

Röhr + Stolberg GmbH

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Incorporated and registered in Germany with the commercial register at the
Local Court Krefeld, Germany, with HRB 1734

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VAT Identification Number: DE 120142715

Terms & Conditions

- A. **Applicability of the General Terms and Conditions of Röhr + Stolberg GmbH (R+S)**
- B. **Terms and Conditions of Purchase and Order**
- C. **General Terms and Conditions of Service**

A. Applicability of the General Terms and Conditions of R+S

A.1

- (1) These General Terms and Conditions (**T&Cs**) apply to all business relationships between **R+S** and their contractual partners. The T&Cs shall also apply if these T&Cs are not expressly referred to in future transactions in individual cases. Furthermore, the T&Cs only apply if the contractual partner is a trader (Section 14 of the German Civil Code (BGB)), a legal entity under public law or a special fund under public law.
- (2) In these T&Cs, the contractual partners are those partners who conduct business with **R+S** on the supplier and/or customer side.

A.2

- (1) Deviating, conflicting or supplementary General Terms and Conditions of the contractual partner shall only become part of the contract to the extent that **R+S** expressly agreed to their validity in writing. This requirement for consent also applies if the provider refers to its General Terms and Conditions in the context of the order confirmation and we do not expressly object to this.
- (2) Individual agreements made with the contractual partner in individual cases (including any side agreements, additions or amendments) shall in any case take precedence over the T&Cs. Provided that no counter-evidence is furnished, a written contract or the written confirmation of **R+S** shall be authoritative to the content of such agreements.

A.3

References to the applicability of statutory provisions have – as far as permissible – only clarifying significance. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these T&Cs in a permissible manner.

A.4

In different jurisdictions, words can have different meanings. In the event of any discrepancy between a foreign language version of these T&Cs and the German version of these T&Cs, the meaning of the German version of these T&Cs shall prevail.

B. Terms and Conditions of Purchase and Order

B.1 Contractual Content

B.1.01

Orders placed by **R+S** are exclusively governed by the Terms and Conditions of Purchase and Orders by **R+S**.

B.1.02

All orders placed and purchases made by **R+S** are processed exclusively on the basis of the statutory provisions - insofar as these Terms and Conditions of Purchase and Order do not regulate the issue.

B.1.03

- (1) Orders placed by us be considered binding upon written submission or confirmation by **R+S** at the earliest. The contractual partner must inform us of obvious errors (e.g. clerical and calculation errors) and incompleteness of the order, including the order documents, for the purpose of correction or completion in advance to acceptance; otherwise, the contract is deemed not to have been concluded.
- (2) The provider will confirm our order in writing within a period of one (1) week or execute it unconditionally by sending the goods (acceptance).
- (3) A delayed acceptance by the contracting party shall be considered a new offer and shall require acceptance by **R+S**.
- (4) Offers of the provider or other contractual partner of **R+S** shall require an explicit written acceptance by **R+S**.

B.1.04

The provider may not transfer the rights and obligations arising from this order to third parties without the written consent of **R+S**. This does not apply to the advance assignment of the purchase price claim in the context of an extended retention of title.

B.2 Prices

B.2.01

- (1) Unless otherwise agreed, the prices mentioned in the order are considered fixed prices. All prices are net prices. The applicable statutory value added tax is to be paid in addition to the net price.
- (2) The price covers all services and ancillary services that are necessary for the fulfilment of the contract. If the provider is also obliged to install the equipment, this is included in the fixed price, unless a special compensation is agreed. In particular, the agreed price covers packaging, transport and insurance costs, expenses, licence fees and all other ancillary costs and all public charges.

B.2.02

In the case of weight-based prices, the official weighing is decisive or, if such has not been performed, our own weight determination is decisive.

B.2.03

If orders are placed without a price or stating a provisional guideline price, **R+S** reserves the right to approve the price after receipt of the fixed price confirmation by the seller.

B.2.04

Any offers, consultations, demonstrations, provision of technical documents and sample deliveries by the provider are free of charge for **R+S**.

B.3 Delivery Time

B.3.01

The delivery time specified by us in the order is binding. If the delivery time has not been specified in the order and has not been otherwise agreed, it will be two (2) weeks from the conclusion of the contract. The provider must notify any recognisable delays in delivery – for whatever reason – immediately in writing.

B.3.02

- (1) If the contractual partner does not provide its service or does not do so within the agreed delivery time, or if he is in default, the rights of **R+S** – in particular to cure, rescission and damages – shall be determined in accordance with the statutory provisions. The provisions in B. 3.02 (2) remain unaffected.
- (2) If the contractual partner is in default, we can – in addition to further statutory claims – demand lump-sum compensation for our damage caused by default in the amount of 1% of the net price per completed calendar week, but in total not more than 5% of the net price of the goods delivered late. We reserve the right to prove that higher damage has occurred. The contractual partner reserves the right to prove that no damage at all or only significantly less damage has occurred.

