



## **1.0 Scope of Application, Offers, Confirmation of Orders, Scope of Deliveries**

- 1.1 Any offer, sale or delivery effected by R. STAHL Schaltgeräte GmbH, Waldenburg, Germany (hereinafter: Supplier) shall be solely governed by these General Terms and Conditions of Sale and Delivery. Any diverging terms and conditions of Purchaser shall be deemed accepted only and only insofar as expressly accepted and confirmed in writing by Supplier.
- 1.2 Contents and scope of any offer shall be construed solely in accordance with the model description. In particular, any documentation, illustration, drawing, specifications of weights or measurements and of similar data forming part of an offer shall constitute mere guidelines, except where expressly declared binding.
- 1.3 The scope of a delivery shall be construed in accordance with Supplier's written confirmation of the order, in the absence of such with Supplier's order. This provision shall not affect Supplier's right to carry out technical modifications to the delivery item, provided that its technical function is not impaired as a result.
- 1.4 In case of an ongoing business relationship, the current version of Supplier's General Terms and Conditions forms part of the agreement even if express reference has not been made any more.

## **2.0 Delivery Period, Delay, Impossibility**

- 2.1 Compliance with delivery periods is conditional upon Purchaser's performance of its own contractual obligations. Delivery periods commence upon dispatch of the confirmation of the order, but not before all of the details concerning the execution of the order have been clarified, not before Purchaser has supplied all documents, permissions and releases, not before Supplier has received any down payments agreed upon and not before any other requirements agreed upon by the parties in the individual contract for the seamless execution of the order have been complied with. Otherwise the time for delivery shall be reasonably extended except where Supplier is responsible for the delay.
- 2.2 The agreed delivery dates shall be considered as complied with, should the goods for delivery have left Supplier's plant prior to its expiry or, in case of a delivery ex works, Purchaser was given notice that the goods are ready for shipment.

Correct and punctual supply to Supplier by its own auxiliary Suppliers is reserved. Should delivery be delayed due to the occurrence of unforeseeable and/or unusual circumstances on the part of Supplier, which could not be avoided with due care, the delivery deadlines shall be extended accordingly. The aforesaid applies irrespective of whether such delay occurs in the plant of Supplier or in one of its auxiliary Supplier's plants. Such delaying circumstances are, for example, sanctions and intervention by governmental authorities, delayed delivery of parts from auxiliary Suppliers, difficulties in power supply or other kinds of operational disturbances. These provisions shall apply mutatis mutandis in cases of strike and/or lockout.



Should such delay continue for more than two months, Purchaser shall be entitled to cancel the contract with respect to the part of the contract not yet performed. Any claims for damages on the grounds of an extension of the delivery period or due to a release and discharge from the obligation to deliver shall be determined solely in accordance with Section 5.

Supplier may only invoke the aforementioned circumstances, if Supplier has notified Purchaser thereof without delay.

