

# Payment and Delivery Terms of Roberto Design International GmbH

## 1. General

- 1.1 Our payment and delivery terms shall only apply to companies, a legal public-law entity or special funds of a public-law authority (called the "Purchaser" in the following).
- 1.2 The following payment and delivery terms will apply exclusively to the contractual relationship between our Company and the Purchaser. **Any deviating, conflicting or additional terms of the Purchaser will only be deemed as a constituent part of the relevant agreement if we have expressly agreed that such terms will apply.** This required consent will apply under all circumstances, even if an order is carried out by our Company unconditionally and if we are aware of the purchaser's terms and conditions.
- 1.3 Our payment and delivery terms will also apply to all equivalent future business transactions as a basic agreement which means that it will not be necessary to refer to this expressly in each particular case.
- 1.4 Any individual arrangements made with a customer in a particular case shall always prevail over the present payment and delivery terms. A written agreement or a written confirmation by our Company will be considered as authoritative as regards the relevant terms of such arrangements.
- 1.5 The international terms regarding the interpretation of customary contract clauses (INCOTERMS) - in the relevant applicable version - will apply additionally or instead of the provisions defined in these Payment and Delivery Terms, to the extent that such customary contract clauses have been used in the relevant order confirmation or correspondence.

## 2. Conclusion of a contract / scope of the duty to perform

- 2.1 All offers submitted by our Company are non-binding offers, unless stipulated otherwise in the relevant offer. Such offers only mean that the purchaser is requested to submit an offer. The right to make a prior sale is hereby reserved.
- 2.2 An agreement will only be deemed as concluded if we have issued a written order confirmation, which may also be communicated by fax, email or electronically, unless explicitly agreed otherwise.
- 2.3 Any changes or additions to the relevant agreement, side agreements or individual arrangements must be confirmed in writing to be deemed as valid.

## 3. Prices and terms of payment

- 3.1 Our specified prices are net prices (plus VAT) at the relevant statutory VAT rate, untaxed in the case of export, and plus transport costs and transport insurance fees, import duties or inspection fees, unless stated otherwise in the relevant order confirmation.
- 3.2 The purchase price will be due and payable from the date of receipt of an invoice and after the goods ordered have been delivered or accepted, i.e. as follows:
  - within 10 days: with a discount of 2%;
  - within 11 to 30 days: net

- within 10 days: with a discount of 3% in the case of a SEPA basic debit note (EU/EEA countries as well as Switzerland and Monaco).
- 3.3 If the customer has failed to pay an invoice within 30 days after the due date and the receipt of an invoice, it will be deemed as delayed in payment; in this case, default interest at a rate of 8 percentage points above the relevant base lending rate will become due in addition to the purchase price, as a consequence. We expressly reserve the right to claim any additional damage caused by a delay in payment.
  - 3.4 Payment of the purchase price will be free of any costs or charges for our Company and must be made exclusively to our Company by means of a bank transfer to one of our bank accounts specified on the invoice.
  - 3.5 Payment of an invoice by means of a crossed check or a draft will only be accepted if this mode of payment has been agreed in an exceptional case.
  - 3.6 If there are any unpaid accounts receivable based on the deliveries made, particularly deliveries not subject to a reservation of title or for which such a reservation of title has lapsed, we shall at first be entitled to offset all incoming payments against accounts receivable, interest or legal costs and only after that against any other accounts receivable.
  - 3.7 The right of the purchaser to offset the invoiced amount against any other amounts or to withhold a payment will only apply if the purchaser's counter-claims have been adjudicated by means of a final (non-appealable) judgment or if they are uncontested. If a retention right is exercised, this will also be subject to the requirement that the relevant counter-claim is based on the same contractual relationship.

