

**Rickmeier GmbH Terms and Conditions of Sale, Delivery and Payment**  
(as of 1.10.2009)

for use during transactions with:

1. a person who is acting within the scope of their commercial or independent occupation when they conclude the contract (trader);
2. public sector legal entities or a public law special trust.

**I. General points**

1. All supplies and services shall be based on these terms and conditions and on any specific contractual agreements. No differing terms and conditions of purchase of the Orderer shall become part of the content of the contract through the fact of acceptance of an order. Unless agreed otherwise, a contract shall be established upon written confirmation of the order by the Supplier.
2. The Supplier shall retain title and copyright to samples, cost estimates, drawings and other information of a tangible or intangible nature, which may not be made accessible to third parties. The Supplier undertakes only to make accessible to third parties any information and documents that are designated by the Orderer as confidential, subject to the latter's consent.

**II. Price and payment**

1. Unless explicitly agreed otherwise, all prices shall be ex works, including loading in the factory but excluding packaging and unloading. Packaging shall be charged at cost and shall not be returnable. The costs for the installation and commissioning of hydraulic plant shall only be included in the prices where this is explicitly confirmed.
2. The agreed prices are net of value added tax, which shall be added to the prices at the statutory rate.
3. Unless agreed otherwise, the Supplier's invoices shall fall due for payment immediately in cash, without deductions.
4. The Orderer shall only be entitled to retain payments, or to offset them against counterclaims, inasmuch as its counterclaims are uncontested or have been finally and non-appealably approved.
5. If the order defaults in payment, the outstanding balance shall attract interest in accordance with § 88(2) BGB [*German Civil Code*] (8% above the base rate). If the Supplier is able to prove evidence of a higher default loss, it may make a claim in this respect.

**III. Delivery time, delay in delivery**

1. The delivery time shall be as agreed by the contracting parties. The Supplier will only adhere to the delivery time provided all commercial and technical questions have been clarified between the contracting parties, and provided the Orderer has met all obligations incumbent on it, for example provision of the requisite official certificates or approvals or payment of a deposit. Failing this, the delivery time shall be extended accordingly. This shall not apply if the Supplier is responsible for the delay.
2. Adherence to the delivery time-limits shall be subject to the proviso of proper and timely delivery to the Supplier. The Supplier shall make known as soon as possible any delays that may arise.
3. The delivery period shall be deemed to have been adhered to provided the delivery item has left the Supplier's factory, or has been declared ready for shipment, by the end of the delivery period. If an acceptance procedure is to take place, then unless there is a justified reason for refusal of acceptance, the acceptance date or the notification that the delivery item is ready for acceptance, shall be authoritative in determining whether the delivery period has been adhered to.
4. If shipment or acceptance of the delivery item is delayed for reasons for which the Orderer is responsible, it shall be charged the costs incurred as a result of the delay, commencing one month after notification of readiness for shipment or acceptance.
5. If failure to adhere to the delivery time is due to an act of God, labour disputes or other events outside the Supplier's control, the delivery time shall be extended accordingly. The Supplier shall notify the Orderer of the start and end of such circumstances as quickly as possible.

6. The Orderer may withdraw from the contract without notice if the Supplier is definitively unable to provide full performance prior to transfer of risk. The Orderer may also withdraw from the contract if execution of part of the delivery under an order is impossible and it has a justified interest in refusing a part-delivery. If this is not the case, the Orderer must pay the contract price relating to the part-delivery. The same shall apply in the event of incapacity on the part of the Supplier. For the rest, section VII.2 shall apply.  
If impossibility or incapacity arises during default in acceptance, or if the Orderer is solely or primarily responsible for the circumstances in question, it shall remain obliged to pay the consideration.
7. If the Supplier is in default in delivery and the Orderer suffers a loss as a result, the latter shall be entitled to demand a flat rate amount of default compensation. This shall amount to 0.5 % for each full week of delay, albeit up to a maximum of 5 % of the value of that part of the entire delivery that cannot be used in good time, or in accordance with the terms of the contract, as a result of the delay. If the Orderer sets the Supplier a reasonable time limit, after the order is due for delivery, during which to perform, taking into account statutory exceptional circumstances, and if such time limit is not adhered to, the Orderer shall be entitled to withdraw from the contract in accordance with the statutory provisions. Further claims arising out of default in delivery shall be based exclusively on section VII.2 of these terms and conditions.
8. Subject to any different agreements in individual instances, we accept no delivery obligation without a binding acceptance obligation on the part of the Orderer. Unless explicitly agreed, delivery to the customer, even over a long period, shall not give rise to any future delivery obligation. If we take delivery, without objection, of a delivery schedule or comparable documents from the customer, this shall not give rise to a delivery obligation on our part.
9. If we have, in an individual instance, agreed to an ongoing delivery obligation, without fixing an aggregate delivery quantity (open-ended delivery agreement), we shall have an ordinary right of termination subject to three months' notice. The customer shall have the same right of termination if it has entered into an ongoing acceptance obligation to take delivery, without fixing an aggregate delivery quantity.
10. If it becomes obvious, after conclusion of the contract, that our payment claim is at risk owing to lack of capacity on the part of the Orderer, then § 321 BGB shall apply. There shall be a risk in particular if our credit insurer refuses to cover the Orderer's order or parts thereof. There shall also be a risk if the Orderer inadequately fulfils its contractual obligations towards us or towards third parties, or is slow in paying.

