



General Terms & Conditions of Delivery and Sale of Rhein-Nadel Automation GmbH

Rev. 02/2021

I. Scope

1. The following General Terms and Conditions of Delivery and Sale form the basis of the present and all future offers, contracts, services and deliveries including consultations, information, installation and maintenance activities between Rhein-Nadel Automation GmbH as the Supplier and the Customer to the extent that the latter is an entrepreneur. Any purchasing terms and conditions issued by the Customer shall not become subject matter of the contract, not even through acceptance of the order. These General Terms & Conditions of Delivery and Sale shall be deemed accepted at the latest upon taking delivery of the deliverables or services.

II. Conclusion of contract and documents

1. A contract is formed only upon Supplier's order confirmation expressed in writing or in text form. Quotations, descriptions, estimates and other pre-contractual communications are always non-binding. Information and/or specifications appearing in brochures, leaflets and application engineering notes are intended to be for information only.
2. Any change or amendment of a contract by the Customer shall require Supplier's confirmation in writing or in text form. By awarding the contract the Customer agrees to the Terms and Conditions of Sale and Delivery stated hereinbelow. The Supplier reserves rights of ownership, copyright and other intellectual property rights in samples, quotations, drawings and other information, whether tangible or intangible, including in electronic form. None of the foregoing shall be disclosed to third parties except with Supplier's consent stated in writing or in text form.
3. The contractually agreed scope of delivery / service shall be as determined in Supplier's order confirmation in writing or in text form.
4. Technical changes to the contractually owed deliverables / services remain reserved to the extent that they can be deemed reasonably acceptable to the Customer.
5. In the case of delivery abroad, the responsibility for compliance with all customs clearance and other formalities shall rest with the Customer.

III. Price and payments

1. Save as otherwise agreed, prices apply ex works including loading at the works, but exclusive of packaging and unloading. Prices are subject to addition of Sales Tax at the then applicable legal rate. All work associated with erection, installation and/or commissioning of a system is not included in the price and we shall bill for it separately.
2. Save as otherwise agreed, payment shall be made to Supplier's account, without any deduction, as follows:
 - 30 % upon receipt of the order confirmation;
 - 60 % upon notification of the Customer that the main components are ready to ship;
 - 10 % within one month from the passage of risk.
3. The Customer may offset counterclaims only to the extent that its counterclaims are uncontested or legally enforceable. The Customer may exercise a retention right only if it derives from the same legal relationship.
4. Prices stated are based on the purchase prices, raw materials and energy prices, wages, social security contributions, freight rates and public charges valid at the time of bid submission, which have a direct and indirect impact on the cost of goods. In the case of a change in these reference variables the Supplier reserves the right to correct prices accordingly, provided that the time between conclusion of the contract and the agreed production/delivery date exceeds four months.
5. Partial deliveries are allowed if they can be deemed reasonably acceptable to the Customer; they obligate the Customer to make corresponding partial payments.
6. The Customer is not allowed to assign any claims arising from the contract to third parties.
7. If, at any time after the conclusion of the contract, we become aware of circumstances that may cast serious doubt on Customer's creditworthiness, the Supplier may impose the condition, as a prerequisite for any further services, that Customer furnishes adequate security within a reasonable time period. Customer's failure to comply with such request for security shall entitle the Supplier to withdraw from the contract.
8. If the Customer is more than 10 days in arrears with any agreed instalment payments, the full balance still outstanding at such time shall become payable immediately.
9. If the Customer falls behind with payments, Supplier may change default interest at the then applicable legal default interest rate. Apart from the foregoing and if Customer's delay in payment has caused greater loss or damage, the Supplier may claim compensation therefor. In transactions with fully qualified merchants, the right to claim default interest at the commercial rate (section 353 of the German Commercial Code) remains unaffected.

