

# General Terms and Conditions of Sale and Delivery Plant Technology/RIFAST Business Unit



Edition November 2017

## 1. Offer/Offer Costs

- a) Insofar as at the customer's request the submission of offers includes planning, design or technical calculation services, RIBE reserves the right to charge the customer for these, in accordance with the usual hourly rates at RIBE. The information contained in brochures and other information material only serves as a general description and only becomes binding contractual content if it is enclosed with the system specifications by mutual agreement and in writing.
- b) All offers submitted by RIBE are subject to confirmation with respect to price, quantity, delivery period and delivery possibilities. Offers can only be accepted within 30 days unless otherwise specified in the offer.
- c) RIBE reserves all ownership rights and copyrights relating to cost estimates/quotations, drawings and other documents. These may only be made accessible to third parties for purposes related to a specific project and subject to the written approval of the disclosing party and are to be returned to us immediately upon request and any copies that have been made thereof destroyed.
- d) Our General Terms and Conditions of Sale and Delivery also apply to future business transactions, even if we do not specifically refer to them again. Telephone or verbal agreements, additional agreements, undertakings and assurances as well as subsequent amendments to the contract only become legally binding if they have been confirmed by us in writing.

## 2. Scope of Delivery

- a) The scope of delivery is defined by the written order confirmation from RIBE. Verbal collateral agreements and changes require written confirmation by RIBE.
- b) The customer is entitled to withdraw from the contract by written declaration within five working days of the notification of a correction. There are no further claims – in particular no claims for damages.

## 3. Delivery Time

- a) The delivery time is specified by the agreements between the contracting parties. Compliance with the delivery time by RIBE requires that all commercial and technical questions have been clarified between the contracting parties and that the customer has fulfilled all of his obligations such as the submission of the necessary official certificates or approvals or the payment of a deposit. If this is not the case, the delivery time shall be extended by an appropriate period.
- b) Delivery periods and delivery dates are only binding if they are confirmed as binding by RIBE. The delivery period shall be extended by a reasonable amount upon the occurrence of unforeseen hindrances which are beyond the control of RIBE – irrespective of whether they have occurred at RIBE's works or on the premises of RIBE's sub-suppliers – e. g. disruptions to operations, rejected items production, delays in the delivery of important raw and building materials, provided that such hindrances can be shown to have a significant influence on the completion or supply of the delivery item. In important cases the supplier shall inform the customer as soon as possible of the beginning and end of such hindrances.

## 4. Terms of Delivery, Transfer of Risk, Acceptance Test, Assembly, Commissioning, Delay in Acceptance

- a) Unless otherwise agreed between the parties, the provisions of Incoterms 2010 EXW (RIBE's delivery plant) shall apply to deliveries made by RIBE. We are entitled to provide

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partial performance and partial deliveries, provided that the customer can be reasonably expected to accept these.

- b) Insofar as acceptance/relocation approval is required, the risk with respect to the plants or parts to be delivered shall pass to the customer upon delivery to the customer's premises.
- c) Commissioning of the system shall be carried out by RIBE. The customer shall make all of the necessary materials, sample parts, auxiliary equipment, tools and energy available free of charge at the installation site. The customer must provide sample parts for setting up the system. The following suggestions can be used as a guide:  
Components on the contour of which only the systems need to be adjusted, e.g. manual workplaces for assembly: 2 pieces.  
Components which are assembled, pressed or machined together in the device and are therefore no longer present as a single part and/or in their initial state: 30 – 50 sets  
More accurate quantities shall be agreed when the order is placed.
- d) If commissioning is delayed for reasons for which RIBE is not responsible, the additional expenses shall be charged separately.
- e) RIBE shall declare readiness for acceptance after the system has been commissioned. The acceptance test is to be carried out within 5 working days during RIBE's normal business hours. Insofar as the customer refuses to carry out an acceptance test, he shall be deemed to be in default of acceptance.
- f) The customer may not refuse acceptance if any fault present is only minor. Final acceptance shall be performed at the place of delivery. Insofar as final acceptance is delayed as a result of circumstances for which RIBE is not responsible, e.g. missing sample parts, customer components or similar items, the scope of delivery shall be deemed to have been accepted at the latest when it has been in the production process for a period of at least 5 days, with the customer bearing the requisite additional costs.
- (g) An acceptance report shall be drawn up by the parties on the acceptance test. Defects which are not relevant to production shall not prevent the acceptance test, shall be documented in the report and rectified by RIBE within 30 working days.
- h) The customer shall provide the interfaces and structural preparations described in the plant specification, as well as any items which the customer is required to provide before delivery of the plant.