- 2.3 Should Supplier be responsible for delayed delivery and should Purchaser suffer a loss as a result, Purchaser may claim a compensation for each full week of delay in the amount of 0.5 %, not exceeding, however, a total of 5 % of the value of that part of the total delivery which, due to the delay, could not be used on time or not in conformity with the contract. Any claims for compensation apart from this shall be governed solely by Section 5. The right to terminate the contract after ineffective expiry of a reasonable period of grace granted by Purchaser, or where the law does not require such period of grace, shall remain unaffected.
- 2.4 Should the entire delivery or performance of the contract become finally impossible for Supplier prior to the passing of risk, Purchaser may rescind the contract. Should delivery only become partly impossible and should Purchaser have a justified interest in refusing a partial delivery, or should Supplier become incapable of the contractual delivery, such circumstances shall be deemed equivalent to impossibility. Should Purchaser claim compensation for loss arising from such impossibility, liability shall be governed by Section 5.
- 2.5 Supplier shall be released from having to observe delivery times and, where applicable, other contractual obligations insofar and as long as obstacles beyond Supplier's responsibility, render compliance with the contract impossible or unreasonably difficult. Such obstacles within the meaning of this clause constitute in particular, but not limited to this listing, the following circumstances:
- mobilization, war, civil commotion, civil war, blockades, industrial actions, demonstrations, stay-in strikes and sabotages;
  - detrimental natural phenomenon like ice, floodwaters or low water, hurricanes, tornados, earthquakes and flood waves;
  - essential adverse effects on sources for foreign currencies required for the payment of raw materials;
  - obstructions, delays, restrictions or discontinuation of loading and transport;
  - obstruction by explosion, fire, destruction in full or in part of production facilities, of storage facilities, machineries and machine parts;
  - machinery breakage;
  - effects of an "energy crisis", shortage of fuel, additives or energy;
  - shortage of labour due to maladies and epidemics;
  - Supplier is not all been supplied with raw materials, additives or packaging materials or only being supplied with not as ordered;
  - national measures, in particular official orders and such alike, at home or abroad;
  - pending violation of national or international laws, in particular import or export regulations regarding the delivery, and/ or delay due to approval procedures under such regulations; Purchase shall provide any and all information and documents required under such regulations for the purpose of export/ transport/ import.



If one or more of the aforesaid obstacles occur, Supplier shall initially be entitled to postpone the agreed time of delivery for the expected duration of the reason. Supplier shall immediately inform Purchaser thereof. In case of an oral notice, Supplier shall confirm Purchaser such notice in writing as soon as reasonable under the circumstances. Upon ending of such obstacle, Supplier shall deliver in reasonable time according to its production and other circumstances. Supplier shall inform Purchaser as soon as possible about the respective date of delivery.

Should such obstacles persist for more than three months, each Party may rescind the contract. The right to rescind the contract shall be suspended for as long as and as far as Supplier is under contractual obligations to purchase raw material, as long as further upholding of the contract is still reasonable for Purchaser.

- 2.6 If shipment is delayed for reasons which are the responsibility of Purchaser, Purchaser will be charged for any cost and expenses arising from storage beginning 10 days after notification of readiness for dispatch; in case of storage at Supplier's plant a minimum amount of 0,5 % of the invoice value shall be charged for each month. Following the ineffective expiry of a reasonable deadline set by Supplier, Supplier is, however, entitled to otherwise dispose of the goods for delivery and to supply Purchaser within an appropriately extended delivery period with the ordered goods or with goods of the same generic product group.

### **3.0 Dispatch, Passing of Risk, Acceptance of Delivery**

- 3.1 Delivery shall be effected ex works (EXW Incoterms 2010), unless otherwise expressly agreed. If Supplier is under the obligation to dispatch the goods, Supplier shall be entitled to choose the means and the route of transportation. Upon respective demand, transport insurance shall be taken out with the respective costs to be borne by Purchaser.
- 3.2 Risk shall – even in cases of partial delivery - pass to Purchaser no later than upon dispatch or collection of the goods. The aforesaid shall apply irrespective of whether Supplier had agreed to provide additional services such as payment of the costs of transport, delivery or assembly.
- 3.3 Should dispatch be delayed due to circumstances, Supplier is not responsible for, risk shall pass to Purchaser 10 days after notification of readiness for dispatch; Supplier, however, has to take out insurance cover as requested by Purchaser at Purchaser's expense.
- 3.4 Without prejudice to any warranty claims, Purchaser has to accept the goods delivered, even if they evidence insignificant defects.
- 3.5 Supplier may carry out partial deliveries.



- 3.6 Unless otherwise agreed, packaging shall be arranged for by Supplier and shall not be requested from Purchaser. Therefore, the packaging is transport packaging. Place of performance for the return of transport packaging is at Supplier's registered office. Purchaser shall bear the costs of the returning of the transport packaging as well as the costs of collection incurred by Supplier. Furthermore, Purchaser shall keep the transport packaging clean and return it during Supplier's regular business hours without it being intermingled with other components.