B.3.03

In the event of a delay not attributable to the contractual partner and in cases of force majeure, **R+S** may withdraw from the contract, provided that the delay is not attributable to **R+S**, if the service is of no interest to **R+S** as a result of the delay and a reasonable additional period of time has elapsed.

B.3.04

Early deliveries, deliveries outside the goods receiving hours specified by **R+S**, as well as partial deliveries and advance deliveries require the explicit written consent of **R+S**.

B.3.05

Additional costs incurred due to non-compliance with instructions, incomplete or late delivery of requested shipping documents or incorrect delivery shall be borne by the supplier.

B.4 Shipping

B.4.01

All shipments must be accompanied by a packing slip or delivery note stating the date (issue and shipping), our order ID (date and number), as well as the content of the delivery (article number, quantity, weights and type of packaging). In addition, the delivery note must be sent to the purchasing department on the day of dispatch, as well as in digital form.

B.4.02

In addition to the article description, all shipping documents must contain the order number, the order date, the quantities and weights as well as the type of packaging.

B.4.03

Partial or remaining deliveries must be marked as such.

B.4.04

Until the complete handover to **R+S** or acceptance of the deliveries and services by **R+S**, the provider bears the risk of loss, accidental loss or damage, regardless of the pricing.

B.5 Drafts, Samples, etc.

B.5.01

Drawings, drafts, samples, plans, illustrations, tools, internal company data, manufacturing instructions, other documents – including in electronic form – that **R+S** has made available to the provider for the purpose of submitting an offer or for the execution of an order shall remain the intellectual property of **R+S** and may not be used, duplicated or made available to third parties for purposes other than the contractual service. After termination of the contract, these must be returned to us.

B.5.02

- (1) Drawings, drafts, samples, plans, illustrations, tools, internal company data, manufacturing instructions, other documents – including in electronic form – must be treated confidentially and must not be passed to third parties without the prior, explicit, written consent of **R+S**. This also applies after completion of the contract. The obligation of secrecy shall only expire when and to the extent that the knowledge contained in the documents provided has become generally known. Special non-disclosure agreements and legal regulations for the protection of secrets remain unaffected.
- (2) All employees or consultants who become aware of the above-mentioned documents and information must also be included in this obligation. Any use for a different purpose than the one agreed with **R+S** is not permitted. In the event of a violation, **R+S** reserves the right to take legal action, including the assertion of claims for damages.

B.5.03

All rights to apply for property rights to inventions contained in the documents and information remain with **R+S**.

B.5.04

By accepting or approving the drawings and samples submitted, **R+S** does not waive any warranty claims.

B.6 Warranty

B.6.01

- (1) For any rights in the event of material and legal defects of the goods (including incorrect and short delivery) and in the event of other breaches of duty by the provider, the statutory provisions and, exclusively in our favour, the following additions and clarifications shall apply.
- (2) According to the statutory provisions, the provider is liable in particular for ensuring that the goods have the agreed nature at the time of transfer of risk to us. In any case, those product descriptions which - in particular by designation or reference in our order - are subject of the respective contract or have been included in the contract in the same way as these T&Cs shall be considered an agreed nature. It makes no difference whether the product description comes from us, from the supplier or from the manufacturer.

B.6.02

All deliveries and services must comply with the safety and accident prevention regulations applicable for **R+S**, the provisions of the Act on the Provision of Products on the Market (German Product Safety Act, ProdSG) and the Act on Protection against Hazardous Substances (Chemicals Act, ChemG), the DIN regulations and the Workplace Ordinance, the necessary permits as well as the specifications, drawings and other information specified in the order and must be checked by the provider for this.

B.6.03

R+S's inspection and notification obligations for defects are based exclusively on Section 377 of the German Commercial Code (HGB) with the following proviso:

- (1) Our obligation to investigate is limited to defects that come to light during our incoming goods inspection under external inspection, including delivery documents (e.g. transport damage, incorrect and short delivery) or are recognizable during our quality control in a random sampling procedure.
- (2) If acceptance has been agreed, there is no obligation to inspect.
- (3) In addition, it depends on the extent to which an investigation is feasible after the proper course of business, considering the circumstances of the individual case. Our obligation to give notice for defects discovered later remains unaffected. Notwithstanding to our duty to inspect, our complaint (notification of defects) shall be deemed to be immediate and timely if it is sent within two (2) working days of discovery or, in the case of obvious defects, of delivery.

B.6.04

In addition, a warranty period of thirty (30) months from delivery applies to all defects.

B.6.05

In the event of replacement delivery or remedy of defects, the warranty period for the replaced or repaired parts begins to run anew. For the parts of delivery that could not remain in operation during the inspection of the defect and/or the elimination of defects, the current warranty or warranty period is extended by the period of the interruption of service.

B.6.06

In the event of material defects, **R+S** may assert the statutory claims at its own discretion.

