

RHOTHETA – General Terms of Sale and Delivery

Status as of 24 November 2014

1. General Provisions

1.1 These General Terms and Conditions of Sale and Delivery are the basis of all sales and deliveries of RHOTHETA Elektronik GmbH (hereinafter referred to as RHOTHETA), unless deviating agreements have been expressly confirmed in writing by RHOTHETA.

1.2 Deviating conditions of purchase of the customer are not an integral part of the contract, even if they are taken as the basis of the order and RHOTHETA has not objected to their contents.

1.3 The provisions agreed upon in each individual case shall apply to the installation of devices of RHOTHETA and the commissioning work.

1.4 The legal relationships between RHOTHETA and the customer are subject exclusively to the substantive and procedural law applicable in the Federal Republic of Germany under exclusion of the CISG Convention on Contracts for the International Sale of Goods of 11 April 1980.

1.5 The sale, resale and disposal of the supplies and services as well as any technologies or documents associated therewith may be subject to German, EU, US export control law and, where applicable, to the export control laws of other countries. Any resale in countries subject to an embargo or to blocked individuals or to individuals, who use or may use the deliveries and services militarily, for ABC weapons or for nuclear technology, is subject to approval. With the order, the customer declares compliance with any such laws and ordinances and that the supplies and services are not delivered directly or indirectly to countries, which prohibit or limit the import of these goods. The customer agrees to obtain any and all approvals necessary for the export or import; the customer shall release and hold harmless RHOTHETA from and against any and all damage arising for RHOTHETA from the culpable infringement of the duties referred to in this paragraph for the customer.

2. Prices, Terms

2.1 An order shall be binding on RHOTHETA only by acceptance in writing (order acknowledgment).

2.2 In the absence of a special written agreement, the prices shall apply ex works, excluding packaging. The method and route of dispatch is determined by RHOTHETA.

2.3 The invoice amount is due in full upon delivery or acceptance. The customer will be in default without any further statements by the seller 30 days after the due date, unless he has paid.

2.4 In the case of default in payment, the customer shall owe RHOTHETA default interest in the amount of 9 percentage points (5 percentage points above the respective base rate for consumers) above the respective base rate.

2.5 If the customer has ordered goods with a value in excess of EUR 25,000.00 and places the first call-off, he shall be obligated to order an adequate security in the amount of the total value of the order for RHOTHETA for security for its claims. This shall also apply even if circumstances become discernible, which give rise to justified doubt about the creditworthiness of the customer in accordance with dutiful commercial discretion. The securities are due in each case in the event of default in payment of the customer with regard to the individual deliveries for the payment in the respective amount of the performance in default. If no

adequate securities are ordered for the benefit of RHOTHETA despite a request, it is entitled to withdraw from the contract.

2.6 The customer shall only have a right of retention or the right to set-off with counterclaims, when the claims of the customer are not contested by RHOTHETA or have the force of law, unless the claims of the customer are based on a substantial breach of contract by RHOTHETA. A right of retention can be exercised by the customer only insofar as his counterclaim is based on the same contractual relationship.

3. Technical Documentation

Documentation (design and other drawings, data on dimensions and weight, patterns and the like) transmitted to the customer is only binding in accordance with the declaration issued in writing by RHOTHETA; The ownership and copyright of RHOTHETA to the documentation shall always remain in force. The customer is to return these documents after use to RHOTHETA. These documents may not be used contrary to the intended purpose, in particular, may not be duplicated or made accessible to third parties without the written declaration of consent by RHOTHETA. Any replica based on these documents is not permitted. Any infringement shall entitle RHOTHETA to demand injunctive relief and compensation for damages.

4. Deliveries

4.1 The delivery times are only binding when they have been confirmed in writing by RHOTHETA. The delivery time begins with receipt of the written order confirmation; if no other agreements have been reached, the delivery time six months. The delivery time shall be complied with in the event of a debt collectible by the creditor, if RHOTHETA has notified the customer of the provision of the commodity prior to its expiration. The delivery date shall be complied with in the event of a shipping debt, if RHOTHETA has handed over the commodity prior to its expiration to the shipping person and has notified the customer thereof.

4.2 The order may also be placed as part of a framework order. In the case of a framework order, RHOTHETA undertakes to deliver a specific number of devices in each case at call-off. If a framework order is agreed upon, the acceptance of all of the ordered commodities must occur within 12 months from the date of the written order confirmation of the framework order. In such event, the delivery time shall commence upon the written confirmation of the call-off.

