

§ 1 Applicability

(1) The present General Terms and Conditions („GTC“) contain the exclusively applying conditions between you and us, RoofTech GmbH, Benzstraße 21, 71101 Schönaich Germany. These GTC become part of all contracts, which we conclude with you on deliveries or services offered by us. These GTC only apply if you are an entrepreneur (sec. 14 German Civil Code), a corporate body under public law or a special fund under public law. (2) General terms and conditions of you or of any third party do not apply, even if we do not object its application on an individual basis. Even if we refer to correspondence containing general terms and conditions of you or a third party or refer to such, this is no approval of the applicability of your general terms and conditions. (3) Unless otherwise agreed, these General Terms and Conditions also apply as a framework agreement to equivalent future contracts in the version in force at the time you place your order, or at any rate in the version that was last communicated to you in writing, without the need to make reference to it again in each individual case.

§ 2 Offer and Conclusion of Contract

(1) The presentation of our products on our homepage www.rooftech.de, in our catalogues or our other advertising media, offers or quotes is no binding offer from our part. You submit a binding offer with your order to us. (2) A contract between you and us is only concluded with a separate express declaration of acceptance by us, issued by facsimile, e-mail, in writing or by sending of the ordered products. (3) Except for our managing directors, our staff is not entitled to make arrangements differing from these GTC. (4) Our specifications regarding the object of delivery or the service (e.g. weight, measure, margin and technical data) as well as our designs of these (e.g. illustrations) in our offers and/or order confirmations are only roughly relevant, if the usability for the contractually intended purpose does not require an exact consistency. They are no characteristics of state, but descriptions or specifications of the deliveries or services. Divergences customary in trade or divergences due to legal provisions or which are technical improvements are permitted as far as the usability for the contractually intended purpose is not affected. (5) All our offers and cost estimates as well as illustrations, calculations, prospectuses, catalogues, models and other documents and media provided to you are subject to our property and/or copy right. You are not entitled to make these items accessible to any third party without our express consent, neither as such nor its content, to use them yourself or through any third party, to let them be used or copied. On our demand you are obliged to return these items entirely to us and to destroy any copies made, if any, if they are not required any more in due course of business or if negotiations do not lead to a conclusion of a contract.

§ 3 Prices and Payments

(1) The prices are valid for the scope of services and delivery listed in the order confirmation. The prices are in Euro ex works plus packaging, value added tax, at export shipment customs as well as fees and other public charges, if we take them over for you. (2) Our prices are calculated on the basis of our conditions and exchange rates, if any, valid at the time of the conclusion of the contract. If we agree with you that delivery shall take place later than four months after conclusion of the contract, we shall be entitled to adjust the agreed upon price to any changed conditions (e.g. our procurement costs; exchange rates). (3) Invoiced amounts are to be paid within the agreed upon respite. Relevant is the date of receipt of payment by us. (4) In case of default of payment, you are obliged to pay default interest amounting to 9 (nine) percentage points interest above base rate. Furthermore, we are entitled to charge a lump-sum of 40 Euro. The assertion of higher interest and/or further damages remains unaffected. The lump-sum mentioned in the second sentence of this section will be deducted from the amount owed as damages, as far as the damages are costs of assertion of rights. Vis-à-vis entrepreneurs, our right to demand commercial maturity interest (sec. 353 German Commercial Code) remains unaffected. (5) We are entitled to carry out outstanding deliveries or services only against advance payment or security deposit, if we get to know circumstances after conclusion of the contract, which are suited to considerably reduce your credit worthiness and by which the payment of our open claims by you regarding the respective contract is endangered.

§ 4 Delivery and Term of Delivery

(1) Deliveries by us are effected ex works. On your demand and on your costs, we send the products to a different place of destination. As far as nothing else is agreed upon, we are entitled to determine the type of shipment (in particular the transport company, dispatch route and packaging) on our own. (2) The term of delivery is agreed upon individually, respectively will be specified by us when receiving the order. If shipment has been agreed upon, the terms of delivery and dates of delivery relate to the point in time of the handover to the shipper, freight carrier or any other third person entrusted with the transport. (3) The observance of our delivery commitment requires the due fulfilment of your contractual obligations. The defense of lack of performance of the contract is reserved. (4) If an ordered product is undeliverable because we are not supplied by our supplier without our fault, we are entitled to withdraw from the contract. In such case we will inform you immediately and refund an effected payment. (5) Your entitlement to damages or wasted disbursements in case of delayed delivery or impossibility of performance is governed according to sec. 7.