## 4. Retention of title

- 4.1 The goods sold will remain our property until the relevant purchase price has been paid in full and all our present or future accounts receivable, based on the relevant purchase agreement in relation to the continuous business relationship (secured accounts receivable), have been settled.
- 4.2 The purchaser is obliged to treat the goods subject to a retention of title carefully and to take out sufficient insurance coverage for the goods against fire, water, theft or similar risks on the basis of the original value of the goods, at its own costs. Beyond that, the purchaser will submit written proof of the existing insurance coverage to our Company upon request. The purchaser hereby assigns to our Company any claims for damages against insurance companies or other obligated parties to which it is entitled (on a pro-rata basis, if appropriate) in order to secure our claims. We hereby accept the assignment of such rights.
- 4.3 The purchaser is not permitted to pledge the goods subject to a retention of title or assigned as a security to any third party until the secured accounts receivable have been paid in full. The purchaser is obliged to notify our Company immediately of any impairment to our goods subject to a retention of title, particularly of any seizure or other interventions by third parties, so that we can initiate the necessary steps. If the third party

concerned is unable to reimburse the costs incurred by our Company due to the judicial/extra-judicial defense of our rights, or if the reimbursement of these costs is not possible, the purchaser must reimburse such costs to our Company.

- 4.4 The purchaser is entitled to sell the goods subject to a retention of title within the usual scope of its business activities.
- 4.5 If the goods subject to a retention of title are resold, the purchaser hereby assigns to our Company the relevant account receivable arising with regard to the third party concerned, including any additional rights, as a whole, i.e. as a security for all the accounts receivable resulting from the business relationship with the purchaser, and which we are entitled to enforce against the purchaser at the time the goods are resold. Our Company hereby accepts this assignment of rights. The obligations specified in section 4.3 above will also apply in consideration of the assigned account receivable.
- 4.6 Regardless of our right to collect the account receivable in question ourselves, the purchaser will remain entitled to collect the account receivable even after it has assigned the relevant account receivable to our Company in accordance with section 4.5. We hereby agree not to collect the account receivable in question, for as long as the purchaser has fulfilled its payment obligations with regard to our Company and is not delayed in payment, provided that there is no other insufficiency regarding its ability to perform. However, if this is the case, the purchaser must inform our Company about the identity of the debtor – upon request – as regards the accounts receivable assigned to us as a security and must provide our Company with all the necessary information with regard to the collection of the relevant account receivable and will hand over the required documents to our Company and will inform the debtor (third party) about the assigned right to collect the account receivable in question.
- 4.7 If the achievable value of the securities provided exceeds the value of the relevant accounts receivable by more than 10%, our Company shall be obliged to release any additional securities at the purchaser's request. The selection of the securities to be released will be made by our Company.

## **5. Delivery time, delayed delivery and right of retention**

- 5.1 All delivery dates are not binding, unless they have explicitly been designated as binding.
- 5.2 If our Company has failed to observe a binding delivery date for any reasons for which we are not responsible, we will inform the purchaser about the non-availability of the goods without delay and will communicate the planned new delivery date to the purchaser. In the event that the service is not available upon the expiry of the new delivery date, we shall be entitled to withdraw from the relevant agreement, in whole or in part. In this case, we will reimburse any counter-performance already made by the purchaser without delay.
- 5.3 If any of our suppliers has made a delivery on its own, which has not been made properly and on time, this will also be deemed as the 'non-availability' of the service as defined above, provided that we have concluded a

congruent hedging transaction, or in the case of any *Force-Majeure-Event* or other unforeseeable events, particularly any delays in relation to labor disputes, such as strikes or lock-outs, governmental orders, subsequent cessation or the restriction of export or import options, e.g. due to embargos, natural disasters, war, civil riots, arson or similar events. This will also apply if such circumstances have arisen at the sites of our pre-suppliers.