#### **4.0 Warranty**

- 4.1 Supplier shall be liable for defects of goods delivered or of services rendered, including the absence of warranted qualities, as follows:

Only reasonably substantial impairments of the work and deliveries regarding their quality or contractual use shall constitute a defect. All parts that prove to be defective, due to a cause set prior to the passing of risk – in particular on account of defective engineering, poor construction material or faulty workmanship -, within twelve months of the passing of risk shall be, at Supplier's discretion, either repaired or replaced free of charge. Notice of the discovery of such defects after delivery shall be given without delay and in writing. Any parts replaced become the property of Supplier. Minor impairments within the meaning hereof do not form an obstacle for performance of the contract.

- 4.2 In particular, the warranty does not cover damages caused by:

incorrect or negligent use, faulty assembly and/or faulty installation or putting into operation, either by Purchaser or by third parties, natural wear, defective or negligent handling, inappropriate production equipment and facilities or inappropriate operating supply items, faulty construction work, inappropriate foundation soil, chemical, electro-chemical or electrical influences,

as long as Supplier is not liable for such cause or reason.

- 4.3 Purchaser shall, after consulting with Supplier, provide Supplier with the necessary time and opportunity to carry out any repair work or replacement delivery, which seems necessary according to Supplier's own discretion. Otherwise, Supplier shall be released from liability. Should industrial safety or the prevention of disproportionately high damages require to urgently remedy such defect, Purchaser shall advise so immediately indicating the relevant circumstances, whereupon Supplier shall grant Purchaser permission in good time according to the circumstances, but at any event after three working days, to remedy the defect itself or have it remedied by third parties and to demand from Supplier compensation for the necessary costs. Should Supplier be in default with remedying the defect, Purchaser shall have the same right irrespective of such separate permission. In case of unjustified denial of such permission, Supplier undertakes to compensate for any damage ensuing as a result.
- 4.4 This warranty shall not cover defects resulting from a faulty modification or repair work effected by Purchaser or third parties without the prior written consent of Supplier.



- 4.5 Should the repair work prove unsuccessful despite a reasonable period of grace having been granted, or should Supplier refuse to remedy the defect although Purchaser is entitled to such and/or should a replacement not be delivered, Purchaser may reduce the purchase price or cancel the contract using its own discretion. Should Purchaser cancel the contract, Supplier shall take back the goods and reimburse the contract price payment made by Purchaser less the value of the possibility of use granted. The value of the possibility of use shall be calculated on the basis of a reducing balance method of depreciation over a utilisation period of 5 years in the case of goods of a value per piece of more than € 1.000,00, otherwise of 3 years. The Parties shall be free to prove that a longer or shorter utilisation period was to be applied or that there was, for particular reasons, only a possibility of use of a lower value.
- 4.6 The warranty period concerning repair work carried out and replacements delivered is six months and begins after the finishing of the repair work or the delivery of the replacement. The warranty period shall, however, end no later than upon expiry of the initial warranty period applicable in relation to the original good delivered.
- 4.7 Any warranty claims of Purchaser become time-barred after 12 months since passing of the risk.

## **5.0 Liability**

- 5.1 Purchaser shall be entitled to claims for damages in accordance with legal provisions under the German Product Liability Act, in cases of death, injury or detriment to health, in cases of wilful damage or gross negligence, irrespective of legal basis. The same shall apply in a case of gross negligence of Suppliers legal representatives and executive employees. Supplier shall further be liable for breaches of cardinal obligations, i.e. contractual obligations that form the very basis for a proper execution of the contract and which Purchaser may rely on, as well as for malicious non-disclosure of defects and on the grounds of a guarantee.

Apart from liability under the German Product Liability Act and liability on the grounds of intent/gross negligence or cases of death, injury or detriment of health, liability shall be limited to the foreseeable and insurable damage typical of such type of contract. As far as damages are covered by a third party liability insurance or an insurance for third party product liability of Supplier, Supplier assigns, as far as legally possible, these insurance claims to Purchaser and shall in return be released in the amount of such insurance cover.

Beyond that, Purchaser shall not be entitled to any claims for damages, loss or compensation, in particular not for consequential damages as, for example, loss of production, loss of use or lost profit.

