

# General Terms and Conditions of Delivery of COLSON Rollen GmbH (1)



## 1. Scope, Form

- 1.1 These General Terms and Conditions of Sale (GTCS) shall apply to all our business relations with our customers („Buyer“). The GTCS shall only apply if the Buyer is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law.
- 1.2 The GTCS shall apply in particular to contracts for the sale and/or delivery of goods („Goods“), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers (§§ 433, 650 BGB). Unless otherwise agreed, the GTCS in the version valid at the time of the Buyer's order or, in any case, in the version last notified to the Buyer in text form shall also apply as a framework agreement for similar future contracts without us having to refer to them again in each individual case.
- 1.3 Our GTCS shall apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of the Buyer shall only become part of the contract if and to the extent that we have expressly consented to their application. This requirement of consent shall apply in any case, for example even if we carry out the delivery to the Buyer without reservation in the knowledge of the Buyer's GTC.
- 1.4 Individual agreements made with the Buyer in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these GTCS. Subject to proof to the contrary, a written contract or our written confirmation shall be authoritative for the content of such agreements.
- 1.5 Legally relevant declarations and notifications by the Buyer with regard to the contract (e.g. setting of deadlines, notification of defects, withdrawal or reduction) shall be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Legal formal requirements and further proof, in particular in case of doubts about the legitimacy of the person making the declaration, shall remain unaffected.
- 1.6 References to the applicability of statutory provisions shall only be of a clarifying nature. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTCS.

## 2. Conclusion of Contract

- 2.1 Our offers are subject to change and non-binding. This shall also apply if we have provided the Buyer with catalogs, technical documentation (e.g. drawings, plans, calculations, calculations, references to DIN standards), other product descriptions or documents - also in electronic form - to which we reserve property rights and copyrights. They may not be made accessible to third parties.
- 2.2 The order of the goods by the Buyer shall be deemed to be a binding offer of contract. Unless otherwise stated in the order, we shall be entitled to accept this offer of a contract within 4 weeks after its receipt by us.
- 2.3 Acceptance may be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the Buyer.

## 3. Delivery Period and Delay in Delivery

- 3.1 The delivery period shall be agreed individually or stated by us upon acceptance of the order.
- 3.2 If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (non-availability of the service), we shall inform the Buyer of this without delay and at the same time notify the Buyer of the expected new delivery deadline. If the service is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall immediately refund any consideration already paid by the Buyer. A case of non-availability of the performance in this sense shall be deemed to be in particular the non-timely self-delivery by our supplier if we have concluded a congruent hedging transaction, neither we nor our supplier are at fault or we are not obliged to procure in the individual case.
- 3.3 The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder by the Buyer shall be required.
- 3.4 The delivery period shall be deemed to have been complied with if the goods have left the factory or notification of readiness for dispatch has been given by the time the delivery period expires.

- 3.5 The rights of the Buyer pursuant to Clause 8 of these ALB and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

## 4. Delivery, Transfer of Risk, Acceptance, Default of Acceptance

- 4.1 Delivery shall be made “ex-warehouse”, which is also the place of performance for the delivery and any subsequent performance. At the Buyer's request and expense, the goods shall be shipped to another destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, we shall be entitled to determine the type of shipment (in particular transport company, shipping route, packaging) ourselves.
- 4.2 The risk of accidental loss and accidental deterioration of the goods shall pass to the Buyer upon handover at the latest. In the case of sale by delivery to a place other than the place of performance, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass to the Buyer upon delivery of the goods to the forwarding agent, the carrier or any other third party designated to carry out the shipment.
- 4.3 If the Buyer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the Buyer is responsible, we shall be entitled to claim compensation for the resulting damage, including additional expenses (e.g. storage costs), beginning with the delivery deadline or - in the absence of a delivery deadline - with the notification that the goods are ready for shipment. The proof of a higher damage and our legal claims (especially compensation of additional expenses, reasonable compensation, termination) remain unaffected.

## 5. Prices and Terms of Payment

- 5.1 Unless otherwise agreed in individual cases, our prices current at the time of conclusion of the contract shall apply, “ex-warehouse”, plus statutory value added tax. The prices shall be binding for the entire term of the contract. If, however, between the conclusion of the contract and the date of performance there are increased costs on our side due to legal changes, e.g. due to higher customs duties or other levies, we shall be entitled to adjust the purchase price accordingly. We reserve the right to increase the purchase price by notifying the Buyer prior to the date of delivery if any circumstances beyond our control, such as changes in exchange rates, currency regulations, changes in duties and taxes, unexpected increases in manufacturing costs, as well as changes in delivery dates, delivery quantities or specifications of the goods caused by the Buyer, or delays for which the Buyer is responsible and which the Buyer has not notified us of in due time, force us to do so.
- 5.2 In the case of sale by delivery to a place other than the place of performance (Clause 4.1), the Buyer shall bear the transport costs “ex-warehouse” and the costs of any transport insurance requested by the Buyer. Any customs duties, fees, taxes and other public charges shall be borne by the Buyer.
- 5.3 The purchase price shall be due and payable within 30 days from the date of invoice. This shall also apply to partial deliveries. However, we shall be entitled at any time, even within the framework of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. We shall declare a corresponding reservation at the latest with the order confirmation.
- 5.4 Upon expiry of the aforementioned payment period, the Buyer shall be in default. During the period of default, interest shall be charged on the purchase price at the statutory default interest rate applicable at the time. We reserve the right to assert further damage caused by default. With respect to merchants, our claim to the commercial due date interest rate (§ 353 HGB) shall remain unaffected.
- 5.5 The Buyer shall only be entitled to rights of set-off or retention to the extent that his claim has been legally established or is undisputed. In the event of defects in the delivery, the Buyer's counter rights shall remain unaffected, in particular pursuant to Clause 7.6 of these GTCS.

