising from or in conjunction with this contractual agreement.
- (5) Subject to the issuance of a warning letter at an earlier point in time, the Buyer shall enter into payment default by no later than 14 days after the coming-due and receipt of an invoice or an equivalent payment demand. The purchase price shall be interest-bearing during the payment default timeframe at the respectively valid statutorily prescribed interest rate. We reserve the right to assert more extensive claims for payment default damages. In our dealings with entrepreneurs, our claim to the commercial default interest (§ 353 HGB [German Commercial Code]) shall remain unaffected.
- (6) The Buyer shall be entitled to assert offsetting and retention rights only insofar as his claim has been legally upheld, is undisputed or we have acknowledged it. In the event of defects in the delivery, the Buyer's counterclaims – particularly in accordance with §

7 Para. 6 Clause 2 of these AVB – shall remain unaffected. If, after the conclusion of the contractual agreement, it becomes recognisable (e.g. through the filing of a petition to open bankruptcy proceedings) that our claim to the purchase price has been put at risk owing to the Buyer's lack of solvency, then we shall be entitled, in accordance with the statutory directives regarding the refusal to render contractual performance and – where applicable, after setting a notice period – to withdraw from the contractual agreement (§ 321 BGB). For contractual agreements regarding the production of specific items (individual production), we can immediately declare our withdrawal from the contractual agreement; the statutory provisions regarding the dispensability of the setting of a notice period shall remain unaffected.

§ 6 Reservation of Ownership

- (1) Until payment in full has been made for all our present and future payment claims from the Purchasing Agreement and an on-going business relationship (secured payment claims), we reserve the right of ownership to the sold Goods.
- (2) The Goods subject to the reservation of ownership may, before payment in full is made for the secured payment claims, neither be pledged to third parties nor transferred by way of security. The Buyer must promptly notify us in writing if a petition is filed for the opening of bankruptcy proceedings or insofar as third-parties assert claims to the Goods belonging to us (e.g. seizures).
- (3) In the event of a contractual violation upon the part of the Buyer – particularly in the event of the non-payment of the purchase price that has come due, we shall be entitled, in accordance with the statutory directives, to withdraw from the contractual agreement and/or demand the return of the Goods based upon the reservation of ownership. However, the demand for the return of the Goods shall not at the same time constitute the declaration of the withdrawal from the contractual agreement; rather, we shall be entitled to merely demand the return of the Goods and reserve the right to withdraw from the contractual agreement. If the Buyer fails to pay the purchase price that has come due, we may assert these rights only if we have set an appropriate notice period in advance for the Buyer to make payment which turns out to be fruitless or the setting of such a notice period is dispensable in accordance with the statutory directives.
- (4) Until this right is revoked, the Buyer shall be authorised, in accordance with (c) below, to resell and/or process the Goods subject to a reservation of ownership during ordinary business dealings. In this case, the following provisions shall be valid upon a supplemental basis.
 - a) The reservation of ownership shall extend to products at their full value, which are created through the processing, mixing or combining of our Goods, whereby we shall be considered to be the manufacturer. If, as the result of the processing, mixing or combining with goods from third parties, the third-party ownership rights shall continue to be valid, we shall acquire co-ownership to them based upon the ratio of the invoiced values to the processed, mixed or combined Goods. Otherwise, for the created product, the same shall be valid as for the Goods which are delivered subject to a reservation of ownership.

- b) The Buyer shall already now assign the payment claims, which are created from the resale of the Goods or the product, against third parties, overall and/or in the amount of our co-ownership stake, in accordance with the aforementioned paragraph to us for security purposes. The Buyer's obligations specified in Para.2 shall also be valid for the assigned payment claims.
- c) In addition to us, the Buyer shall also be authorised to collect the payment claim. We shall obligate ourselves to not collect the payment claim as long as the Buyer fulfils his payment obligations to us, he has no lack of solvency and we do not assert the reservation of ownership by exercising a right in accordance with Para. 3. However, if this is the case, then we may demand that the Buyer disclose to us the assigned payment claims and their debtors, provide all information required for the collection of such payment claims, submit the relevant documents and notify the debtors (third parties) of the assignment. Moreover, in this case, we shall be entitled to revoke the Buyer's authorisation to resell and process the Goods which are subject to the reservation of ownership.
- d) If the realisable value of the security exceeds our payment claims by more than 10%, we shall, upon the Buyer's request, release the security of our choice.

