

General conditions of sale, delivery and erection of Robert Thomas Metall- und Elektrowerke KG Industrial Plants Division

I. Field of application

Our General conditions for supplies and services are applicable to all, present and future, contracts with customers. Any deviations, especially those arising in standard conditions of purchase, are negated. They shall only be binding on us when expressly accepted by us.

II. General

Our quotations are submitted without commitment. Orders placed with us shall only be binding on us when confirmed in writing or executed by us.

Oral declarations or agreements shall only be binding on us after our written confirmation. Values (dimensions, weights etc.) stated in our quotation and in attached documents (illustrations, drawings, plans etc.) are approximate values unless we confirm that they are binding.

All quotation documents remain our property and must neither be copied nor made available to third parties without our written agreement.

III. Prices and conditions of payment

1. The prices are based on delivery ex our works including loading in our works, excluding packing and transport.

Payment must be made without deductions at the place of payment of the supplier, on the following terms: 33% following receipt of the supplier's order confirmation, 33% when the main components of the order are ready for despatch and the purchaser has been notified, and the remaining amount within the following month. If payment is improperly delayed, we are entitled to charge interest at an annual rate of 5% above the current interest rate charged by the European Central Bank, unless the purchaser furnishes proof that the financial loss is less significant.

We reserve the right to impose a different or a higher charge.

Cheques and drafts are only accepted as a means of payment. Any collecting expenses shall be borne by the purchaser.

2. The purchaser may only exercise a right to a retention or to offset counter-claims, if they are uncontested or legally binding.
3. If we learn of circumstances suggesting a deterioration of the purchaser's financial position, we are entitled to ask for immediate payment of our claims, and also of those resulting from other contracts, and to provide supplies and services only against payment in advance or against securities.
4. In all other respects, the legal provisions relating to delay in payment shall apply.

IV. Time of delivery

The contractual delivery period begins following despatch of the order confirmation but not before the purchaser has provided any documents, permits and releases to be supplied by him and following receipt of the down payment that has been agreed.

The contractual delivery will have been met if the goods leave our premises or if the customer has been notified of readiness for despatch before its expiry. Partial deliveries are permitted.

In the event of unforeseeable events which are beyond the supplier's control, the delivery period shall be extended accordingly. Our commitment to punctual supplies and services is undertaken with the reservation that we receive on time correct deliveries from our subcontractors, unless we ourselves are responsible for the incorrect or late delivery.

If despatch is delayed at the purchaser's request, we are entitled to charge for the expenses resulting from storage and delay a flat rate of 1/60% of the invoice value for each day of storage and delay.

The purchaser may at his discretion furnish proof that we have not suffered damage from storage and delay, or that the damage is considerably less significant than the charged flat rate. We reserve the right to invoke a charge for damages which exceeds the flat rate.

Claims for damages against us by the purchaser because of late delivery are not permissible, unless late delivery is due to gross or intentional violation of the contract by us or by one of our legal representatives or agents.

V. Transfer of risk

The risk shall pass to the purchaser when the ordered goods leave our premises. This also applies in the case of partial deliveries and when carriage is paid by us.

If despatch is delayed at the purchaser's request or as a result of the purchaser's behaviour, the risk shall pass to the purchaser at the date of readiness of the goods for despatch.

VI. Reservation of proprietary rights

All goods supplied shall remain our property until all of our claims resulting from the contract and from outstanding claims within the framework of the entire business relationship with the purchaser have been paid in full. This also applies to future conditioned claims. If products supplied with reservation of proprietary rights are utilised or processed, such use or processing will be carried out on our behalf as the manufacturer in accordance with § 950 BGB without any obligation on us.

Utilised or processed products supplied by us are considered as goods which are subject to reservation of proprietary as described in paragraph 1.

In the event that our goods are processed, mixed or combined with goods of third parties, we are entitled to co-ownership in proportion to the invoiced amounts for such processed goods.

The purchaser is entitled to dispose of the purchased goods subject to reservation in the normal course of business transactions and according to his usual business conditions, provided that he is not in default of payment with us. He is not entitled to otherwise dispose of the goods which are subject to reservation.

