

Röhr + Stolberg GmbH

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General Terms and Conditions

- A. Applicability of the General Terms and Conditions of Röhr + Stolberg GmbH (R+S)
- B. Conditions of purchase and order
- C. General Terms and Conditions for Services

Special clause concerning the German Federal Data Protection Act (BDSG):

Our contracting partners authorise us to store and process personal data in accordance with the German Federal Data Protection Act (BDSG) to the extent required for the performance of the contractual relationship without extra notice.

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

A.1

These Terms and Conditions shall apply to all business relationships between **R+S** and its contracting partners, even if specific reference to the Terms and Conditions is no longer made in individual transactions, provided that the contracting partner is an entrepreneur (Section 14 of the German Civil Code (BGB)), a legal entity under public law or a fund under public law.

In these Terms and Conditions, the term "contracting partners" refers to partners that conduct business with **R+S** as providers and/or customers.

A.2

These Terms and Conditions apply at all times and exclusively. Deviating, conflicting or supplementary general terms and conditions of the contracting partner shall become part of the contract only if and insofar as **R+S** has expressly approved their applicability in writing.

Individual agreements with the contracting partner that are made in individual cases (including side agreements, supplements and amendments) shall always have priority over these Terms and Conditions. Provided that no counter-evidence is furnished, a written contract or the written confirmation of **R+S** shall be authoritative as far as the content of such agreements is concerned.

A.3

References to the applicability of statutory regulations only have clarifying significance. Thus, statutory regulations apply even without such clarification, provided they are not directly modified or expressly excluded in these Terms and Conditions.

A.4

In different legal systems, the same words can have different meanings. In foreign language, i.e. other than German, versions of these General Terms and Conditions, the respective German legal meaning of the words in question shall be controlling.

B. Conditions of purchase and order

B.1 Subject Matter of the Contract/Prohibition of Assignment

B.1.01

The engagement and purchase orders placed by **R+S** shall be governed exclusively by the Conditions of purchase and order of **R+S**.

B.1.02

Unless otherwise specified in these Terms and Conditions, all engagement orders placed and purchases performed by **R+S** shall be settled **exclusively** on the basis of the statutory regulations.

B.1.03

Offers of the supplier or other contracting partner of **R+S** are subject to express written acceptance by **R+S**.

B.1.04

The supplier is not permitted to transfer the rights and obligations from this purchase order to third parties without the written approval of **R+S**. This does not apply to the advance assignment of the purchase price claim within the scope of an extended retention of title.

B.2 Prices

B.2.01

Unless otherwise agreed, the quoted prices are fixed prices. The price covers all services required for the fulfilment of the contract. In particular, the agreed price covers the packaging, transport, insurance, charges, royalties and public dues except for the value-added tax. If the supplier is also under the obligation to perform the installation, this shall be included in the determined price, unless extra remuneration is agreed.

B.2.02

In the case of weight-based prices, the official weighing or, if such has not been performed, our weight determination shall be authoritative.

B.2.03

If orders are placed without a price or with a price indication, **R+S** reserves the right to approve the price upon receipt of the confirmation.

B.2.04

The offers, guidance, demonstrations, technical documents, and sample deliveries of the suppliers are free of charge for **R+S**.

B.3 Delivery Time

B.3.01

The supplier shall promptly communicate any expected delivery delays.

B.3.02

If the supplier is in arrears with his performance, **R+S** may either request supplementary delivery or rescind the contract after granting a reasonable grace period.

In both cases, **R+S** reserves the right to assert damages.

B.3.03

In the case of a delay for which the supplier is not responsible and in cases of force majeure, **R+S** may – insofar as **R+S** is not responsible for the delay – rescind the contract if the performance is of no interest to **R+S** due to the delay and a reasonable grace period has passed.

B.3.04

Early deliveries, deliveries outside the goods receiving hours specified by **R+S** as well as partial deliveries and advance deliveries are subject to the express written consent of **R+S**.

B.3.05

Additional costs resulting from non-compliance with instructions, incomplete or late delivery of requested shipping documents or faulty delivery shall be borne by the supplier.

B.4 Shipment

B.4.01

A packing slip or delivery note shall be enclosed with all shipments. Moreover, advice of shipment shall be sent to the purchasing department and to the specified destination address on the date of shipment.

B.4.02

Apart from the item designation, all shipping documents must indicate the number and date of the purchase order, the quantities and weights as well as the type of packaging.