§ 5 Place of Performance, Shipment, Packaging, Passing of risk, Approval

(1) Place of performance for all obligations from our contract is Schönaich, Germany, as far as nothing else is determined. (2) Type of shipment and packaging are subject to our own best judgement. (3) The risk passes to you with handover of the delivery item to the shipper, freight carrier or any other third person entrusted with the transport at the latest. This also applies, if partial deliveries are made or if we have assumed other services (e.g. shipment). (4) Storage costs have to be borne by you if you are in default. (5) The transport will only be insured against theft, breakage, damage in transit, fire and water damage or other insurable risks on your explicit demand and on your costs.

§ 6 Warranty

(1) In case of defect (including wrong and short delivery) the legal regulations apply, as far as nothing else is stipulated hereinafter. The special legal stipulations regarding the final delivery to a consumer remain unaffected in each case. (2) Basis for our liability for defects is in particular our agreed upon condition of the product. As far as a condition is not agreed upon, the legal regulations apply in order to assess, whether a defect is at hand. (3) If a bilateral commercial transaction is given, your rights to claim damages for defects and recourse are subject to your compliance with the statutory inspection and notification obligations according to sec. 377 German Commercial Code (Handelsgesetzbuch - HGB). If during the examination of the product or at a later stage a defect appears, you are obliged to inform us immediately in writing, whereas, to meet the deadline, timely mailing shall suffice. Irrespective of this inspection and notification obligation, you are obliged to inform us about apparent defects (including wrong and short delivery) immediately in writing, whereas, to meet the deadline, timely mailing shall suffice, too. If you fail to comply with the due inspection and/or notification of defects, our liability for the defect not notified is excluded. (4) If the product is faulty, we are entitled to choose, whether we perform supplementary performance by removal of defects (subsequent improvement) or by delivery of a product free from defects (replacement delivery). (5) We are entitled to make the owed supplementary performance dependent on the payment of the due purchase price. You are entitled, however, to retain a part of the purchase price, which his adequate in proportion to the defect. (6) You are obliged to give us the time and the opportunity to perform the owed supplementary performance, in particular to hand over the product found faulty for examination purposes. In case of a replacement delivery you are obliged to hand over to us the defect product according to the legal regulations. (7) The expenditures required to examine and to perform supplementary, in particular transport, labour and material costs, are borne by us, if it is de facto defect. If your request for supplementary performance should be unjustified, we are entitled to demand reimbursement for the costs arisen therefrom (8) Your entitlement to damages respectively compensation of wasted expenses is subject to sec. 7 and is excluded otherwise.

§ 7 Other Liability

We are liable – irrespective of the legal basis – for damages or for the compensation of wasted disbursements according to the following provisions in para. (1) to (5): (1) As far as nothing else results from these GTC including clauses of this sec. 7, we are liable according to the applicable legal regulations for any violation of contractual and non-contractual obligations. (2) We are liable for damages in case of intention or gross negligence. In case of simple negligence, we are only liable
a) for damages deriving from the injury of life, body or health,
b) for damages deriving from the breach of a material contractual obligation (obligation which enables the due performance of the contract and you generally rely on that it is complied with); in such case our liability is restricted to the foreseeable, typically incurring damage. (3) The restrictions on liability set forth in para. 2 do not apply as far as we have fraudulently concealed a defect or assumed a guarantee for the condition of the product as well as for your claims according to the German Product Liability Act (Produkthaftungsgesetz). (4) The provisions of this sec. 7 apply accordingly for the compensation of wasted disbursements. (5) As far as liability is excluded or restricted vis-à-vis us the same applies for the individual liability for damages of our legal representatives and our vicarious agents.

§ 8 Limitation Period

(1) The limitation period for claims due to defects is one year from delivery. If an approval is agreed upon, the limitation period begins with the approval.
(2) Statutory special provisions for claims of return of third parties, in case of fraudulent intent of the seller and for claims in recourse due to final delivery to a consumer remain unaffected.
(3) The aforementioned limitation periods of the sales law also apply for your contractual and non-contractual claims, which are based on a defect of the product, unless the application of the regular statutory limitation period leads to a shorter limitation period. The limitation periods of the German Product Liability Act remain unaffected at any rate.
(4) Besides, the statutory limitation periods are exclusively applicable for claims for the purchaser's damages according to sec. 7.