- 5.2 The burden of proof in legal action shall remain unaffected by these provisions.



5.3 Liability under the Product Liability Act or on grounds of intent or fraudulent misrepresentation shall be time-barred in accordance with the statutory period of limitation. Any other claim for damages shall elapse after 18 months beginning with the knowledge of the damage.

## **6.0 Prices and Payment**

6.1 Unless otherwise agreed, prices shall be ex works (EXW Incoterms 2010) plus the statutory value added tax payable at the time. Additional costs such as packaging, freight, insurance, customs duties and the installation costs shall be charged separately.

6.2 Unless otherwise agreed, payments shall be made in cash within ten days of the date of invoice without any deductions, free at Supplier's payment office.

6.3 Should Purchaser fall into arrears with payments, interest at a rate of 8 percentage points above the respective base interest rate shall be charged. Interest on arrears is to be charged at a higher rate should Supplier prove further legal entitlement for higher interest rates.

6.4 Purchaser may not exercise a right of retention and/or set off counterclaims, unless such counterclaim is undisputed or has been adjudicated by non-appealable judgement. Furthermore, the said shall not apply to claims based on defective delivery. If the delivery is divisible, the latter exception only relates to the part of the partial performance affected. In the case of a minor impairment, this exception does not apply, however, to that part of the payment exceeding the amount representing the loss of value of the goods delivered.

6.5 Supplier may suspend performance of delivery and service, should after formation of the contract it transpires that Purchaser will not fulfil a considerable part of its obligation due to its considerably impaired creditworthiness. Should Supplier suspend the performance of the contract, Supplier shall communicate so to Purchaser immediately and continue the performance, should Purchaser provide adequate security for the performance of its own obligations.

6.6 With regard to business transacted overseas, Supplier may also suspend performance of delivery, should foreign exchange turbulences result in currency disadvantages for Supplier of more than 10 %. Such currency disadvantage shall only have occurred after formation of the contract and before the first contractual delivery.



## **7.0 Retention of Ownership**

- 7.1 Ownership of the goods delivered, that is title to and right of disposal of, does not pass onto Purchaser until each and every claim of Supplier against Purchaser on the basis of the delivery contract have been duly fulfilled. Supplier also claims the extended reservation of title under German law. Should the parties have agreed on the drafts and cheques payment procedure and should Supplier be liable to third parties, in particular to a bank, due to such bill of exchange, Purchaser's obligations shall not be considered fulfilled until such liability of Supplier out of said bill of exchange has finally ceased.
- 7.2 Pending final and due fulfilment of each and every claim of Supplier against Purchaser on the basis of the delivery contract, Purchaser shall not give the goods delivered in pledge or as security, resell these goods or assign rights to third parties that relate to these goods without the explicit prior consent of Supplier.
- 7.3 Should Purchaser resell the goods delivered in violation of this agreement or with the consent of Supplier, Purchaser now already assigns to Supplier each and every claim arising from such sale. Supplier accepts this assignment. Supplier may collect such claim against such third party directly. Supplier may also invoke its extended reservation of title to the goods delivered. In such a case, Purchaser shall inform Supplier of the claim assigned to Supplier and of the debtor, provide all information necessary for the collection of such claim, deliver to Supplier all of the respective documentation and inform the debtor of such assignment.
- 7.4 Any mixture, combination or adjunction of the goods delivered with other goods, shall always only be effected in the name of Supplier. Should the goods delivered be connected in such way with goods not belonging to Purchaser, Supplier shall be entitled to joint ownership in the new product in the ratio of the value of the goods delivered and the other goods' value.

Should, due to such processing, mixing or combination, Supplier's ownership cease and Purchaser's new product be the principal product, it shall be deemed agreed that Purchaser assigns to Supplier proportionate joint ownership in this product.

Should the goods delivered be permanently connected with land and/or buildings, Purchaser also assigns to Supplier the claim(s) arising from or in connection with such connection as a further security for Supplier's claims against Purchaser.