B.6.07

- (1) If the supplier is responsible for product damage, he must indemnify **R+S** against claims by third parties to the extent that the cause is in his sphere of control and organisation and he himself is liable in the external relationship
- (2) As part of its indemnification obligation, the provider must reimburse expenses in accordance with Sections 683, 670 of the German Civil Code (BGB) that result from or in connection with a claim by third parties, including recalls carried out by us. We will inform the provider about the content and scope of recall measures – as far as possible and reasonable – and give him the opportunity to comment. Further statutory claims remain unaffected.
- (3) The provider must take out and maintain appropriate product liability insurance for personal injury/property damage.

B.6.08

In the event of default by the provider in remedying the defect or a replacement delivery, **R+S** shall be entitled to replace or repair defective parts at the provider's expense and to remedy any damage incurred or to have this work carried out by third parties at the provider's expense.

B.6.09

In urgent cases, **R+S** may carry out the rectification itself or have it carried out by a third party without the conditions for default being met, provided that prior notification and cure by the provider would not have been possible. The costs incurred as a result of this are borne by the provider. The right to withdraw or reduce or compensate for damages remains unaffected.

B.6.10

An important reason – in particular the existence of defects in a delivery or service of the provider – entitles **R+S** to withdraw from all contractual relationships with the provider that have the regular delivery of goods or the regular provision of services or works as their object.

Good cause exists in particular if there is a justified fear that defects in a supply or service will also have an impact on other supplies or services or will occur in the same way.

B.7 Payment

B.7.01

- (1) Payments of **R+S** are subject to subsequent auditing
 - within 14 days of complete delivery and service (including any agreed acceptance) and receipt of a proper invoice for payment with a 3% discount
 - or within 30 days without deduction.
- (2) In the case of bank transfer, payment is made on time if our transfer order is received by our bank before the payment period expires; we are not responsible for delays caused by the banks involved in the payment process.
- (3) We do not owe any interest on maturity. The statutory provisions apply to default in payment.
- (4) We are entitled to rights of set-off and retention as well as the defence of unperformed contract to the extent permitted by law. In particular, we are entitled to withhold payments as long as we are still entitled to claims against the provider for incomplete or defective services.
- (5) The provider shall have a right of set-off or retention only on the basis of legally established or undisputed counterclaims.

B.7.02

Invoices and payment requests must include the order number of **R+S** and the order date. A payment period only begins after the invoices and deliveries have been received in full by **R+S** and the ancillary obligations have also been fulfilled by the provider.

B.7.03

In the event of goods arriving early, the invoice will be valued to the delivery date contractually requested by **R+S**. The value date is considered the invoice receipt date.

B.7.04

In the event of defective goods or services or partial delivery in breach of contract, the invoice will be valued to the date of its freedom from defects or complete delivery. The value date is considered the invoice receipt date.

B.8 Place of Performance/Jurisdiction/Choice of Law

B.8.01

For both contracting parties, the place of performance and payment is the registered office of **R+S**.

B.8.02

For all disputes arising from or in connection with the contractual relationship between the contractual partner and **R+S**, the place of jurisdiction is Krefeld. In the above case, **R+S** is entitled to sue the contractual partner, also at its respective registered office. Overriding statutory provisions, in particular on exclusive competences, remain unaffected.

B.8.03

The law of the Federal Republic of Germany applies to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods (CISG).

C. General Terms and Conditions of Service

C.1. Conclusion of Contract

C.1.01

The following regulations apply when **R+S** provides supplies or services.

C.1.02

- (1) Our offers are subject to change and non-binding. This also applies if we have provided the buyer with catalogues, drawings, plans, illustrations, calculations, costings, cost estimates, references to DIN standards, other product descriptions or documents – also in electronic form – to which we reserve all property rights and copyrights.
- (2) The order of the goods by the buyer is considered a binding contractual offer. Unless otherwise stated in the order, we are entitled to accept this contractual offer within two (2) weeks of its receipt by us.
- (3) Acceptance can be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the buyer.
- (4) For the content of the respective contract, the written order confirmation of **R+S** is relevant, where appropriate in conjunction with the list of services drawn up by **R+S**.

C.1.03

- (1) Public statements that promote the products and services of **R+S** are only attributable to **R+S** if these statements originate from **R+S** or have been made on behalf of **R+S** or have been expressly authorised by **R+S** or if it is a matter of public statements by preceding links in the distribution chain within the meaning of Section 434 (3) no. 2 b) of the German Civil Code (BGB).
- (2) Exceptionally public statements do not have to be attributed to **R+S** if **R+S** did not know and did not have to know the public statements, or **R+S** corrected the public statements at the time of conclusion of the contract in the same or equivalent manner and regardless of whether the customer became aware of this correction or whether the public statements could not influence the customer's purchase decision.
- (3) A sufficient correction of the objective requirements within the meaning of Section 434 (3) of the German Civil Code (BGB) can in any case be made on the homepage of **R+S** at the address www.roehr-stolberg.de.