#### **IV. Transfer of risk, acceptance**

1. The risk shall transfer to the Orderer after the delivery item has left the factory, even if part-deliveries take place or if the Supplier has agreed to undertake other services, such as the shipping costs or delivery and installation. If an acceptance procedure is required, then it shall be decisive in determining the transfer of risk. It must take place on the acceptance date, or alternatively after the Supplier has notified that the delivery item is ready for acceptance. The Orderer may not refuse acceptance in the event of a minor defect.
2. If shipment or acceptance is delayed or fails to take place, through circumstances outside the Supplier's control, the risk shall transfer to the Orderer on the date of notification that the delivery item is ready for shipment or acceptance. The Supplier undertakes to contract those insurance policies required by the Orderer, at the latter's expense.
3. Part-deliveries shall be admissible if the Orderer can reasonably be expected to accept them.

#### **V. Reservation of title**

1. The Supplier shall retain title to the goods until receipt of all payments under the delivery contract. If the Orderer is in default or if the Supplier receives credible information in this context, which lead it to fear that the outstanding debts may be irrecoverable, then the Supplier shall be entitled to prohibit resale or further processing of the goods delivered and to take these back or collect them. The Supplier may, if necessary, access the Orderer's premises for this purpose. If the Supplier recovers the goods, this shall equate to withdrawal from the contract. After recovering the goods, the Supplier

shall have authority to sell them, in which case the proceeds of sale shall be credited against the Orderer's liabilities, less reasonable costs of the sale.

2. The Orderer shall be obliged to treat the goods with care. It shall in particular be obliged to adequately insure them against fire and water damage and theft, at their replacement value, and to store the goods in such a way that they are protected from moisture and at a reasonable temperature. If maintenance and inspection work is necessary, the Orderer must undertake this in good time at its own expense.
3. In the event of attachment or other interventions by third parties, the Orderer must immediately notify the Supplier in writing, to enable it to bring an action in accordance with Section 771 ZPO [*German Code of Civil Procedure*]. If the third party is not able to reimburse the Supplier the judicial and extrajudicial costs of an action, in accordance with Section 771 ZPO, then the Orderer shall be liable for the loss incurred.
4. The Orderer shall be revocably entitled to process or sell the subject of sale during the normal course of its business, provided it has agreed a reservation of title with its customer and provided the receivables arising out of the resale transfer to the Supplier. It hereby assigns to the Supplier all receivables making up the final invoice amount (including value added tax), which are owed to it by its customers or third parties out of the resale, irrespective of whether the goods were sold on without agreement or by agreement. The Orderer shall remain authorised to collect the debt even after the assignment, provided the Supplier has not revoked this authority. This shall not affect the Supplier's authority to collect the debt itself. However, the Supplier undertakes not to collect the debt for as long as the Orderer meets its payment obligations out of the proceeds received, is not in payment default, and in particular for as long as no application for the institution of insolvency proceedings has been filed, and provided payments have not been suspended. If this is the case, the Orderer shall be obliged to immediately notify the Supplier of the assigned receivables and the debtors concerned, to provide all information required for collection purposes, to hand over the relevant documents and to notify the third party debtor of the assignment.  
The Orderer shall not be authorised to assign receivables which prejudice the Orderer's assignment in advance to the Supplier under the extended reservation of title; the same shall apply to prejudicial factoring transactions, which the Orderer shall also not be entitled to undertake, owing to the Supplier's collection authority.
5. Processing or remodelling of the goods by the Orderer shall in all cases be undertaken on the Supplier's behalf. If the goods are processed together with other items not belonging to the Supplier, the Supplier shall acquire joint title to the new product in the ratio of the value of the goods to that of the other items at the time of processing. For the rest, the same shall apply in relation to the item produced through processing as applies to the goods delivered subject to reservation of title.
6. If the subject of sale is processed together with other items not belonging to the Supplier, the Supplier shall acquire joint title to the new item in the ratio of the value of the goods to that of the other incorporated items at the time of incorporation. If incorporation takes place in such a way that the Orderer's item is considered to be the main item, then it is agreed that the Orderer shall transfer prorata joint title to the Supplier. The Orderer shall safeguard the sole title or joint title on the Supplier's behalf.
7. The Orderer shall also assign to the Supplier by way of security those receivables that accrue to it against a third party, through combination of the subject of sale with an item of real property.
8. The Supplier undertakes to release the collateral due to it, at the request of the Orderer, inasmuch as the value of the collateral exceeds the receivables to be secured by more than 10%; the Supplier shall be responsible for selecting the collateral to be released.

