

General Terms and Conditions of Business of RATIONAL AG

I. Scope of application

1. These General Terms and Conditions shall apply without exception to all orders placed with us, including future orders, even if the customer's order contains different terms and conditions. Such terms and conditions are expressly objected to, irrespective of when we receive them.
2. Amendments and addenda to these General Terms and Conditions of Business must be made in writing.
3. For business relationships with subsidiaries of RATIONAL AG, the General Terms and Conditions of Business of these companies shall apply.

II. Quotation/order confirmation

1. Our quotations are non-binding. Any documents submitted together with the quotation, such as catalogues, brochures, images etc., only contain approximate details and descriptions. We retain ownership of as well the copyright in any drawings, designs, samples and other documents produced by us. Such documents shall not be made accessible to third parties and shall be returned to us immediately upon request.
2. Contracts shall be constituted by our written order confirmation, the content of which shall prevail. Contracts for spare parts shall be constituted upon consignment of the goods. Amendments and subsidiary agreements shall be made in writing.
3. We reserve the right to make technical modifications.

III. Delivery and transfer of risk

1. A binding delivery date has only been agreed, if we have confirmed it as such in writing. A prerequisite of binding delivery dates is that the customer has informed us correctly of the technical requirements, including all dimensions. If that turns out not to be the case or if a modified contract performance is subsequently agreed, we shall not be held responsible for any resulting delays and the delivery date shall be adjusted appropriately.
2. A binding delivery date has been met, if the delivery has been dispatched to the customer or to the specified delivery address at that date. Meeting the delivery date requires that the customer's contractual obligations have been met on time; this includes that any advance payments agreed have been received on time.
3. Furthermore the delivery date shall be adjusted as appropriate in the event of actions relating to labour disputes, in particular strike and lockout, and the occurrence of other unforeseeable obstacles beyond our control, if such obstacles can be demonstrated to have a significant impact on the completion or delivery of the item to be delivered. This shall also apply if such circumstances arise at our suppliers.
4. In the event of a delivery delay for which we are responsible, the customer shall be able to rescind the contract only after setting a reasonable grace period of at least four weeks and threatening explicitly to reject the delivery. Claims for damages shall be excluded in accordance with the rules in section VI.6.
5. Partial deliveries are permitted and shall be invoiced when they are made.
6. Although we assume the costs for transport and transport insurance, the risk shall pass to the customer when the goods leave our premises.
7. We will not perform installation and commissioning work; such work shall be included in the scope of delivery only on the basis of a separate explicit written agreement.
8. The ordering party does not have the right to return ordered items that are free of defects if said party is a full merchant in accordance with section 1 of the German Commercial Code (HGB).

IV. Retention of title

1. The goods delivered shall remain our property until all receivables under the business relationship have been settled in full. Resale to third parties of goods subject to retention of title requires our consent. In the event of resale, the customer shall thereby assign its receivables to us and shall undertake to provide us with all details required to collect such receivables.
2. Processing or conversion within the scope of the customer's business operations shall always be performed on our behalf, but without any obligation for us. In the event that our (joint) ownership expires as a result of combination, it is hereby agreed that the customer's (joint) ownership of the combined item shall pass to us in proportion to its value (invoice amount).
3. The customer shall not pledge as collateral goods subject to retention of title, nor assign them as security. The customer shall notify us immediately if the goods subject to retention of title are seized by third parties. The customer is obliged to treat the goods subject to retention of title with care, insure them against theft, damage, destruction and accidental loss (in particular through fire and water) and provide evidence of this request.

4. If the value of all our security interests exceeds the amount of all secured claims by at least 20%, we shall release the corresponding part of the security interests. We are furthermore entitled to enforce all our rights arising under the aforementioned retention of title, including the collection of assigned receivables, as soon as the customer is in default of payment.

V. Prices and payment

1. Our prices are ex works and are subject to the applicable statutory value added tax.
2. For orders performed over a period in excess of three months, we reserve the right to adjust the confirmed prices.
3. Modifications made at the request of the customer after our order confirmation shall be invoiced separately.
4. The payment terms for buyers shall be 10 days from the invoice date less a 2% cash discount, or 30 days net for goods or 10 days net for services. Cash discounts shall not be granted on new invoices while older invoices remain unpaid. The payment terms for foreign buyers shall be 30 days net.
5. We reserve the right to demand immediate prepayment of the agreed selling price for first-time orders from new customers, as well as for orders from buyers of insufficient financial standing, or if we learn of this subsequently. If the buyer fails to settle such a receivable immediately, we can rescind the sales contract without incurring any liability for damages.
6. Payment shall be made exclusively to us or to the bank account specified in our invoice. Payment instructions, cheques and in particular bills of exchange shall be accepted only by special arrangement and as payment pending settlement, not as final settlement. Collection costs as well as bill of exchange and cash discount charges shall be borne by the buyer. Renegotiation and prolongations shall not be deemed to be settlement. The buyer's payment obligation shall not be affected by a demand for reduction, a delay affecting other parts of the sales contract or by counterclaims. All withholding and set-off rights against our payment claim shall be excluded.
7. In the event of non-performance by the customer, we shall be entitled to demand flat-rate damages of 20% of the contractual consideration. Non-merchants are free to provide evidence of lesser damage. The right to claim higher damages actually incurred shall be unaffected.

