

# **General Terms and Conditions of Sale**

Röttgers Ketten GmbH & Co. KG

## 1. Scope of application

- 1.1 All contracts/contract offers and acceptances concerning deliveries and services of Röttgers Ketten GmbH & Co. KG are made on the basis of these General Terms and Conditions of Sale. They shall also apply to all future business relations/contracts without renewed express reference.
- 1.2 Deviations, changes and additions require our express written confirmation.
- 1.3 General terms and conditions of the purchaser are contradicted. Paragraph 2 applies accordingly.

## 2. Contract content

- 2.1 Order confirmations as well as their amendments and supplements must be made in writing. Order confirmations transmitted by remote data transmission and electronic printout are also valid without signature.
- 2.2 Verbal declarations shall in any case require confirmation in the aforementioned form. This applies in particular to those of our sales representatives and/or field staff.
- 2.3 The order confirmation is authoritative for the content and scope of our deliveries and services.
- 2.4 Subsequent changes (e.g. of dimensions) also require our express written consent within the scope of call-off orders / framework agreements. If the ordered goods have already been produced or are in production, any modification is excluded. In this case, the purchaser remains obligated to accept the goods in accordance with the specifications set forth in the order confirmation/framework agreement.
- 2.5 The compatibility / matching of a chain with a sprocket of the purchaser is only subject of the scope of services on the basis of an express agreement and requires the provision of the corresponding sprocket by the purchaser.
- 2.6 Our catalogs and other sales documents, lists and drawings are carefully prepared. Should the technical data, weights and dimensions or prices contained therein nonetheless be obviously incorrect, we reserve the right to make subsequent corrections.

## 3. Prices

- 3.1 In the absence of a special agreement, the prices shall apply ex works excluding packaging and insurance plus the statutory value added tax at the respective statutory rate.

- 3.2 If there are more than 6 weeks between the conclusion of the contract and the delivery date, we are entitled to adjust the prices in the event of unforeseeable significant increases in our costs, in particular due to an increase in material costs / raw material prices.

## 4. Delivery times / delays

- 4.1 Fixed delivery dates, as well as fixed transactions under commercial law, require our express consent in the form relevant to the order confirmation.
- 4.2 The delivery period shall regularly commence upon dispatch of our written order confirmation, but not prior to the provision of the specifications, documents and, in individual cases, components or other items to be provided by the purchaser (e.g. sprockets) and shall be subject to the purchaser's compliance with the agreed terms of payment and other obligations. The defense of non-performance of the contract shall remain reserved.
- 4.3 In the case of call-off or framework contract orders, the first delivery shall be made as confirmed. All further deliveries, unless already scheduled in the contract and confirmed by us, shall be made within 20 working days of receipt by us of the written call-off by the purchaser, unless expressly agreed otherwise.
- 4.4 The delivery period shall be extended by a reasonable period of time in the event of force majeure, measures within the scope of labor disputes, in particular strikes and lockouts, as well as the occurrence of similar unforeseen obstacles beyond our control, insofar as such obstacles can be proven to have a significant influence on the completion or delivery of the delivery item.
- 4.5 Such a reasonable extension of the delivery periods shall also occur in the event of untimely self-delivery.
- 4.6 If delivery becomes impossible for us due to the events described under 4.5, our obligation to perform and deliver shall lapse.
- 4.7 The delivery period shall be deemed to have been met if the delivery item has left the factory or notification of readiness for dispatch has been given by the time the delivery period expires.
- 4.8 If we fail to meet a delivery date/period that has been firmly confirmed, the purchaser shall be obliged to set us a reasonable period of grace in writing. If we culpably fail to deliver within the grace period set, the purchaser shall be entitled to withdraw from the contract.
- 4.9 With regard to any damage caused by delay or default, Clause 9 shall apply.

4.10 Upon our request, the purchaser is obliged to declare within a reasonable period of time whether it will withdraw from the contract due to the delay in delivery and/or demand damages instead of performance and/or insist on delivery.

4.11 If the shipment, dispatch or delivery is postponed at the request of the purchaser beyond the time stipulated in the contract, we may charge the purchaser a storage fee of 0.5% of the invoice amount for each month or part thereof, up to a maximum of 5% of the storage fee, at the earliest ten working days after notification of readiness for dispatch of the goods. The contracting parties shall be at liberty to demonstrate proof of higher or lower storage costs.