- 5.4 Compliance with the delivery dates is subject to the requirement that the contractual obligations assumed by the purchaser have been fulfilled properly and in a timely manner. In particular, all the delivery deadlines promised by our Company will therefore only start to run after we have received all the necessary documents required for the execution of the relevant order and (if this has been agreed) after the receipt of a down payment or an advance payment.
- 5.5 Beyond that, the statutory regulations will apply to any delayed delivery on the part of our Company, subject to the proviso that the purchaser is obliged to send us a written reminder in each particular case.
- 5.6 We shall be entitled to refuse performance after the conclusion of the agreement pursuant to the relevant legal regulations if there is any discernible risk that our claim for payment of the purchase price is jeopardized because the purchaser's duty to perform is not sufficient (e.g. if an application for opening insolvency proceedings has been filed). In particular, our Company shall also be entitled to request that any (additional) services will be provided concurrently only if the purchaser pays the purchase price, either partly or in full, or if it provides securities. We shall be entitled to withdraw from the relevant agreement, if the customer has failed to comply with this request within a reasonable deadline granted to it. The legal regulations stipulating that the fixing of a deadline is not necessary remains unaffected. We hereby reserve the right to enforce any additional claims in such a case (if necessary).
- 5.7 Our statutory rights of withdrawal from or termination of the relevant agreement and the legal regulations applicable to the handling of an agreement will not be affected if the duty to perform has been excluded. The purchaser's rights of withdrawal from or termination of the relevant agreement pursuant to sections 7 and 8 of these Delivery and Payment Terms will not be affected.

## **6. Delivery and passage of risk**

- 6.1 The goods will be delivered from our warehouse in Bad Sobernheim (Germany), which will also be deemed as the place of performance.
- 6.2 The goods will also be sent to a different destination at the purchaser's request and at its costs. Unless agreed otherwise, our Company shall be entitled to decide how the goods will be dispatched, at our own reasonable discretion, particularly to select the carrier, the route of dispatch and the packaging of the goods.
- 6.3 We hereby reserve the right to make partial deliveries.
- 6.4 The risk of accidental loss or accidental deterioration of the goods will pass to the purchaser when the goods are delivered to it at the latest. If the goods are dispatched at

the purchaser's request, the risk of accidental loss or accidental deterioration of the goods ordered and the risk of a delayed delivery will pass to the carrier, the freight carrier or any other individual commissioned by our Company with the transportation of the goods. If acceptance of the goods has been agreed, the time of acceptance shall be deemed as authoritative with regard to the time at which passage of risk takes place. The time at which the purchaser is considered as delayed in the acceptance of the goods or is in debtor's delay will be deemed as equivalent to the time of delivery or acceptance.

6.5 The purchaser will be deemed to have culpably infringed its responsibilities if it is delayed in the acceptance of the goods, or if delivery of the goods is delayed for any other reasons for which the purchaser is responsible and we shall be entitled to request indemnification for any damage that may have arisen or any additional expenditure incurred by our Company. We also reserve the right to enforce additional claims, if necessary.

## **7. Warranty and liability for defects**

7.1 All the information relating to the goods is merely considered as information about the quality and the characteristics of the goods, unless any specific characteristics or the suitability of the goods for particular purposes have been expressly warranted in writing by means of a guarantee.

7.2 Any customary deviations or deviations due to the materials used or because such deviations are technically unavoidable as regards the quality, color or design of the goods are therefore not deemed as a defect.

7.3 Any and all claims for defects are subject to the requirement that the purchaser has fulfilled its statutory obligations of inspection and the requirement to give notice of defects (if any) pursuant to §377 HGB.

7.4 The purchaser is obliged to check the goods for any defects promptly after their delivery at the agreed destination or, if the goods are collected by the purchaser, on a spot-check basis, in order to check the quality of the goods, provided that this is reasonable in terms of business routine.

7.5 The purchaser will be obliged to notify our Company without delay, if any defect has been found in the goods received by it during their inspection or later, where the type and scope of the alleged defect must be stated in each particular case. The sample material for the notice of defects must be kept ready by the purchaser and will be made accessible to our Company upon request.

7.6 Our Company's liability for any defect of which we have not been informed, i.e. any warranty claims, claims for damages or other claims of the purchaser, shall be excluded if the purchaser has failed to fulfill its duties to carry out an inspection of the goods and to give notice of the relevant defects, either not at all or not in time.

7.7 If any defect in the goods has been found, we shall be entitled to remedy them, at our discretion, either by subsequent performance, by eliminating the defects or by making a substitute delivery. The purchaser is obliged to return the defective goods to our Company in the case

of a substitute delivery of the goods in question, in accordance with the relevant statutory regulations, i.e. in their original condition, including packaging and labelling.