B.4.03

Partial deliveries or deliveries of remaining goods shall be designated as such.

B.4.04

Until the complete handover to **R+S**/acceptance of the deliveries and services by **R+S**, the supplier shall, irrespective of the pricing, bear the risk of loss, incidental destruction or damage.

B.5 Drafts, Samples, Etc.

B.5.01

Drawings, drafts, samples etc. that **R+S** makes available to the supplier for the purpose of making an offer or performing a purchase order remain intellectual property of **R+S** and shall not be used for any other purposes, duplicated or made accessible to third parties.

B.5.02

These documents shall be treated as confidential and shall not be forwarded to any third parties without the prior express written approval of **R+S**. This obligation shall also be imposed on all employees who gain knowledge of the said documents and information. The use for any purpose other than the purpose agreed with **R+S** is not permitted.

B.5.03

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

B.5.04

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

B.6 Warranty

B.6.01

The contracting partner of **R+S** shall provide a warranty and pay damages in the statutory scope and for the statutory period. Apart from this, the regulations in section B.6 shall apply.

B.6.02

All deliveries and services must fully comply with the safety and accident prevention regulations applicable for **R+S**, including but not limited to the regulations of the German Product Safety Act (ProdSG) and of the German Chemicals Act (ChemG), the DIN regulations and the German Workplace Ordinance (ArbStättV), the required permits as well as the specifications, drawings and other details, and shall be reviewed by the supplier for compliance.

B.6.03

The inspection and reporting obligations of **R+S** for defects are governed exclusively by Section 377 of the German Commercial Code (HGB).

B.6.04

Apart from this, all defects shall be covered by a warranty for two years from the delivery.

B.6.05

In the event of replacement delivery or elimination of defects, the warranty period shall begin anew for the replaced or rectified parts. For supplied parts that could not remain in operation during the inspection of the defect and/or the elimination of defects, the current guarantee/warranty period shall be extended by the duration of the operational disruption.

B.6.06

In the events of defects in quality, **R+S** may assert the statutory claims at its own discretion.

B.6.07

Insofar as the supplier is responsible for the error, he shall indemnify **R+S** against the manufacturer liability claims of the buyers of **R+S**, which the buyers of **R+S** are entitled to against **R+S**.

B.6.08

In the event of delay of the supplier in connection with the elimination of defects or replacement delivery, **R+S** may replace or repair defective parts at the expense of the supplier and eliminate any damage incurred or have this work done by third parties at the expense of the supplier.

B.6.09

In urgent cases, **R+S** may perform the rectification directly or through a third party even if the conditions for default are not on hand, in case prior notification of and supplementary performance by the supplier would not have been possible. The supplier shall bear the costs incurred. The right to rescission, reduction or damages remains unaffected.

B.6.10

In the event of good cause – including but not limited to errors in the deliveries or services of the supplier – **R+S** shall be entitled to rescind all contractual relationships with the supplier for the regular supply of goods or the regular performance of work or services.

Good cause is presented especially if there are justified fears that errors or defects of delivered goods or services could also affect other deliveries or services or could occur in the same way in other deliveries or services.

B.7 Payment

B.7.01

Subject to the condition that the invoice will be reviewed later on, payments of **R+S** are made

- within 14 days of the receipt of the invoice less 3 % cash discount
- or within 30 days with no discount.

B.7.02

Invoices and payments requests must contain the number and date of the purchase order of **R+S**. Any payment period shall begin only after the invoices and deliveries have arrived at **R+S** in their entirety and any ancillary obligations of the supplier have been fulfilled.

B.7.03

If goods arrive prematurely, the invoice shall be valued as of the delivery date contractually requested by **R+S**. This value date will be deemed to be the date of receipt of the invoice.

B.7.04

In the case of defective goods or performance or partial delivery in breach of the contract, the invoice shall be valued as of the date of flawlessness/complete delivery. This value date will be deemed to be the date of receipt of the invoice.

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

B.8.01

The domicile of **R+S** shall be the place of performance and payment for both parties.

B.8.02

The courts of Krefeld, Germany, shall have jurisdiction over all disputes from or in connection with the contractual relationship between the contracting partner and **R+S**.

In the aforesaid case, **R+S** may also bring action against the contracting partner at his domicile.