§ 7 Buyer's Claims for Defects

- (1) For the rights of the Buyer with regards to material and legal defects (including any incorrect deliveries and short deliveries as well as improper mounting or flawed mounting instructions), the statutory directives shall be valid insofar as nothing to the contrary is stipulated in the following. In all cases, the statutory special provisions shall remain unaffected for the final delivery of the Goods to a consumer (recourse against suppliers in accordance with §§ 478, 479 BGB).
- (2) The basis for our liability for defects shall above all be the contractual agreement concluded regarding the quality of the Goods. Insofar as nothing has been expressly stipulated, we shall provide no faultless warranty in this regard. This shall also be valid for the reference to DIN Norms.
- (3) Insofar as no quality guarantees have been agreed, it must be assessed in accordance with the statutory directives whether a defect exists or not (§ 434 Para. 1 Clauses 2 and 3 BGB). However, we shall assume no liability for public statements made by the manufacturer or other third parties (e.g. advertising claims).
- (4) Deviations that are customary for the industry with regards to the design, the structure, the colours and the dimensions of the purchased Goods, which lie in the nature of the materials used, shall not entitle the Buyer to assert warranty claims insofar as the value of the Goods or their suitability for general or the contractually-prescribed usage is only insignificantly reduced.
- (5) The Buyer's claims for defects shall require that he has fulfilled his statutory obligations to examine and make notification of defects (§§ 377, 381 HGB). If a defect is discovered during the delivery, the examination or at some later point in time, then we must promptly

be notified thereof in writing. In all cases, obvious defects must be reported in writing within 3 working days after delivery and defects not recognisable during the examination within the same timeframe after discovery thereof. If the Buyer fails to undertake the proper examination and/or notification of defects, we accept no liability for the defect not reported and/or for the defect not reported in a timely manner or for the defect not properly reported in accordance with the statutory directives.

- (6) If the delivered Goods are defective, we may initially choose whether to perform subsequent performance through the elimination of the defect (rectification) or by delivering flawless Goods (replacement delivery). Defective Goods may be sent back to us only with our prior consent. If the Goods are returned to us without our prior consent, we shall be entitled to refuse to accept them. Our right to refuse to render subsequent performance subject to the statutory requirements shall remain unaffected.
- (7) We shall be entitled to make the subsequent performance owed dependent on the proviso that the Buyer pays the purchase price owed. However, the Buyer shall be entitled to withhold an appropriate portion of the purchase price based upon the defect.
- (8) The Buyer must grant us the time and opportunity that are required for the rendering of the subsequent performance owed – particularly to surrender the Goods about which a notification of defects has been made for inspection purposes. In the case of the replacement delivery, the Buyer must return the defective Goods in accordance with the statutory directives. The subsequent performance shall include neither the dismantling of the defective Goods nor their reinstallation if we were not originally obliged to install the Goods.
- (9) We shall bear the expenditures which are required for the purposes of the examination and the subsequent performance – particularly transport, infrastructure, labour and materials costs (not: dismantling and installation costs) – if a defect actually exists. Otherwise, we may demand that the Buyer reimburse the costs (particularly examination and transport costs) which are incurred from the unjustified demand for the elimination of the defect (particularly examination and transport costs) unless the lack of defectiveness was not recognisable to the Buyer.
- (10) In urgent cases, e.g. if operational safety is put at risk or in order to ward off disproportional damages, the Buyer shall have the right to eliminate the defect on his own and to demand that we reimburse the objectively-required expenditures in this regard. We must be notified promptly – if possible, in advance – of the undertaking of subsequent performance by the Buyer. The Buyer's right to undertake subsequent performance shall not be valid if we would be entitled to refuse to make corresponding subsequent performance in accordance with the statutory directives.
- (11) If the subsequent performance is unsuccessful twice or a timeframe that has been appropriately set by the Buyer for subsequent performance – but nonetheless at least 14 days – has fruitlessly lapsed or is dispensable in accordance with the statutory directives, the Buyer may withdraw from the Purchase Agreement or reduce the purchase price. However, in the case of only a minor defect, no right of rescission shall be valid.

- (12) Claims of the Buyer to damage compensation and/or the reimbursement of expenditures in vain shall also be valid for defects only in accordance with § 8 and shall otherwise be excluded.

