



RSP GmbH General Sales and Delivery Terms Status 09/2011

§ 1 General information

- (1) The following sales and delivery terms shall apply exclusively to all deliveries and other services of Reschwitzer Saugbagger Produktions GmbH (hereinafter referred to as RSP GmbH). These also comprise the regulations relating to maintenance and repair services. They only apply towards entrepreneurs within the meaning of § 310 Par. 1 in conjunction with § 14 BGB [German Civil Code].
- (2) All agreements and collateral agreements between the orderer and RSP GmbH shall require a written form in order to be legally valid. This shall also apply to the waiver of the written form. Decisive for the interpretation of all contractual agreements and these General Business Terms is the German language.
- (3) Inclusion and interpretation of these sales and delivery terms are exclusively regulated, as well as conclusion and interpretation of the legal contracts with the orderer itself, according to the law of the Federal Republic of Germany. The application of the international purchase law of movable objects (UN law on purchases/ CISG, Vienna convention governing purchase law) is excluded.
- (4) Other terms and conditions, in particular general business, purchasing or delivery terms of the orderer, shall not become part of the contract even if RSP GmbH has not explicitly objected hereto.
- (5) The invalidity of individual provisions of these sales and delivery terms or its parts shall have no effect on the validity of the other regulations. The statutory regulation shall apply should a provision be invalid.
- (6) The place of performance for all obligations ensuing directly or indirectly from this contractual relationship, including the payment obligation, is Saalfeld. The exclusive place of jurisdiction is Saalfeld. RSP GmbH is also entitled to file action before a court which has jurisdiction for the registered seat or a branch of the orderer.

§ 2 Offers, scope of services and conclusion of contract

- (1) RSP GmbH is bound to its contractual offers for 3 months from the date of the offer letter insofar as not offered otherwise.
- (2) An order of the orderer shall only be deemed as accepted with the written order confirmation of RSP GmbH.
- (3) An unchanged offer acceptance of the orderer, or in case of deviating placement of order, the order confirmation of RSP GmbH is exclusively decisive for the scope of the contractually owed services.
- (4) RSP GmbH shall also reserve the right to make changes to the construction, the choice of materials, the specifications and the type of construction after sending an order confirmation insofar as these changes neither object to the order confirmation nor the specifications of the orderer, no justified interest of the user is infringed or the object of contract is in danger. The orderer shall declare that it agrees with proposed changes of RSP GmbH which go beyond this insofar as these are deemed reasonable for the orderer.
- (5) Partial deliveries, which do not impair the functional capability of the whole unit and are deemed reasonable for the orderer, are permitted.
- (6) The documents upon which the offer or the order confirmation is based, such as diagrams, drawings, measurement and weight details, are as a rule only to be understood as approximate values provided they are not explicitly described as binding. RSP GmbH shall be liable for such information within the framework of the care and attention in own matters.
- (7) Documents, such as cost estimates, service specifications, samples or other documentation such as drawings and plans, with the exception of pure advertising materials, shall remain the property of RSP GmbH and may not be made accessible to third parties. They are, insofar as no contract is concluded, to be returned to RSP GmbH immediately.

§ 3 Prices

- (1) The prices are in € net plus the applicable rate of value added tax.
- (2) Insofar as not otherwise agreed all prices shall apply ex works Saalfeld. The delivery is carried out excluding postage, insurance, packaging, customs

and transport costs. This shall also apply to follow-up deliveries requested by the orderer.

- (3) Special packaging (e.g. boxes) with enclosed bill of lading shall remain the property of RSP GmbH and are to be returned. If the goods are not returned within 14 days then the packaging material will be invoiced at the cost price.
- (4) The decisive statutory value added tax at the time of the delivery is to be paid by the orderer in addition to the price. With deliveries within the European Union (EU) the orderer has to submit its value added tax identification number in time before the contractually agreed delivery date in order to prove its exemption from value added tax. In the event of the failure to submit the timely and full notification RSP GmbH reserves the right to charge the respective applicable value added tax. With deliveries outside of the EU RSP GmbH is entitled to subsequently charge the applicable rate of value added tax if the orderer does not send a proof of export within one month after the respective shipment.
- (5) The agreed remuneration is to be paid. However, RSP GmbH reserves the right to change its price accordingly if there is a period of more than 4 months between the conclusion of the contract and the delivery and reductions or increases in costs occur, in particular owing to collective wage agreements, the change to material and raw material prices or other changes to market prices by involved third parties. RSP GmbH will inform the orderer of the price change and upon request prove the price adjustment factors and their concrete increase. The orderer is entitled to cancel the contract if a price increase is 20 % or more above the agreed price. This right must be asserted immediately.
- (6) If RSP GmbH shall take into account special wishes or requests for changes of the orderer, these changes are to be agreed in writing. The incurred additional costs will be invoiced to the orderer.

