

RAFI GmbH & Co. KG - General Terms and Conditions (Sales)

Part 1: General Regulations for Standard Products, Catalogue Goods and Serial Deliveries of Customer-Specific Products

§ 1 Scope

(1) These General Terms and Conditions apply exclusively. They apply to all our deliveries to Customers, including future individual contracts. We do not accept deviating or contradicting conditions unless we have expressly accepted them in writing, even if we have delivered goods in awareness of deviating conditions or accepted payments without prejudice.

(2) These General Terms and Conditions only apply vis-à-vis companies, legal entities under public law or separate estates under public law.

§ 2 Offer and Acceptance

As a general rule, we create a quotation based on the information we have received at the respective time. Our Customers can accept this quotation informally. This forms a binding individual contract. In the event an order contains regulations altering our quotation the order equals a new offer in the sense of § 145 BGB (German Civil Code) we reserve the right to accept or reject this offer within a period of ten (10) working days upon receipt. This also forms a binding individual contract.

§ 3 Prices and Payment

(1) Unless otherwise agreed in writing, our prices are calculated ex works (EXW in accordance with INCOTERMS 2010) not including the respectively applicable sales tax and the costs for packaging.

(2) Payments are due thirty (30) days upon invoicing. After the due date default yearly interest of nine (9) percentage points above the ECB base interest rate shall apply in accordance with § 288 BGB (German Civil Code). We reserve the right to claim further damages caused by delay.

§ 4 Rights to Offset and Withhold

Our Customer is only entitled to offset amounts to the extent the counterclaims are undisputed or have been judicially established as final and absolute. Our Customer may only claim the right to withhold payment in the event the counterclaims derive from the same contractual basis.

§ 5 Delivery

(1) Deliveries depend upon the timely and orderly fulfillment of the Customer's obligations. We reserve the defense of the lack of contractual performance.

(2) In the event of a delay in acceptance or any other breach of obligations to co-operate attributable to the Customer we have the right to claim the damages caused, including any additional costs.

§ 6 Retention of Title

(1) The goods shall remain in our sole property until the receipt of all payments. If the Customer breaches his obligations, including but not limited to delayed payment, we are entitled to redeem the goods.

(2) The Customer is required to handle the goods with care, insure them adequately and, to the extent necessary, maintain them.

(3) While and to the extent payment has not been received, the Customer must immediately notify us in writing if the goods are burdened with a lien of a third party or other third party interventions.

(4) The Customer may sell the goods in our property in the due course of his business. In this event, however, he hereby transfers the receivables resulting out of such a sale to us, whether before or after the goods in our property have been used in any further manufacturing. Notwithstanding our right to demand payment of the receivables ourselves, the Customer shall continue to have the right to pursue payment. In this context, we covenant not to pursue payments, provided that and to the extent the Customer continues to fulfill its payment obligations towards us, no petition for insolvency or similar proceedings has been filed and payments have not been suspended.

(5) To the extent the foregoing securities exceed the value of our claims by more than ten (10) percent, we are obligated to release the securities of our choice upon written request of the Customer.

§ 7 Warranty for Defects

(1) It is a condition precedent for any warranty claims due to defects that the Customer has duly fulfilled his obligations of inspection and defect notification in accordance with § 377 HGB (German Commercial Code).

(2) Warranty claims may only be raised within twelve (12) months upon the transfer of risk.

(3) In case of defects in the goods the Customer has a right to claim supplementary performance in the form of repair or delivery of goods which are free from defects. If the supplementary performance is not successful, the Customer may reduce the sales price or withdraw from the respective purchase contract.

§ 8 General Liability

(1) In case of willful or grossly negligent conduct on our behalf or on behalf of our representatives or auxiliary persons we are fully liable in accordance with the regulations provided by law; the same applies in case of a willful or negligent breach of material contractual obligations. To the extent the breach of contract is not caused willfully, the liability for damages is limited to the foreseeable and typically caused damages.

(2) Liability due to negligent injury to life, body or health as well as liability based on the German Code of Product Liability (Produkthaftungsgesetz) shall remain unaffected.

(3) With the exception of the foregoing regulations in § 7 and § 8, our liability is excluded. In particular, we expressly indicate hereby that we only carry the costs of a recall or preliminary field action of our products in case we are compelled by law, unless such costs have been negotiated and finally agreed to in writing prior to such action. This is particularly so but not limited to cases of mere optical defects and we generally do not carry the costs of preliminary field actions for the purposes of preserving a reputation or out of goodwill in cases in which the defects do not pose a threat to the rights of third parties.