- 7.5 If the behaviour of Purchaser is in breach of contract, in particular in case of not inconsiderably delayed payment, pledging or assigning the goods delivered as security or other assignment to third parties, Supplier has the right to recover the goods delivered; Purchaser is obliged to surrender possession. The recovery by Supplier of the goods delivered does not constitute rescission of the contract.



- 7.6 In cases of seizure or other interventions by third parties, Purchaser shall inform Supplier in writing immediately in order to enable Supplier to file legal action in accordance with Section 771 of the German Code of Civil Procedure (ZPO). Should such third party be unable to reimburse Supplier including its in and out of court costs of such action pursuant to Section 771 ZPO, Purchaser is liable to Supplier for the respective costs and expenses.
- 7.7 Supplier undertakes to release, at the request of Purchaser, its securities insofar as their value in terms of collection of such exceeds the secured claim by more than 10 %.
- 7.8 During the duration of the retention of title, Supplier may insure the goods delivered at Purchaser's expense against theft, breakage, fire, water and other damage, unless Purchaser proves to have taken out sufficient insurance cover to such effect itself. At Supplier's request, Purchaser shall provide such prove by producing the actual insurance policy to Supplier.
- 7.9 In case of a delivery to a foreign Purchaser, the foreign Purchaser shall secure Supplier's ownership of the goods to be delivered in accordance with the statutory provisions of the delivery country and shall also assist where and to what extent may be necessary to secure Supplier's retention of ownership. In addition, such foreign Purchaser shall also comply with German Law.

## **8.0 Industrial property rights**

Supplier reserves its right to, title in, ownership of, copyright and other industrial rights in any documents accompanying an offer, any documents and information Purchaser receives in the context of the sale and delivery process as well as its know-how. Purchaser shall not make these documents and information available to any third party without explicit consent of Supplier and shall only use these documents and information in accordance with the contract. The aforesaid shall not apply to information, which is already in the public domain independent from the sale and delivery process and which Purchaser proves to have already been in his possession prior to the transfer from Supplier, or which Purchaser learned about from an authorised third party independently from the sale and delivery process.

## **9.0 Place of Performance, Contractual Language, Applicable Law, Venue, Data Protection, Confidentiality, Written Form and Partial Invalidity**

- 9.1 Place of performance both regarding payment and delivery is at the registered office of Supplier.
- 9.2 The contractual language is the English language. Any contractual statement shall require to be made out in English. The aforesaid shall apply irrespective e of any communications between personnel of Purchaser and of Supplier regarding technical, logistical or other practical issues are communicated in the mother tongue of Purchaser or in a third language.



- 9.3 These General Terms of Sale and Delivery and the entire legal relationships between Supplier and Purchaser shall be governed solely by German law with the application of the UN Convention on the International Sale of Goods (CISG) excluded.
- 9.4 In the event of any dispute arising from the contractual relationships between the parties, venue shall be Stuttgart, Germany. However, Supplier may choose to bring an action against Purchaser at the statutory venue of Purchaser.
- 9.5 The following provisions shall apply to the contractual relationships in the following priority:
- a) Individual contractual Agreements entered into between the parties.
  - b) These General Terms of Sale and Delivery.
  - c) Statutory law, in particular the German Commercial Code (HGB) and the German Civil Code (BGB).
- 9.6 Purchaser is advised, in accordance with Section 33 of the German Federal Data Protection Act (BDSG), that Supplier saves the contractual data in machine-readable form and processes these data as required according to the purpose of the contractual relationship. All data shall be kept in confidence. Both Purchaser and Supplier shall keep in confidence any information, of which one of them becomes aware of in the course of carrying out this contract, that is not known to the public and emanates from the other Party's sphere.
- 9.7 Additional agreements, provisos, amendments and supplements require written confirmation by Supplier in order to be effective.
- 9.8 Should any of the provisions of these General Terms of Sale and Delivery or any other provision in connection with other stipulations be invalid or become invalid, the validity of all other provisions or stipulations shall remain unaffected.