C.1.04

Property specifications attributable to **R+S**, which include dimensional information, are to be understood in accordance with the standards applicable to the respective material, i.e. they

apply with the tolerances specified in the corresponding standards. However, exceeding such tolerances does not automatically lead to the assumption of a defect.

C.2. Copyright / Software / Production Equipment / Continuation of Rights

C.2.01

The drafts, models, installation plans, disposition and other drawings, text templates etc. created by **R+S** remain the intellectual property of **R+S**, even if the customer has paid compensation for the work.

The right to exploit these objects and the intellectual achievements embodied in them is reserved exclusively to **R+S**.

C.2.02

R+S is entitled to affix its own company marks and trademarks. The customer is prohibited from removing such signs affixed by **R+S**.

C.2.03

The customer is liable for ensuring that the templates, drafts, plans, texts, trademarks and the like handed over by him may be lawfully exploited and indemnifies **R+S** against any claims by third parties due to the infringement of the corresponding intellectual property rights.

C.2.04

R+S has the sole copyright to the control software and other software that is delivered with the systems.

Only the simple right of use to the software is transferred, namely in the form that the software may be used exclusively for the operation of the individual system subject to the contract.

C.2.05

Any reproduction and other use of the software is unlawful.

C.2.06

Decompilation of the software is not permitted. If the customer requires interface information, **R+S** will disclose the interfaces of the software upon request. Only if **R+S** does not comply with this request within a reasonable period of time the customer is permitted to decompile the software parts necessary for this analysis for the purpose of interface analysis. A period of at least two (2) weeks is considered reasonable.

C.2.07

Unless otherwise agreed, any individual production equipment necessary for the production of the subject matter of the contract, such as templates, tools and likewise, shall and remain the property of **R+S**, even if the customer reimburses pro rata production equipment costs for the creation. In the absence of other agreements, this reimbursement of the cost of means of production reflects two thirds of the full cost of the means of production.

If an explicit exclusive purchasing right is agreed with the customer, the customer pays the full cost of the production equipment as well as the costs for replacement after wear and tear. In this case, ownership of the production equipment is transferred to the customer and is made available to **R+S** for the manufacture of products.

C.2.08

If a customer has only paid pro rata production equipment costs, he is not granted an exclusive purchasing right from the production equipment.

C.2.09

If a customer pays the full development and production costs, he is entitled to the ownership of the production equipment in derogation from the provision in C.2.07 and, by way of derogation from the provision in C.2.08, the exclusive right of purchase to the contractual objects manufactured from them.

C.2.10

C.2.03 shall apply mutatis mutandis to the development of production equipment carried out according to the customer's specifications, as **R+S** cannot check the information to determine whether it infringes the rights of third parties.

C.2.11

R+S will store production equipment within the meaning of Section C.2.07 that has not yet been worn out for a period of 2 years after an order in order to be able to reuse them for any reorders. There is no further storage obligation.

The above shall also apply in cases in which the customer has assumed the full development and manufacturing costs for the production equipment and does not collect the production equipment within a reasonable period of time after completion of the order and corresponding request from **R+S**.

C.3. Shipping / Assumption of Risk

C.3.01

The shipping method (in particular transport company, shipping route, packaging) is reserved for **R+S** unless a specific shipping method is expressly prescribed or has been agreed.

C.3.02

When the goods leave the **R+S** plant or warehouse, the customer assumes any risk. For sales shipment, this applies from the time of handover to the carrier (Section 447 (1) of the German Civil Code (BGB)). The delivery is only insured at the request of the customer. Any costs resulting from such insurance must be borne by the customer.

C.3.03

The risk transfers to the customer when the goods are handed over to the carrier, when the goods are announced that they are ready for shipment or that they are ready for delivery on the agreed delivery date.

C.4. Delivery Time

C.4.01

Delivery **time** is the generic term for delivery **dates** and delivery **periods**. Delivery **dates** refer to a point in time, be it a specific day or a calendar week or similar, on which delivery must take place. Delivery **periods** refer to the period within which a delivery must be made.

C.4.02

- (1) Any agreed delivery **periods** apply ex works, unless expressly agreed otherwise. Such delivery **periods** shall commence on the date provided for in the order confirmation, but not earlier than when the documents to be provided by the customer, permits, call-offs and shipping addresses have been obtained, all details of the order have been clarified, and the customer has made agreed to down payments or securities.
- (2) If a delivery **period** has been agreed, this shall be extended appropriately if the customer is in arrears with the provision of documents, permits, shipping address notifications, down payments or securities to be procured by him. The same applies if a delivery **date** has been agreed.
- (3) A corresponding deviation from delivery **dates** or extension of delivery times also takes place if the requirements for the **R+S** services to be rendered by the customer himself or through third parties are not available in time.

C.4.03

If the customer requests changes to the order after the order confirmation, the delivery period does not begin until the confirmation of the change by **R+S**. The delivery date will be postponed accordingly.