4.3 If an agreed delivery date is exceeded, default of delivery shall only occur after expiration of a reasonable grace period to be granted in writing by the customer, however not earlier than after 20 calendar days. RHOTHETA is not deemed to be in default, if is not responsible for the default of delivery. If the default exists with the setting of a grace period with regard to the delivery, which is part of an on-going framework order, then possible legal consequences of the default, which are selected by the customer, relate only to the part of the framework order, with which RHOTHETA is in default.

4.4 RHOTHETA is liable for compensation for damages in the case of default of delivery only in accordance with Article 5 of these conditions.

4.5 In cases of force majeure (e.g., cessation of a business, curtailment of the manufacture of the contract products, strike, damage to the industrial facilities, natural phenomenon, actions of public authorities, traffic disruptions or other obstructions deprived of the exertion of influence of RHOTHETA) and other circumstances for which RHOTHETA is not responsible, RHOTHETA may withdraw from the contract. This shall also apply in particular with respect to self-deliveries. RHOTHETA will inform the customer immediately of the non-availability of the delivery item and in the case of withdrawal immediately refund a payment already made to the customer. Further claims of the customer are excluded; Article 5 remains unaffected. If deliveries are agreed upon within a framework order at call-off, RHOTHETA shall be released from the total still outstanding obligation to deliver.

4.6 If deliveries provided at the agreed upon delivery dates are not accepted by the customer, then RHOTHETA can charge the customer for the incurred storage costs. After a reasonable grace period with expiration of the term without results, RHOTHETA can have the delivery item at its disposal elsewhere and provide the customer with a reasonably extended deadline.

4.7 The binding obligation of the delivery dates assumes the fulfilment of the contract by the customer, in particular the delivery at the due date of the components owed by him and compliance with the payment due dates.

4.8 RHOTHETA shall be entitled to perform partial deliveries to a reasonable extent.

5. Liability

5.1 RHOTHETA shall be liable in the following cases: in case of intent, in case of gross negligence, in the case of culpable loss of life, bodily injury and damage to health, in the case of defects, which RHOTHETA has fraudulently concealed, within promises of guarantee, under the Product Liability Act for personal injuries and property damage to privately used items as well as in the case of culpable violation of essential contractual obligations (material contractual obligations).

5.2 In the case of violation of essential contractual obligations, the liability shall be limited to contractually typical, reasonably foreseeable damage, as long as RHOTHETA has only acted slightly negligently. Material contractual obligations shall be such obligations the fulfilment of which only enables the proper performance of the contract and which the contractual party may regularly rely on to be fulfilled. Any further claims, on any legal grounds whatsoever, shall be excluded.

5.3 All claims for damages against RHOTHETA, irrespective of the legal grounds, become time-barred at latest in one year (in the case of consumers two years) from the delivery of the item to the customer, in the case of tortious liability from the time of knowledge or grossly negligent ignorance of the circumstances justifying the claim and of the person liable to pay compensation. The provisions of this paragraph shall not apply in the event of a liability under Article 5.1.

5.4 Any further claims, on any legal grounds whatsoever, shall be excluded.

6. Retention of Title

6.1 If the customer is a consumer, the delivered commodity remains in the ownership of RHOTHETA until the completed payment. If the customer is not a consumer, the provisions of the following sentences apply. The commodity delivered to the customer remains the property of RHOTHETA, until all claims from the business relationship with the customer, including claims arising in the future from contracts subsequently concluded are settled. This also applies to a balance in favour of RHOTHETA, if individual or all claims of RHOTHETA are incorporated in an on-going account (current account) and the balance is drawn. The customer will abstain from all disposals, which endanger the property of RHOTHETA.

6.2 If the commodity is taken back by RHOTHETA, this is only regarded as a withdrawal from the contract when this is expressly declared. A seizure carried out for RHOTHETA always means a withdrawal from the contract.

6.3 The customer will immediately inform RHOTHETA of seizures or other endangerments originating from third parties to the rights of RHOTHETA and will immediately transmit all information in writing, which is necessary for the assertion of the rights of RHOTHETA. Insofar as damage occurs as a result of the fact that a third party does not provide the costs to be refunded by him of the judicial or extra-judicial assertion of the rights of RHOTHETA, the customer is liable for reimbursement of these costs.

6.4 Processing or restructuring of the commodity of RHOTHETA by the customer takes place exclusively for RHOTHETA. In the case of processing with other commodities, which are not in the ownership of RHOTHETA, RHOTHETA is entitled to joint ownership of the new item. The value of the share in the joint ownership of RHOTHETA corresponds to the ratio of the invoiced value of the commodity delivered subject to retention of title to the acquisition value of the other processed commodity at the moment of the processing. The provisions concerning commodities subject to retention of title otherwise apply accordingly to the newly manufactured item.