IV. Delivery time, Delay in delivery

1. The delivery time shall be as defined in the agreements between the contracting parties. Supplier's compliance therewith shall be contingent on prior clarification of all commercial and technical issues between the contracting parties and Customer's fulfilment of all the duties incumbent on it such as, e.g., furnishing the necessary official certificates or permits or making a down payment. Otherwise, the delivery time shall be reasonably extended. This shall not apply if the delay is attributable to the Supplier.
2. The delivery time starts on the date of the order confirmation, but not prior to submission of the documents, sample parts, approvals and clearances to be procured and/or furnished by the Customer and receipt of an agreed down payment.
3. The delivery time shall be deemed observed if the object of delivery has left Supplier's works prior to expiration thereof or if notice of readiness for shipment has been given. To the extent that an acceptance is required, timely delivery shall be determined on the basis of such acceptance or of the notice of readiness for acceptance.
4. If the shipping and/or acceptance of deliverables is delayed for reasons attributable to the Customer, the latter shall be charged for the costs resulting from such delay starting one month from the notice of readiness for shipping or acceptance, respectively.
5. If late delivery is due to Force Majeure, industrial action, unavailability of service or any other event beyond Supplier's control, the delivery time shall be extended by an appropriate period. A case of unavailability of service within the meaning of this clause shall specifically be one in which the Supplier's sub-suppliers have in turn failed to deliver on time, provided always that the Supplier has entered into a congruent supply arrangement and is not responsible for the unavailability. The Supplier shall notify the Customer of the beginning and end of such circumstances at the earliest possible date.
6. In case of a delay in delivery the Supplier's liability shall be limited to the foreseeable, typically incurred loss or damage. Furthermore, liability shall be limited to liquidated damages in an amount of 0.5% of the delivery value per complete week of delay; overall, the indemnification shall be limited to 5% of the delivery value. In this context, 'delivery value' denotes the value of that portion of the overall supply which cannot be used in a timely manner or according to the provisions of the contract. The limitations shall not apply if the delay in delivery is attributable to a wilful breach of contract by Supplier's organs or senior executives. The limitation to 0.5% of the delivery value shall furthermore not apply if the delay in delivery was caused by a grossly negligent breach of contract on the part of Supplier's organs or senior executives.

V. Passing of risk, Acceptance

1. The risk passes to the Customer when the deliverables have left the works; this shall also apply if partial shipments are made or if the Supplier has assumed further obligations, e.g., shipping costs or delivery and installation. To the extent that an acceptance procedure is required it shall define the passing of risk. Such acceptance shall be carried out promptly on the acceptance date or, alternatively, upon Supplier's notification that the deliverables are ready for shipment. The Customer is not allowed to refuse acceptance on the grounds of a non-essential defect.
2. If shipping and/or acceptance is delayed or omitted due to circumstances not attributable to the Supplier, the risk shall pass to the Customer as of the date of the notice of readiness for shipping and/or acceptance, respectively. The Supplier undertakes to take out any insurance requested by the Customer at the latter's expense.



3. If shipping is delayed at Customer's request or if the goods are not accepted for reasons not attributable to us, the risk shall pass to the Customer upon notification of the readiness for shipping. The costs incurred for storage, at least 0.5% of the value of the goods per month, shall be borne by the Customer. However, the Customer shall be free to prove lesser damages.

