

General Terms and Conditions



I. General

All orders are accepted and executed on the basis of the following conditions which shall also apply, without repeated notification, to future deliveries. Deviations from our terms and conditions of sale, in particular the Purchaser's terms and conditions, shall not be binding upon us even if they have not been expressly rejected. Deviations shall only apply if they have been confirmed by us in writing.

All collateral agreements to the Purchase Contract, including in particular oral agreements with travelling salesmen and agents, and telephone orders must be confirmed in writing.

II. Prices

Unless otherwise agreed, prices are ex-works excluding freight, customs duties and import duties, and plus value added tax. Packaging is included for purchases in standard containers. In the event of new orders (follow-up orders), we shall not be bound to previous prices.

III. Duty to deliver and duty to accept

For deliveries with a binding specified time, we only guarantee that the goods will leave our factory, at the latest, by the agreed time, and that the forwarding agent will be instructed to comply with the Purchaser's desired delivery date

Reasonable partial deliveries are permissible. For call orders where there has been no agreement as to the term and acceptance dates, we shall be entitled to demand a binding specification in this respect no later than three months following the order acknowledgement. If the Purchaser does not comply with this demand within three weeks, we shall be entitled to set a two-week period of grace and, following the unsuccessful expiry of this period, to refuse delivery, cancel the contract and demand compensation for damages.

Our supply and performance obligation is subject to the proviso of correct and timely delivery to us by our suppliers, save for where we ourselves are responsible for any incorrect or delayed delivery to us by our suppliers. We are required to substantiate any absence of fault on our part.

In cases of force majeure, particularly shortages of material or transport options, industrial disputes, war, unrest, epidemics or pandemics, government or statutory measures (e.g. export restrictions) or other unforeseeable or serious events (regardless of whether these instances of force majeure affect us or our suppliers or subcontractors), binding delivery dates will also be appropriately extended for the duration and to the extent of the disruption plus a reasonable lead time. We are obliged to promptly notify the customer of the event in question insofar as reasonably possible. If the hindrance continues for longer than two months, both contracting parties shall be entitled to withdraw from the as yet unfulfilled parts of the contract. Should suspension of the delivery obligation be unreasonable for the customer, the customer may also withdraw earlier from the contract concerned following expiry of a reasonable period of time to be stipulated by the customer. Stipulation of a deadline is not required in cases provided for by law (particularly Ss. 323 (2), (4) of the German Civil Code [BGB], S. 326 (5) BGB, S. 376 of the German Commercial Code [HGB]). Where part performance has been effected, the customer may withdraw from the entire contract solely where it has no interest in the part performance.

IV. Place of performance, transfer of risk, dispatch

The place of performance and the place of fulfilment shall be Börnsen, including where delivery is specified as being 'free place of destination'. The risk shall pass to the Purchaser upon acceptance for loading onto the means of transport or, in the case of collection by the Purchaser, upon allocation for loading. Unless otherwise agreed, we will select the packaging, dispatch route, mode of dispatch and containers (barrels, pallets, containers) at our own discretion.

V. Retention of title

Title to the delivered goods shall remain vested in us until fulfilment of all claims against the Purchaser. If a bill of exchange is issued for payment of the purchase price, the retention of title shall not expire until the bill of exchange has been honoured by the Purchaser as the drawee. The Purchaser shall only be entitled to resell goods subject to retention of title within the normal course of business and subject to the condition that the Purchaser also enters into a retention of title agreement with its customers. The power of disposal shall automatically lapse if the Purchaser ceases making payments, if judicial or non-judicial composition proceedings are initiated or if an application for insolvency proceedings is lodged against its assets.

In the event that the goods have been resold, the Purchaser hereby already assigns to us, until fulfilment of all claims, the receivables and other claims against its customers arising out of the resale together with all ancillary rights, and we hereby accept the assignment. Upon demand, the Purchaser is obliged to provide us with all necessary information and to hand over all documents which are necessary to assert our rights against the customer as purchaser. The foregoing shall also apply to claims for work remuneration arising from the joining of the goods subject to retention of title to a plot of land whereby the assignment shall be limited to the invoice value of the goods subject to retention of title. If, by agreement, the goods subject to retention of title are resold together with other goods which do not belong to us, the assignment of the purchase price receivable shall only apply in the amount of the invoice value of our goods subject to retention of title. If the value of our existing collaterals exceeds our total receivables by more than 20% we shall, to this extent and upon demand by the Purchaser, be obliged to release collaterals of our choice. In the event of seizure or attachment by third parties of the goods subject to retention of title, we must be notified immediately thereof. The Purchaser shall, in all cases, bear any costs arising therefrom. If the Purchaser acts in breach of contract, and in particular in the event of payment default, we shall be entitled to take back the goods and the Purchaser shall be under an obligation to surrender them.