C.4.04

- (1) If we are unable to meet binding delivery periods for reasons for which we are not responsible (unavailability of the service), we will inform the buyer immediately and at the same time inform the buyer of the expected new delivery date. If the service is not available within the new delivery period, we are entitled to withdraw from the contract in whole or in part; we will immediately refund any consideration already provided by the buyer. Unavailability of the service exists, for example, in the event of non-timely self-delivery by our supplier, if we have concluded a congruent hedging transaction, in the event of other disruptions in the supply chain, for example due to force majeure or if we are not obliged to procure in individual cases.
- (2) The occurrence of our default of delivery is determined by the statutory provisions. In any case, however, a dunning letter and specification of a period of time must be set by the buyer. If we are in default of delivery, the buyer can demand lump-sum compensation for his damage caused by default. The lump-sum for damages amounts to 0.5% of the net price (delivery value) for each completed calendar week of default, but in total no more than 5% of the delivery value of the goods delivered late. We reserve the right to prove that the buyer has suffered no damage at all or only a significantly smaller damage than the above lump-sum.
- (3) The rights of the buyer under these T&Cs and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or cure), remain unaffected.

C.5. Partial Deliveries / Excess and Shortfall Quantities

C.5.01

R+S is entitled to deliver excess or short quantities of up to 8% customary in the industry upon delivery, without this being considered a breach of duty or defect.

Partial deliveries are also permissible to a reasonable extent for the customer.

C.5.02

If **R+S** makes use of the right of partial delivery or excess and short delivery, payments for goods already delivered cannot be withheld by the customer for this reason.

C.6. Prices

C.6.01

Unless otherwise agreed, the prices apply ex works or from stock, **excluding** packaging, customs duties for export deliveries, as well as fees and other public charges.

C.6.02

- (1) As far as packaging is required, **R+S** does the packaging in accordance with the existing regulations. The packaging will be invoiced at cost price.
- (2) Rental packaging remains our property. The return must be made within a reasonable period of time in perfect condition and, unless otherwise agreed, free.
- (2) The customer is entitled to return transport packaging to us at the place of dispatch of the goods at his own expense. The packaging must be cleaned, free of foreign substances and sorted according to different packaging materials.

C.6.03

The prices and costs are exclusive of the applicable statutory value added tax.

C.6.04

R+S's hourly rates and surcharges apply to every normal hour of travel, waiting and working. Travel hours are calculated without overtime surcharges. Travel times with motor vehicles, on the other hand, are considered normal working hours with overtime bonuses.

R+S charges a daily flat rate for board and lodging in Germany for each travel and working day. If an assembly or other customer service is continued after a weekend, **R+S** shall reimburse redemption or travel expenses for the weekend at **R+S's** discretion, unless otherwise expressly agreed. Holiday surcharges and triggers are also levied on local holidays.

Travel expenses are billed as follows: - Air travel: economy class - Rail travel: 1st class - Local transport: taxi and, if applicable, porters - Company-owned vehicles: Mileage allowance according to the **R+S** billing rates specified in the Annex.

On request, **R+S** will provide appropriate proof of release and travel expenses.

Should the cost and price elements specified in this clause change, **R+S** shall notify the customer within one (1) month in advance and provide the customer with the current basis of the present cost elements.

C.6.05

Travel hours and travel expenses for the return journey can only be entered on the employment certificates or timesheets after they have been completed.

C.6.06

If an assembly, commissioning, maintenance, repair or other service is delayed for reasons for which **R+S** is not responsible, the customer shall bear all costs arising therefrom, in particular waiting times and further travel costs and expenses incurred by **R+S** and subcontractors commissioned by **R+S** as a result of the delay.

C.6.07

The legal consequence referred to in Section C.6.06 shall only apply if the reasons for the delay are attributable to the client.

C.6.08

- (1) If we are unable to meet binding delivery periods for reasons for which neither **R+S**, nor the customer is responsible (unavailability of the service), we will inform the buyer immediately and at the same time inform him of the expected new delivery period. If the service is not available within the new delivery period, we are entitled to withdraw from the contract in whole or in part; we will immediately refund any consideration already provided by the buyer.
- (2) Unavailability of the service exists, for example, in the event of non-timely self-delivery by our supplier, if we have concluded a congruent hedging transaction, in the event of other disruptions in the supply chain, for example due to force majeure or if we are not obliged to procure in individual cases.
- (3) Force majeure means, for example, fire damage, floods, strikes and lawful lockouts, unexpected pandemics or epidemics, as well as operational disruptions or official orders for which the contracting party concerned is not responsible.
- (4) The contracting party concerned shall use its best endeavours to remedy the force majeure and limit its effects as far as possible.
- (5) Notwithstanding the foregoing, each party to the contract is entitled to withdraw from the orders affected by this if the force majeure lasts more than 2 (two) weeks from the agreed delivery date. The right of each party to the contract to terminate the contract for good cause in the event of prolonged force majeure remains unaffected. Irrespective of this, any negligence during the default is to be held responsible (Section 287 of the German Civil Code (BGB)). The contracting party is also liable for coincidence due to the performance, whereby this also includes force majeure, unless the damage would have occurred even if the performance had been made in time.

