

## GENERAL TERMS AND CONDITIONS

### Resch D.C. GmbH

#### **1. Application of Terms and Conditions, Verbal Side Agreements, Performance of Purchase Contract, Storage Fees, Place of Performance, and Transfer of Risk**

- 1.1 These General Terms and Conditions (hereinafter the "**Terms**") form an integral part of each offer, each confirmation of order and each transaction concluded by Resch D.C. GmbH (hereinafter "RDC"). The buyer's orders shall be deemed accepted if RDC confirms an order in writing.
- 1.2 Verbal commitments or other verbal side agreements not contained in an offer, in the confirmation of an order or in the purchase contract shall be invalid, unless the RDC management has confirmed these in writing.
- 1.3 Several buyers shall be jointly and severally liable for the fulfilment of their contractual obligations. The buyer shall be deemed to have performed a contract only if the purchase item was collected and if the purchase price along with all ancillary charges pursuant to the purchase contract has been received on RDC's business account. RDC shall be deemed to have performed the purchase contract if it has made the purchase item ready for collection at the place of dispatch and if it has notified the buyer thereof, and in any case once the buyer has taken over the purchase item.
- 1.4 If the purchase item is not collected in time, RDC may charge the buyer a storage fee at a rate of at least EUR 20.00 per day, plus statutory value added tax (EUR 24.00 gross per day) from the first day of buyer's default. Once the buyer is in default, RDC shall be liable for any damage meanwhile caused to the purchase item only in case of gross negligence or intent.
- 1.5 Exclusive place of performance for all claims arising from or in connection with the purchase contract shall be A-4690 Schwanenstadt.
- 1.6 Any and all encumbrances, costs and risks connected with the purchase item shall transfer to the buyer upon expiry of the time limit for acceptance/take-over and, in case of takeover, as of the takeover date.

#### **2 Prices, Maturity, Default Interest, No Setoff, Cancellation Fee**

- 2.1 Prices are payable net without cash discounts or other rebates from the place of performance (see Section 1.5). Any increase in prices by the factory, increases/introduction of new freights and customs duties, changes in official exchange rates and other import duties or taxes, which arise after the buyer has signed the purchase contract, will be added to the agreed purchase price and will therefore result in price increases.
- 2.2 The purchase price and prices for other services are due and payable upon delivery of the purchase item. If payment in instalments was agreed, the entire outstanding purchase price payable along with default interest will be immediately payable if the buyer is in default with only one instalment. Default interest will be charged from the day following the invoice date. In case of late payment, the buyer shall pay default interest at a rate of 12.19% p.a. It shall be the buyer's exclusive responsibility to procure loans to finance the purchase. RDC will not influence acquisition financing in any manner whatsoever.
- 2.3 Notwithstanding the buyer's fault and the amount of a down payment, any down-payments made by the buyer shall be earnest money (Section 908 of the Austrian Civil Code). In no event may these payments be reduced by court order.
- 2.4 Cash payments may only be made at RDC's cash desk. Bank transfers shall be made to RDC's business account and shall be deemed made only once the payment is credited on RDC's account.
- 2.5 Under no circumstances may the buyer set off his own claims against RDC's claims. The buyer may validly transfer rights and obligations under the purchase contract only with RDC's written consent.
- 2.6 If the purchase price is not fully paid, RDC shall have the exclusive right to earmark payments received. The buyer acknowledges that RDC cannot accept any notes or declarations on payment slips, because these will be subject to machine processing.