# General Terms and Conditions of Delivery of COLSON Rollen GmbH (2)



- 5.6 If, after conclusion of the contract, it becomes apparent (e.g. by filing for insolvency proceedings) that our claim to the purchase price is jeopardized by the Buyer's inability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of unjustifiable items (custom-made products), we may declare our withdrawal immediately; the statutory provisions on the dispensability of setting a deadline shall remain unaffected.
- 6. Retention of Title**
- 6.1 We shall retain title to the goods sold until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims).
- 6.2 The goods subject to retention of title may not be pledged to third parties or assigned as security before full payment of the secured claims. The Buyer shall notify us in writing without delay if an application is made to open insolvency proceedings or if third parties (e.g. seizures) have access to the goods belonging to us.
- 6.3 In the event of conduct by the Buyer in breach of contract, in particular in the event of non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions or/and to demand surrender of the goods on the basis of the retention of title. The demand for return does not at the same time include the declaration of withdrawal; we are rather entitled to demand only the return of the goods and to reserve the right of withdrawal. If the Buyer does not pay the purchase price due, we may only assert these rights if we have previously set the Buyer a reasonable deadline for payment without success or if setting such a deadline is dispensable under the statutory provisions.
- 6.4 Until revoked in accordance with (c) below, the Buyer shall be entitled to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition.
- (a) The retention of title shall extend to the products resulting from the processing, mixing or combining of our goods at their full value, whereby we shall be deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. Otherwise, the same shall apply to the resulting product as to the goods delivered under retention of title.
- (b) The Buyer hereby assigns to us by way of security any claims against third parties arising from the resale of the goods or the product in total or in the amount of our co-ownership share, if any, in accordance with the preceding paragraph. We accept the assignment. The obligations of the Buyer set out in 6.2 shall also apply in respect of the assigned claims.
- (c) The Buyer shall remain authorized to collect the claim in addition to us. We undertake not to collect the claim as long as the Buyer meets his payment obligations towards us, there is no deficiency in his ability to pay and we do not assert the retention of title by exercising a right pursuant to 6.3. If this is the case, however, we may demand that the Buyer inform us of the assigned claims and their debtors, provide all information necessary for collection, hand over the relevant documents and inform the debtors (third parties) of the assignment. In addition, in this case we shall be entitled to revoke the Buyer's authorization to further sell and process the goods subject to retention of title.
- (d) If the realizable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the Buyer's request.
- 7. Warranty**
- 7.1 Partial deliveries and excess or short deliveries of up to 10% shall be permissible and shall not constitute a defect.
- 7.2 The statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title (including wrong delivery as well as defective assembly instructions), unless otherwise stipulated below. In all cases, the special statutory provisions shall remain unaffected in the case of final delivery of the unprocessed goods to a consumer, even if the consumer has processed them further (supplier's recourse pursuant to § 478 BGB). Claims arising from supplier recourse shall be excluded if the defective goods have been further processed by the Buyer or another entrepreneur, e.g. by incorporation into another product.
- 7.3 The basis of our liability for defects is above all the agreement reached on the quality of the goods. All product descriptions and manufacturer's specifications which are the subject of the individual contract or which were publicly announced by us at the time of the conclusion of the contract shall be deemed to be an agreement on the quality of the goods. However, we shall not be liable for public statements made by a third party manufacturer or other third parties (e.g. advertising statements) to which the Buyer has not referred to us as being decisive for his purchase.
- 7.4 As a matter of principle, we shall not be liable for defects of which the Buyer is aware at the time of conclusion of the contract or is not aware due to gross negligence (§ 442 BGB). Furthermore, the Buyer's claims for defects shall require that he has complied with his statutory obligations to inspect the goods and to give notice of defects (§§ 377, 381 HGB). In the case of goods intended for installation or other further processing, an inspection must in any case be carried out immediately before processing. If a defect becomes apparent upon delivery, inspection or at any later time, we must be notified thereof in writing without delay. In any case, obvious defects must be reported within 8 working days of delivery and defects which are not apparent on inspection must be notified within the same period of time from the time of discovery. If the Buyer fails to carry out the proper inspection and/or to give notice of defects, our liability for the defect not notified in time or not notified properly shall be excluded in accordance with the statutory provisions.
- 7.5 If the delivered good is defective, we may initially choose whether to provide subsequent performance by remedying the defect (subsequent improvement) or by delivering an item free of defects (replacement delivery). Our right to refuse subsequent performance under the statutory conditions shall remain unaffected.
- 7.6 We shall be entitled to make the subsequent performance owed dependent on the Buyer paying the purchase price due. However, the Buyer shall be entitled to retain a part of the purchase price which is reasonable in relation to the defect.
- 7.7 The Buyer shall give us the time and opportunity required for the subsequent performance owed, in particular to hand over the goods complained about for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective item to us in accordance with the statutory provisions. Subsequent performance shall neither include the removal of the defective item nor its re-installation if we were not originally obliged to install it.
- 7.8 We shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs and, if applicable, removal and installation costs, in accordance with the statutory provisions if there is actually a defect. Otherwise, we shall be entitled to demand reimbursement from the Buyer of the costs incurred as a result of the unjustified request to remedy the defect (in particular inspection and transport costs), unless the lack of defectiveness was not apparent to the Buyer.
- 7.9 Claims of the Buyer for damages or reimbursement of futile expenses shall also exist in the case of defects only in accordance with Clause 8 and shall otherwise be excluded.
- 8. Liability**
- 8.1 We shall be liable for damages - irrespective of the legal grounds - within the scope of culpability in the event of intent and gross negligence. In the event of simple negligence, we shall be liable, subject to statutory limitations of liability (e.g. care in own affairs; insignificant breach of duty), only (a) for damages resulting from injury to life, body or health, (b) for damages arising from the breach of a material contractual obligation (obligation the fulfillment of which is a prerequisite for the proper performance of the contract and the observance of which the contractual partner regularly