The purchaser shall transfer to us any claims against third parties resulting from the resale of the goods which are subject to reservation. They serve as security to the same extent as the goods which are subject to reservation. In the case of a resale of goods which are subject to reservation together with other goods which have not been supplied by us, his claims from the resale of our goods in the proportion of the invoice value of the goods which are subject to reservation to the invoice value of the goods supplied by third parties are transferred to us, and our portion of the claims resulting from such resale shall be remitted with precedence. In the case of a resale of the goods in which we have co-ownership, the claim transferred to us will correspond to the proportion of our co-ownership.

The purchaser is entitled to collect the amount of such claims resulting from a resale on our behalf. We are entitled to revoke this authorisation for collection at any time, if the purchaser is in default of payment with us and/or if his financial position deteriorates.

If the value of the securities the purchaser has offered to us exceeds our claims by more than 20%, further securities for a corresponding amount will be released by us on request at our discretion.

VII. Warranty and liability

We undertake to warrant for our supplies and services and for lack of assured features subject to the following conditions:

The purchaser must advise us in writing of any defects immediately after receipt of the goods but in any event not later than 7 days after the goods have been received or the services have been rendered. Any defects which are not detected within this time despite thorough inspection must be reported in writing immediately following their detection.

If a complaint is justified and submitted in due form and within the specified time, we are entitled at our discretion to take back the faulty goods and to supply correct goods or to repair the goods complained about. If we choose to repair, the purchaser must grant us the necessary time and give us the opportunity to carry out the repair free of charge. Should we fail to supply replacement goods or carry out a repair within a reasonable period of time, the purchaser may put forward his legal claims for compensation.

For repairs and goods supplied in replacement, the same warranty applies as for the goods initially supplied. The warranty period for all supplies and services is six months. The warranty period for sold plant components and accessories or spare parts commences at delivery and/or erection of plants including acceptance but in any event not later than at the time of commissioning.

We, our legal representatives and agents do not accept any liability with respect to claims for damages, irrespective of the legal cause, which arise from a fault in contract negotiations, from positive violation of the contract and from unauthorised action. This exclusion does not apply if we, our legal representatives and agents act with ill intent or gross negligence.

Consequential damage due to defects will only be subject to compensation if we have violated essential contractual duties by negligence, and if and insofar as they are typical for this type of contract and foreseeable at the date of contract signature.

VIII. Building and erection work

If we carry out building and erection work, the purchaser shall be responsible for preparation of the site in such a manner that we can immediately commence building and erection work. Furthermore, the purchaser undertakes to guarantee that the preliminary work carried out before we commence building and erection work is completed to such an extent that allows us to carry out our building and erection work without impediment.

Materials and tools as well as auxiliaries to be provided by the purchaser must be available completely and without restriction when the building and erection work is commenced.

The purchaser shall arrange to provide sufficient energy on site at his expenses.

The purchaser shall be responsible for the supply of adequate lighting on site, for secured storerooms for the supplier's tools used for the building and erection work, for appropriate common and social rooms and for adequate sanitary installations.

If the building and erection work has to be interrupted through no fault of our own, the purchaser shall bear the resulting costs.

If the costs for building and erection work are not included in the price for the delivered plant, we are entitled to request reasonable progress payments as the work proceeds. Invoices for progress payments and final invoices for building and erection work are payable immediately upon receipt, independently of other payments.

The purchaser's claims under the warranty and the supplier's liability as defined above shall also apply to building and erection work.

IX. Place of fulfilment and place of jurisdiction

Place of fulfilment for our supplies and services is the address of our headquarters.

Contracts with purchasers are governed by the law of the Federal Republic of Germany with the exclusion of the purchasing right under the Vienna agreement of April 11, 1980.

The place of jurisdiction is Siegen/Westphalia, Federal Republic of Germany. However, we are entitled to take proceedings against the purchaser at his general place of jurisdiction.

These general conditions of sale, delivery and erection have been translated from the definitive German text into the English language.

In the case of conflict or lack of clarity between the German version of the general conditions of sale, delivery and erection and the English translation, the German text shall prevail.