B.8.03

The laws of the Federal Republic of Germany shall apply, under exclusion of uniform law, including but not limited to the UN Convention on Contracts for the International Sale of Goods (CISG).

C. General Terms and Conditions for Services

C.1. Order Confirmation/Contract

C.1.01

The following regulations shall apply if **R+S** delivers goods or performs services.

C.1.02

The written order confirmation of **R+S** – in connection with any list of services prepared by **R+S** – shall be authoritative for the content of the respective contract.

C.1.03

Information on characteristics of the products and services of **R+S** shall be attributable to **R+S** only if this information originates from **R+S**, is provided by express order of **R+S** or is expressly authorised by **R+S** or **R+S** knew or had to know this information and has not disclaimed it within a reasonable period. Assistants of **R+S** in the meaning of Section 434 (1) of the German Civil Code (BGB) do not include authorised dealers and customers of **R+S** who act as resellers. Adequate correction of information on characteristics in the meaning of Section 434 (1) of the German Civil Code (BGB) may in any case be made on the home page of **R+S** at the URL www.roehr-stolberg.de.

C.1.04

Information on characteristics that is attributable to **R+S**, which contains measurable values, shall be interpreted under consideration of the standards applicable to the respective material, i.e. subject to the tolerance limits determined in such standards. However, surpassing of such tolerance limits does not automatically result in the assumption of a defect.

C.2. Permanent Rights/Copyright/Software/Manufacturing Equipment

C.2.01

The drafts, models, setup plans, general arrangement drawings and other drawings, text templates, etc. prepared by **R+S** shall remain intellectual property of **R+S** even if the customer has paid compensation for the work.

The right to utilise these goods and the intellectual properties they embody are exclusively reserved to **R+S**.

C.2.02

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

C.2.03

The customer is liable for ensuring that the templates, drafts, plants, texts, trademarks etc. provided by him may be legally utilised and indemnifies **R+S** against any and all third-party claims due to the breach of such intangible property rights.

C.2.04

R+S holds the sole copyright to the control software and other software delivered with the systems.

Only the non-exclusive right to use the software is granted in that the software may be used exclusively for the operation of the individual system constituting the subject matter.

C.2.05

It is unlawful to duplicate the software or use it in any other way.

C.2.06

Decompiling the software is not permitted. If the customer needs interface information, **R+S** will, on request, disclose the interfaces of the software. Only if **R+S** does not comply with this request within a reasonable period, the customer may, for the purpose of analysing the interface, decompile the software parts required for this analysis. "Reasonable" means a period of at least two weeks.

C.2.07

Any manufacturing equipment required for the production of the subject matter, such as templates, tools etc. shall – unless otherwise agreed – become and remain property of **R+S**, even if the customer pays pro-rata compensation for the creation of such. Unless otherwise agreed, pro-rata costs in this context reflect a share of two thirds of the full costs of the manufacturing equipment.

C.2.08

If a customer has only paid pro-rata manufacturing equipment costs, he will not be granted any exclusive procurement right from the manufacturing equipment.

C.2.09

If a customer pays the full development and production costs, he shall, notwithstanding C.2.07, be entitled both to the property right to the manufacturing equipment and, notwithstanding C.2.08, to the exclusive procurement right to the subject matter manufactured with such.

C.2.10

C.2.03 shall apply analogously to the development of manufacturing equipment, as **R+S** cannot check whether the information infringes any third-party rights.

C.2.11

R+S will keep manufacturing equipment in the meaning of section C.2.07, which is not yet worn out, for a period of two years after an order in order to be able to reuse it for any subsequent purchase orders. No further storage obligation exists beyond this.

The aforesaid shall apply even in cases in which the customer has borne the full development and product costs for the manufacturing equipment and does not collect the manufacturing equipment upon completion of the order and after being requested by **R+S** to do so.

C.3. Shipment/Risk

C.3.01

Unless a specific mode of shipment is required, **R+S** reserves the right to choose a mode of shipment.

C.3.02

The customer assumes all risks as soon as the goods leave the works or the warehouse of **R+S**. Insurance will only be taken out at the request and at the expense of the customer.

C.3.03

The risk passes to the customer upon handover of the goods to the forwarder, upon notice of the readiness for shipment or as of the readiness on the agreed delivery date.

C.4. Delivery Time

Delivery **dates** refer to a point in time, e.g. a specific day or calendar week on which the delivery is to be made.

