

Rasco Purchasing Terms & Conditions

I. Scope, written form, concluding contracts

1. Our purchasing conditions apply exclusively to transactions with companies as defined in Section 14 of the German Civil Code (Bundesgesetzbuch – BGB), legal entities under public law and special funds under public law.
2. The legal relationships between us and the contractor are determined exclusively according to the following purchasing conditions. Any General Terms and Conditions of the contractor that contradict or differ from these purchasing conditions are not accepted unless we have consented thereto in writing on a case-by-case basis.
3. In the case of ongoing business relationships, our purchasing conditions also apply to all future transactions between us and the contractor, even if these purchasing conditions are not referred to explicitly in each case.
4. Orders and declarations of acceptance, amendments and other supplementary verbal agreements and arrangements which are concluded before or upon conclusion of the contract require the written or text form to be legally valid (hereinafter referred to as "written form" or "in writing").
5. Our orders must be confirmed by the contractor - stating the order number - immediately in writing.
6. Unless stated or agreed otherwise, we are bound by purchase orders for ten days after receipt. If there is a permanent business relationship, the order is considered accepted if the contractor does not reject the issued order within 10 days of the order letter.

II. Prices

1. Unless agreed otherwise, the agreed prices are fixed prices, including all ancillary costs. Unless agreed otherwise, delivery shall be to the location named in the order, carriage paid, including packaging.
2. Price increases after conclusion of the contract are not valid for us.

III. Delivery, late delivery, partial delivery

1. Delivery shall be at the contractor's cost and risk, unless agreed otherwise. A signature on the contractor's delivery notes does not represent acceptance of the quality of the received goods, nor are the contractor's delivery and payment terms accepted.
2. Unless agreed otherwise, the agreed delivery dates or periods are binding. If the contractor is in arrears, we reserve the right to demand 0.2% of the price of the goods for each day of delay to a maximum of 5% of the damages suffered by us as a result of the delay. The contractor reserves the right to prove lower damages; we reserve the right to claim higher actual damages.
3. In the event of a delay, the additional costs incurred as a result of the non-fulfilment of our delivery dates shall be borne by the contractor.
4. The contractor shall collect goods which do not correspond to our order at its own cost. We also reserve the right to return these goods and charge for this service.
5. We reserve the right to amend the agreed delivery dates to an extent acceptable for the contractor, if the requirements of No. XIII apply or if the amendment is necessary in order to guarantee a smooth progress of our business.
6. As soon as the contractor has an indication that fulfilment of its contractual duties on time or by the deadline may not be possible, it must notify us in writing immediately and state a new delivery date, which we are not obliged to accept. Damages resulting from a breach of the duty of notification shall be borne by the contractor, unless the breach of the duty of notification is not the fault of the contractor.
7. The contractor is not entitled to make partial deliveries. However, we reserve the right to call ordered goods in partial deliveries. Insofar as additional costs are not incurred for the supplier, we can demand changes in the construction and design.
8. We reserve the right to reject excessive or reduced deliveries.
9. In any case, the payment periods according to No. V shall only start from the agreed delivery deadline upon receipt of the correct invoice.

IV. Shipping

1. The contractor must comply with the stated shipping conditions exactly; in particular each shipment must have a delivery note in triplicate, on which our order number and date are stated, along with the item and article number. Insofar as we bear the shipping costs in exceptional cases, the cheapest shipping option must be selected. We reserve the right to refuse shipments if the shipment does not include a proper delivery note. The costs resulting from refusal of a delivery shall be borne by the contractor.
2. The contractor shall bear the costs for the packaging of goods unless expressly agreed otherwise in writing.

V. Invoicing, payment

1. Invoices must state our order number and date, as well as the position and article number. VAT and the total net amount must be shown separately. If invoices do not correspond to these requirements, we can reject them. The payment and discount periods shall then start on the day the new, correct invoice is received.
2. Unless agreed otherwise, we make payments either within 14 days with 3% discount or within 45 days net, in each case after delivery of the goods and receipt of the auditable invoice according to No. V. 1.
3. We shall pay either in cash, by cheque, by bank transfer or by offsetting against counterclaims.
4. To the statutory extent, we reserve the right of retention and offsetting of payments due to the contractor.

VI. Contractor's right of retention and offsetting

With regard to the delivery of goods, the contractor can only assert a right of retention if these are uncontested or legally upheld demands, or demands which are ready for a decision and which are based on the same contractual relationship. Offsetting shall only be considered if the contractor's demand is uncontested, ready for decision or legally upheld.

VII. Assignment

Irrespective of Section 354 a of the German Commercial Code (Handelsgesetzbuch – HGB), the contractor is not entitled to assign its claims against us or to have them collected by or pledged to third parties without our written consent. This shall not apply if and insofar as the contractor has granted its suppliers an extended retention of title within the framework of its normal business. In the event of seizure, the contractor shall notify us immediately.