## 5. Drawings

- a) Brochures and catalogs are not binding unless otherwise agreed. Specifications in technical documents are only binding insofar as they are expressly guaranteed.
- b) Before the particulars are specified in detail, we submit the draft design in order that the spatial conditions can be checked and approval (release) issued. In order to guarantee the stated delivery time, this release must be issued within 2 working days.
- c) The dimensions and weights shown in our drawings are non-binding. We reserve the right to make design changes.
- d) We retain the copyright and the rights under Section 7 of German Patent Law and Section 1 of German Utility Model Law relating to our drawings and devices, together with the associated documents. These are entrusted to the recipient only for personal use for the purposes of our respective offer and may not be reproduced or made accessible to third parties – also in the form of extracts – without our express permission. In the event of unlawful use, we draw attention to Sections 1, 15, 36 of the German Copyright Act, Sections 1, 3, 15, 31 to 33 of the Artistic Protection Act and Sections 17, 18 and 19 of the Unfair Competition Act.
- e) Drawings and associated documents are to be returned to us without delay if a decision is taken not to place an order.

## 6. Payment, Prohibition of Offsetting and Assignment

- a) Unless otherwise agreed, prices are always quoted exclusive of sales tax/value added tax and shipping costs.
- b) Unless otherwise agreed, payments are to be made as follows:
  - 30% of the value of the plant as a deposit after receipt of the order confirmation,
  - 60% after notification of readiness for dispatch
  - 10% upon commissioning.
- c) All invoices are payable within 10 days from the date of invoice without deduction, unless otherwise indicated on the invoice. The date of receipt of the payment in RIBE's accounts shall be decisive for compliance with the stipulated payment deadlines. Checks are only accepted on account of payment. All expenses incurred shall be borne by the customer.
- d) In the event of default in payment, interest at the rate of 8 percentage points per annum above the respective base lending rate (Section 247 of the German Civil Code) shall become due. We reserve the right to provide evidence of further loss or damage caused by default.
- e) RIBE is not obligated to fulfill the contract as long as the customer does not fulfill his obligations under other contracts with RIBE as agreed, and in particular does not pay invoices which are due.
- f) In the event that more than one receivable is due from the customer, RIBE shall be entitled to offset payments of the customer against its claims in the order of their maturity. The debtor's right of determination under Section 366, paragraph 1 of the BGB (German Civil Code) shall be excluded in this respect.
- g) The customer may only offset claims or withhold their payment if it has been confirmed in writing that they are undisputed or have been legally established.
- h) After the unsuccessful expiry of a reasonable period of grace, RIBE shall be entitled to execute outstanding deliveries only in return for advance payment or make them dependent on the provision of a security if the customer is in arrears with agreed payment targets or if there are circumstances which give rise to doubts concerning the customer's ability to pay on the basis of normal banking standards.
- i) The customer is not allowed to offset claims of RIBE or assert any right of retention, particularly in the case of notices of defects, unless the customer's claims are acknowledged by RIBE or have been legally established. Claims against RIBE may only be assigned with the written consent of RIBE.

## 7. Retention of Title

- a) The products sold shall remain the property of RIBE until the fulfillment of all claims – including future claims – arising from the business relationship. Payment by bills of exchange and checks shall only be deemed to have been affected once they have been honored. Any processing of the products shall be deemed to have been carried out on behalf of RIBE. In cases in which third-party items are combined or mixed with products produced by RIBE, RIBE shall acquire co-ownership of such items to the extent which corresponds to the ratio of RIBE's products to the other items incorporated by the customer at the time of the combination or mixing. Insofar as the customer acquires sole ownership of the new item, he hereby grants co-ownership to the new item in the proportion of the invoice value of the goods subject to the retention of title to the value of the new item. Until revoked, the customer may sell on the goods which are owned or co-owned by RIBE within the framework of orderly business operations, but not pledge them or assign them as security. Insofar as for his part the customer sells RIBE's products or his goods into which RIBE products are incorporated without receiving the entire purchase price in advance, or concurrently upon the delivery of the purchased item, the customer undertakes to agree a reservation of title in accordance with these conditions with his customer. The customer hereby assigns to RIBE