7.8 We shall be entitled to request that substitute performance is subject to the requirement that the purchaser will pay the purchase price owed by it. However, the purchaser will be entitled to withhold a reasonable part of the relevant purchase price in relation to the relevant defect.

7.9 If a defect has in fact been discovered, our Company will pay the necessary expenses, particularly transport, routing, labor costs and the cost of materials. If the purchaser's request for the elimination of defects is not justified, our Company shall have the right to claim the reimbursement of any costs incurred by us for the elimination of such defects.

7.10 The purchaser will be entitled to withdraw from the relevant agreement, or to reduce the purchase price, if subsequent performance has failed or if a reasonable time limit requested by the purchaser, which must be observed by our Company, has expired. However, the purchaser will only be entitled to withdraw from the relevant overall agreement in the case of defects relating to partial deliveries, if the other partial deliveries are demonstrably of no interest to it. Withdrawal from the agreement shall not be permitted, however, if merely a minor defect in the goods has been found.

## **8. Other liability**

8.1 We shall only be liable for damages in accordance with the relevant legal regulations in any of the following cases:

a. for any damage caused by wilful intent or gross negligence, including wilful intent or gross negligence on the part of our representatives or auxiliary agents;

b. for any damage based on slight negligence on our part or on the part of our representatives or auxiliary agents: only if any material contractual obligations have been breached. Our liability will be limited to the reimbursement of the expenses incurred for the typical foreseeable contractual damage in terms of scope and the level of damage;

c. if we have fraudulently concealed a defect;

d. if our Company has assumed a guarantee.

8.2 Liability for any damage relating to injury to life, body or health will not be affected, regardless of the degree of fault; furthermore, mandatory liability pursuant to the Product Liability Act will not be affected.

8.3 The purchaser's right to withdraw from or to terminate the agreement will only apply in the case of any breach of duty that does not relate to a defect, if we are responsible for such a breach of duty. Any right to terminate an agreement at the purchaser's own discretion pursuant to §§651, 649 BGB is hereby excluded. Beyond that, the legal requirements and legal consequences will apply.

## **9. Statute of limitation**

- 9.1 All claims based on quality defects or defects in title will be time-barred after one (1) year from the date of delivery or acceptance of the goods. The statutory period of limitation will start on the date of acceptance.
- 9.2 The above period of limitation will also apply to any contractual or extra-contractual claims for damages enforced by the purchaser, based on any defect of the goods, unless the ordinary statutory period of limitation would result in a shorter limitation period in a particular case.
- 9.3 The periods of limitation pursuant to the German Product Liability Act will not be affected.
- 9.4 Beyond that, the statutory periods of limitation will apply to any claims for damages enforced by the customer.

## **10. Place of jurisdiction and governing law**

- 10.1 The place of jurisdiction for all disputes based on the contractual relationship with the customer, including deeds, bills or check procedures, shall be Bad Sobernheim (Germany). This will also apply if the customer's place of business is outside the Federal Republic of Germany (§ 17 EuGVÜ).
- 10.2 The entire legal relationship between our Company and the customer is exclusively subject to the laws of the Federal Republic of Germany, and all the international and supra-national legal systems (governing contracts), including the applicability of the UN Convention on Contracts for the International Sale of Goods (CISG), are hereby excluded.
- 10.3 The requirements and effects of the retention of title pursuant to section 4 of these Delivery and Payment Terms shall be subject to the laws applicable in the jurisdiction of the respective storage location of the goods, if the choice of law in favor of German law agreed in this case is either inadmissible or ineffective.

## **11. Severability clause**

If any provision of these Delivery and Payment Terms has not become a constituent part of the relevant agreement, either in whole or in part, this will not affect the validity of the other provisions of the agreement. An agreement will be subject to the relevant legal regulations if any provisions of these Delivery and Payment Terms have not become a constituent part of the relevant agreement, or if they are or will become ineffective.

## **12. Data protection**

It is pointed out to the customer that its data will be stored by our Company pursuant to §33 BDSG (Federal German Data Protection Act). The purchaser's data will be processed in compliance with the regulations of the BDSG and exclusively for the purpose of the business relationship between our Company and the purchaser.