

General terms and conditions of sale of Rubner Holzindustrie Ges.m.b.H

1. Scope

- 1.1. All sales, deliveries and services of Rubner Holzindustrie Ges.m.b.H (hereinafter also: "Rubner" or "we") shall be made exclusively on the basis of these general terms and conditions of sale (hereinafter: "Terms and Conditions").
- 1.2. Rubner contracts exclusively on the basis of these Terms and Conditions. Any additional or differing terms and conditions of sale or purchase of contractual partners (hereinafter: "Customer") are not effective for our sales, deliveries, services and agreements. Modifications of Rubner's Terms and Conditions expressly do not become part of any contractual relationship, even if the Customer refers to them or if their validity has not been separately objected.
- 1.3. No modification of these Terms and Conditions shall be effective or binding unless confirmed by Rubner in writing. The absence of objection, or any silence of Rubner is not considered as consent, e.g. to Customer's requests for modification.

2. Offer, completion of contract & characteristics

- 2.1. Our offers are non-binding, unless expressly agreed otherwise in writing. Inquiries, offers and orders, as well as amendments or supplements require our written confirmation for effectiveness.
- 2.2. Drawings, illustrations, dimensions, weights or other performance data and descriptions are only binding if expressly agreed in writing; this shall also apply to other special characteristics and the suitability of the object of delivery for a specific purpose.
- 2.3. In case an order is based on a sample or specimen, only the essential characteristics of the sample or specimen are considered to be agreed for the object of delivery, unless expressly agreed otherwise in writing. In particular deviations of a lesser extent or that are technically unavoidable for wood as a natural material (e.g. regarding wood grain, wood colour etc.) are no defects at all.
- 2.4. Any statements by third parties, particularly but not restricted to be made in advertising, regarding the quality of the object of delivery are not considered to be decisive or become part of the agreement, unless expressly agreed in writing.

3. Prices

1. Unless otherwise expressly agreed in writing, all prices of Rubner are excluding VAT, custom duties or similar public fees for deliveries, FCA ("Free Carrier") Rohrbach an der Lafnitz, Austria, (according to Incoterms 2020).
2. Unless otherwise agreed in writing, our prices are binding for a period of 10 business days in Austria commencing the conclusion of the agreement, according to the provisions of clause 2 of these Terms and Conditions.
3. Any discounts or deductions as well as any compensation for sales and freight shall automatically cease to apply if the Customer is in default of payment for more than one month.
4. In case of successive-delivery-orders and for all orders on demand, we charge the prices valid on the day of delivery. Same applies to all other orders, provided that the delivery of goods or the provision of services - without culpability of Rubner - takes place later than one month after the order has been confirmed.

4. Shipping and transfer of risk

1. Customer shall bear the risk for shipment (even in terms of a freight-free delivery). The risk is transferred automatically to the Customer when the goods are loaded onto the means of transport. The time limits for the delivery of the goods or the services by Rubner do not start before all details of the contract have been agreed. If shipment is impossible, becomes impossible or is delayed without culpability of Rubner, the risk is transferred to the Customer automatically with the notification that the goods are ready for shipment. Rubner is not liable for any damage or loss during shipment at all.
2. If shipment by Rubner has been agreed, without having selected a type of shipment, it will be made at our discretion without any obligation or guarantee to search or select the cheapest type of shipment. Freight expenses are to be reimbursed to Rubner.

3. All official permits required for the delivery in accordance with the order, e.g. but not restricted to import and export licenses, foreign exchange permits and transport permits, must be obtained by the Customer on its own expense and risk in a timely manner so that no delays in the planned transport date occur. Otherwise, Customer shall be liable for all negative effects and costs that occur and Rubner is also entitled to rescind the contract.

5. Excessed, reduced and partial deliveries

Excessed or reduced deliveries of up to 10% and tolerances within the commercial standard scale are permissible and do not raise any claims for Customer. This shall apply to all orders and deliveries. Deliveries in parts are permissible and will be invoiced to the Customer on a pro rata basis.

6. Order on demand

In terms of orders on demand or similar, the Customer is obliged to accept the ordered object of delivery within a reasonable period of time, at the latest within 4 weeks from the date of order, unless otherwise agreed in writing. If the Customer does not comply with this obligation within the specified period, he shall be liable for all negative effects and costs thereof and Rubner is also entitled to rescind the contract.