§ 9 Miscellaneous Provisions

(1) Any and all individual contracts with us and any disputes arising in connection with them are governed by the material law of the Federal Republic of Germany including the UN Convention on the International Sale of Goods.

(2) Place of fulfillment and supplementary performance as well as the place of jurisdiction for any disputes out of or in connection with the individual contracts or these General Terms and Conditions shall be the seat of our corporation. If the seat of our Customer is located outside of Germany, instead of the jurisdiction an arbitration in accordance with the rules in force at the time of filing at the International Chamber of Commerce shall be carried out, with the place of arbitration being Munich and the language of the proceedings being English if the correspondence has predominantly been carried out in English.

(3) Prior to calling upon a court or arbitration panel, our Customer and we will enter into mediation proceedings in order to achieve an amicable settlement of any dispute out of or in connection with an individual contract or these General Terms and Conditions. With respect to both interim measures of injunctive relief and with regards to the time after the mediation proceedings have ended the path to court or arbitration remains unaffected. Beyond that, the German Code of Mediation ("Mediationsgesetz") shall apply.

(4) In the event a regulation in these General Terms and Conditions or an individual contract is fully or partially incomplete, void or invalid, the remaining regulations and conditions shall remain unaffected thereby. In lieu of an incomplete, void or invalid regulation, our Customer and we will negotiate a valid regulation which is comparable to the incomplete, void or invalid regulation.

Part 2: Special Regulations for Customer-Specific Products, Developments and Customization or Modification Services

§ 10 Scope

(1) Part 2 of our General Terms and Conditions applies to new product developments, further developments of existing standard products and catalogue goods or individual systems to the demands of our Customers. These regulations also apply exclusively for any and all customer-specific services and products, including future individual contracts. We do not accept deviating or contradicting conditions unless we have expressly accepted them in writing, even if we have delivered goods in awareness of deviating conditions or accepted payments without prejudice.

(2) This second part of these General Terms and Conditions also only applies vis-à-vis companies, legal entities under public law or separate estates under public law.

§ 11 Application of German Law on Work Service Contracts (“Werkvertragsrecht”)

(1) Unless otherwise provided in the following regulations, the German Laws on Work Service Contracts (“Werkvertragsrecht”) shall apply to any of our development and customization performances.

(2) For our deliveries subsequent to sample release as well as any and all serial deliveries (including but not limited to contracts designated otherwise as delivery contracts), standard software as well as subcontracted services and goods of third parties, Part 1 of these General Terms and Conditions shall solely apply which are based on the German laws on Sales Contracts (“Kaufvertragsrecht”).

§ 12 Order Contract and Costs for Development and Customization Performances

(1) With respect to quotations for individual contracts, § 2 of these General Terms and Conditions shall apply.

(2) Even without a formal quotation our oral and email communications with our Customers classify as assignments in the meaning of the German Laws on Work Service Contracts (“Werkvertragsrecht”) and are always performances for remuneration in accordance with § 632 I and II of the German Civil Code (BGB). Exceptions thereof must be agreed to in writing and executed by both parties.

(3) The payment terms are determined in our respective quotation. Should no defined payment conditions have been agreed to, § 3 of these General Terms and Conditions shall apply. Beyond that, one-time costs shall be invoiced partially or fully, as the case may be. Forty percent (40%) fall due upon the order contract and invoicing. Another thirty percent (30%) fall due upon intermediate prototype release and invoicing. The last thirty percent (30%) fall due upon release of serial production and invoicing.

§ 13 Customization Services and Co-operation of our Customers

(1) Development and Customization Services can only be achieved in close co-operation with our Customer. Therefore, our Customers have to provide us with any and all information we require to carry out our services and support us adequately.

(2) In the event the information we require from the Customer (i.e. the specifications or the product requirements or releases for prototypes) is not received, is delayed or incomplete, the schedule and milestones are postponed respectively. Any additional costs caused thereby have to be charged to our Customer against corresponding evidence.

(3) Our Customers are obligated to approve or reject our prototypes. If no response has been issued within four (4) weeks upon shipment of a prototype, the respective prototype shall be considered accepted.