§ 4 Terms of payment

- (1) RSP GmbH shall issue invoices on the expected day of the service or partial service or – if release order by the orderer has been agreed – on the day of the readiness for delivery.
- (2) Insofar as not otherwise agreed the purchase price (net) is due and payable without deduction with the notification that the object of delivery is ready for delivery.
- (3) A deduction of cash discount is not permitted unless the contractual partners agree a deviating regulation in writing.
- (4) With all special productions or order volumes exceeding € 30,000.00, in particular with all complete deliveries for suction excavators RSP GmbH is entitled to invoice the orderer a partial invoice for a reasonable advance payment before execution already. This is 30 % of the order value, provided that a deviating value amount was not stipulated with the offer for the order. This partial invoice is due and payable for the orderer with receipt of the invoice. RSP GmbH is entitled to make the execution dependent on the receipt of the advance payment. The paid partial invoice is taken into account with the creation of the final invoice.
- (5) The legal consequences in case of delay of payment of the orderer are determined according to the statutory regulations of the BGB insofar as these terms and conditions do not contain any deviating regulations. If the orderer is in default then RSP GmbH is entitled to deem all receivables against the orderer due and payable after the unsuccessful expiry of a final deadline of one week.
- (6) Instead of the advance payment RSP GmbH is entitled to demand any other form of payment security from the orderer, such as the guarantee of an internationally recognised credit institute or a federal German credit insurer. Insofar as the delivery of the ordered object is to be carried out before satisfaction of the payment obligation of the orderer according to Par. (2) the amount of the payment guarantee is determined with the full amount of the contractually agreed price.
- (7) If it becomes clear after conclusion of the contract that the payment claim is at risk by insufficient payment capability of the orderer RSP GmbH shall



RSP GmbH General Sales and Delivery Terms Status 09/2011

be entitled to the rights from § 321 BGB (Plea of uncertainty). RSP GmbH is then also entitled to deem all receivables from the current business relationship with the orderer, which are not yet subject to the statute-of-limitations, due and payable. This plea of uncertainty shall cover all further outstanding deliveries and services from the business relationship with the orderer.

(8) In case that the payment deadline is exceeded interest shall be requested in the amount of 8 % above the respective applicable base lending rate subject to the assertion of further claims

(9) The claims of RSP GmbH for payment shall become statute-barred in 5 years notwithstanding § 195 BGB. § 199 BGB shall apply with regard to the start of the statute-of-limitations.

§ 5 Offsetting and retention / assignment

(1) Offsetting and retention are excluded unless the counter-claim of the orderer stems from the same contractual relationship and is undisputed or has been declared final and binding.

(2) The assignment of a claim towards RSP GmbH, no matter of what kind, to third parties is only permitted with the written consent of RSP GmbH.

§ 6 Delivery deadlines and termination of contract

(1) The stating of a delivery time in the offer is carried out to the best knowledge and belief, however is only deemed non-binding and approximate, in particular if coordination concerning technical details, provisions by the orderer and third parties or other acts of assistance of the orderer have been insufficiently determined. The delivery date or the delivery deadline will only become binding when it was explicitly agreed as a binding fixed deadline in the contract.

(2) The delivery deadlines and dates shall only begin to apply after the full clarification of all execution details and technical questions, which relate to the object of delivery. Moreover, the orderer has to satisfy all obligations for which it is responsible (such as necessary confirmations and permits, provision of documents, vehicles or parts) properly and in time. If these pre-requisites are not satisfied then the deadline shall be extended by the duration of the delay.

(3) The same shall apply in case of measures within the framework of industrial disputes, in particular strike and lock-out and with the occurrence of unforeseeable impediments, which are beyond the control of the seller, e.g. delay in delivery of a subsupplier, interferences to transport and operation, shortage of materials or energy, etc. Changes to the delivered goods arranged for by the orderer shall also lead to an extension of the delivery period for the duration of the delay.

(4) After completion of the object of delivery notification will be given by RSP GmbH that it is ready. The orderer undertakes to pick the object of delivery up within 3 workdays after receipt of the notification that the object is ready.