7. Payment

1. Unless otherwise agreed in writing, our invoices are due without any deduction or retention within 14 days commencing the invoice date.
2. If several claims of Rubner are due, we shall be entitled to set off payments of the Customer first against the latter's older outstanding claims, as long as the contractual partner is informed about the type of offsetting that has taken place. If costs and interest have already been incurred with regard to outstanding claims, we shall be entitled to set off the payment first against costs, then interest and then to invoiced amounts. Customer's Dedication of payment contrary to this sequence are only decisive if Rubner has not objected this dedication. If several claims are due and Customer dedicated a payment contrary to the sequence mentioned above (costs, interest, oldest claim...), without the consent of Rubner, Rubner expressly reserves the right to object this dedication of payment within 7 days commencing the payment and to dedicate the payment according to the sequence in this clause.
3. Payment is deemed to be effective only when Rubner can dispose of the entire invoiced amount. In case of cheques, payment is deemed to be effective, when the cheque has been cashed. Bills of exchange and checks are only accepted on account of fulfilment, bills of exchange only pursuant to a separate written agreement.
4. Rubner's right to claim interest shall be governed by § 456 of the Austrian Commercial Code (UGB).
5. Awareness of circumstances that might jeopardize the credit-standing of Customer, in particular if Customer suspends payments, Rubner shall be entitled (i) to render the entire open amount, (ii) to demand payments in advance and/or (iii) to demand security deposits. If it has been agreed that Rubner shall deliver in advance, we may refuse delivery if, after the conclusion of contract, we become aware of circumstances that might jeopardize the Customer's ability for payments. This right to refuse or postpone delivery does not apply once the payment has been made or security is provided for it.
6. Offsetting with counterclaims by Customer is not permitted, except in cases in which (i) counterclaims are legally related to the liability of Customer or (ii) the counterclaims are determined by a verdict, or (iii) have been recognized explicitly by Rubner in writing.
7. Any rights of retention of Customer are excluded.
8. Any cession and/or transfer of claims by Customer requires the prior written consent of Rubner.

8. Delivery and acceptance, return of goods

1. Delivery dates/delivery deadlines that have been confirmed by Rubner are - unless expressly agreed in writing – only approximate values. Any liability for possible damages and/or loss of profit due to exceeding the delivery dates/delivery deadline shall be excluded to the extent permitted by law.

2. Delays in delivery due to force majeure, due to delays in delivery and performance on the part of our suppliers and sub-suppliers and due to events that impede or make delivery impossible for us - including all events that are beyond the control of Rubner and do not occur due to delay or negligence of Rubner, such as in particular, but not restricted to, strikes, lock-outs, governmental orders and prohibitions of entry due to pandemics, accidents, fires, damages or other misfortunes, natural disasters including but not limited to floods, earthquakes and hurricanes, war, hostile acts (whether or not war is declared), invasion by foreign troops, restrictions of a de facto or de jure government which directly affect the delivery of the objects of delivery ; rebellions, revolutions, insurrections, sabotage or military or other takeovers of power or civil wars, riots, civil disturbances or civil commotion; ionizing radiation, contamination by radioactivity from nuclear fuel combustion or nuclear waste, radioactive, toxic, explosive or other hazardous properties of an explosive nuclear device or components thereof. etc., even if these occur at our sub-suppliers or their sub-suppliers - are not Rubner's responsibility even in case of bindingly agreed deadlines. They entitle us to postpone delivery for the duration of the obstruction plus a reasonable start-up period or rescind the contract in whole or partially on account of the part not yet fulfilled. If the obstruction lasts longer than three months, Customer is - after setting a reasonable extension period in writing - entitled to rescind the contract with regard to the part not yet fulfilled.
3. Customer is obliged to accept the delivery. Claims due to defects of the objects of delivery are not affected by this. In case of defective delivery, there shall be no obligation to accept the delivery if this constitutes a material breach of contract or if there is a risk of material damage or personal injury due to the nature of the defected object of delivery.
4. Customer undertakes to immediately inspect the object of delivery for any defects after delivery and must report any defects by registered mail within a reasonable period of time, at the latest within 14 days commencing reception of the objects of delivery. If the Customer fails to report any defects within this period, any claims for warranty and/or damages as well as a failure regarding the defect-free nature of the objects of delivery cannot be claimed anymore.
5. If the Customer has reported any defects regarding the objects of delivery in due time, he shall, at our request, return the goods concerned in the same condition in which they were delivered. Otherwise, the Customer is solely entitled to return the object of delivery after obtaining our expressly written confirmation.

9. Warranty

1. Any warranty claims (besides any further requirements) are only applicable for defects that were already existing prior transfer of possession (in case of shipment prior to the handover to the first carrier). The burden of proof for this existence of any defect is on the Customer. A presumption of defectiveness pursuant to § 924 ABGB is expressly excluded. Liability for ordinary wear and tear is excluded in any case.
2. The warranty period for all deliveries shall be six months, commencing the date of delivery.
3. The notification of any existing defects, incompleteness or any deviations (pursuant to §§ 377 UGB) shall be made immediately upon delivery of the goods in written, specifying the defect, incompleteness or deviation. Warranty claims, claims for damages due to the defect itself (§933a para. 2 Austrian civil code ABGB) and claims arising from a failure cannot be claimed if the defect could have been discovered by proper inspection before the start of processing and the complaint is not made by registered mail in advance of processing. If the Customer fails to inspect or notify Rubner about a defect by written notice as mentioned above, the Customer's right to claim any remedies with respect to the defect or any consequential damages shall be forfeit (§ 377 UGB).
4. In case the warranty claim turns out to be justified, Rubner is entitled at its sole discretion
 - a.) to rectify the objects of delivery free of charge or
 - b.) to provide faultless substitution or
 - c.) Rubner is also entitled to credit reduced value or to take back the justly claimed delivery - even partially - against reimbursement of payment.
5. Improvements, Rectifications and/or subsequent deliveries abroad the above-mentioned warranty period have no legal significance and shall - unless otherwise expressly agreed in writing - only be made without prejudice but as an act of goodwill.
6. Solely the direct Customer is entitled to warranty claims against us and no claims shall be transferred to third parties.
7. Recourse in the sense of § 933b ABGB shall be excluded.

