

General Terms and Conditions of Business, Sale and Payment
(hereinafter referred to in short as **TERMS and CONDITIONS**):

1. General – scope of application

1.1.

The following General Terms and Conditions apply for all offers, sales of goods, deliveries and all ancillary services of Peter Riedel GmbH, Straße des Friedens 15, 08352 Raschau-Markersbach (hereinafter: Supplier) to entrepreneurs, legal persons under public law and special funds under public law (hereinafter: Buyer).

1.2.

Any conflicting or deviating General Terms and Conditions of the Buyer are expressly excluded herewith. They shall only become part of the contract, if the Supplier agrees to them expressly and in writing in the individual case.

1.3.

These Terms and Conditions also apply even if the Supplier being aware of the conditions of the Buyer which are conflicting with or deviating from these Terms and Conditions performs the delivery to the Buyer without reservation.

1.4.

Sales representatives, travelling salesmen or agents of the Supplier are not authorised to represent the Supplier in legal transactions. Orders, understandings or other agreements shall only be effective when they are confirmed by the Supplier in writing.

2. Offer and contract conclusion

2.1.

All offers of the Supplier are subject to change and non-binding. In particular, documents, images, drawings, weight, dimension and other information belonging to an offer shall only be understood as reference values unless they are not expressly designated as binding. All productions/ orders are only carried out according to customer-specific information of the Buyer. For this, the made so-called workflow planning is decisive and binding. We reserve the right to technical changes or changes of the production process within reasonable bounds, provided that thereby type and quality of the product are not changed disadvantageously.

2.2.

By ordering a product, the Buyer declares bindingly his intention to purchase the ordered product. The Supplier has a right to accept this order within two weeks after the date of its receipt by the Supplier. The acceptance can be carried out either only in a written or a text form, or by consignment of the ordered product.

3. Price and payment conditions

3.1.

The offer prices are subject to change and non-binding unless otherwise expressly agreed in writing. The price indications refer to the European currency (Euro) “ex works” (EXW) exclusive of security, freight, customs duties, import duties, assembly and transport packaging as well as exclusive of value added tax, according to Incoterms 2010. Where required, the value added tax is shown separately at the statutory rate in the invoice on the date of the invoicing.

3.2.

All expenses for any commissioned construction work including assembly and installation as well as expenses for accommodation and travel are to be borne by the Buyer. The scope of services, conditions of the individual order, possible inclusion of the German Construction Contract Procedures” (VOB), Part B (DIN 1961), in the version currently in force at the time of the conclusion of a contract and the legal consequences of the execution of the contract are regulated separately in an individual agreement between the parties.

3.3.

The supplier expressly reserves the right to make price adjustments to the customer at any time (before the order confirmation and during the duration of the performance of the contractually owed services) without any restriction, in particular if the basis of his calculation changes (such as exchange rate fluctuations, currency regulations, changes in law or changes to other obligations on the part of the supplier, significant increase in work performance, material or other costs of the supplier).

3.4.

The Supplier is entitled in all circumstances to charge the Buyer the price for the goods delivered or to be delivered which is valid at the time of the billing. This applies in particular when the Supplier has indicated to the Buyer his readiness to deliver and transfer the goods to the Buyer and the Buyer does not immediately take over the goods or the Supplier is otherwise in default of acceptance. Moreover, the Supplier further reserves the right to charge the Buyer the price for the goods which is possibly increased after this date (see point 3.3 2nd paragraph).

3.5.

The invoice amount is due for payment within 30 days from the billing by the Supplier and is to be transferred to the bank account specified by the Supplier based on receipt-limitation unless otherwise agreed upon. After the expiration of this period, the Buyer is in default of payment. In this case, the Supplier is entitled, despite the Buyer's provisions to the contrary, to credit payments at first against Buyer's older debts. If costs and interest have already occurred, the Supplier is entitled to credit the payment at first against the costs and then against the interest, and finally against the principal amount.

3.6.

The Buyer is not entitled to carry out on his own authority any deductions from the invoice amount unless the Supplier has allowed and confirmed deductions or discounts expressly and in writing.

A right of the Buyer to the offsetting and/or withholding or reduction shall be excluded provided that it does not concern the counterclaims recognized by the Supplier or legally determined counterclaims. The Buyer, however, also has the right to withholding due to counterclaims from the same contractual relationship.

3.7.

The invoice amounts are also due for payment, if delivery has not been carried out yet and/or the property right to the goods has not (yet) been transferred to the Buyer. The compliance with the payment deadline is essential for the execution of the contract and thereby an implicit basis of a contract.

3.8.

A payment is deemed to be carried out only when the Supplier can have the ordered amount at his disposal. In case of the payment by means of cheques and bills that the Supplier reserves the right to accept in individual cases, the payment shall be deemed as carried out only when the cheque/bill has been cashed. The costs and expenses related to this are borne by the Buyer.