VI. Warranty and damages

1. The customer shall be responsible for the accuracy and completeness of any specifications, dimensions and other details supplied to us for performance of the order. Errors in this respect on the part of the customer shall not constitute deficiencies in our performance.
2. Obvious deficiencies in our performance and/or work shall be notified and specified in writing without delay following performance, and non-obvious deficiencies without delay as soon as they are detectable. We cannot take verbal and/or subsequent notifications of deficiencies into account.
3. Transport damage shall be notified and specified in writing immediately after delivery. The notification must be received by us no later than 5 working days after delivery. Verbal and/or subsequent complaints regarding transport damage cannot be taken into account.
4. Deficiencies shall not include immaterial deviations from the agreed quality, immaterial impairments of usability, normal wear and tear or damage that occurs after the transfer of risk as a result of improper or negligent handling, excessive use, unsuitable operating equipment, defective construction work, an unsuitable installation site or as a result of special external factors that have not been assumed under the contract, and in the case of software errors that cannot be replicated. If the customer or third parties make inappropriate modifications or repairs, claims for deficiencies shall be excluded in respect of these claims or any consequences of making them.
5. We shall rectify, free of charge, justified claims asserted for deficiencies in our performance by reworking or by making a replacement delivery, at our discretion. The customer shall be responsible for providing evidence of the deficiency. We can refuse to rectify deficiencies if the cost of doing so is disproportionate. If the warranty repair or replacement to be performed by us fails within an additional period reasonably set by the customer, the customer can – without prejudice to any claim for damages under section 6 – demand a reasonable reduction in the consideration or rescind the contract.

6. Claims for damages by the customer, for whatever legal reason, in particular due to infringement of obligations under the contractual relationship and as a result of impermissible actions, shall be excluded. This shall not apply to cases of intent or gross negligence, injury to life, body or health, to liability assumed under the Product Liability Act, to a guarantee issued by us, to damage resulting from culpable infringement of material contractual obligations or to other cases of legally mandated liability. However, liability for infringement of material contractual obligations shall be limited to replacement of the typical, foreseeable damage, unless the liability applies due to intent or gross negligence or due to injury to life, body or health. The provisions of this section do not entail any change in the burden of proof to the customer's disadvantage.
7. Claims for material deficiencies shall expire by limitation after twelve months. This shall not apply if the law prescribes longer periods (building works and material for building works, deficiencies in building works, recourse in the case of the sale of consumer goods). Claims for material deficiencies of used goods shall expire by limitation after six months, unless they relate to the sale of consumer goods within the meaning of the Act.
8. More extensive or other warranty or damages claims by the customer against us and our agents due to a material defect shall be excluded.

VII. Manufacturer warranty

1. If RATIONAL grants a warranty for its products, this is a manufacturer warranty for the end user.
2. Except for RATIONAL, no-one is entitled to issue, alter or waive warranty declarations for RATIONAL products on behalf of RATIONAL.

VIII. Disposal

1. After discontinuation of use, and at the request of the customer, the appliance shall be collected by a professional disposal contractor and recycled in an environmentally friendly way. Disposal in end-of-life appliance containers at collection points is expressly prohibited. The contact details of a professional disposal contractor may be obtained from your designated RATIONAL service representative.
2. The customer shall place any commercial users to which it transfers the goods supplied (third parties) under a contractual obligation to dispose of said goods properly in accordance with legal requirements after discontinuation of use. In the event that the goods are passed on to others, the customer shall impose on third parties an obligation to transfer this contractual duty to its own customers.
3. Should the customer fail to place a third party under an obligation to assume the duty of disposal or to pass this contractual obligation on to its own customer, it shall, under its relationship with RATIONAL, take back at its own expense the supplied goods after discontinuation of use and dispose of them properly in accordance with legal requirements. If in such a case a third party approaches RATIONAL as the manufacturer and demands that it take back the goods, the customer shall assume responsibility for the professional disposal and environmentally friendly recycling at its own expense, as soon as requested by RATIONAL. If it is unable to do so, it shall notify RATIONAL of this fact within one week of the initial request. In this case, the customer shall bear all disposal costs incurred by RATIONAL.

IX. Place of jurisdiction, place of performance

1. The place of jurisdiction for all legal disputes arising from the business relationships with customers that are merchants, legal persons under public law or special funds under public law as well as the place of performance for all obligations arising from the contractual relationship shall be Landsberg am Lech. This applies even if the customer does not have a general place of jurisdiction in the Federal Republic of Germany.

X. Final provisions

1. The assessment of all legal relationships with the customer is subject to the laws of the Federal Republic of Germany. Application of the UN Sales Convention (CISG) is excluded.
2. If a part of the contract or of these General Terms and Conditions of Business is ineffective or impracticable, this shall have no impact on the validity of the rest of the contract or these General Terms and Conditions of Business.