Delivery **periods** refer to the period within which a delivery must take place.

Delivery **time** is the generic term for delivery **dates** and delivery **periods**.

C.4.01

Unless expressly agreed otherwise, any agreed delivery **periods** shall apply ex works. Such delivery **periods** shall begin as of the time provided for in the order confirmation, at the earliest when the documents, permits, call-offs and shipment addresses to be provided by the customer are on hand, all details of the order have been clarified and the customer has made any agreed down-payments or furnished any agreed collateral.

If a delivery **period** has been agreed, it shall be duly extended if the customer is in arrears with the provision of any documents, permits, shipment address notifications, down-payments or collateral to be furnished by him. The same shall apply if a delivery **date** has been agreed.

The postponement of delivery **dates** or the extension of delivery **periods** shall also take place if the preconditions for the services to be performed by **R+S**, which must be fulfilled directly by the customer or by third parties, are not fulfilled in due time.

C.4.02

If the customer requests changes to the order after the order confirmation, the delivery **period** shall begin only upon confirmation of the change by **R+S**. The delivery **date** shall be postponed accordingly.

C.4.03

The performance **period** shall be duly extended in the event of occurrence of unforeseen hindrances that **R+S** cannot avert despite the exercise of the diligence that can reasonably be expected under consideration of the circumstances of the case, e.g. total or partial unavailability of sub-contractors for which **R+S** is not responsible. In such a case, **R+S may rescind the contract**.

C.4.04

For **R+S** to come into default of delivery, a reminder of the customer is required in any case.

C.5. Partial Deliveries/Excess and Shortfall Quantities

C.5.01

In the case of delivery of uncountable goods, **R+S** shall be entitled to deliver common surplus or shortfall quantities of up to 10 % without this automatically being considered as a breach of obligations or defect.

Partial deliveries are also permissible to an extent that the customer can reasonably be expected to accept.

C.5.02

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

C.6. Prices

C.6.01

Unless otherwise agreed, the prices are quoted ex works/warehouse, **exclusive** of packaging.

C.6.02

If packaging is required, **R+S** will package the goods according to the existing regulations and proceed according to Section 4 of the German Packaging Ordinance (VerpackV).

C.6.03

The prices and costs are subject to the applicable value-added tax.

C.6.04

The hourly rates, premiums etc. of **R+S** apply to every normal hour of travel, waiting and work on the basis of the respective standard weekly working hours according to the collective labour agreement. Travel hours will be billed without overtime premiums. However, driving times with motor vehicles will be treated as normal working times with overtime premiums.

R+S will bill the accommodation costs (food and lodging in Germany) for every day of travel and work. If the installation or other customer service continues after a weekend, accommodation costs or travel costs shall be paid at the discretion of **R+S**, unless expressly agreed otherwise. Holiday premiums and accommodation costs will also be charged for on local holidays.

Travel costs shall be settled as follows: - Flight tickets: Economy class - Railway tickets: 1st class - Urban transport: Taxi and porter, if necessary - Company car: Mileage allowance according to the applicable rates of **R+S**.

C.6.05

The travel time and expenses for the return trip can only be entered on the work certificates or time reports upon completion.

C.6.06

The billing rates of **R+S** as specified in section C.6.04 are based on the wage, salary and working time rates applicable at the time. In case the latter are changed, **R+S** reserves the right to

adjust the billing rates accordingly. On request, the billing rates applicable at the time will be communicated to the customer upon first demand.

C.6.07

If an installation, commissioning, maintenance, repair or other service is delayed for reasons outside the sphere of **R+S**, the customer shall bear all resulting costs, including but not limited to waiting times and further travel costs and expenses of the staff deployed by **R+S** and of sub-contractors engaged by **R+S**, which are incurred due to the delay.

C.6.08

The legal consequence mentioned in section C.6.07 shall apply only if the customer is responsible for the reasons for the delay.

C.7. Terms of Payment

C.7.01

Down-payments are subject to the provisions of the German Value-Added Tax Act (UStG).

C.7.02

Unless otherwise agreed, payments shall be due immediately.

C.7.03

Payments to be made to **R+S** are due within 10 days of the invoice date. After this time, the debtor will be in default of payment.

C.7.04

The customer may only offset undisputed or legally established claims.

C.7.05

Except in cases of C.7.04, the customer does not have any right of retention.