VIII. Guarantee and liability

1. The delivery object must have the agreed quality and, at the time of delivery, must correspond to the state of the art in terms of design and material. If there are samples, the quality of the sample in respect of material and finishing shall be considered binding for all deliveries and subsequent deliveries.
2. We are entitled to the statutory guarantee periods without reductions. We reserve the right to demand improvement or replacement from the contractor, at our discretion, irrespective of whether a purchase or works contract was concluded.
3. In the event of significant defects, we reserve the right to withdraw from the contract and/or to demand compensation instead of performance, if the contractor has not fulfilled its obligation to correct the defect despite a deadline being set.
4. In urgent cases, we can make the repairs ourselves in consultation with the contractor and at its cost. In this case, the contractor shall bear all costs necessary for the repair or replacement.
5. If a defect covered by a guarantee from the contractor is identified during the guarantee period, it shall be assumed that this is a guarantee case according to Section 443 para. 2 BGB. In this case, we can also sue the contractor if we remained unaware of the defect as a result of gross negligence.
6. Returned defective goods shall be charged to the contractor. The return shipment shall be at its risk and cost. Defects only identified during the processing or reworking of the goods or during their use shall also entitle us to demand reimbursement of the costs incurred to no avail.
7. If we demand repair or replacement and the contractor is late with the repairs or replacements, after setting an appropriate additional deadline we reserve the right to purchase replacements at the contractor's cost or to withdraw from the contract, to reduce the payment and/or to demand compensation.
8. Unless agreed otherwise in writing, claims due to defects shall expire 36 months after delivery of the goods to us.
9. As long as defects remain, we can withhold payment.
10. Costs resulting from the testing of defective goods shall be borne by the contractor.
11. Identifiable, obvious defects shall be reported by us within 14 days of delivery, concealed defects within 14 days of discovery.
12. In the case of product liability, the contractor shall indemnify us from third-party claims, subject to other rights, insofar as the causes are in its area of control and organisation and it is liable

externally. The indemnification shall also apply to costs which we have been able to assume or have assumed when calculating and avoiding or reducing a product liability risk.

IX. Tools, moulds, models, drawings, documents

1. Tools, moulds, models, drawings, samples and documents of all kinds which we provide to the contractor or pay for shall remain or become our property and therefore are freely available to us. Any necessary handover shall be replaced by the contractor safeguarding the items for us and using the same with due care and attention. All costs for maintenance of tools, moulds and models which are incurred up to the contractually agreed output quantities of parts shall be charged to the contractor. The contractor shall insure tools, moulds, models and documents of all kinds against fire and theft at the replacement value. The contractor shall insure our property and the objected provided to it at its own cost. It herewith assigns claims for payment against its insurance to us. We accept this assignment.
2. The contractor may not handover tools, drawings, models, samples and documents of any kind to third parties for inspection, or make the same accessible in any other manner or reproduce the same without our express written consent. The objects manufactured according to the documents may not be provided to third parties without our express written consent.
3. Drawings, models, samples and documents of all kinds must be returned to us free of charge without reminder as soon as they are no longer required to implement the contract. The contractor shall be liable for their loss and damage.
4. If the contractor culpably breaches the conditions of this No. IX, it shall be liable for each breach and shall pay a contractual penalty, irrespective of the severity of the breach, of up to EUR 20,000.00 (in words: twenty thousand euros). The exact amount of the contractual penalty shall be decided by us at our discretion in each case and, if contested, shall be considered by the court with the relevant jurisdiction. The contractual penalty shall be added to any additional claims for compensation.

X. Quality assurance and documentation

1. At the time of time, the contractor shall comply with the applicable, recognised rules of technology and science, statutory provisions, safety provisions and the agreed technical data.
2. We reserve the right to check the validity of the contractor's quality management system on site. Changes to the items to be delivered require our prior written consent.
3. The contractor shall check the quality of the items being delivered on an ongoing basis. The contracting partners shall inform each other of possible improvements to quality.
4. If quality guidelines have been agreed with the contractor, these shall apply accordingly.

XI. Retention of title

1. Insofar as delivered goods are paid for, ownership shall transfer to us upon payment. We acknowledge the contractor's simple retention of title. We do not acknowledge an expanded or extended retention of title. Within the framework of proper business, we reserve the right to process, sell or otherwise dispose of the delivered goods, including before the transfer of title.

XII. Third-party property rights

1. The contractor guarantees that no property rights or other third-party rights are breached by the delivery of the goods ordered by us, their resale or processing by us and/or their proper use. If we are sued by third parties because of a breach or infringement of such rights, the contractor shall indemnify us from all such claims and measures in full, unless the contractor is not responsible for this; this shall also include the timely defence of anticipated claims and measures by third parties against us.
2. The contractor's liability in accordance with No. 1 above shall also include all consequential damage incurred by us, namely as a result of delivery shortages and disruptions to production.

XIII. Final provisions

1. The place of performance for all deliveries, services and payments is our company's registered office in Kolbermoor.
2. For all disputes arising from the legal relationship between us and the contractor, if the contractor is a businessman, a legal entity under public law or a special fund under public law, the place of jurisdiction is our registered office. This shall apply correspondingly if the contractor does not have a general place of jurisdiction in Germany or relocates its place of residence or usual abode from the Federal Republic of Germany after the contract has been concluded. This shall also apply if the contractor's place of residence or usual abode is not known when the case is brought. We also reserve the right to take legal action at the contractor's registered office.
3. German law shall apply to the legal relationship between the parties, but to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
4. If one or more of the provisions are invalid in part or in full, this shall not affect the validity of the remaining provisions. Insofar as the invalid clauses contain a valid component, this shall remain in force. The parties shall agree a replacement provision which comes as close as possible to the commercial result of the removed clause.

As at: 01.Feb.2011/BEF

Rasco GmbH, Kolbermoor