

## **RHOTHETA - General Terms and Conditions of Sale and Delivery**

**Last updated July 2020**

### **1. Scope of application**

- 1.1 The present and future commercial relationship with the Customer and all contractual supplies and services of RHOTHETA Elektronik GmbH (hereafter: "RHOTHETA") provided to the Customer shall be governed by the following Terms and Conditions of Sale and Delivery (hereafter: "TCSD") and any additional terms and conditions specified for the sale or delivery.
- 1.2 The TCSD do not need to be explicitly agreed again for future commercial relationships.
- 1.3 Conflicting, contrary or supplementary terms and conditions of the party originating the order (the "Originator") are hereby rejected. These TCSD shall also apply if RHOTHETA executes the order while unaware of terms and conditions of business that conflict with or differ from these TCSD.
- 1.4 The sale, resale and disposal of the supplies and services and associated technology or documentation may be subject to German, EU, US export control law and any export control law of other states. Any resale to countries that are subject to an embargo or to blocked persons or to persons who use or may use the supplies and services for military purposes, for NBC weapons or for nuclear technology requires a license. The Originator declares by placing the order that it shall comply with the laws and ordinances of the respective country and that the supplies and services shall not be delivered directly or indirectly to countries that prohibit or restrict the import of these goods. The Originator declares that it has received or is receiving all necessary export or import licenses.

### **2. Conclusion of contract, formal requirements, blanket orders**

- 2.1 All offers are non-binding and subject to change unless they are expressly designated in writing as binding offers. By placing the order, the Customer makes a binding declaration that it wishes to purchase the ordered goods.
- 2.2 Non-binding offers of RHOTHETA are valid for a period of 3 (three) months. If the Customer fails to accept the offer within said period, it shall become null and void.
- 2.3 A contract is only created once RHOTHETA accepts an order and sends the Originator an order confirmation. The form of the order and order confirmation and any other declarations made in the commercial relationship shall be governed exclusively by the following provisions.
- 2.4 The legal relationship between RHOTHETA and the Customer shall be governed solely by the written purchase agreement that is entered into, including these TCSD. Amendments and additions to the Agreement made must be made in writing to be valid. This shall also apply to the cancellation or amendment of this written form requirement. The written form requirement is not satisfied by email transmission.
- 2.5. RHOTHETA may confirm or reject any order within two weeks after receiving it provided the technical requirements or the order are clarified.
- 2.6 The Originator shall provide RHOTHETA with the information concerning the end customer, in particular the country, the type of use (military/civilian/dual use), and any other necessary information.
- 2.7 Even after the order has been confirmed, RHOTHETA shall be authorized to cancel the contract if RHOTHETA learns of serious grounds relating to the Customer personally, such as the Customer's poor credit rating or in the event of conduct by the Customer that is in breach of contract.
- 2.8 The order may also be placed as a blanket order. In this process, subject to compliance with the formal requirements specified in Section 2.2., the parties agree a blanket order for a fixed number of goods and a fixed term. A blanket order does not constitute an offer to enter into individual agreements. If a blanket order is agreed all ordered goods must be accepted in text form within 12 months from receipt of the order confirmation. The delivery period shall commence in this case upon confirmation of the request in text form.

- 2.9. Amendments and additions to the Agreement made must be made in writing to be valid. This shall also apply to the cancellation or amendment of this written form requirement.

### 3. Prices, shipping

- 3.1. The prices specified in the order confirmation are fixed prices unless otherwise expressly agreed.  
3.2. All prices are net prices in EURO, plus the VAT, packaging, transport, and any customs duty and insurance statutorily due at the time of the service and delivery.  
3.3. The prices confirmed by RHOTHETA are based on the price list applicable on the date of the order confirmation. Cost increases that arise up to the end of the delivery entitle the sales price to be increased correspondingly.  
3.4. The sale by RHOTHETA shall be made in accordance with the relevant shipping regulations.

### 4. Payment and billing

- 4.1. Billing by RHOTHETA shall be done in accordance with the requirements of sections 14 ff. German VAT Act [UStG].  
4.2. Unless the deliveries are made to recipients outside Germany in relation to whom delivery is only made if paid for in advance and shipping only takes place after receipt of payment, payment for the goods must be made net within 30 days after delivery and receipt of the invoice. Upon expiry of the aforementioned period the Originator shall be in default.  
4.3. In the case of customer-specific productions, as well as when the order value exceeds € 100,000.00, 30% of the invoice amount shall be due and payable immediately to RHOTHETA as soon as the order confirmation is received. The remaining 70% shall be due two weeks prior to the agreed delivery date.  
4.4. Offsetting with counterclaims shall only be permitted to the extent that these are undisputed or have been held to be final and non-appealable. The same shall apply to the assertion of a right of retention.