(5) If the orderer is in default of acceptance or if it breaches other obligations to provide assistance then RSP GmbH is entitled to request compensation for the insofar incurred damages including possible additional expenses. The right is reserved to further claims.

(6) If the order is cancelled by the orderer, the contract cancelled or the contract reversed for other reasons and if the orderer is liable to damages towards RSP GmbH then RSP GmbH is entitled to request flat rate damages in the amount of 10 % of the net order value provided the orderer does not prove that the breach of contract of which it is accused did not lead to any damages or any reduction in value or such a loss suffered by RSP GmbH is substantially lower than the flat rate. RSP GmbH alternatively/or as an option reserves the right to concretely calculate and assert the amount of the damages.

§ 7 Passing of risk and transport risk

(1) The place of performance for all deliveries and services is the plant of RSP GmbH in Saalfeld, insofar as not otherwise agreed in writing. RSP GmbH does not assume any liability for the transport to the place of destination.

The transport is carried out at the costs and risk of the orderer.

(2) Insofar as requested by the orderer RSP GmbH shall secure the delivery by transport insurance. The costs incurred in this respect shall be borne by the orderer.

(3) The risk of accidental loss or the deterioration of the object of delivery shall pass to the orderer from the day of notification that the object is ready for shipment or acceptance (notification of readiness).

§ 8 Reservation of title

(1) RSP GmbH reserves the right to the property to the delivered goods until the full payment. The reservation of title shall also apply until all, also future and conditional claims from the business relationship, have been satisfied between the orderer and RSP GmbH.

(2) The orderer is not authorised to assign as collateral or pledge the goods, however is entitled to resell the reserved goods in proper business transactions. It hereby now already assigns the claims established hereby towards its business partners to RSP.

(3) If the goods are processed by the orderer the reservation of title shall also cover the whole new object. The orderer acquires co-ownership to the fraction, which corresponds with the ratio of the value of its goods to the goods delivered by RSP GmbH.

(4) If the value of all collateral existing for RSP GmbH exceeds the existing claims in the long-term by more than 10 % then RSP GmbH shall, at the request of the orderer, release collateral items at the choice of RSP GmbH.

(5) In case of conduct of the orderer in breach of the contract, in particular with default in payment, RSP GmbH is entitled to assert the reservation of title and to take the delivery back. The taking back or attachment of the delivery by RSP GmbH does not represent a cancellation of the contract unless RSP GmbH explicitly declares this in writing. Sales proceeds are to be offset against the liabilities of the orderer – minus reasonable sales costs.

(6) In case of attachment or other interventions of third parties the orderer must inform RSP GmbH immediately in writing so that RSP GmbH can file an action according to § 771 ZPO [Code of Civil Procedure]. Insofar as the third party is not in the position to reimburse RSP GmbH the in-court and out-of-court costs of an action according to § 771 ZPO the orderer shall be liable for the incurred expenses and loss.

§ 9 Claims for defects

(1) If the object of contract is a trading business for both contractual partners then the orderer must inspect the delivery immediately after receipt insofar as this is deemed reasonable according to the proper course of business and, if a defect is determined report this to RSP GmbH immediately in writing. If the orderer fails to submit this report then the goods shall be deemed as approved unless it concerns a defect which could not be identified during the inspection or RSP GmbH maliciously failed to disclose the defect. Incidentally §§ 377 ff. HGB [German Commercial Code] shall apply.

(2) Insofar as a defect is determined in the delivery, which as proven was incurred before passing of the risk RSP GmbH is entitled, at its choice, to carry out the subsequent performance in the form of the remedy of defects or the delivery of a new object (among others replacement of a component). In the event of the remedy of defects RSP GmbH undertakes to bear the direct costs for the subsequent improvement or with delivery of spare parts the costs for the substitute delivery including the shipment costs provided these costs are not increased by the fact that the object of delivery was taken to another location than the place of performance. In case of delivery locations outside of the Federal Republic of Germany the total costs which are to be borne are limited to the amount of the order value concerned.

(3) If there is only an insignificant defect then the orderer is merely entitled to a right for reduction of the contractual price. The right to reduction shall otherwise remain excluded.

(4) Claims for defects of the orderer are excluded with natural wear and



RSP GmbH General Sales and Delivery Terms Status 09/2011

tear or damages which have been suffered after the passing of the risk as a result of faulty or negligent handling, excessive use, unsuitable operating equipment or owing to special external influences, which were not presumed according to the contract. If changes or repairs are made by the orderer or by third parties no warranty claims shall exist for the ensuing consequences either.