his claims from this resale, as well as the rights from the retention of title agreed by him. At the request of RIBE, the customer shall be obliged to notify his customer of the assignment and to provide RIBE with the information or surrender the documents required to assert its rights against the purchaser. In the event of default of payment, other serious breaches of contract or a significant deterioration in the customer's financial circumstances, the latter shall be obliged at RIBE's request to surrender to RIBE without delay all objects in which RIBE has co-ownership at his own expense. Insofar as the value of the collateral from the retention of title exceeds RIBE's claims from the business relationship with the customer by more than 20% in total, RIBE shall, at the customer's request, declare the release of collateral at his discretion.

## 8. Liability for Defects to the Delivery

RIBE shall be liable as follows for defects to the delivery, including the absence of explicitly warranted properties, to the exclusion of further claims:

- a) All parts shall be repaired or replaced free of charge at RIBE's reasonable discretion for which it can be shown that within 12 months of acceptance they become unusable or considerably impaired in their usability as a result of a circumstance that existed before the transfer of risk – in particular due to faulty design, poor building materials or defective workmanship. RIBE shall be notified immediately in writing if any such defects are discovered. Replaced parts shall become the property of RIBE and are to be returned upon request.
- b) After consultation with RIBE, the customer shall provide RIBE with the necessary time and opportunity to carry out all repairs and replacement deliveries which RIBE considers to be necessary; otherwise, the supplier shall be exempted from liability for the resulting consequences. Only in urgent cases in which operational safety is placed at risk, or in order to prevent disproportionately high levels of loss or damage, in which case the supplier is to be notified immediately, shall the customer have the right to rectify the defect himself or have it rectified by third parties and demand compensation from RIBE for the necessary expenses.
- c) The customer has the right to withdraw from the contract within the scope of the statutory provisions if the supplier – taking into account the legal exceptions – allows a reasonable period of time that has been set for him for the repair or replacement delivery due to a defect of quality to elapse unsuccessfully. If there is only a negligible defect, the customer shall only have a right to reduce the contract price.
- d) No warranty is provided in the following cases in particular:
  - Unsuitable or improper use, faulty assembly or commissioning by the customer or third parties, natural wear and tear, faulty or negligent handling, improper maintenance, unsuitable operating resources, defective construction work, unsuitable building ground, chemical, electrochemical or electrical influences – unless they are the responsibility of the supplier;
  - If the customer or a third party interferes with the system, the warranty provided by RIBE shall lapse unless the customer can show that his own intervention or the intervention by the third party is not the cause of the defect. The same applies to changes to the delivery item which are carried out without the prior consent of RIBE;
  - Defects resulting from the customer's specifications.
- e) For third-party products, the liability of RIBE shall be limited to the assignment of the liability claims against RIBE of the third-party product.
- f) If the delivery item cannot be used by the customer in accordance with the contract due to a fault on the part of RIBE as a consequence of the omission or faulty execution of suggestions and advice submitted before or after the conclusion of the contract or due to the infringement of other ancillary contractual obligations - in particular instructions for the

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operation and maintenance of the delivery item - the provisions contained in the paragraphs under Section 8 a) shall apply accordingly to the exclusion of further claims by the customer.

g) Further warranty claims are excluded.

## 9. Liability for Indirect Damage

a) RIBE shall be liable for damage which has not occurred to the delivery item itself – for whatever legal reasons – only in the case of

- intent,
- gross negligence on the part of the owner / administrative bodies or senior executives,
- culpable injury to life, body, health,
- defects which RIBE has fraudulently concealed or whose absence RIBE has guaranteed,
- Defects to the delivery item, insofar as liability is assumed according to the Product Liability Act for personal injury or property damage to privately used items.

b) In the event of the culpable infringement of essential contractual obligations, the supplier shall also be liable for gross negligence on the part of non-executive employees and for slight negligence – in the latter case limited to the reasonably foreseeable loss or damage which is typical for such types of contracts.