### 3. Reservation of Title

- 3.1 **Scope of Reservation of Title:** RDC will reserve title to the purchase item along with all independent components and accessories pending full payment of the purchase price and default interest and fees, if any, and all costs, charges, commissions, taxes and the like connected with recovery, if any, storage and appraisal of the purchase item. RDC may mark its title on the purchase item at any time. The buyer shall properly maintain the purchase item at buyer's own cost and expense.
- 3.2 **Third-Party Access to Purchase Item and Notification Duty:** If third parties should access the purchase item, the buyer shall immediately notify RDC by phone and take all measures which are necessary to enforce RDC's ownership rights. The buyer may not make available to third parties, sell or encumber the purchase item without RDC's prior written consent. The buyer shall immediately notify RDC of any relocation or pledge of the purchase item. While RDC reserves title to the purchase item and at RDC's request, the buyer shall insure the full value of the purchase item against all risks and restrict the transferability of the insurance policy in RDC's favour. RDC empowers the buyer to collect the information necessary to verify this obligation from the insurance company disclosed by the buyer. Should appropriate insurance cover not have been provided despite RDC's request, RDC may provide the necessary cover on behalf and for the account of the buyer with an insurance company selected by RDC.
- 3.3 **Default in Payment and Recovery:** In case of the buyer's default in payment, RDC may immediately exercise its reservation of title and take the purchase item from the buyer anywhere or obtain the right to dispose of the purchase item in any other manner. In this case, RDC is obliged to return the purchase item to the buyer only concurrently against payment of all liabilities which are outstanding under the purchase contract (e.g. outstanding purchase price along with default interest and fees, if any, and all costs, charges, commissions, taxes and the like connected with the recovery, storage and appraisal of the purchase item). The buyer expressly, unconditionally and irrevocably agrees already at this point in time that RDC may recover the purchase item if buyer is in default in payment. The buyer shall promptly deliver to RDC all requested documents in case RDC should recover/take the purchase item from the buyer. The buyer may not assert any compensation claims out of or in connection with RDC's recovery of the purchase item as a result of RDC having exercised its reservation of title, except in case of RDC's gross negligence or intent. In this context, the buyer waives his right to take action for trespass and injunctive relief. For the avoidance of doubt, a recovery of the purchase item does not constitute withdrawal from the contract.
- 3.4 **Realization of Purchase Item:** If RDC has recovered/taken the purchase item from the buyer due to the buyer's default in payment, RDC may also realize the purchase item and continue the purchase contract. RDC shall realize the purchase item as follows: The collected purchase item must first be appraised at the buyer's cost and expense by a court-sworn expert to be selected by RDC. The appraisal result shall be notified to the buyer, and the buyer shall be granted a six-week time limit. The buyer may certainly inspect the expert's appraisal opinion or statement at the buyer's request. The buyer may nominate potential buyers within that six-week period. RDC shall opt for a nominated candidate if his bid is equal to or higher than the bids other buyers have submitted to RDC or if his bid equals at least the appraised value determined by the court-sworn expert and if the purchase price is paid in cash. After expiry of the six-week period, RDC may sell the purchase item by private sale or voluntary auction. At RDC's free election, sale and/or auction may also be carried out in the name and for the account of the buyer. The estimated value determined by the expert shall be the minimum purchase price. Unless the purchase item is sold within ten weeks after it has been appraised by the court-sworn expert, RDC may procure another appraisal at the buyer's cost and expense and subsequently sell the purchase item without having again notified the buyer. The sales proceeds shall first be used to cover costs, charges, commission, taxes and the like arising in connection with the recovery, storage, appraisal and sale of the purchase item. Any residual sales proceeds shall be used to cover the still outstanding purchase price along with default interest and fees, if any.