(5) The assertion of claims for defects presumes that the special manufacturer's regulations for operation and service are complied with in accordance with the operating and service book and the service is carried out and documented by RSP GmbH or authorised service workshops.

(6) If the orderer was also partly responsible for causing the defect, in particular owing to the non-compliance with its obligation to avoid or minimise damages RSP GmbH is entitled to a claim for damages against the orderer after the subsequent improvement which corresponds with a cofault share of the orderer.

(7) The liability for used objects of delivery, used vehicles or used parts is carried out under the exclusion of the warranty for defects of quality unless RSP GmbH failed to disclose defects of which it was aware maliciously or by wilful intent.

(8) With regard to the condition free of defects of title the assurance of RSP GmbH shall apply, insofar as not otherwise agreed, free of industrial property rights and other rights as well as restrictions to use in Germany.

(9) Further claims of the orderer, insofar as these do not result from an explicit assumption of a guarantee, are excluded. This shall not apply in case of wilful intent, gross negligence or breach of essential contractual duties by RSP GmbH.

(10) The claims for defects shall become statute-barred in one year after the delivery.

(11) Claims for defects are principally to be asserted in the direct contractual relationship towards RSP GmbH or at the authorized contractual partners. For examination of defects the orderer/customer has the obligation to transfer or send the object of delivery or the faulty parts to the place of performance of RSP GmbH according to § 7 (1), alternatively to an authorized service partner explicitly named by RSP GmbH.

§ 10 Liability

(1) The liability of RSP GmbH for breaches of contractual duties as well as from a tortuous act is limited to wilful intent and gross negligence. This shall not apply with the injury to life, the body and health of the orderer / customer, claims owing to the breach of cardinal duties and compensation for damages due to default (§ 286 BGB). The aforementioned liability exclusion shall also apply to the vicarious agents of RSP GmbH.

(2) Insofar as liability for damages, which are not due to injury to life, the body or health, is not excluded for slight negligence, such claims shall become statute-barred within one year beginning with the establishment of the claim.

(3) Insofar as the liability for damages towards RSP GmbH is excluded or limited this shall also apply with regard to the personal liability for damages of the employees, representatives and vicarious agents of RSP GmbH.

§ 11 Accession of leasing

(1) If RSP GmbH approves a leasing accession of a leasing company as requested by the orderer the orderer undertakes to inspect the object of delivery that it is free of defects and to submit all necessary declarations concerning the acceptance and handover immediately, by no later than within 3 days and by satisfying the requirements of the lessor.

(2) In case of justified cancellation of the lessor for reasons for which the orderer is responsible the original contract between the orderer and RSP GmbH shall come into force again. Otherwise the orderer and the lessor shall be liable for the purchase price claim as joint and several debtors.

§ 12 Special and additional regulations for services and repairs

(1) The scope of the afore-mentioned terms and conditions of §§ 1 to 11 principally also covers services and repairs insofar as not otherwise regulated separately in the service or repair contract or below.

(2) An acceptance will take place immediately after completion of the work and after notification of completion by RSP GmbH. A protocol is to be prepared concerning the acceptance including proof of service and to be signed by both contractual partners. If the orderer does not take part on the agreed acceptance date the service shall be deemed as accepted.

(3) RSP GmbH assumes no warranty and liability for culpable conduct of persons who are provided by the orderer. Such persons are vicarious agents of the order.

(4) A claim exists for free subsequent improvement in case of the occurrence of assembly faults, for which RSP GmbH is responsible. Claims for damages beyond this are excluded according to § 10.

(5) If deadlines are stipulated binding for assembly work then these shall only begin to apply when the orderer has satisfied all duties to provide assistance. For the event of culpable non-observance of deadlines by RSP GmbH the orderer has to set a reasonable final deadline in writing. After expiry of this deadline the orderer can terminate the contract. Claims for compensation for the damages due to delay are excluded insofar as these are not due to wilful intent or gross negligence.

Subsequent requests for changes of the orderer shall be carried out at its costs within the framework of that which is possible and deemed reasonable. They shall extend the deadlines in line with the implications.

(6) Additional expenses which exceed the placed order, in particular for changed assembly services and other services and for other unforeseeable difficulties, which are within the area of responsibility of the orderer, shall be remunerated separately according to costs.

(7) After the acceptance the invoice is due and payable for the service, repair or assembly services. RSP GmbH has a right of retention to the respective object of contract, in particular to the suction excavator itself, until payment of the full invoice amount.

(8) Claims for defects for services and repairs shall become statute-barred in 6 months after acceptance.