VI. Reservation of title

1. The Supplier reserves title to the deliverables until receipt of all payments due under the delivery contract.
2. The Supplier may insure the deliverables against theft, breakage, fire, water and other damage at Customer's expense, save where the Customer has demonstrably taken out such insurance himself.
3. The Customer shall not pledge the deliverables, nor transfer them as security, until he has made full payment thereof. In case of attachment, seizure or other disposition being levied thereon by third parties, the Customer shall promptly notify the Supplier accordingly.
4. If the Customer is in breach of contract, and specifically in arrears with payment, the Supplier may recover the deliverables following due warning and the Customer shall be obligated to surrender the same.
An assertion of the reservation of title and attachment of deliverables by the Supplier shall entitle the latter to withdraw from the contract.
5. If the Customer is in arrears with payment, the Supplier may repossess deliverables that are subject to a reservation of title but shall not be deemed to have thereby exercised his right to withdraw from the contract. If deliverables subject to a reservation of title are realized, the Supplier may deduct 10% of the realization proceeds towards the costs incurred by the Supplier in connection with such realization, unless the Customer can demonstrate that the costs incurred by the Supplier in connection therewith are substantially lower.
6. The Supplier may withdraw from the contract and demand the immediate return of the deliverables if the Customer files for its own insolvency, or if insolvency proceedings are instituted against the Customer, or if a petition for insolvency is rejected for want of assets.
7. The Customer may resell the deliverables in the ordinary course of business. However, the Customer hereby assigns to the Supplier all claims he may come to hold against the buyer or third parties as a result of such resale, irrespective of whether the goods subject to a reservation of title are sold without further processing or in a further processed form. The Customer may collect on such claims even after such assignment. The Supplier's right to collect on such claims itself shall remain unaffected; however, the Supplier undertakes not to collect on such claims for as long as the Customer meets its payment obligations. The Supplier may require the Customer to disclose to it all assigned claims along with the respective debtors; to provide all information needed for collection; to furnish the relevant documents; and to notify the debtor of the assignment. If the deliverables are resold together with other goods not owned by the Supplier, the Customer's claim against the buyer thereof shall be deemed assigned in the amount of the delivery price agreed between the Supplier and the Customer. Any processing or transformation by the Customer of goods subject to a reservation of title shall at all times be deemed to be performed on behalf of the Supplier. If an item subject to a reservation of title is processed together with other items not belonging to the Supplier, the Supplier shall acquire joint ownership of the resulting new item in proportion to the ratio of the value of the item subject to reservation of title to the value of the other processed items at the time of their processing. Besides, the provisions applicable to items subject to a reservation of title shall likewise apply to any new item created by such processing.
8. The Supplier shall release security interests to the extent that the realizable value thereof exceeds the secured debt by more than 10%. In this context, the choice of security interests to be released shall be at Supplier's own discretion.

Warranty for quality defects, Joint and several liability

1. It shall be a prerequisite to Supplier's liability that the Customer inspects the deliverables for defects promptly upon receipt. The Customer must notify the Supplier of any defects forthwith, but no later than within one week, either in writing or in text form. In the case of concealed defects this obligation arises at the time of discovery thereof. If the Customer fails to comply with the foregoing obligation to give notice of a defect under warranty then the deliverables shall be deemed approved, provided always that the defect was of a type detectable by due and proper inspection.
2. No guarantees are given.
3. No warranty is accepted for defects resulting from any of the following causes: improper/inexpert use, faulty installation or commissioning by the Customer or third parties, natural wear and tear, improper or neglectful handling, unsuitable equipment, provided they are not attributable to a fault of the Supplier.
4. Any modifications or repairs carried out improperly and without Supplier's approval by the Customer or third parties shall void the liability for any consequences resulting therefrom.
5. In the event of a defect, the Supplier shall determine by reasonable assessment, including of the Customer's interests, whether to remove the defects via repairs or to supply a replacement.
6. Out of the costs of a justified rectification of defects the Supplier shall cover the costs of labour and materials; other costs such as, specifically, installation and removal costs as well as costs of testing and inspection shall not be borne by the Supplier.
7. If the Customer has moved the deliverables away from the place of acceptance, the Customer shall bear any additional defect rectification costs resulting therefrom. The liability for damages, subject to limitation as stipulated hereinbelow, shall remain unaffected by this provision. Should the defect rectification or replacement delivery fail, the Customer may reduce the purchase price. To the extent that the non-conformity is not of a minor nature, the Customer may opt, at its own discretion, to withdraw from the contract instead. The Supplier may refuse the rectification of defects if it involves disproportionate costs.
8. The Supplier carries liability in accordance with the law, albeit its liability for damages shall be limited as follows:
 - a) In the case of simple negligence, liability shall be borne for injuries to life, body or health.
 - b) In the case of wilful intent on the part of a simple vicarious agent and of gross negligence by legal representatives, employees or vicarious agents, the liability shall be limited to the foreseeable, typically occurring damage.
Moreover, liability shall be limited to the sum covered by the business liability insurance which amounts to € 10 million in respect of personal injury and € 5 million for damage to property.
The liability for injuries to life, body or health remains unlimited.
 - c) In the case of a breach of a cardinal obligation, the Supplier shall bear liability for simple negligence as well, in derogation of para. 8.a), but subject to a limitation as under b).A cardinal obligation is understood to be one whose fulfilment is key to the proper performance of the contract and on the observation of which the other party to the contract may commonly rely on.
9. The Customer cannot claim liability for defects if it has installed the deliverables on unsuitable building ground or in an otherwise improper manner, or uses it improperly, or employs unsuitable equipment, or damages the deliverables or exposes them to chemical, electronic or electric influences, or performs no or improper maintenance thereon, so that the defect is caused by the Customer.
10. Deliverables forming the object of a complaint under warranty must be sent to Aachen at no cost to the Supplier.