#### 4. Delivery, Delay in Delivery, Cancellation Fee

- 4.1 **Delivery Period:** The delivery period is set out in the purchase contract. Delivery periods accompanied by language such as "expected", "approximately" or "about" are merely indications and do not constitute fixed dates. If shipment is delayed without RDC's fault, RDC's notice of readiness shall be deemed to be shipment. Any malfunctions in RDC's own operations or in operations of third parties, which are critical for manufacture and transport, will release RDC from its obligation to comply with delivery periods, entitle RDC to make partial deliveries or to withdraw from the contract. Malfunctions may be caused by force majeure, shortages of raw materials and energy, traffic bottlenecks, government interference, labour disputes, war and riots, fire, and mechanical breakdown. In all these cases of malfunction, the buyer is not entitled to assert any damages whatsoever.
- 4.2 **Delay in Delivery, Grace Period and Exclusion of Damages:** If the agreed delivery date is exceeded by more than four weeks, the buyer may set a reasonable at least four-week grace period for RDC. The buyer shall not be entitled to recover damages from RDC for non-performance or default, unless RDC has acted with intent or gross negligence. Neither party may derive any right from withdrawal of the contract due to delay in delivery.
- 4.3 **Suspension of Delivery Obligation:** RDC's delivery obligation is suspended as long as the buyer is in arrears with his obligations towards RDC (e.g. payment obligation under this or another transaction with RDC). If RDC has any doubts regarding the buyer's ability to pay (e.g. if a KSV inquiry suggests a default risk), RDC may make the further performance of the purchase contract conditional upon a down payment or provision of collateral (e.g. bank guarantee).
- 4.4 **Change of Order and Extension of Delivery Period:** The delivery period starts to run with the conclusion of the purchase contract. The delivery period will be interrupted if the buyer insists on a different design of the purchase item prior to its delivery. The resulting new delivery period will be extended by the time which is necessary to change the design.
- 4.5 **Shipment of Purchase Item:** All items are generally delivered freight forward, without packaging, ex warehouse. All shipments and also return shipments, if any, are transported at the buyer's risk. RDC will select method and route of dispatch, thereby taking into account the buyer's wishes, if possible. The buyer may take over from the carrier goods damaged in transit only if such damage was previously acknowledged in writing. The buyer will be responsible for any consequential damage which arises from his failure to comply with that obligation.
- 4.6 **Fate of Down Payment/Earnest Money:** If the purchase contract is cancelled for reasons beyond the buyer's control or if the buyer has exercised his withdrawal right because RDC has failed to observe the delivery period, RDC shall be obliged to repay any down payments. In all other cases, the down payment shall forfeit as earnest money for the benefit of RDC (see Section 2.3).
- 4.7 **RDC's Withdrawal Right in Case of Buyer's Default; Cancellation Fee:** If the buyer is in default (i) in respect of accepting the purchase item or (ii) in providing a shipment address or (iii) in fulfilling his payment obligations or (iv) in providing an agreed collateral and if such default exceeds 8 calendar days from the agreed due date or, if no due date was agreed, from the respective request, RDC may set a grace period of 8 calendar days and subsequently withdraw from the purchase contract and charge a no-fault cancellation fee of 10% of the total price the buyer is required to pay under the purchase contract. These payments cannot be reduced by court order. Notwithstanding the above, RDC may also assert any damage in excess of the above.
- 4.8 **Call Orders:** Unless otherwise agreed, call orders are subject to a call period of not more than 6 months from the contract execution date. After expiry of that period, RDC may compute and deliver to the buyer or store at the buyer's account the residual quantity which is outstanding at that time. The same applies, if ordered volumes are not taken over at the agreed point in time. In both cases, the quality risk and the risk hazard will transfer to the buyer on the default date.

#### 5. Limitation of Warranty Claims and Damages and Claims Due to Error and Laesio Enormis; Product Liability

- 5.1 **Product Description:** Information provided in descriptions on services, weights, operating expenses, speed etc. shall only be approximate and therefore non-binding. The buyer cannot assert any rights towards the seller from the fact that the factory uses symbols or numbers to designate the order or the ordered items.