4.12 If the purchaser is also in default of acceptance or culpably violates other obligations to cooperate, we shall be entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses. Assertion of further claims remains reserved. If the above conditions are met, the risk of accidental loss or accidental deterioration of the purchased goods shall pass to the purchaser at the point in time at which the purchaser is in default of acceptance or debtor's delay.

## 5. Delivery / transfer of risk

5.1 We are entitled to make partial deliveries to a reasonable extent.

5.2 We reserve the right to make excess or short deliveries for manufacturing reasons. Excess or short deliveries of up to 10% of the order quantity are customary in the industry and shall be deemed contractual fulfillment unless this is deemed unreasonable in the individual case. In the event of under-delivery of the order quantity, there shall be no entitlement to subsequent delivery of the shortfall quantity. In the event of over-delivery of the order quantity by up to 10%, there is a right to additional invoicing.

5.3 Deviations with regard to the dimensions, weight and volume of the goods to be delivered are permissible within the customary, product-specific tolerance limits.

5.4 Shipment shall be made at the express request of the purchaser and on its behalf at the purchaser's expense.

5.5 The risk of accidental loss and/or destruction shall pass to the purchaser at the latest upon dispatch or handover to the person carrying out the transport, irrespective of who bears the freight costs. This also applies in the event that the transport is carried out by our employees or agents.

5.6 Furthermore, the risk shall pass to the purchaser as soon as the purchaser is in default of acceptance after receipt of our notification of readiness for dispatch.

## 6. Retention of title

6.1 The delivered goods (goods subject to retention of title) shall remain in our ownership until all our claims against the purchaser arising from the business relationship have been fulfilled.

6.2 During the period of retention of title, the purchaser shall properly store and keep the goods delivered by us separately from similar or identical goods of other companies and mark them as originating from our delivery.

6.3 The purchaser shall be entitled to sell, install or process the goods in the ordinary course of business, provided that it does not enter into any agreement with its customer (in particular no prohibition of assignment) which may exclude or impair our rights in any way.

6.4 The purchaser hereby assigns to us all claims in the amount of the final invoice amount agreed with us (including value added tax) which accrue to the purchaser from the resale against the customer or against third parties. This assignment shall apply regardless of whether the purchased item has been resold without or after processing. The purchaser remains authorized to collect the claim even after the assignment. Our authority to collect the claim ourselves shall remain unaffected. However, we shall not collect the claim as long as the purchaser meets its payment obligations from the proceeds collected, is not in default of payment and, in particular, no application for the opening of insolvency proceedings has been filed and there is no suspension of payments.

6.5 A sale in the ordinary course of business shall not be deemed to have taken place if the purchaser pledges the goods subject to retention of title to a third party, transfers them by way of security and/or makes them the subject of factoring and/or sale-lease-back procedures.