## 10. Defects of Title

a) Unless otherwise agreed, RIBE shall be obligated to provide the delivery only in the country of the place of delivery free of industrial property rights and copyrights of third parties (hereafter referred to as "industrial property rights").

b) If the use of the delivery item leads to the infringement of industrial property rights or copyrights in Germany, RIBE will – at its own expense – fundamentally grant the customer the right to further use or modify the delivery item in a manner which is reasonable for the customer such that the infringement of the industrial property rights no longer exists.

If this is not possible under economically reasonable conditions or within a reasonable period, the customer is entitled to withdraw from the contract.

c) The obligations of RIBE referred to in this clause 10 shall be conclusive with respect to the infringement of industrial property rights or copyrights. They shall only exist if:

- The customer informs RIBE immediately of any asserted claims of infringement of industrial property rights or copyrights,
- The customer supports RIBE to an appropriate extent in defending against the asserted claims or enables the supplier to carry out the modification measures,
- RIBE reserves the right to take all defensive measures, including out-of-court settlements, especially if the customer does not recognize any alleged claims of third parties;
- The defect of title is not based on an instruction from the customer and
- The infringement of rights has not been caused by the fact that the customer has changed the delivery item without authorization or used it in a non-contractual manner.

## 11. Limitation Period

All claims of the customer – for whatever legal reasons – shall become statute barred after 12 months from the time of acceptance. The statutory time limits shall apply to claims for damages by the customer in the event of intent, fraudulent conduct, gross negligence and in cases of culpable injury to life, body and health and – insofar as liability is assumed under the German Product Liability Act – for personal injury or property damage to privately used objects.

## 12. Software

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- a) In cases in which software is supplied, the customer shall be granted the non-exclusive right to use the software supplied, including its documentation. The assignment for use applies to the delivery item intended for this purpose. Use of the software on more than one system is prohibited.
- b) The reproduction, revision, filling or conversion of the object code into the source code is only permitted to the extent permitted by law (Sections 69a ff. German Copyright Act). At the same time, the customer undertakes not to remove or change the manufacturer's information (copyrights, etc.) without the prior approval of RIBE.
- c) RIBE reserves all other rights to the software and documentation, including copies. The granting of sublicenses is expressly excluded.

## 13. Regulations in the Country of Destination

Not later than at the time of the order, the customer must draw the attention of RIBE to the statutory, official and other regulations and technical standards in the country of destination (excluding Germany) which relate to the execution of the supplies and services, operation and health and accident prevention. These also include in particular the relevant regulations governing machine safety. The customer is obligated to check whether the subject matter of the contract can be used and operated in the country of destination in accordance with the local legal regulations. RIBE is entitled to fulfill legally prescribed documentation obligations by means of documents in German or (at the option of the customer) in English.

## 14. System Documentation

Wiring diagrams are created with EPLAN (RIBE standard). A risk analysis is drawn up, but remains in the possession of RIBE.

Documentation concerning the topic of "EMC" is included if available.

A CAD model is provided for design approval. Detailed models or drawings of the individual subassemblies are not included (intellectual property of RIBE).

## 15. Final Provisions, Applicable Law, Place of Jurisdiction

- a) The law of the Federal Republic of Germany applies exclusively to the contract to the exclusion of the laws on the international purchase of movable goods, even if the customer has his company headquarters abroad.
- b) The place of performance for all obligations arising out of the contractual relationship with the customer is 91126 Schwabach.
- c) The exclusive – including international – place of jurisdiction for all disputes arising directly or indirectly from or in connection with the delivery is our place of business in 91126 Schwabach. However, we are entitled to take legal action against the customer at his general place of jurisdiction.
- d) Insofar as one or more provisions of the contract with the customer, including these General Terms and Conditions of Sale and Delivery, is or becomes invalid in whole or in part, this shall not affect the validity of the remaining provisions. The wholly or partially invalid provision shall be replaced by a provision whose economic purpose comes as close as possible to that of the invalid provision.