

General Terms and Conditions of Sale and Delivery for Construction Machinery / - Equipment, Industrial Machinery and Commercial Vehicles of ROCKBIRD GmbH

1. Offer, quotation and conclusion of contract

1.1 Every offer, quotation or order shall be subject exclusively to the "General Terms and Conditions of Sale and Delivery" as set forth hereinbelow (hereinafter also referred to as "Terms and Conditions of Contract"). No customer terms and conditions of contract conflicting with or differing from these Terms and Conditions of Contract shall be recognized by the contractor unless with the contractor's express and written consent thereto. These Terms and Conditions of Contract shall be applicable even when the contractor makes any delivery to the customer without reservation while being aware of any customer terms and conditions of contract conflicting with or differing from these Terms and Conditions of Contract (text form sufficient).

Every offer submitted by the contractor shall be subject to change without notice. No order awarded shall be binding unless after its written confirmation by the contractor.

1.2 Any individual agreement (including any subsidiary agreement, supplement or amendment) made with a customer on a single-case basis shall prevail over these Terms and Conditions of Contract. The contents of any such agreement shall be subject to a written contract or written confirmation issued by the contractor (text form sufficient).

1.3 The Contractor reserves the right of ownership and, insofar as copyrightable, the copyright to cost estimates, drawings, information of a physical and non-physical nature - also in electronic form - and other documents. No such document may be disclosed to any third party.

1.4 Neither the underlying contract of sale nor these General Terms and Conditions of Sale and Delivery shall apply unless to entrepreneurs, legal entities under public law, or special funds under public law as defined in Section 310, Subsection 1, Sentence 1 of the German Civil Code (BGB).

2. Scope of obligation to deliver

2.1 The scope of delivery shall be subject to the contractor's written order acknowledgement (text form sufficient).

2.2 Unless expressly referred to as binding, any dimensional notation, weight, illustration or drawing or any other document belonging to any offer or quotation shall only be deemed binding to an approximate degree.

2.3 Insofar as the delivery item contains software, the Customer shall be granted a non-exclusive right to use the (co)delivered software. It shall be provided for use on the delivery item intended for this purpose. Use of the software on more than one system or delivery item is not permitted. The granting of sublicenses is not permitted.

The customer may only use the software to the extent permitted by law (§§ 69 a ff UrhG). He undertakes not to remove manufacturer's details (including copyright marks) or to change them without the express consent of the Contractor.

All other rights to the software, collected and/or generated data by the delivery item and the documentation including copies shall remain with the Contractor.

3. Price and payment

3.1 Prices shall apply ex contractor warehouse. Value-added tax shall be invoiced in addition.

3.2 Unless otherwise agreed, the payment of the purchase price shall be made in cash without any deduction of cash discount not later than thirty (30) days after the invoice date.

3.3 The contractor shall be entitled not to perform any delivery or service outstanding unless against advance payment or provision of security in the event of any failure to comply with the terms of payment or if the contractor, after having concluded the contract, becomes aware of any risk to the claim for payment due to the customer's lacking ability to pay.

3.4 No right to set-off and/or retention shall be available to the customer unless for counterclaims which are recognized by declaratory

judgment, uncontested or ready for a decision in any proceedings pending in court.

3.5 Invoices may be sent by mail or e-mail at our discretion. The customer agrees to receive invoices electronically. Electronic invoices will be sent to the customer by e-mail in PDF format to the e-mail address provided. At the express request of the customer, the invoice dispatch can also be switched to delivery by mail at any time.

4. Delivery period

4.1 A delivery deadline shall be deemed met when, prior to its expiry, the delivery item has left the contractor's warehouse or the manufacturing plant, or when readiness for dispatch has been notified to the customer.

4.2 In the event of force majeure and the occurrence of unforeseen obstacles beyond the control of the contractor (e.g. caused by epidemic, pandemic, labor disputes, strike, official measures, defective production or delayed or limited supply of raw and auxiliary materials, power, water and possibly gas failure, lack of means of transport, etc.), the agreed delivery time shall change accordingly. This shall also apply if the obstacles have arisen during an already existing delay. The Contractor shall notify the Client of the beginning and end of such circumstances as soon as possible.

4.3 The customer shall be entitled to claim compensation for any loss or damage incurred by the customer due to any delay for which the contractor is responsible, including but not limited to any date of delivery or performance firmly agreed with the customer. For ordinary negligence, such compensation shall amount to 0.5 % for every full week exceeding the deadline but to a maximum of 5 % of the net compensation amount of the delivery which has not been delivered in time due to any such delay. Any further claim for damages for delay shall be excluded for ordinary negligence without prejudice to item 8.5 hereof.

4.4 If shipping is delayed due to any circumstance under the customer's control, the contractor shall be entitled to claim the costs incurred by the contractor due to such delay including any storage costs incurred with any third party.

After an additional period of time granted by the contractor has elapsed without any result, the contractor shall be entitled to use the delivery item otherwise and to make delivery to the customer subject to a reasonable extension of the delivery period.