## **VI. Defect claims**

The Supplier shall provide warranty as follows for material defects and defects of title in the delivery, to the exclusion of further claims, conditional upon section VII:

### Material defects

1. Defect claims by the Orderer presuppose that the latter has properly met the investigation and complaint obligations under Section 377 HGB. Complaints in relation to defects that are recognisable during a reasonable incoming goods control procedure must be made in writing to the Supplier, notwithstanding any further statutory investigation and complaint notification duties, at the latest within five days of receipt of the goods by the Orderer.
2. All parts that prove to be defective as a consequence of a circumstance in existence prior to the transfer of risk must be repaired, or non-defective replacements supplied, free of charge, at the Supplier's choice. The Supplier must be notified in writing as soon as such defects are discovered. Replaced parts shall become the property of the Supplier.
3. Having reached an understanding with the Supplier, the Orderer must provide it with the necessary time and opportunity to undertake all repairs and replacement deliveries that the Supplier deems necessary, failing which it shall be exempted from its liability for the resulting consequences. The Orderer shall only have the right to remedy the defect itself, or to arrange for its remedy by third parties and to claim reimbursement of the associated expenses, where there is an urgent risk to operational safety, or in order to avert disproportionately high losses, in which case the Supplier must be notified immediately.
4. Inasmuch as the complaint should prove to be justified, the Supplier shall bear the costs of the replacement part, out of the indirect costs arising through the repair or replacement. It shall also bear the costs of removal and installation, and those of the provision of any fitters and assistants who may be required, including their travelling costs, provided this does not involve the Supplier in any unreasonable expense.
5. The Orderer shall have a statutory right to withdraw from the contract if the Supplier fails to observe a reasonable additional time that it has been set for repair or replacement delivery owing to a material defect, with consideration to the statutory exceptional circumstances. If a defect is only minor, the Orderer shall only be entitled to reduce the contract price. It shall not be entitled to reduce the contract price in any other circumstances.  
Further claims shall be dealt with in accordance with section VII.2 of these terms and conditions.
6. No warranty is accepted in the following circumstances in particular.  
Unsuitable or inappropriate use, defective installation or commissioning by the Orderer or third parties, normal wear and tear, defective or negligent treatment, inappropriate maintenance, unsuitable resources (in particular dirty or inadequately filtered lubricants), defective building work, unsuitable building ground, chemical, electrochemical or electrical influences, inasmuch as the Supplier is not responsible for them.
7. Unless agreed otherwise, the Supplier shall not provide any warranty for the fact that the products supplied are suitable for the Orderer's special intended use. This shall apply in particular if the Supplier delivers on the basis of the Orderer's drawings, specifications, samples etc. The Supplier shall also provide no warranty, unless agreed otherwise in an individual instance, in relation to the efficiency and operational safety of the products supplied, within the product environment envisaged by the Orderer, i.e. in the overall system comprising the product supplied (e.g. pump) and the other system components (e.g. motor, lubrication system). In this respect, the Orderer shall bear sole responsibility for the system, which shall also include testing the system under practical conditions.
8. If the Orderer or a third party effects inappropriate repairs, the Supplier shall not be liable for the resultant consequences.  
The same shall apply in the event of any changes to the delivery item without the Supplier's prior approval.