### 5. Delivery

- 5.1. The delivery times/implementation deadlines stated in the order confirmation are binding. RHOTHETA undertakes to notify the Originator immediately if circumstances arise or become evident that result in it being impossible to adhere to the agreed delivery time or the agreed implementation deadline.  
5.2. Unless otherwise agreed between the Parties, the delivery time shall be around 6-8 weeks. The delivery time begins with payment in accordance with section 4.2., if the order value exceeds € 100.000.00 according to clause 4.3. with down payment.  
5.3. If the agreed delivery time is not met, delivery shall be in default only after the expiry of a reasonable grace period to be granted in writing by the Originator, but no earlier than 2 weeks after expiry of the original delivery time. RHOTHETA shall not be in default if RHOTHETA is not responsible for the late delivery. If the default accompanied by a grace period set exists in relation to a delivery that is part of an ongoing blanket order, any legal consequences of the default which are chosen by the Originator shall relate only to the part of the blanket order in relation to which RHOTHETA is in default  
5.4. Impediments to the business operation and/or to the business operation of the suppliers that are not caused by RHOTHETA, in particular as a result of strikes, lawful lockouts, official administrative orders and all other events of force majeure, shall extend an agreed delivery time by the duration of the impediment, plus a reasonable start-up time. The same shall apply in the case of operational stoppages, a shortage of raw materials or equipment, a shortage of transport options, and in the event of delivery by RHOTHETA's suppliers that is not timely, is not correct or is not sufficient, if these circumstances are not due to RHOTHETA. RHOTHETA shall be entitled to cancel the contract in these cases. The cancellation right exists prior to that only if RHOTHETA has notified the Customer in writing that the contract cannot be performed or cannot be performed any longer.  
5.5. In the event of cancellation, RHOTHETA shall immediately refund to the Originator any payment already made, less any costs that have arisen. Additional claims made by the Originator are excluded;

where deliveries have been agreed as part of a blanket order on demand RHOTHETA shall be discharged from the entire delivery obligation still outstanding.

- 5.6. If the deliveries offered on the agreed delivery deadlines are not accepted by the Originator, RHOTHETA may invoice the Originator for the resulting storage costs incurred by RHOTHETA. After a 7-day grace period set by RHOTHETA has expired without the desired result, RHOTHETA may dispose of the deliverable elsewhere and supply the Originator with a reasonably extended period.
- 5.7. Partial deliveries shall be permitted within the delivery periods stated by RHOTHETA provided this is feasible for the Originator and it is not prejudiced as a result.
- 5.8. Risk of accidental loss and accidental deterioration of the goods shall pass upon transfer to the shipper. Risk is still deemed to have passed if the Customer is in default with acceptance.
- 5.9. Any desired insurance coverage must be taken out by the Originator at its own expense. If RHOTHETA pays any shipping costs, the insured amount shall correspond to the production value. If the Originator pays the shipping costs, the insured amount shall correspond to the invoice value.

## 6. Liability

- 6.1. RHOTHETA's liability, regardless of the legal ground, shall be limited to loss or damage that RHOTHETA or one of its vicarious agents or contractors has caused as a result of willful intent or gross negligence, or, in the case of a breach of obligations that are material for the performance of the contractual purpose, and on whose performance the Customer was entitled to rely, as a result of ordinary negligence.
- 6.2. The level of RHOTHETA's liability shall be limited to loss or damage that was, when the contract was entered into or at the latest when the breach of duty was committed, foreseeable as loss or damage typical of similar businesses of this kind, unless RHOTHETA is liable due to willful intent or gross negligence of its statutory representatives or executives.
- 6.3. Claims by the Customer under the German Product Liability Act and for death, physical injury and impairment to health shall remain unaffected hereby.
- 6.4. The Originator/Customer shall discharge RHOTHETA from all loss or damage resulting for RHOTHETA from the culpable breach of the duties specified in section 1.4. for the Originator/Customer.

## 7. Retention of title

- 7.1. The delivery shall remain the property of RHOTHETA until the fulfillment of all claims it has against the Originator under the business relationship, where the Originator is the consumer. If the Originator is not the consumer, the following provisions shall apply.
- 7.2. The delivery shall remain the property of RHOTHETA pending settlement of all claims under the business relationship with the Originator, including future claims under contracts entered into subsequently. The same shall apply to a balance in favor of RHOTHETA in relation to any or all claims that have been incorporated by RHOTHETA in a current invoice.
- 7.3. If goods are taken back by RHOTHETA this shall only be deemed to be cancellation of the contract if the cancellation is explicitly declared. An attachment made on behalf of RHOTHETA shall always constitute cancellation of the contract.
- 7.4. The Originator shall inform RHOTHETA directly of any attachments or other risks emanating from third parties relating to RHOTHETA's rights and shall immediately send in writing and in text form all information necessary to assert RHOTHETA's rights. To the extent that a loss arises due to the fact that a third party fails to pay for the costs that it is to reimburse for the judicial or non-judicial assertion of RHOTHETA's rights, the Originator shall be liable to reimburse these costs.
- 7.5. Processing or transformation of the goods of RHOTHETA by the Originator shall be performed exclusively for RHOTHETA. If there is processing with other goods that are not owned by RHOTHETA, RHOTHETA shall be the co-owner of the new article. The value of RHOTHETA's co-ownership share corresponds to the ratio between the invoiced value of the goods delivered subject to retention of title and the acquisition value of the other processed goods at the time of processing. The provisions concerning the goods subject to retention of title shall otherwise apply accordingly to the newly created item.