The customer's rights pursuant to Section 320 of the German Civil Code (BGB) shall remain unaffected if and to the extent that **R+S** has not complied with its warranty obligations.

C.7.06

Should the customer's financial situation deteriorate significantly after the conclusion of the contract or – if the customer's declaration of intent is required for the conclusion of the contract – after the last declaration of intent of **R+S** with a view to the conclusion of the contract, **R+S** may, at its own discretion, demand advance payment or collateral for all deliveries and services still to be performed under the same legal relationship (Section 273 of the German Civil Code (BGB)). If the customer does not comply with this demand, **R+S** may rescind the said contracts or, after determining a specific period, claim damages instead of the performance in the amount of 25 % of the order total not executed, provided that the customer does not furnish evidence of less damage.

Only if, by way of exception, an unusually high damage is on hand in the individual case, **R+S** may demand compensation for the damage that exceeds the lump sum; the lump sum shall be offset against this claim.

C.8. Inspection and Defect Notification Obligation

C.8.01

Upon handover, the customer shall without delay inspect the deliveries of **R+S**, including drawings, implementation plans, project proposals etc., for their operability and correctness.

C.8.02

Obvious defects shall be reported in writing to **R+S** without delay, at the latest within 12 days of the arrival at the destination, specifying the exact complaints.

C.8.03

The customer shall also report concealed defects in this form without delay upon discovery.

C.9. Claims of the Customer for Defects (Warranty)

Warranty in the context of these Terms and Conditions means: Claims for deficient performance due to delivery of defective goods.

C.9.01

Notwithstanding the limitation of liability in this section **C.9.**, the special statutory regulations for the final delivery of the goods to a consumer remain unaffected (supplier recourse pursuant to Sections 478, 479 of the German Civil Code (BGB)).

C.9.02

If the customer does not comply with the inspection and reporting obligations according to section **C.8.**, **R+S** shall not be liable for any defects not reported.

C.9.03

The general limitation period for claims due to defects in quality and title is **12 months** from the delivery or, if an acceptance has been agreed, from the acceptance.

The special statute of limitation remains unaffected (especially Section 438 (1) no. 1, (3), Sections 444, 479 of the German Civil Code (BGB)).

C.9.04

The limitation period of 12 months shall also apply to contractual and extracontractual claims for damages based on a defect of the goods.

However, this shortened period of limitation shall not apply

- if the damage was caused by intent or gross negligence of **R+S** or its representatives or agents;
- in the case of damage from injury to life, body and health;
- in the event of a delay, if a fixed delivery date has been agreed;
- if a defect is maliciously concealed;
- if a guarantee has been provided and/or the risk of procurement or manufacturing in the meaning of Section 276 of the German Civil Code (BGB) has been assumed by **R+S**;
- in cases of mandatory statutory liability, especially according to the German Product Liability Act (ProdHaftG).

The aforesaid regulations do not involve any change of the burden of proof to the disadvantage of the customer.

C.9.05

If the warranty period is suspended or interrupted due to work performed or replacement deliveries by **R+S**, such a suspension or interruption shall only apply to the functional unit affected by the replacement delivery or rectification.

C.9.06

In case the customer has a right to supplementary performance, **R+S** will first decide whether the supplementary performance is to take place through elimination of the defect (rectification) or through delivery of flawless goods (replacement delivery). The right to refuse supplementary performance under the statutory conditions remains unaffected.

C.9.07

R+S does not provide any warranty for components supplied by the customer. Unless expressly agreed otherwise, the customer alone shall be responsible for the suitability and properties of such components.

C.9.08

In the event of the customer's non-compliance with the operating and maintenance instructions, it will be assumed that any damage incurred is the result of this. In this case, the burden of explanation of proof that this is not the case lies with the customer.

C.9.09

R+S may make the supplementary performance conditional upon the payment of the due purchase price by the customer. However, the customer may withhold a portion of the purchase price that is reasonable in proportion to the defect.

C.9.10

Work on goods delivered by **R+S** or on other services performed by **R+S** will only be considered as defect elimination or rectification work

- **if** the defectiveness has been expressly recognised by **R+S**
- **or if** defect reports have provably been submitted
- **and if** these provable defect reports are justified.

If these conditions are not met, such work shall be considered as extra performance.

C.9.11

Apart from this, rectification work or replacement deliveries of **R+S** will be rendered as extra performance, unless such expressly takes place in recognition of a legal obligation.