VI. Warranty and liability for defects

Notices of defects must be issued to us in writing immediately and no later than seven days following receipt of the delivery. Otherwise the goods shall be deemed to have been approved. A claim must contain a product description, the order number, the purchase date, a concise description of the defect and include an explanation of why the party asserting the claim believes that Rudolf Hensel GmbH is liable. In the event that Rudolf Hensel GmbH assumes liability for a legitimate defect, at its discretion it will replace the coating material with material of the same type and quality or, if no longer manufactured, with the successor material. In the event a warranty period has been agreed, no new warranty period applies to the replacement material. On the contrary, the warranty period ends upon the expiry of the remaining warranty period applicable to the product replaced. Cure by means of replacement material is the sole remedy in the case of a legitimate defect. Rudolf Hensel GmbH assumes no liability for lost profits, loss of use, lost output, lost contracts or other financial or economic losses or any form of indirect or consequential damages.

VII. General limitation of liability

Our liability for damages is limited to cases of negligent or intentional breach of obligations for which fulfilment is essential to the proper performance of the contract, on compliance with the contract partner regularly relies and may rely, and for which a breach would jeopardise the achievement of the contract purpose, and wilful misconduct or grossly negligent behaviour.

This also applies to acts carried out by our vicarious agents and persons engaged by us in the performance of our obligations (*Erfüllungsgewährten*); damages resulting from loss of life, personal injury or damage to health ensuing from an intentional or grossly negligent breach of duty by us or from an intentional or grossly negligent breach of duty by our legal representatives or persons engaged by us in the performance of our obligations; claims arising under the product liability act (*Produkthaftungsgesetz*); and claims arising from the fraudulent concealment of a defect or from the assumption of a procurement guarantee. Liability is excluded in all other cases.

In particular, we shall not be liable for faulty preparation of the surfaces and/or incorrect application of the coating caused or ordered by the Purchaser or third parties; faults or defects which result from the use of faulty equipment and/or faulty tools by the Purchaser or third parties; lack of compatibility of our products with other products not originating from us, unless we have given confirmation of such compatibility beforehand; product defects resulting from special specifications desired or ordered by the Purchaser; use of our products in a manner which deviates from the properties and parameters expressly agreed with the Purchaser or use under environmental conditions which differ from the information provided by the Purchaser; storage, handling or use of our products which lies within the Purchaser's domain of responsibility; and use of our products in a manner which deviates from the information provided by us regarding the specifications, technical data sheets or other information provided by us.

We shall only be liable for advice, assistance or a warranty that has been given by us in the event that we have invoiced for this. Gratuitous advice or assistance or a gratuitous warranty shall not result in any liability on our part, unless there has been gross negligence of wilful misconduct on our part. This limitation of liability for advice, assistance or a warranty shall not apply where this is a contractual obligation on our part.

VIII. Payment terms

The purchase price and the consideration for ancillary performance shall be payable upon handover of the delivery item. Checks and bills of exchange shall only be accepted subject to settlement; they shall only constitute payment after they have been honoured and must have prior written consent. If bills of exchange are accepted, the bank's discount and collection charges shall be charged. They must be paid immediately in cash.

In the event of late payment, reasonable default interest shall be charged which shall be at least equal to the statutory interest rate under section 288 of the German Civil Code (BGB).

IX. Consulting

Liability of any kind whatsoever for consulting or processing advice is only accepted by us if we have made the proposals to the Purchaser at its written request and have done so in writing, in a binding manner and with respect to a specific known building project. In any case, the Purchaser shall remain under an obligation to check our proposals, taking our goods into account, to ensure they are suitable for the specific purpose of use intended by the Purchaser, to comply with the technical datasheets and approvals and, where necessary, to obtain authorisation from the competent authority prior to carrying out the works.

X. Data protection

Order-related data will be saved by us in compliance with the statutory data protection.

XI. Applicable law and place of jurisdiction

All disputes arising out of this contractual relationship are to be referred to the competent court having jurisdiction for our head office, unless a different exclusive place of jurisdiction is prescribed by law.

This contract shall be exclusively governed by German law, excluding laws regarding the international purchase of moveable goods, including where the Purchaser's registered office is located abroad.

XII. Miscellaneous provisions

The assignment of the Purchaser's rights and obligations arising out of the contract concluded with the Purchaser shall require our written approval in order to be valid.

In the event that a provision of these General Terms and Conditions of Business is or becomes invalid, this shall not affect the validity of the other provisions. In such a case, the invalid provision must be replaced with a lawful provision which reflects the economically intended purpose.

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