VIII. Warranty of title

1. If the use of the deliverables results in an infringement of industrial property rights or copyrights under inland jurisdiction, the Supplier shall procure for the Customer, at Supplier's expense, the right to generally continue the use thereof, or else shall modify the deliverables - in a manner that can be deemed reasonably acceptable to the Customer - so that the infringement will cease. If this is not feasible in an economically reasonable manner or within reasonable time, the Customer may withdraw from the contract.
Under the foregoing conditions the Supplier shall be entitled to withdraw from the contract as well.
Moreover, the Supplier shall hold the Customer free and harmless of any uncontested or unappealable claims asserted by the holders of the relevant industrial property rights.
2. Damage claims based on defects of title may be asserted only subject to the limitation defined in section VII. The Supplier shall not bear liability to the extent that the defect of title results from an instruction given by the Customer or that the infringement was caused at least in part by an unauthorized modification or non-contractual use of the deliverables on the part of the Customer.
3. The Customer shall give reasonable support to the Supplier in defending against any claims brought forward and shall enable the Supplier to carry out such modification work. The Customer shall reserve to the Supplier all defence measures, including extrajudicial settlement. The Supplier will accept no liability to the extent to which loss or damage arises from Customer's breach of the aforementioned obligations.

IX. Statute of limitations



All Customer claims in respect of defects shall become time-barred after 12 months. Where wilful intent or bad faith is involved and for claims under the Product Liability Act, the statutory time limits apply. The latter shall also apply with regard to defects of a building structure or where deliverables commonly employed in a building structure have caused its defectiveness.

X. Use of software

To the extent to which software is included in the scope of supply, the Customer is granted a non-exclusive right to use the supplied software including the associated documentation. It is made available for use on the deliverable for which it is intended. The software must not be used on more than one system. The Customer shall not copy, revise or translate the software, nor convert it from object code to source code, except to the extent permitted by law (sections 69 (a) et seq. of the Copyright Act). The Customer undertakes not to remove or modify information provided by the manufacturer, particularly copyright notices, without the manufacturer's explicit prior consent. All other rights in the software and documentation, including any copies thereof, remain with the Supplier or software supplier, respectively. It shall not be allowed to grant sub-licenses.

XI. Applicable law, Legal venue

1. All legal relations between the Supplier and the Customer shall be governed exclusively by the law of the Federal Republic of Germany applicable to mutual legal relations between domestic parties.
2. The forum of jurisdiction shall be the competent court at Supplier's business seat. However, the Supplier may also sue at Customer's principal seat of business.