C.9.12

As a matter of principle, the expenses required for the inspection and supplementary performance, including but not limited to transport, road, work and material costs (not: disassembly and installation costs) will be borne by **R+S** if a defect is actually on hand. Otherwise, **R+S** may demand reimbursement of the costs incurred from the unjustified defect elimination request (including but not limited to inspection and transport costs), unless the non-existence of the defect was not obvious to the customer.

In case systems delivered by **R+S** are set up or operated outside the customer's headquarters despite the fact that the respective contract was concluded with a subsidiary or head office of the customer in Germany, the customer shall bear the additional costs that may arise because any warranty measures to be performed by **R+S** result in transport costs, travel costs and other overhead that exceed the limits of Germany.

C.9.13

The customer shall give **R+S** the needed time and opportunity to perform the rectification and replacement deliveries owed under the warranty. The customer may only eliminate the defect directly or through third parties and demand reimbursement of the incurred costs from **R+S** in urgent cases that threaten the operational safety, to avert disproportionately high damage or if **R+S** is in default of the elimination of a defect; in this case, **R+S** shall be informed immediately (if possible in advance).

C.9.14

If the rectification has failed or if a reasonable period determined by the customer for the rectification has passed without success (Section 323 (1) or Section 281 (1) of the German Civil Code (BGB)) or is not necessary according to the statutory regulations (Section 323 (2) or Section 281 (2) of the German Civil Code (BGB)) or may be refused by **R+S** pursuant to Section 439 (3) of the German Civil Code (BGB) or is unacceptable to the customer, the customer may rescind the contract. However, no right of rescission shall apply in the case of a minor defect.

C.9.15

The customer shall only have a right to reduction of the price if **R+S** agrees to this.

C.9.16

Claims of the customer for damages or compensation of expenses made in vain are excluded even in the case of defects according to section C.10.01 and shall only exist in the cases of section C.10.02.

C.10. Other Liability

C.10.01

Unless provided otherwise in these General Terms and Conditions and subject to section C.10.02 below, any claims of the customer for damages and compensation of expenses against R+S are excluded, regardless of what the legal basis may be. In particular, this also applies to tort claims (e.g. Section 823 of the German Civil Code (BGB)).

Insofar as the liability is excluded or limited, this also applies to the personal liability of the employees, staff members, representatives and agents of R+S.

10.02

The limitation of liability according to the preceding section 10.01 shall not apply

- if the damage was caused by intent or gross negligence of **R+S** or its representatives or agents;
- in the case of culpable breach of material contractual obligations, in which case the

damages shall be limited to the damage typical for the contract, which is foreseeable at the conclusion of the contract. Material contractual obligations are obligations that protect legal positions of the contracting partner that are material to the contract, which the contract must grant him under consideration of its content and purpose as well as contractual obligations whose fulfilment is essential to the due performance of the contract, compliance with which the customer has regularly relied on and may rely on;

- in the case of damage from injury to life, body and health;
- in the event of a delay, if a fixed delivery date has been agreed;
- if a defect is maliciously concealed;
- if a guarantee has been provided and/or the risk of procurement or manufacturing in the meaning of Section 276 of the German Civil Code (BGB) has been assumed by **R+S**;
- in cases of mandatory statutory liability, especially according to the German Product Liability Act (ProdHaftG).

The aforesaid regulations do not involve any change of the burden of proof to the disadvantage of the customer.

C.10.03

In the case of a breach of an obligation that does not consist of a defect, the customer can only rescind or terminate the contract if **R+S** is responsible for the breach of the obligation. An unlimited right of termination of the customer (especially pursuant to Sections 651, 649 of the German Civil Code (BGB)) is excluded. Apart from this, the statutory conditions and legal consequences shall apply.

C.11. Call-off Orders

C.11.01

If call-off orders are not called off within four weeks of the agreed call-off period, **R+S** may demand payment.

C.11.02

The same shall apply in the case of call-off orders without any specifically agreed call-off period, if four months pass without any call-off after the notice of readiness for shipment by **R+S**.

C.12. Storage/Default of Acceptance

C.12.01

R+S is under no obligation to insure stored goods.

C.12.03

In the event of default of acceptance, **R+S** may store the goods in a commercial warehouse at the risk and for the account of the customer.