4.5 Compliance with the delivery deadline shall be subject to the observance of the customer's obligations as defined in the purchase agreement.

4.6 The delivery period shall be extended to a reasonable extent if the contractor does not receive supplies itself despite having given identical purchase orders to the contractor's supplier or manufacturer. In this case, the contractor shall immediately notify the customer about the unavailability of the delivery.

5. Transfer of risk and receipt of delivery item

5.1 Risk shall pass to the customer upon the transfer of the delivery item to a forwarding agent, carrier or collector, or when carried by any means of transport belonging to the contractor but not later than when leaving the contractor's or manufacturing plant's warehouse.

Upon the customer's request, an insurance against breakage, transport damage or damage by water or fire shall be taken out for the consignment by the contractor at the customer's expense.

5.2 If the shipment is delayed due to circumstances for which the contractor is not responsible, the risk shall pass to the customer from the day of readiness for shipment or notification that the goods are ready for collection. The contractor shall agree to insure the delivery item against any damage upon the customer's request. Any cost thereof shall be at the customer's expense.

5.3 The customer shall take delivery of any object delivered inbound unless it presents any material defect without prejudice to any right resulting from item 7 hereof.

5.4 Partial deliveries shall be permitted to a reasonable extent.

6. Reservation of title

6.1 The contractor shall reserve title to ownership in every delivery item until the complete payment of every debt due to the contractor from the business relation with the customer. For current accounts, the

	entire reserved property shall be used for securing the debt resulting from the balance of such account.		
	If the estimated value of the reserved property used as security for the contractor exceeds the receivables from the customer still to be paid by more than 50%, the contractor shall agree, upon the customer's request, to release collaterals of its choice to such extent.		
6.2	The customer may neither pledge nor transfer ownership in the delivery item for collateral. The customer shall give immediate notice to the contractor of any levy of execution, seizure or any other disposition by any third party.		
6.3	If the customer commits any act contrary to the contract including, but not limited to any default in payment, the contractor shall be entitled to take back any item delivered after sending a dunning notice and the customer shall be obliged to surrender possession thereof.		
	The assertion of the retention of title shall require the rescission of the contract.		
6.4	The contractor shall be entitled to insure the delivery item at the customer's expense against any loss or damage by fire, water or other damage or loss, unless the customer can provide evidence for having taken out such insurance itself.		
7.	Liability for defects in delivery		
7.1	If there is an agreement between the Customer and the Contractor on the quality of the delivery item, objective requirements for the delivery item shall not apply in this respect.		
7.2	Every part which, within a period of twelve (12) months after its delivery, presents any material defect caused by any circumstance which occurred prior to the transfer of risk shall be either remedied or replaced at the contractor's option subject to the latter's reasonable discretion. The discovery of any such defect shall be notified to the contractor in writing and without any delay.		
	Claims for material defects shall be subject to a limitation period of twelve (12) months after delivery. The period mentioned in sentence 3 of the foregoing item 7.1 shall not apply neither to any defect in a structure nor to any item used for a structure and having caused such material defect. In derogation of sentence 3 of the foregoing item 7.1, the statutory time limits shall also apply in the event of any entrepreneur recourse pursuant to Sections 478, 479 of the German Civil Code (BGB), and in case of any customer claim in accordance with item 8.5 of these Terms and Conditions of Contract.		
7.3	No liability shall be assumed for any damage caused by natural wear and tear.		
7.4	No warranty shall be assumed for any loss or damage due to any of the causes listed below: <ul style="list-style-type: none"> - Unsuitable or improper use; - Incorrect installation or start-up by the customer or by any third party; - Improper or negligent handling of the delivery item including with regard but not limited to any operating instructions available; - Exposure to excessive stress and strains; and - Use of any unsuitable operating media or substitute material. 		
7.5	After reaching mutual understanding, the customer shall allow sufficient time and opportunity to the contractor for making any rework or substitute delivery as considered necessary at the contractor's reasonable discretion; the contractor shall be exempted from liability for defects otherwise. The customer shall not be entitled neither to correct any defect on the customer's own nor to have any defect corrected by any third party, and claim reasonable compensation from the contractor for any expenditure required thereby unless in urgent cases which cause a hazard to operational safety, and in which the customer shall be notified thereof with no delay.		
7.6	Of the direct costs arising from the repair or replacement delivery, the Contractor shall bear the costs of the replacement part, including shipping, as well as the necessary costs for removal and installation, provided that the complaint is to be regarded as justified, insofar as this does not result in a disproportionate burden for the Contractor. In the event of the sale of a new item, the Contractor shall also reimburse, to the extent of its legal obligation, the expenses incurred by the Customer within the scope of recourse claims in the supply chain. The customer shall assume costs in other respects.		
7.7	Liability shall be cancelled for the consequences brought about by any		
	modification or repair work which has been performed improperly by the customer or by any third party without the contractor's prior authorisation.		
		7.8	No further claim of the customer shall be admissible unless in the event as set forth in item 8.5 of these Terms and Conditions of Contract.
		7.9	Pre-owned delivery items shall not be sold unless excluding any liability for material defects. Such exclusion shall not apply to any claim as defined in item 8.5 of these Terms and Conditions of Contract.
		7.10	Unless as otherwise agreed, the contractor shall make its domestic deliveries free from any industrial property right and copyright of any third party. If there should still be a corresponding infringement of an industrial property right, the contractor shall either obtain a corresponding right of use from such third party, or modify the delivery item to an extent which ensures that there will be no more infringement of an industrial property right. If this is not possible for the Contractor under reasonable and acceptable conditions or within a reasonable period of time, both the Client and the Contractor shall be entitled to withdraw from the contract.
		7.11	The provisions set forth in this item 7 shall apply mutatis mutandis in other respects if there is any deficiency in title while no claim of the customer shall exist unless the customer notifies the contractor of any such claim raised by any third party in writing and without any delay, does not recognize any alleged act of infringement neither directly nor indirectly, every opportunity for defence is maintained for the contractor without any restriction whatsoever, the infringement of any such right is not based on any modification to the delivery item made by the customer or any use thereof contrary to the agreement, and any such deficiency in title is not due to any instruction given by the customer.
		8.	Customer's rights to rescind the contract, reduce the price, and other contractor liability
		8.1	The customer may rescind the contract if complete performance by the contractor prior to the transfer of risk becomes definitely impossible. The same shall be applicable if the contractor is unable to perform. In addition, the customer may also rescind the contract if the performance of a part of a delivery becomes impossible in terms of quantity when ordering objects similar in type, and if the customer has a legitimate interest in rejecting a partial delivery. If the foregoing is not the case, the customer may reduce consideration accordingly.
		8.2	The customer shall be entitled to rescind the contract if there is any delay in delivery as defined in item 4 of these Terms and Conditions of Contract, and if the customer grants a reasonable time extension to the contractor in default, and if such time extension is not observed.
		8.3	The customer shall remain obligated to give consideration if impossibility of performance occurs while the customer is in default of acceptance or due to any fault of the customer.
		8.4	Furthermore, the customer shall be entitled to rescind the contract if the contractor has allowed a reasonable time extension set by the customer for defect remedy to elapse without fulfilment. The customer's right to rescind the contract shall also exist in the event of any other failure of the contractor to remedy a defect or provide replacement.
		8.5	No other claim for compensating any loss or damage whatsoever, including any loss or damage not caused to the delivery item itself, shall exist unless as follows: <ul style="list-style-type: none"> - In case of gross negligence or intent; - In the event of injury of life, body or health; - In the event of any culpable non-observance of essential duties under the contract where the fulfilment of the purpose of the contract is put at risk with regard to the foreseeable damage or loss typical of this contract; - If and where the German Product Liability Act provides for liability for personal injury or material damage of objects used for private purposes in the event of any defect in an item delivered; - For any defect which may have been fraudulently concealed or whose nonexistence has been guaranteed by the contractor.
			Any further claim for damages shall be excluded in other respects.
		9.	Liability for collateral duties
			The provisions as set forth in items 7 and 8 of these Terms and Conditions of Contract shall apply mutatis mutandis excluding any