- 5.2 **Manufacturer's Warranty:** Whenever the manufacturer of an item grants a warranty, those warranty claims can be asserted only and directly towards the manufacturer subject to the terms and conditions of the manufacturer's warranty. The buyer cannot assert any claims from such manufacturer's warranty towards the seller; such claims are fully excluded.
- 5.3 **Buyer's Obligation to Inspect the Purchase Item and to Notify Deficiencies:** The buyer shall promptly and thoroughly inspect and check the purchase item upon takeover. Deficiencies shall immediately be notified to RDC, and at least within 21 calendar days from takeover. That complaint shall be sent by registered letter and describe the nature of a deficiency in detail. If, upon takeover, a deficiency is not noticeable despite thorough examination (so-called hidden deficiency), it must immediately be notified to RDC and at least within 21 calendar days after it was discovered. That complaint shall be sent by registered letter and describe the nature of a deficiency in detail. If the buyer fails to notify a deficiency in due time, he shall fully, irrevocably and finally lose his right to warranty and damages due to the respective deficiency, and due to error on the absence of deficiencies and generally his right to compensation of consequential damage. If a deficiency is notified correctly and in due time, the buyer is required to assert his warranty claims and damages in court within the time limit referred to in Section 5.4; otherwise his rights will forfeit.
- 5.4 **Abbreviation of Time Limits for Warranty Claims and Damages:** The buyer's warranty claims shall forfeit, unless the buyer asserts these in court within 12 months from delivery of the purchase item or from default in acceptance of the purchase item. Any damages of whatever nature shall forfeit, unless asserted in court within 6 months after the buyer is aware of damage and damaging party, and no later than within 2 years from occurrence of the event giving rise to a claim.
- 5.5 **Lost Profit:** In derogation of Section 349 of the Austrian Companies Code, lost profit shall generally and invariably be compensated only if a loss of profit was caused by the seller's gross negligence or intent.
- 5.6 **No Consequential Damage and Avoidance on the Grounds of Error and Laesio Enormis:** As a matter of general principle, the buyer is not entitled to assert claims against RDC for the following: (i) damage due to direct or indirect flaws/errors, including but not limited to those in design, material or processing or production of the purchase item (complete exclusion of consequential damage), and (ii) (business) error or (iii) shortfall exceeding fifty percent (see Section 934 Austrian Civil Code).
- 5.7 **Exceptions from Limitation of Liability and Shift of Burden of Proof:** The limitation of liability pursuant to Sections 5.3, 5.4 and 5.6 is inapplicable only if RDC has caused or concealed the respective deficiency by gross negligence or intent. Section 924 of the Austrian Civil Code shall not be applicable between buyer and seller. It shall be buyer's exclusive responsibility to prove the existence of a deficiency upon delivery and the existence of RDC's fault.
- 5.8 **Handling of Warranty Claims:** Replaced parts will transfer to RDC's property. Flaws or deficiencies of parts subject to normal wear and tear, which were caused due to such wear and tear, shall not be covered by warranty.
- 5.9 **Expiry of Warranty Claims:** The buyer cannot assert a warranty claim if he uses consumables (e.g. foils cardboard packaging etc) or spare parts not approved by RDC or the producer and if flaws or deficiencies simultaneously occur which are linked to the use of such components. The buyer's warranty claim in respect of products with use-by dates or best-before-use dates will forfeit with the expiry of the respective use-by date or best-before-use date of a product.
- 5.10 **Place of Performance for Warranty Claims and Right to Rectification and Improvement:** All warranty claims and damages shall be performed exclusively at A-4690 Schwanenstadt. As a result, any expenses incurred for external technical assignments, bypass equipment and transports shall be chargeable. RDC shall be granted adequate time which is necessary for rectification and/or improvement. If work necessary to rectify flaws is sourced from third parties, the buyer shall not be entitled to assert any warranty claims or costs towards RDC.
- 5.11 **Product Liability:** In cases of product liability, RDC will disclose to the beneficiary within a reasonable period of time the producer, importer or the party having supplied the product to RDC, unless RDC is subject to a confidentiality obligation in a particular case.



**6. Provision of Machinery on a Trial Basis:** If a potential purchase item is made available to the buyer on a trial basis as a loan and if the buyer wishes to subsequently buy it, all related payments are due immediately after invoicing. Agreed rental payments shall be transferred until the 5th day of a month in advance to RDC's business account. The risk of loss, destruction of or damage to the goods for any reason whatsoever shall transfer to the customer at the time of shipment. The customer shall properly insure the goods from the takeover date against all risks (fire, theft, burglary, flood, improper handling, malicious damage etc). If the goods are purchased at the end of the trial period, all warranty periods shall start to run retrospectively from the commencement of provision on a trial basis. While machinery is provided on a trial basis, RDC may demand return of the potential purchase item at any time and without cause and compliance with time limits.

## **7. Final Provisions**

- 7.1 RDC may transfer the contract to companies directly or indirectly affiliated with RDC without the buyer's consent. The buyer may not withhold the purchase price for any reason whatsoever,
- 7.2 Any amendment and/or modification of the purchase contract, including this written form requirement, shall be made in writing to be effective.
- 7.3 Should any term of the purchase contract be or become invalid due to legal provisions, the validity of the remaining terms shall thereby not be affected. The parties undertake to replace invalid or non-effective terms by terms that closest reflect the economic purpose of the invalid or ineffective terms. The same applies if the consummation of the purchase contract reveals any loophole.
- 7.4 Unless otherwise provided herein, all notices, communications, reports, statements and notifications to be given or made to the other party pursuant to the offer or the purchase contract shall be valid if given or made in writing to the respective other party.
- 7.5 The purchase contract shall exclusively be governed by and construed in accordance with Austrian law, to the exclusion of the UN Sales Convention and Austrian International Private Law (Act on International Private Law; Convention on the Law Applicable to Contractual Obligations; Rome I and II Regulation).
- 7.6 Exclusive place of jurisdiction shall be Austria. Exclusive place of jurisdiction for all disputes arising out of or in connection with the offer or the purchase contract shall be the court having jurisdiction for commercial matters in the first district of Vienna (BGHS Wien or Handelsgericht Wien).