6.5 The provision under Article 6.4 of these conditions applies accordingly to inseparable mixing and combination of the commodity delivered subject to retention of title with other commodities. The customer shall alone preserve the sole ownership or joint ownership for RHOTHETA.

6.6 The customer, who is not a consumer, is entitled to resell the commodity delivered by RHOTHETA subject to retention of title in proper business transactions. The customer herewith assigns in advance all receivables arising here from against third parties in the amount of the respective invoice amount (including statutory VAT) to RHOTHETA. RHOTHETA already now declares the acceptance of the assignments. The customer is entitled to collect the assigned receivables in trust. RHOTHETA retains the right of revocation in the event that the customer does not properly comply with his contractual obligations. Upon request the customer has to notify RHOTHETA of the assigned receivables as well as the corresponding debtors and to make available to RHOTHETA all information and documents necessary for the debt collection. The assignment according to this paragraph also relates to receivables, which RHOTHETA is entitled to for processed, restructured and mixed commodities subject to retention of title. This Article 6.6 shall not apply if the customer is a consumer.

7. Warranty

7.1 The commodity is to be examined by the customer for defects without undue delay. If a defect emerges, then the defect must be reported in writing and substantiated to RHOTHETA immediately, at latest within twelve days.

7.2 In the event of a report of defects, which is justified and at the due date, withdrawal from the contract or reduction of the payment can be demanded according to the legal requirements, however, at earliest after the expiration without result of reasonable deadlines set by him for subsequent fulfilment, unless, the setting of the deadline for subsequent fulfilment is dispensable according to statutory provisions. If only an insignificant defect exists, in particular, if the functionality of the product is not impaired, the customer is entitled only to the right to the reduction of the payment. RHOTHETA repairs the defect optionally by means of subsequent fulfilment by rectification of the defect or delivery of a defect-free item; in doing so, RHOTHETA bears only the costs required for the purpose of the subsequent fulfilment. In the event of withdrawal, the customer is liable in the case of intent and any negligence for deterioration, destruction and loss of use. A defective commodity, which is replaced by RHOTHETA by a new one, becomes the property of RHOTHETA.

7.3 The subsequent fulfilment can also be refused, when the customer does not return the rejected commodity upon request to RHOTHETA.

7.4 All information of RHOTHETA concerning its products, in particular the illustrations, drawings, weight, dimension and performance figures contained in the bid and printed matter are average values to be regarded as approximate. They are not quality guarantees, but rather descriptions or characterizations of the commodity.

7.5 The customer is obligated to release RHOTHETA from possible product liability claims, if he sells the delivered commodities in the USA, Canada, other countries, which do not belong to the European Union or to third parties, which operate the devices of RHOTHETA in the countries mentioned or sell them in these countries. The liability under Article 5 of these General Terms and Conditions shall remain unaffected.

7.6 No warranty is provided by RHOTHETA, insofar as changes have been made by the customer or third parties to the devices or repairs using non-original parts or a third party not authorized by RHOTHETA installs the device or has carried out repair and/or maintenance work on it. In this event, any warranty claim of the customer with regard to RHOTHETA also expires, unless the customer proves that the defect was not caused due to the unauthorized installation, repair and/or maintenance.

7.7 If the defect of the purchased item had been caused by a part delivered by the customer, RHOTHETA will charge the customer for the time and material expended for the repair. The customer releases RHOTHETA from all possible claims of his customers; this applies in particular to product liability claims. The liability under Article 5 of these General Terms and Conditions shall remain unaffected.

7.8 The period of limitation for claims arising from defects is 12 months (24 months in the case of consumers). This does not apply to damage claims of the customer, which are aimed at compensation for bodily injury or damage to health due to a defect for which RHOTHETA is responsible or are based on our intentional or gross culpability.

8. Transfer of Risks and Prohibition of Assignment

8.1 If the parties have agreed to a debt collectible by the creditor, then the danger of the accidental destruction and the accidental deterioration of the sold commodity transfers to the customer, if he is in default after receipt of the notification that the goods are ready. The customer has to conclude possibly desired insurance coverage at his own expense.

8.2 The customer is not entitled without the consent of RHOTHETA, to transfer his contractual rights. Section 354a German Commercial Code shall remain unaffected.

9. Place of Performance and Legal Venue, Severability Clause

9.1 The place of the registered office of RHOTHETA shall be place of performance, unless otherwise agreed in the order. Place of performance for payments shall always be the place of the registered office of RHOTHETA. The place of registered office of RHOTHETA shall be agreed as legal venue for any and all disputes arising directly or indirectly under the contractual relationship.

9.2 Should provisions of this agreement be or become invalid, the effectiveness of the remaining provisions of the agreement shall remain unaffected.