C.7. Terms of Payment

C.7.01

The provisions of the Value Added Tax Act apply to down payments.

C.7.02

Unless otherwise agreed, payments are due immediately.

C.7.03

Payments to be made to **R+S** are due at the latest ten (10) days after the invoice date. If this date is exceeded, the debtor defaults on payment.

C.7.04

The customer can only offset claims that are undisputed or have been legally established.

C.7.05

The customer has no right of retention, except in cases of C.7.04.

The customer's rights pursuant to Section 320 of the German Civil Code (BGB) shall also remain in force as long as and to the extent that **R+S** has not fulfilled its warranty obligations.

C.7.06

If, after the conclusion of the contract - if a declaration of intent by the customer is still required for the conclusion of the contract, after the last declaration of intent by **R+S** aimed at the conclusion of the contract - a significant deterioration occurs in the customer's financial situation, **R+S** may, at the discretion of **R+S** require advance payment or security for all services and deliveries still to be performed under contracts arising from the same legal relationship (Section 273 of the German Civil Code (BGB)). If the customer does not comply with this request, **R+S** may withdraw from these said contracts or, after setting a period of time, demand damages in lieu of performance, and without special proof 25% of the unexecuted order amount, unless the customer can prove a lesser damage.

Only if, by way of exception, there is an unusually high level of damage in the individual case, **R+S** can demand compensation for the damage exceeding the lump-sum, whereby the lump-sum is to be offset against this claim.

C.8. Duty to Inspect and Complain

C.8.01

The deliveries of **R+S**, including drawings, execution plans, project planning proposals and likewise, must be checked by the customer immediately upon handover for their usability and regularity.

C.8.02

Obvious defects must be reported in writing to **R+S** immediately, but no later than twelve (12) days after arrival at the destination, stating the specific complaints.

C.8.03

The customer must also report hidden defects in this form immediately after discovery.

C.9. Customer's Claims for Defects (Warranty)

Warranty in these T&Cs means: Claims for poor performance due to delivery of a defective item.

C.9.01

This is without prejudice to the limitation of liability in this Section **C.9.** the statutory provisions on the purchase of consumer goods (Sections 474 et seq. of the German Civil Code (BGB)) and the rights of the buyer from separately issued warranties, in particular on the part of the manufacturer pursuant to Section 479 of the German Civil Code (BGB), as well as the provisions on provider recourse pursuant to Sections 445a, 445b, 478 of the German Civil Code (BGB) remain.

C.9.02

If the customer does not comply with the requirements set out in section **C.8.** the liability of **R+S** for the defect that has not been reported is excluded.

C.9.03

The general limitation period for claims arising from material defects and defects of title is twelve (12) months from delivery or, if acceptance has been agreed, from acceptance.

The special statutory provisions on the statute of limitation (in particular Section 438 (1), no. 1, (3), Sections 444, 479 of the German Civil Code (BGB)) remain unaffected.

C.9.04

The limitation period of twelve (12) months also applies to contractual and non-contractual claims for damages based on a defect in the item, unless the application of the regular statutory limitation period (Sections 195, 199 of the German Civil Code (BGB)), would lead to a shorter limitation period in the individual case.

However, this shortening of the limitation period does not apply

- insofar as the cause of the damage is based on intent or gross negligence on the part of **R+S** or its representatives or by a person deployed to perform an obligation;
- in the event of damage resulting from injury to life, limb and health;
- in the event of default, provided that a fixed delivery date has been agreed;
- in the case of fraudulent concealment of a defect;
- if **R+S** assumes a guarantee and/or the procurement or manufacturer risk within the meaning of Section 276 of the German Civil Code (BGB);
- in cases of mandatory legal liability, in particular under the Product Liability Act.

A reversal of the burden of proof to the detriment of the customer is not associated with the above provisions.

C.9.05

If the warranty period is suspended or interrupted by work or replacement deliveries carried out by **R+S**, such suspension or interruption shall only extend to the functional unit affected by the replacement delivery or repair.

C.9.06

In the event that the customer has a right to cure, **R+S** shall first decide whether the cure will be fulfilled by remedying the defect (rectification) or by delivering a defect-free item (replacement delivery). If the type of cure chosen by us is unreasonable for the buyer in an individual case, he can reject it. The right to refuse cure under the statutory conditions remains unaffected.

C.9.07

R+S does not assume any warranty for components provided by the customer. The customer is solely responsible for the suitability and quality of such components, unless expressly agreed otherwise.

C.9.08

In the event of non-compliance with the operating and maintenance instructions by the customer, it is presumed that any damage incurred is due to this. In this case, the customer bears the burden of presentation and proof for the opposite.