- 6.6 In the event of seizure, confiscation or other dispositions or interventions by third parties, as well as in the event of damage or other impairments to the goods subject to retention of title, the purchaser is obliged to notify us immediately. If the purchaser incurs claims against third parties as a result of the damage or impairment, the purchaser hereby assigns these claims to us by way of security.
- 6.7 In the event of the processing and/or treatment of goods subject to retention of title, this shall be carried out on our behalf and for us as manufacturer within the meaning of §§ 950 ff. BGB (German Civil Code). (No obligation arises from this.) In this case, we shall be entitled to (co-)ownership of the items created by processing the goods subject to retention of title in the ratio of the goods subject to retention of title to the value of the new item at the time of processing. We shall also be entitled to pro rata co-ownership of the new item if goods of third parties are processed in addition to the goods subject to retention of title. If the purchaser resells the newly manufactured item, the purchaser hereby assigns to us by way of security the claim to which it is entitled from the sale in the amount of the value of the goods subject to retention of title.
- 6.8 We undertake to release the securities to which we are entitled at the purchaser's request insofar as their value exceeds the claims to be secured by more than 20%.
- 6.9 In case of breach of duty by the purchaser, in particular in case of default of payment, we are entitled to withdraw from the contract and to reclaim the goods subject to retention of title. The purchaser is obliged to their surrender. The reclaiming of the goods subject to retention of title or the assertion of the retention of title alone does not require a withdrawal. Nor shall it be deemed to be an implied declaration of withdrawal on our part unless we expressly declare that such actions are to be understood as withdrawal.
- ## 7. Terms of payment
- 7.1 Our invoices are regularly payable within 10 days of the date of invoice (as per invoice date) with a 2% cash discount or within 30 days without any deduction.
- 7.2 The deduction of a cash discount presupposes that the purchaser is not culpably in arrears with its other payment obligations and that the invoice amount is credited to our account within the agreed cash discount period.
- 7.3 Payment shall be deemed to have been made as soon as the amount is irrevocably at our disposal.
- 7.4 Payments by bill of exchange are also not accepted on account of performance. Collection charges for check payments shall be borne by the purchaser.
- 7.5 If the purchaser does not effect payment within the performance period, i.e. within 30 days of the invoice date, the purchaser shall be in default even without a reminder.
- 7.6 If the date of receipt of the invoice or payment schedule is uncertain, default shall occur no later than 30 days after the due date and receipt of the counter-performance.
- 7.7 If the purchaser is in default, we shall be entitled to demand interest on arrears from a purchaser who is not a consumer at the applicable statutory rate, without the purchaser being able to object to the fact that we have incurred only a lower interest loss or no interest loss at all. The right to claim further damages, e.g. in the event of the utilization of a higher current account credit on our part, shall remain unaffected by this.
- 7.8 Irrespective of separately agreed payment arrangements in individual cases, claims due to us shall become due immediately if circumstances arise in the person of the purchaser which make it unreasonable to adhere to payment arrangements made. This shall be the case in the event of justified indications of a significant deterioration in the purchaser's financial situation, in particular in the event of suspension of payments, protests against checks and bills of exchange or default in payment, if it becomes apparent that our claim to counter-performance is jeopardized by the purchaser's inability to meet its payment obligations. In such cases, we shall also be entitled to obtain performance concurrently or the provision of further securities. Furthermore, we shall be entitled to set a reasonable period of time within which the purchaser shall, at our discretion, effect counter-performance or provide security concurrently with performance. After unsuccessful expiration of the deadline, we are entitled to withdraw from the contract.
- 7.9 All claims shall also become due if an application is made to open insolvency proceedings against the purchaser's assets.

- 7.10 Within the scope of the warranty for defects, the purchaser may withhold payments after a justified complaint has been made only to an extent that is in reasonable proportion to the material defect that has occurred. In all other respects, the purchaser shall have no right of retention.
- 7.11 The purchaser shall only be entitled to offset counterclaims that are undisputed or have been legally established.

## 8. Warranty

- 8.1 The purchaser may not refuse acceptance of deliveries due to insignificant defects or excess or short deliveries to an insignificant extent (+/-10%).
- 8.2 Claims for defects shall not exist in the case of only insignificant deviation from the agreed quality and in the case of only insignificant impairment of usability, unless otherwise agreed between the contracting parties.
- 8.3 Furthermore, claims for defects shall not exist in the event of natural wear and tear and damage occurring after the transfer of risk as a result of:  
incorrect or negligent storage, installation or commissioning or other handling,
- excessive stress,
  - inadequate machining or processing,
  - when combining/ merging with unsuitable or insufficiently matched components (e.g. unsuitable sprockets),
  - external influences (e.g. weather or temperature influences) or physical, chemical or electrochemical treatment which are not assumed under the contract,
  - or due to improper modifications or repair work by the purchaser or a third party.
- 8.4 When ordering chains for sprockets of the Purchaser, Clause 2.5 shall apply. If the purchaser does not fulfill its obligation to provide the goods, incompatibility shall not constitute a defect.
- 8.5 The purchaser shall immediately inspect the goods delivered for their proper condition and notify us in writing of any obvious defects immediately upon receipt of the goods. For hidden defects, this period shall apply from the time of their discovery.
- 8.6 In the event of a justified notice of defect (i.e. in the event of material defects which or the cause of which already existed at the time of the transfer of risk), we shall be entitled, at our discretion, to rectify the defect (rectification of defects) or to make a subsequent delivery (replacement delivery).
- 8.7 If we deliver a defect-free item for the purpose of subsequent performance, the purchaser shall surrender the defective item to us. This shall apply mutatis mutandis to defective parts if these are replaced by defect-free parts within the scope of rectification.
- 8.8 The purchaser is only entitled to withdraw from the contract or to reduce the purchase price:
- if we are not able to rectify the defect or make a replacement delivery;
  - if we refuse rectification or subsequent delivery due to disproportionate costs;
  - if a delay in the rectification of defects or subsequent delivery for which we are responsible occurs beyond a reasonable period;
  - if the replacement delivery or rectification of defects fails twice.
- 8.9 Statutory rights of recourse of the purchaser against us exist only insofar as the statutory requirements (including the purchase of consumer goods) are fulfilled. Therefore, there shall also be no recourse claims, for example, if the purchaser has made agreements with its customer that go beyond the statutory defect claims within the scope of a warranty or as a gesture of goodwill.
- 8.10 Insofar as the statutory provisions on the sale of consumer goods, in particular with regard to liability under a right of recourse (in the absence of the statutory requirements) do not apply, a one-year warranty period shall apply. Legally binding longer periods remain unaffected.
- 8.11 The legal consequences of a breach of the commercial duty of inspection and notification of defects shall also remain unaffected.
- 8.12 In all other respects, Clause 9 shall apply to claims for damages. Further claims or claims other than those regulated in this clause and Clause 9 by the purchaser against us and our agents on account of a material defect are excluded.