#### Defects of title

9. If use of the delivery item leads to an infringement of industrial property rights or copyright in Germany, the Supplier shall in principle, at our own expense, procure for the Orderer the right to continued use, or else modify the delivery item in a manner that is reasonably acceptable for the Orderer, in such a way that no further infringement of the protective right occurs.

If this is not possible subject to commercially reasonable conditions, or within a reasonable period, the Orderer shall be entitled to withdraw from the contract. The Supplier shall also have the right to withdraw from the contract, subject to the above criteria. The Supplier shall also indemnify the Orderer in the event of uncontested or finally judicially approved claims by the proprietor of the property rights in question.

10. The list of the Supplier's obligations laid down in section VI.9 shall be exhaustive, conditional upon section VII.2, in the event of an infringement of a proprietary right or copyright. They shall only apply if
  - the Orderer notifies the Supplier immediately of asserted infringements of protective rights or copyright;
  - the Orderer supports the Supplier to a reasonable extent during defence of the claims asserted, and permits the Supplier to undertake the modification work pursuant to section VI.7;
  - the Supplier retains the right to undertake all actions in defence, including out-of-court settlements;
  - the defect of title is not the result of an instruction given by the Customer; and
  - the infringement of rights has not been caused by the fact that the Orderer has altered the delivery item on its own initiative or has used it in a manner contrary to the contract.

#### **VII. Supplier's liability, exclusion of liability**

1. If the Orderer cannot use the delivery item, through the fault of the Supplier, as a result of failed or deficient execution of proposals or advice given prior to or after contract conclusion, or as a result of a breach of other ancillary contractual obligations, in particular instructions pertaining to the operation or maintenance of the delivery item, then the provisions of sections VI and VII.2 shall apply, to the exclusion of any further claims by the Orderer.
2. The Supplier shall be liable for damage not caused to the delivery item itself, irrespective of the legal reasons, only
  - a. in the event of intent;
  - b. in the event of gross negligence on the part of the owner / the executives or senior employees;
  - c. in the event of a culpable loss of life, physical injury and health impairment;
  - d. in the event of defects that it has fraudulently failed to disclose or whose absence it has guaranteed;
  - e. in the event of defects in the delivery item, inasmuch as it is liable for personal injury or property damage to privately used items under the Produkthaftungsgesetz [*German Product Liability Act*].In the event of a culpable breach of material contractual obligations, the Supplier shall also be liable for gross negligence on the part of junior staff and in the event of minor negligence, in the latter case limited to the reasonably predictable losses which are typical in connection with contracts. No further claims may be made.

#### **VIII. Limitation**

All claims by the Orderer, irrespective of their legal basis, shall be barred by limitation after 12 months. The statutory time limits shall apply to damages claims according to section VII.2 a - e. They shall also apply for defects to a building construction, or for delivery items that have been used for a building construction in accordance with their habitual manner of use, and have caused it to be defective.

#### **IX. Governing law, place of jurisdiction, place of performance**

1. If the Orderer is a trader or a public sector legal entity, the place of jurisdiction shall be the court with competence for the Supplier's registered office. However, the Supplier may file an action at the Orderer's registered office.
2. Exclusively the law of the Federal Republic of Germany shall govern all business relations and the entire legal relationship between the Orderer and the Supplier; the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

3. Unless agreed otherwise, the Supplier's registered office in Balve-Garbeck shall be the place of performance.

**X. Final provisions**

1. If single terms and conditions as set out above should be or become invalid, this shall not affect the validity of the remaining provisions. Rules that come as close as possible to the commercial purpose of the condition replaced, and which serve as far as possible to appropriately safeguard the interests of both parties, shall apply in place of any invalid provisions.
2. These terms and conditions shall have the effect of rendering invalid all the Supplier's earlier terms and conditions of sale and delivery and terms and conditions for labour work. It hereby makes it known, pursuant to § 33 BDSG [*German Federal Data Protection Act*] that the customer's data is processed electronically.