C.9.09

R+S shall be entitled to fulfil cure on the customer paying the purchase price due. However, the customer is entitled to withhold a part of the purchase price that is appropriate in relation to the defect.

C.9.10

Work on goods delivered by **R+S** or other services provided by **R+S** shall only be considered work to remedy defects or rectify defects,

- insofar as the defectiveness has been expressly acknowledged by **R+S**
- or if notices of defects have been proven
- and to the extent that these proven complaints of defects are justified.

Without these conditions, such work is to be regarded as a special service.

C.9.11

In all other respects, repairs or replacement deliveries are also provided by **R+S** as special services if they are not expressly made in recognition of a legal obligation.

C.9.12

- (1) The expenses required for the purpose of testing and subsequent fulfilment, in particular transport, travel, labour and material costs (not: removal and installation costs), are generally borne by **R+S** if there is actually a defect. Otherwise, **R+S** demand reimbursement from the customer for the costs incurred as a result of the unjustified demand for the remedy of defects (in particular inspection and transport costs), unless the lack of defectiveness was not recognizable to the customer.
- (2) In the event that **R+S** systems supplied are installed or operated outside the customer's main place of business, even though the contract in question was concluded with a branch or head office of the customer located in Germany, the customer must bear the additional costs incurred by any **R+S** warranty measures to be provided, transport costs, travel costs and other expenses who crosses the borders of Germany.

C.9.13

The customer must give **R+S** the necessary time and opportunity to carry out repairs and replacement deliveries owed as a warranty. Only in urgent cases where operational safety is endangered and in order to avert disproportionately large damage or dangers, whereby **R+S** must be notified immediately – if possible in advance – or if **R+S** is in default with the remedy of a defect, the customer has the right to remedy the defect himself or through third parties and to remedy it by **R+S** reimbursement of the necessary costs. The right of self-remedy does not exist if we would be entitled to refuse a corresponding subsequent fulfilment in accordance with the statutory provisions.

C.9.14

If the subsequent fulfilment has failed or a reasonable period of time to be set by the customer for the subsequent fulfilment has expired without success (Section 323 (1) or Section 281 (1) of the German Civil Code) or is dispensable according to the statutory provisions (Section 323 (2) or Section 281 (2) of the German Civil Code (BGB)) or can be refused by **R+S** in accordance with Section 439 (3) of the German Civil Code (BGB) or is unreasonable for the customer, the customer can withdraw from the contract. However, in the event of an insignificant defect, there is no right of withdrawal.

C.9.15

The customer is only entitled to a reduction in the price if **R+S** agrees to this.

C.9.16

Claims by the customer for damages or reimbursement of futile expenses are also excluded in the case of defects in accordance with Section C.10.01 and only exist in the cases of Section C.10.02.

C.10. Other Liability

C.10.01

- (1) Unless otherwise stipulated in these T&Cs, subject to Section C.10.02, claims for damages and reimbursement of expenses by the customer against **R+S** are excluded, irrespective of the legal grounds. This applies in particular to claims for damages arising from tort (e.g. Section 823 of the German Civil Code (BGB)).
- (2) Insofar as liability is excluded or limited, this also applies to the personal liability of employees, representatives and vicarious agents of **R+S**.

C.10.02

The **limitation of liability** under Section 10.01 above does not apply

- insofar as the cause of the damage is based on intent or gross negligence on the part of **R+S** or its representatives or vicarious agents to perform an obligation;
- in the event of a culpable breach of material contractual obligations, in which case the compensation is limited to the damage typical of the contract that was foreseeable at the time of conclusion of the contract. Essential contractual obligations are those obligations that protect contractual essential legal positions of the contractual partner that the contract is specifically intended to grant it according to its content and purpose; furthermore, those contractual obligations are essential whose fulfilment is essential for the proper execution of the contract in the first place and on the compliance with which the customer has regularly relied and may rely;
- in the event of damage resulting from injury to life, limb and health;
- in the event of default, provided that a fixed delivery date has been agreed;
- in the case of fraudulent concealment of a defect;
- if **R+S** assumes a guarantee and/or the procurement or manufacturer risk within the meaning of Section 276 of the German Civil Code (BGB);
- in cases of mandatory legal liability, in particular under the Product Liability Act.

A shifting of the burden of proof to the detriment of the customer is not associated with the above provisions.

C.10.03

Due to a breach of duty that does not consist of a defect, the customer can only withdraw or terminate if **R+S** is responsible for the breach of duty. A free right of termination of the customer (in particular according to Sections 650, 648 of the German Civil Code (BGB)) is excluded. In all other respects, the legal requirements and legal consequences apply.

C.11. Call-off Orders

C.11.01

If call-off are not called off within four (4) weeks after expiry of the agreed call-off period, **R+S** is entitled to demand payment.

C.11.02

The same shall apply to call-off orders without a specially agreed call-off period if four (4) months have elapsed without a call-off since receipt of the notification from R+S of the readiness for dispatch.