§ 8 Miscellaneous Liability

- (1) Insofar as nothing to the contrary is prescribed in these AVB including the following provisions, we shall be liable for a violation of the contractual and non-contractual obligations in accordance with the statutory directives.
- (2) We shall be liable for damage compensation – regardless of the legal reason – within the parameters of fault-based liability for intentional wrongdoing and gross negligence. In the case of simple negligence, we shall be liable – subject to a less stringent standard of liability – in accordance with the statutory directives (e.g. for exercising due care in one's own affairs) only
- a) For damages arising from the loss of life, physical injury or damage to health,
- b) For damages arising from the major violation of an essential contractual obligation (an obligation whose fulfilment only then makes possible the proper fulfilment of the contractual agreement at all and upon whose fulfilment the contractual partner regularly relies and may rely); in this case, however, our liability shall be limited to the payment of compensation for the foreseeable, typically-occurring damages.
- (3) The liability restrictions specified in Para. 2 shall also be valid for contractual obligations by and/or to the benefit of persons for whose conduct we must be responsible in accordance with the statutory directives. They shall not be valid insofar as we have maliciously concealed a defect or provided a warranty for the quality of the Goods and for the Buyer's claims in accordance with the Produkthaftungsgesetz [German Product Liability Act].
- (4) In the event of a contractual obligation which does not encompass a defect, the Buyer may only withdraw from or terminate the contractual agreement if we are responsible for the contractual violation. An unrestricted right of termination upon the part of the Buyer (particularly in accordance with §§ 651, 649 BGB) shall be excluded. Otherwise, the statutory requirements and legal consequences shall be valid.

§ 9 Customer's Obligation to Pay Damage Compensation

If we, in accordance with the statutory directives, have a damage compensation claim in lieu of performance against the customer, this shall amount to – subject to our documentation of higher damages – a lump sum of 10% of the agreed purchase price. The Buyer shall be entitled to document that damages were not suffered at all or only lower damages were suffered than the lump-sum amount.

§ 10 Statute of Limitations

- (1) In deviation from § 438 Para. 1 No. 3 BGB, the general statute of limitations period for claims arising from material and legal defects shall be one year after delivery is made.

Insofar as delivery acceptance has been agreed, the statute of limitations period shall begin to run upon delivery acceptance.

- (2) However, if the Goods encompass a building structure or an object which, based upon its customary manner of usage, has been used for a building structure and which has caused its defectiveness (building material), the statute of limitations period in accordance with the statutory provisions shall be 5 years after delivery is made (§ 438 Para. 1 No. 2 BGB). Additional statutory special provisions regarding the statute of limitations (particularly § 438 Para. 1 No. 1, Para. 3, §§ 444, 479 BGB) shall also remain unaffected.
- (3) The aforementioned statute of limitations periods for sales law shall also be valid for contractual and non-contractual damage compensation claims of the Buyer which are based upon a defect in the Goods unless the application of the standard statute of limitations period (§§ 195, 199 BGB) would result in the individual case in a shorter statute of limitations period. However, the Buyer's damage compensation claims in accordance with § 8 Para. 2 Clause 1 and Clause 2(a) as well as in accordance with the Produkthaftungsgesetz shall become statute-barred exclusively in accordance with the legal statute of limitations timeframes.

§ 11 Place of Performance

Insofar as nothing to the contrary is prescribed in these AVB and on the order confirmation, our commercial residence shall be the place of performance for all reciprocal obligations.

§ 12 Choice of Laws and Legal Venue

- (1) For these AVB and the contractual relationship between us and the Buyer, the law of the Federal Republic of Germany shall be valid subject to the exclusion of international uniform law – particularly of the United Nations Convention on Contracts for the International Sale of Goods.
- (2) If the Buyer is an entrepreneur in accordance with the German Commercial Code, a juridical person under public law or a special foundation under public law, the exclusive – also international – legal venue for all disputes arising, directly or indirectly, from the contractual relationship shall be our commercial residence in Germersheim. The same shall be valid if the Buyer is an entrepreneur in accordance with § 14 BGB. However, in all cases, we shall also be entitled to take legal action in the place of performance for the delivery obligation in accordance with these AVB and/or a prevailing individual agreement or in the Buyer's general legal venue. The prevailing statutory directives – particularly regarding exclusive competences – shall remain unaffected.

§ 13 Data Protection

We wish to point out that the collected data related to the business relationship shall be saved in files.

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