- 7.6. The provision in section 7.5. of these Terms and Conditions shall apply accordingly to the commingling and combining of the delivered goods subject to retention with other goods. The Originator shall have sole custody of the sole or joint ownership for RHOTHETA.
- 7.7. An Originator who is not the consumer shall be authorized to resell in the ordinary course of business the goods that are delivered by RHOTHETA and subject to retention of title. All claims against third parties arising hereunder are hereby assigned by the Originator in advance to RHOTHETA in the amount of the respective invoice amount, including statutory VAT. RHOTHETA hereby declares its acceptance of the assignment. The Originator shall be authorized to collect the assigned claims in trust. RHOTHETA reserves a right of revocation in the event that the Originator fails to duly meet its contractual obligations. The Originator must upon request notify RHOTHETA of the assigned claims and the corresponding debtors and must provide RHOTHETA with all information and documents necessary to collect the claims. The assignment under this subsection relates to claims that RHOTHETA has for processed, transformed and commingled goods that are subject to retention of title.

## 8. Defect claims by the Originator

- 8.1. The rights of the Originator in the case of defects shall be governed by the statutory regulations unless otherwise specified below.
- 8.2. Complaints of incomplete goods or goods that have been wrongly or defectively delivered shall be notified in writing to RHOTHETA immediately after the goods are accepted. To the extent that such a defect was not apparent to the Originator even upon due examination when the goods were accepted it must be notified in writing to RHOTHETA immediately after it is found. Dispatching the defect notice within the aforementioned time limits is sufficient to protect the rights of the Originator.
- 8.3. Product descriptions shall only be deemed to be an agreement on the quality of the goods if they are explicitly agreed as such in the order confirmation.
- 8.4. Defect claims by the Originator shall lapse within one year of delivery of the goods to the Originator.
- 8.5. In respect of defects in the object of purchase that have been caused by a party belonging to the Originator, RHOTHETA shall invoice the Originator for the time expended and materials used in the repair. The Originator shall discharge RHOTHETA from any and all claims of its purchasers; this shall apply in particular to product liability claims. Liability under section 6 of these Terms and Conditions shall remain unaffected hereby.

## 9. Cancellations

- 9.1. Unless otherwise agreed between the Parties, cancellation charges shall apply in the event that the order is canceled, the amount of which shall depend on the time at which the cancellation was received by RHOTHETA. The cancellation charges shall be based on the staggered cancellation charges described below:

From 5 to 4 weeks prior to the confirmed delivery date: 10% of the order value  
From 4 to 3 weeks prior to the confirmed delivery date: 15% of the order value  
From 3 to 2 weeks prior to the confirmed delivery date: 25 % of the order value  
From 2 to 1 weeks prior to the confirmed delivery date: 30 % of the order value  
From 1 week prior to the confirmed delivery date: 50% of the order value  
Up to one day prior to the confirmed delivery date: 80% of the order value  
On the day of the confirmed delivery date: 95% of the order value

The Customer shall have the option at any time to prove that no loss or a smaller loss has arisen in an individual case.

## **10. Prohibition against assignment**

Notwithstanding the provision in section 354a German Commercial Code [HGB], the Originator shall not be authorized without the prior written consent of RHOTHETA to assign to third parties, or have third parties collect, its claims against RHOTHETA, in particular those relating to warranty and liability.

## **11. Data protection**

- 11.1. If personal data is processed, both Parties shall comply with the national and EU regulations on data protection.
- 11.2. RHOTHETA shall be authorized to process, or have third parties process, personal data provided to it by the Originator for the intended purpose.

## **12. Severability clause**

If a provision of these Terms and Conditions of Sale and Delivery is or becomes invalid or unenforceable either in whole or in part, the validity of the other provisions shall remain unaffected hereby.

## **13. Place of performance, venue, applicable law**

- 13.1. The place of performance for deliveries and services shall be the registered office of RHOTHETA unless otherwise agreed in the order.
- 13.2. Munich shall, to the statutorily permitted extent, be the exclusive venue for all disputes arising from or in connection with the business relationship between the Parties.
- 13.3. The law of the Federal Republic of Germany shall apply; international treaties (e.g. CISG) and those provisions of German international private law that would result in the application of a foreign jurisdiction shall be excluded.