C.12. Storage / Default in Acceptance

C.12.01

R+S is not obliged to insure goods in stock.

C.12.03

In the event of default of acceptance, **R+S** shall be entitled to store the goods at a commercial storage facility at the risk and for the account of the customer.

C.12.04

When stored at **R+S**, **R+S** can charge 0.5% of the invoice amount per month, but at least EUR 30, -- and a further EUR 25, -- from every second full cubic metre of goods per month. The customer reserves the right to prove that the claim has not arisen or has arisen in a lower amount.

C.12.05

The two preceding clauses shall also apply in the event that, at the request of the customer, shipment is delayed for more than two (2) weeks beyond the indicated readiness for shipment.

C.12.06

If the customer does not accept the ordered goods despite setting a period of time, **R+S** shall be entitled to demand 25% of the agreed price as lump-sum compensation, regardless of the proof of the actual damage, unless the customer can prove that there is no or only minor damage.

C.13. Retention of Title

C.13.01

All deliveries by **R+S** are subject to retention of title.

C.13.02

This reservation together with the following extension shall apply until all receivables arising from the business relationship with the customer have been paid and until the complete release from contingent liabilities that **R+S** has entered into in the interest of the customer, and which are related to the delivery.

C.13.03

Pledging of the delivered items is not permitted.

C.13.04

R+S shall be entitled to demand the return of its goods subject to retention of title and/or to withdraw from the contract in the event of good cause, in particular in the event of default of payment, against crediting of the proceeds of the realisation. The mere demand does not constitute a withdrawal from the contract. Rather, **R+S** is entitled to demand only the return of the goods and to reserve the right to withdraw.

C.13.05

If and to the extent that the returned goods can be sold by **R+S** as new in the normal course of business, the customer owes 10% of the invoice value of the goods as redemption costs without further proof. If a sale as new is not possible in the normal course of business, the customer owes a further 30% of the value of the invoice for loss of value without further proof. The customer reserves the right to prove a lower percentage.

C.13.06

R+S reserves the right to assert another, more extensive damage.

C.13.07

The treatment and processing of the goods delivered by **R+S** is always carried out on behalf of **R+S**, so that the goods remain the property of **R+S** in every state of processing and also as finished goods, to the exclusion of the consequences of Section 950 of the German Civil Code (BGB). If the goods subject to retention of title are processed with other items also delivered to the exclusion of the legal consequences of Section 950 of the German Civil Code (BGB), **R+S** shall at least acquire co-ownership of the new item in the ratio of the invoice value of the goods from **R+S** to the invoice value of the other processed items.

C.13.08

The customer hereby assigns in advance all claims arising from the resale, processing, installation and other utilization of the goods from **R+S** to **R+S**. Insofar as the products sold, processed or installed by the customer contain items that are not the property of the customer and for which other providers have also agreed on retention of title with a sale clause and advance assignment, the assignment shall be made in the amount of **R+S**'s co-ownership share, which corresponds to a fraction of the claim, otherwise in full.

C.13.09

The direct debit authorization remaining to the customer despite assignment expires by revocation permissible at any time.

C.13.10

If the value of the collateral to which **R+S** is entitled exceeds **R+S**'s claim against the customer by 50% in the case of deliveries of goods and by 20% in the case of other services, **R+S** shall be obliged, at the latter's request, to release a corresponding amount of collateral at **R+S**'s discretion.

C.14. Place of Performance and Performance

C.14.01

The place of performance and performance for the services to be provided by **R+S** is always the premises of **R+S**. This also applies if **R+S** takes over the transport itself.

C.14.02

The place of performance and performance for all services to be provided by the customer is the registered office of **R+S**, i.e. Krefeld.

C.15. Definitions

C.15.01

All headings in the **R+S** General Terms and Conditions are only intended to make them easier to read and shall not affect the meaning and interpretation of the individual regulations.

C.15.02

Declarations of intent and knowledge transmitted in text form (e.g. by fax or e-mail) are deemed written declarations of intent and knowledge within the meaning of the **R+S** General Terms and Conditions.

C.16. Place of Jurisdiction and governing Law

C.16.01

For all disputes arising from or in connection with the contractual relationship between the customer and **R+S**, the place of jurisdiction is Krefeld.

In the above case, **R+S** is entitled to sue the contractual partner, also at its respective registered office.

C.16.02

The law of the Federal Republic of Germany applies to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods (CISG).

Requirements and effects of retention of title pursuant to **C.13.** are subject to the law of the respective location of the item, insofar as the choice of law made in favour of German law is inadmissible or invalid thereafter.

C.17. Final Provision

Should a provision of these Terms and Conditions or a provision subsequently incorporated into them be or become invalid, void or unenforceable in whole or in part, or should a gap in these Terms and Conditions or their supplements become apparent, this shall not affect the validity of the remaining provisions. Section 306 (2) and (3) of the German Civil Code (BGB) shall remain unaffected by this.

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