C.12.04

In the case of storage at **R+S**, **R+S** may bill 0.5 % of the invoice amount per month, but at least € 30.00, and another € 25.00 for every second full cubic metre of goods per month. The customer is free to furnish evidence that the claim did not accrue or is lower.

C.12.05

The two preceding sections shall also apply if the shipment, at the request of the customer, is delayed for more than two weeks beyond the notice of readiness for shipment.

C.12.06

If the customer does not accept the ordered goods within a specified period, **R+S** may – without furnishing evidence of the actual damage – demand 25 % of the agreed price as lump-sum compensation, unless the customer furnishes evidence that no or less damage was incurred.

C.13. Retention of Title

C.13.01

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

C.13.02

This reservation and the following extension shall apply until all claims from the business relationship with the customer are paid and until full release from any contingent liabilities that **R+S** has assumed on behalf of the customer in connection with the delivery.

C.13.03

Pledging of the delivered goods is not permitted.

C.13.04

R+S may request surrender of its goods subject to retention of title for good cause, especially in the case of default of payment, subject to deduction of the sales proceeds. This request for surrender does not represent the rescission of the contract.

C.13.05

If and to the extent that **R+S** is able to sell the goods taken back as new in the course of its normal operations, the customer shall – without the need for detailed evidence – owe 10 % of the goods invoice value as return costs. If the goods cannot be sold as new in the course of the normal operations, the customer shall – without the need for detailed evidence – owe another 30 % of the goods invoice value for the value loss. In every case, the customer may furnish proof of a lower percentage.

C.13.06

R+S reserves the right to assert other, further damage.

C.13.07

The processing of goods supplied by **R+S** always takes place on behalf of **R+S**, so that the goods remain the property of **R+S** under exclusion of the consequences specified in Section 950 of the German Civil Code (BGB) in every processing state and also as finished goods. If the goods subject to retention of title are processed together with other items that are also supplied under exclusion of the legal consequences of Section 950 of the German Civil Code (BGB), **R+S** will at least become co-owner of the new goods in the ratio of the invoice value of the goods of **R+S** to the invoice value of the other processed goods.

C.13.08

The customer hereby proactively assigns all claims from the resale, processing, installation and other utilisation of the goods of **R+S** to **R+S**. If the products sold, processed or installed by the customer contain items that are not owned by the customer and for which other suppliers have also agreed a retention of title with permission to sale and advance assignment, the assignment shall take place in the amount of the co-ownership share of **R+S**, which corresponds to the fraction of the claim, or otherwise in the full amount.

C.13.09

The collection authorisation that the customer has despite the assignment may be revoked at any time.

C.13.10

If the value of the collateral that **R+S** is entitled to exceeds the claim of **R+S** against the customer by 50 % in the case of deliveries or by 20 % in the case of other services, **R+S** shall, at the request of the customer, release collateral as selected by **R+S** to the respective extent.

C.14. Place of Performance and Fulfilment

C.14.01

The plant of **R+S** always is the place of performance and fulfilment for the services to be performed by **R+S**. This shall apply even if the transport is handled by **R+S** itself.

C.14.02

The domicile of **R+S** is the place of performance and fulfilment for all services to be performed by the customer.

C.15. Definitions

C.15.01

All headings in the **R+S** Terms and Conditions are for improved legibility only and do not affect the meaning and interpretation of the individual regulations.

C.15.02

Written declarations of intent and knowledge in the meaning of the **R+S** Terms and Conditions also include declarations transmitted in text form (e.g. by fax or e-mail).

C.16. Jurisdiction and Substantive Law

C.16.01

The courts of Krefeld, Germany, shall have jurisdiction over all disputes from or in connection with the contractual relationship between the customer and **R+S**.

In the aforesaid case, **R+S** may also bring action against the contracting partner at his domicile.

C.16.02

The laws of the Federal Republic of Germany shall apply, under exclusion of uniform law, including but not limited to the UN Convention on Contracts for the International Sale of Goods (CISG).

If the choice of German law is not permissible or invalid, the conditions and effects of the retention of title pursuant **C.13**. shall be governed by the laws at the respective location of the goods.

C.17. Final Clause

Should any provision of these Terms and Conditions or a provision included in them later on be or become fully or partially invalid, void or unenforceable or should these Terms and Conditions or its supplement turn out to have a gap, this shall not affect the validity of the other provisions. Section 306 (2) and (3) of the German Civil Code (BGB) remain unaffected.