§ 9 Retention of Title

(1) We reserve title to the object of sale until receipt of all payments from the delivery contract ("reserved goods"). In the event of breach of contract on your part, in particular default in payment, we shall be entitled to take back the reserved goods. The taking back of the reserved goods by us shall constitute a withdrawal from the contract. After taking back the reserved goods, we shall be entitled to sell them; the proceeds of such sale shall be set off against your liabilities to us - less reasonable selling costs. (2) In the event of attachments or other interventions by third parties, you must notify us immediately in writing. (3) You are entitled to resell the reserved goods in the ordinary course of business; you hereby assign to us all claims in the amount of the final invoice amount (including VAT) of our claim which accrue to you from the resale against your customers or third parties, irrespective of whether the reserved goods have been resold without or after processing. You remain authorized to collect this claim even after the assignment. Our authority to collect the claim ourselves remains unaffected. However, we undertake not to collect the claim as long as you meet your payment obligations from the proceeds received, are not in default of payment and, in particular, have not filed for insolvency or suspended payments. If this is the case, however, we may demand that you inform us of the assigned claims and their debtors, provide all information necessary for collection, hand over the relevant documents and notify the debtors (third parties) of the assignment. (4) Any processing or transformation of the reserved goods by you shall always be carried out on our behalf. If the reserved goods are processed with other items which do not belong to us, we shall acquire co-ownership of the new item in the ratio of the value of the reserved goods (final invoice amount incl. VAT) to the other processed items at the time of processing. In all other respects, the same shall apply to the new item resulting from the processing as to the reserved goods.
(5) If the reserved goods are inseparably combined or mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the reserved goods (final invoice amount incl. VAT) to the other combined or mixed items at the time of the combination or mixing. If the reserved goods are combined or mixed in such a way that the item is to be regarded by you as the main item, you and we are already now in agreement that you transfer to us pro rata co-ownership of this item. We hereby accept this transfer. You shall keep the sole ownership or co-ownership of an item thus created in safe custody for us.
(6) In the event of seizure of the reserved goods by third parties or other interventions by third parties, you must point out our ownership and inform us immediately in writing so that we can assert our ownership rights. If the third party is unable to reimburse the judicial or extrajudicial costs incurred by us in this connection, you shall be liable for these costs. (7) If you so demand, we shall be obliged to release the securities to which we are entitled to the extent that their realizable value exceeds the value of our outstanding claims against you by more than 10%. However, we may select the securities to be released.

§ 10 Intellectual property rights

(1) You acknowledge our intellectual property rights in all our documents and samples, designs, plans, drawings, shapes, models, production data, production materials and processes, quality control plans and other know-how and information ("Intellectual Property Rights"). You will neither register Intellectual Property Rights yourself nor support third parties in doing so. This also applies if we have not yet applied to register new creations for the applicable intellectual property right. (2) You shall not disclose or make available Intellectual Property Rights to third parties in any form without our express prior approval. (3) You shall not use our name or our logo and marks without our express prior written approval.

§ 11 Confidentiality of trade secrets

(1) We reserve our proprietary rights and, if applicable, copyright in all images, plans, drawings, calculations, standard operating procedures, product descriptions, information and other documents as well as any other items that we provide to you in connection with an order or a prospective order (collectively "Trade Secrets"). Such Trade Secrets may only be used to perform the contractual services. You agree to keep confidential all Trade Secrets obtained from us or our clients for an indefinite period and to only use them as intended for the purposes of the contract. Trade Secrets must be kept confidential vis-à-vis third parties, even after our business relationship has ended. The confidentiality obligation only expires if and to the extent that the knowledge contained in the Trade Secrets has become common knowledge. (2) Trade Secrets must be stored separately at your expense until they are returned and must be adequately protected and insured against disclosure to third parties, destruction and loss.

§ 12 Data protection; compliance

(1) You agree to comply with the statutory data protection provisions with the diligence of a reasonable businessperson. In particular, you will take all necessary technical and organizational measures according to the state of the art to protect Trade Secrets against unauthorized access by third parties, loss, damage or duplication.
(2) You shall instruct all your employees in accordance with the applicable data protection provisions and commit them to confidentiality in writing. You shall provide these statements to us upon request.
(3) In the context of your Compliance, you agree to comply with the applicable statutory national and European law provisions (particularly environmental protection, health and safety, Sicherheitsüberprüfungsgesetz (German Security Clearance Check Act), Verordnung über gefährliche Stoffe (German Hazardous Substance Regulation).

§ 13 Choice of law and place of jurisdiction

(1) If you are a merchant in the meaning of the German Commercial Code, a corporate body under public law or a special fund under public law, as far as you have no general place of jurisdiction in Germany or you move your place of business outside Germany, the place of jurisdiction for any and all possible disputes based on our business relations is Schönaich, Germany. Compulsory legal provisions regarding exclusive venue remain unaffected. (2) The relations between us and you are exclusively subject to the laws of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods as of 11 April 1980 (CISG) does not apply.

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