## 9. Liability / compensation for damages

- 9.1 Claims for damages by the purchaser, irrespective of the legal grounds, in particular due to breach of duties arising from the contractual obligation and from tort, are excluded. This shall not apply insofar as a mandatory liability
- according to the product liability law,
  - for intentional or grossly negligent conduct,
  - due to injury to life, body or health,
  - or due to the violation of essential contractual obligations
- applies.
- 9.2 This shall not apply if a limitation is imposed for another reason:
- for intentional or grossly negligent acts;
  - due to injury to life, body or health is excluded.
- 9.3 Should the purchaser be entitled to claim subsequent performance from its customer or its customer's customer, the purchaser must provide us with the opportunity to carry out subsequent performance itself within a reasonable period of time before procuring "replacement" elsewhere. The purchaser shall impose this obligation on its customer accordingly. If the purchaser violates these obligations, we shall reserve the right to reduce the reimbursement of expenses to the amount that we would have incurred if we had performed the subsequent performance ourselves. The extended liability due to fraudulent intent or from a guarantee remains unaffected.
- 9.4 If the purchaser does not make use of its right towards its customer to refuse a certain type of subsequent performance or the subsequent performance itself due to disproportionate costs, the purchaser shall be in breach of its duty to mitigate damages. In this case, reimbursement of expenses is excluded to this extent.
- 9.5 The purchaser shall have no claim to compensation for expenses incurred in the course of subsequent performance (in particular transport, travel, labor and material costs) to the extent that expenses are increased because the delivery item was subsequently brought to another location (different from the delivery address), unless such transfer is in accordance with its intended use. This applies accordingly to recourse liability.
- 9.6 For claims for damages and reimbursement of expenses in connection with the defectiveness of the goods, the

binding limitation periods for these claims shall apply (cf. 8.10.).

- 9.7 The purchaser is expressly not released from the obligations according to § 377 HGB (German Commercial Code).
- 9.8 Test certificates according to EN 10204 and similar certificates do not imply any assurances or guarantees.
- 9.9 In case of arbitration, the testing facilities of Röttgers Ketten GmbH & Co. KG shall be authoritative, alternatively, in case of considerable differences, a neutral institute/testing laboratory selected by both contracting parties.

## 10. Miscellaneous

- 10.1 The purchaser is prohibited from assigning claims / receivables to which the purchaser is entitled against us.
- 10.2 We shall be entitled to process all data relating to the purchaser within the meaning of the BDSG (Federal Data Protection Act) which we receive from the purchaser itself or from third parties within the scope of or in connection with the business relationship.
- 10.3 If tools are produced by us or on our behalf for the manufacture or processing of goods specific to the purchaser, the tools shall in any case remain in our sole ownership, even if the purchaser has assumed pro rata tool costs in addition to or as part of the remuneration. The obligation to retain special tools expires at the latest three years after the last production with the tool.
- 10.4 Paragraph 10.3 shall apply accordingly to all tool documentation, in particular if it contains our special technical know-how or already protected copyrights or rights of use.
- 10.5 We reserve our unrestricted ownership and copyright exploitation rights to cost estimates, drawings and other documents (hereinafter referred to as "documents"). The documents may only be made accessible to third parties with our prior consent and must be returned to us immediately upon request if the contract is not awarded to us.
- 10.6 The legal relationship in connection with this contract shall be governed by German substantive law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.
- 10.7 The sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the court with local jurisdiction for our registered office.

10.8 Should any provision in these Terms and Conditions or any provision within the scope of other agreements be or become invalid, this shall not affect the validity of all other provisions or agreements. The same applies in the event of a regulatory loophole.

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