(4) Our Customer is obligated to ensure the suitability of the chosen product for its use himself, in particular but not limited to field testing under realistic environmental conditions of the potential places of usage. In the event this obligation is breached by the Customer, our liability is limited to intent and gross negligence. Our liability due to negligent injury to life, body or health as well as liability based on the German Code of Product Liability (Produkthaftungsgesetz) shall remain unaffected.

§ 14 Tooling and other Equipment/Means of Production

(1) In order to manufacture customer-specific products it is possible that special tooling or other equipment/means of production (hereinafter “Equipment”) must be built specifically for our Customer. The costs for such are carried by our Customer either in full or in part as so-called one-time costs. § 12 (3) shall apply in this respect.

(2) If these one-time costs cover one-hundred percent (100%) of the costs of building the Equipment, the title to such shall transfer to the Customer upon full payment. This Equipment will subsequently be marked as property of the Customer and kept safe on his behalf. The applicable regulations of the German Commercial Code shall apply.

(3) If these one-time costs are partial one-time costs, and nothing else has been agreed upon expressly in writing, any tooling or other equipment/means of production shall remain our property. As a general rule we may not use them for our own or third party purposes but only for the manufacturing of the products for the respective Customer.

§ 15 Changes and Additional Services

We use our best efforts to implement the wishes of our Customers as quickly as possible and technically sound, without losing valuable time by a formalistic approach. Therefore, we hereby point out that any of our performances not agreed upon in detail in the original specifications or other customer requirements will lead to revised quotations. These quotations are generally provided within six (6) months upon release of serial production and contain cost reimbursement and commonly recognized payment for additional services. § 12 (2) applies with respect hereto.

§ 16 Logistics Services and Packaging

Our quotations and the calculated remuneration do not contain logistics services and development of packaging unless this is expressly specified.

§ 17 Intellectual Property and Warranty

(1) Liability for flaws in the development services or the corresponding work results and prototypes is based on the provisions of the German Laws on Work Service Contracts ("Werkvertragsrecht"). This shall also apply to individual software. For our standard software or software from third parties, as a general rule, the German Laws on Sales Contracts ("Kaufvertragsrecht") shall apply.

(2) For a substantial share of our development services we use our own know-how with regards to software and hardware which has been fully financed by us to which the intellectual property rights (i.e. patents and copyrights) belong to us ("Background Know-how" or "Pre-existing IP Rights"). This Background Know-how and the corresponding proprietary rights remain our sole intellectual property, irrespective of the national or international application or registration of intellectual property rights. Our Customers receive a simple license which entitles them to use our Background Know-how in order to have the possibility of selling the products manufactured by us. In this way, we are able to offer our Customers comparably inexpensive developments of individual products. Details and variations may be agreed upon expressly in writing on a case-by-case basis.

(3) Customer-specific developments often times result in new know-how and corresponding intellectual property rights ("Foreground Know-how" or "New IP Rights"). To the extent such Foreground Know-how can be transferred independently of the Background Know-how and was fully paid for by our Customers, the user rights become the exclusive rights of our Customers. If the development costs have been carried in part, the Customer receives extensive user rights with respect to the New IP Rights, we, however, also remain entitled to freely use the New IP Rights for our own projects, also with respect to all of our affiliated companies.

(4) We ourselves and our Customers are bound to keep in strict confidence all information regarding Pre-Existing IP Rights and New IP Rights as well as other not publicly accessible Know-how during the collaboration in the respective project and for a period of five (5) years upon the end of the respective project. For this purpose, we generally enter into non-disclosure agreements with our Customers before commencing a project. Nevertheless, it is inevitable in current times to exchange information with affiliated companies to the necessary extent, which is why affiliated companies in the meaning of §§ 15 et seqq. of the German Code of Stock Corporations ("Aktiengesetz") are not deemed third parties in this context.

§ 18 Recall, Field and Exchange Campaigns of our Customers

(1) Of course, we take it for granted to take responsibility for any defects developing despite our high quality standards in case these prove to have been caused by us negligently or if we can be held liable by law. However, recourse claims will only be accepted if our Customer was obligated under the applicable provisions of the law to take such actions and if we have been included in such actions beforehand, and to the extent we would be liable with respect to third parties as well.

(2) Upon written request, we provide conditions of our corporate liability insurance to our Customers for their information.

§ 19 Application of the General Provisions of Part 1

The general regulations regarding General Liability (§ 8) and Miscellaneous Provisions (§ 9) shall apply accordingly to our customer-specific development and customization performances.

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