10. Damages/compensation

1. Customer shall – on whatever legal grounds - only be entitled to claims in case of at least gross negligence on part of Rubner, with the exception for damages from personal injury of life or health. Any other liability, in particular from titles of tort law and warranty or for whatever legal reason, as well as liability for consequential damages, in particular lost profits, shall be excluded in any case.
2. The burden of prove for intentional damage or gross negligence is on the Customer.
3. In case of damages Rubner undertakes at its own discretion, either to remedy the defect, to make a replacement delivery or to pay compensation. If rectification or replacement delivery fails after a reasonable period of time, Customer can demand compensation in money.
4. Rubner is not liable for any damage resulting from improper or not intended use of goods.
5. If goods are manufactured or produced by Rubner on the basis of design information, plans, drawings, models or other specifications provided by Customer or its contractual partner, Rubner shall not provide any warranty and/or liability for the design, feasibility and/or compliance with technical standards or legal requirements at all. In this regard Customer indemnifies and holds Rubner harmless from and against any and all claims, penalties, costs and expenses of any kind whatsoever in case of any infringements of third party intellectual property rights.

11. Retention of title

1. Until full payment of the purchase price and all related (e.g. due to any delay in payment) additional expenses and costs are made, Rubner reserves the right of ownership and remains legal title to all delivered goods (reserved goods). If the reserved goods are processed, transformed or combined with other items not owned by Rubner in a way that repatriation is impossible, Rubner acquires co-ownership of the new produced or manufactured goods. In that case the reserved goods remain property of Rubner according to the amount of the invoice in our co-ownership share (pro rata the value of the delivered goods). Customer is obligated and liable to store the (co-)property of ours properly and free of charge and to insure it sufficiently against all foreseeable risks of ordinary course of business until the retention of title expires.
2. Rubner is entitled, but not obliged, to make the retention of title obvious. This marking must not be removed.
3. Any claims due to the retention of title do not require the rescinding of contract and do not itself constitute a rescission of the contract. Claiming the retention of title does not release the Customer from its contractual obligations.
4. Customer is obligated neither to pawn the reserved goods nor to transfer them by way of security. Customer hereby cedes to Rubner, by way of security, all claims arising from the resale or any other legal reason (insurance, unlawful act) with regard to the reserved goods in the amount of the final invoice amount (including all balance claims from current account). Customer is obliged to immediately make the necessary publicity acts (in particular corresponding book entries) for the effectiveness of the cession mentioned above.
5. In case of any third party seizure of the reserved goods, Customer is obliged to point out Rubner's reservation of title and to notify us immediately in writing.
6. In case of breach of contract by Customer - in particular default of payment - we are entitled to take back the reserved goods and, if necessary, to demand the cession of the Customer's claims for restitution against third parties. Customer hereby irrevocably declares its consent that we are entitled in case of default of payment, insolvency or risk of insolvency to retrieve the reserved goods wherever they may be located without the consent of the Customer. The retraction or seizure of the reserved goods by us shall not constitute a rescission of contract or waiver of any additional claims.
7. Upon request, Customer is obliged to provide us with an exact list of claims ceded to us in pursuant to this provision, including names and addresses of purchasers, and to provide us with all information necessary to enforce the ceded claims.
8. Customer bears all costs arising from the repossession of the reserved goods.

12. Severability clause, place of performance, governing law, legal venue

1. If any term or provision of these Terms and Conditions or one or more provisions within the scope of the other agreements between the contracting parties are or will become invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other term or

provision of these Terms and Conditions or invalidate or render unenforceable such term or provision. Upon such determination that any term or provision of these Terms and Conditions or provisions within the scope of other agreements between the contracting partners is invalid, illegal or unenforceable, such void provision will be replaced by a valid provision which comes closest to the economic purpose of the invalid or void provision.

2. Place of fulfillment for all mutual obligations is A-8234 Rohrbach an der Lafnitz, Austria.
3. These Terms and Conditions and the entire legal relationship between Rubner and the contractual partner shall be exclusively governed by Austrian substantive law, excluding the conflict-of-law rules of private international law. The potential applicability of the Vienna UN Convention on Contract for the International Sale of Goods (CISG) or similar regulations or provisions is excluded.
4. The exclusive place of jurisdiction for all disputes, divergencies or claims arising directly or indirectly from the contractual relationship, including the question of the valid conclusion and the pre- and post-effects, shall be exclusively dealt with the court having pertinent competence for A-8234 Rohrbach an der Lafnitz, Austria.

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