# General Terms and Conditions of Delivery of COLSON Rollen GmbH (3)



relies on and may rely on); in this case, however, our liability shall be limited to compensation for the foreseeable, typically occurring damage.

- 8.2 The limitations of liability resulting from Clause 8.1 shall also apply to third parties as well as in the event of breaches of duty by persons (also in their favor) whose fault we are responsible for according to statutory provisions. They shall not apply insofar as a defect was fraudulently concealed or a guarantee for the quality of the goods was assumed and for claims of the Buyer under the Product Liability Act.
- 8.3 The Buyer may only withdraw from or terminate the contract due to a breach of duty which does not consist of a defect if we are responsible for the breach of duty. A free right of termination of the Buyer (in particular according to §§ 650, 648 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

special fund under public law, the exclusive place of jurisdiction - including international jurisdiction - for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in Hückeswagen/Germany. The same shall apply if the Buyer is an entrepreneur within the meaning of § 14 of the German Civil Code (BGB). However, we shall also be entitled in all cases to file a lawsuit at the place of performance of the delivery obligation in accordance with these GTCS or a prior individual agreement or at the Buyer's general place of jurisdiction. Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.

## 9. Limitation

- 9.1 Notwithstanding § 438 para. 1 no. 3 BGB, the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance.
- 9.2 The provisions of § 438 para. 1 no. 2 BGB and other special statutory provisions on the limitation period (in particular § 438 para. 1 no. 1, para. 3, §§ 444, 445b BGB) shall remain unaffected.
- 9.3 The above limitation periods of the law on sales shall also apply to contractual and non-contractual claims for damages of the Buyer based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in the individual case. Claims for damages by the Purchaser pursuant to Clause 8.1 sentence 1 and sentence 2(a) as well as pursuant to the Product Liability Act shall become time-barred exclusively in accordance with the statutory limitation periods.

## 10. Tooling Costs

- 10.1 Tooling costs shall be charged separately.
- 10.2 The Buyer shall not acquire any claim to the tools by payment of cost shares for the tools; rather, they shall remain our property and possession. We undertake to keep the tools for the Buyer for one year after the last delivery. After this period we may freely dispose of the tools.
- 10.3 With regard to tooling costs for orders which have not come to fruition, the following shall apply:  
For orders cancelled in the development period or in the start-up period, we reserve the right to charge for the costs incurred. The following will be invoiced  
- before release of the samples, the costs for the initial tool set  
- after sample release, the costs for the entire scope of series tools, special equipment and gauges, depending on the amount of the intended monthly requirement.
- 10.4 The tools prepared and invoiced shall remain for inspection for 4 weeks and shall then be scrapped.
- 10.5 The Purchaser shall not have access to stadium plans and construction drawings of the tools.

## 11. Used Goods, Waste

The disposal of old parts and other items which can no longer be used shall be the responsibility of the purchaser. Insofar as statutory regulations are issued which stipulate otherwise, the purchaser undertakes to reach an appropriate agreement with us with regard to recycling. In this context, it shall be assumed that the contracting parties will make use of third parties to fulfill the obligation of utilization.

## 12. Governing Law and Place of Jurisdiction

- 12.1 These GTCS and the contractual relationship between us and the Buyer shall be governed by the laws of the Federal Republic of Germany under exclusion of the laws governing the international purchase of movable goods, in particular the UN Convention on Contracts for the International Sale of Goods.
- 12.2 If the Buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a