further claim of the customer if the delivered item cannot be used by the customer as provided for in the contract through any fault committed by the contractor due to any failure to perform or any defective performance of any proposal or consulting made or given either before or after contract conclusion or any other subsidiary duty under the contract, including but not limited to any instruction for the operator control and maintenance of such delivered item.

10. Limitation

10.1 Claims for material defects and defects of title shall become statute-barred 12 months after delivery.

10.2 The period specified in the first sentence of Clause 10.1 above shall not apply in the case of defects in a building or in items for a building and these have caused the material defect. Notwithstanding clause 10.1 sentence 1 above, the statutory periods shall also apply in the event of recourse against a contractor pursuant to Sections 478, 479 of the German Civil Code (BGB) and in the event of any claims of the Customer pursuant to clause 8.5 of these Terms and Conditions; these shall also apply to the limitation of claims under a right of recourse in the supply chain pursuant to Section 445b (1) of the German Civil Code (BGB). The suspension of the statute of limitations under Section 445b (2) of the German Civil Code (BGB) shall remain unaffected and shall end no later than five years after the date on which the Contractor delivered the item. These provisions on the limitation of recourse claims and on the suspension of expiry shall not apply if the last contract in the supply chain is a consumer goods purchase.

11. Place of performance and place of jurisdiction

11.1 If the customer is a merchant, a corporate body under public law or a special fund under public law, the place of performance and the exclusive place of jurisdiction applicable to both parties and to any present or future claim arising out of this commercial relationship shall be either the contractor's head office or, at the contractor's option, the registered office of the branch establishment which has concluded the agreement.

12.2 Any claim arising out of or in relation with the underlying agreement shall be governed by the laws of the Federal Republic of Germany to the exclusion of the UN Sales Convention.