3.9.

If the Buyer does not fulfil his payment obligations after the due date, in particular does not cash a cheque or bill, or ceases his payments, or if the Supplier becomes aware of other circumstances that put into question the creditworthiness of the Buyer to extent which is important for the business relationship, the Supplier is entitled to declare the entire residual debt due for payment, even if the Supplier has accepted cheques or bills. In this case, the Supplier is also entitled to demand advance payments or securities, suspend and refuse further deliveries to the Buyer, withhold the payments that the Buyer has already made for the goods (or for the goods that were delivered within the scope of another contract), demand from the Buyer default interest amounting to 4% above the respective base rate until the complete payment (for the interest calculation, started months in each case are calculated as full months), as well as withdraw from the contract. The acceptance of cheques is carried out only on account of performance.

4. Delivery

4.1.

The delivery of the goods is to be carried out by the Buyer by collection of the goods in the business premises or the factory of the Supplier, after the Supplier has notified the Buyer that the goods are ready for collection. If the Supplier has committed himself in writing to deliver and transfer the goods to another location, the Buyer is to collect and take over the goods there.

4.2.

Delivery dates or delivery times must be expressly agreed in writing, as they are otherwise non-binding for the Supplier. The written order confirmation of the Supplier is decisive for this. The delivery times start with the date of the order confirmation of the Supplier, however not before all details of the performance have been clarified, the documents, approvals, releases to be provided by the Buyer have been submitted, agreed payments have been received and other conditions agreed upon in an individual contract for the smooth processing of the order have occurred. The compliance with the delivery times requires therefore the fulfilment of the contractual obligations and duties of the Buyer as well as the respective presupplier of the Supplier.

4.3.

The delivery time expressly agreed in writing must be complied with, if in case of delivery ex works the readiness for shipment has been notified or alternatively the delivery items has left the Supplier's factory.

4.4.

Deadlines and dates shall be extended without prejudice to the rights arising from the Buyer's delays in payment by the period, by which the Buyer does not fulfil his obligations towards the Supplier. By subsequent changes accepted by the Supplier, the agreed delivery dates shall be postponed depending on the extent of the requests for changes by a reasonable period of time to a later date. If a dispatch is not possible due to no fault of the Supplier or the necessary shipment instructions or the agreed acceptance are not carried out in due time, the delivery time with the timely notification of the readiness for shipment is deemed to be complied with.

4.5.

The Supplier may deliver the goods in any case prior to the agreed time, provided that the Buyer has been informed about this in an appropriate manner.

4.6. The Supplier shall not be liable even in case of bindingly agreed deadlines and dates for delays in delivery and performance due to force majeure and due to events that make the delivery substantially difficult or impossible for the Supplier (such as labour disputes, operating troubles, official measures, transport interruptions, strike, lock-out or other cases of force majeure), even when they occur at the Supplier's premises or premises of the Supplier's presupplier. These events entitle the Supplier to postpone the delivery or performance for the duration of the impediment plus an appropriate start-up period or withdraw from the contract completely or to some extent due to the part not performed yet.

4.7.

If the impediment lasts longer than three calendar months, after reasonable grace period the Buyer is entitled to withdraw from the contract with respect to the part not performed yet. Claims for damages due to non-performance or delayed performance shall be excluded unless based on a grossly negligent breach of duty on the part of the Supplier or an intentional or a grossly negligent breach of duty on the part of a legal representative or a vicarious agent of the Supplier. Provided that between the parties a special compensation for the occurred delay in delivery has been agreed in writing, it shall be limited to the scope of the delivery covered by the delay and is to be paid only to the extent as the Buyer can prove the corresponding damages caused by the delay with respect to the Supplier.

4.8.

The Supplier is entitled to the partial delivery at any time.

4.9.

If the Buyer does not take over the goods or (if another place of delivery or performance has been agreed in an individual contract) does not give to the Supplier any sufficient delivery instructions by the fixed delivery date, the Supplier may – subject to assertion of further claims or legal actions – keep the goods until the delivery and request from the Buyer appropriate storage costs for this or sell the goods at the best achievable price (after deduction of all appropriate storage and selling fees), whereby revenues above the agreed price are to be handed over to the Buyer and revenues below the agreed price (losses) are to be borne by the Buyer.

5. Dispatch and transfer of risk

5.1.

Unless otherwise agreed, the delivery is carried out ex works (EXW 2010). The risk shall be transferred to the Buyer, also in case of partial performances, as soon as the consignments have been handed over to the person carrying out the transport or have left the warehouse or factory of the Supplier for the purpose of shipping.

5.2.

If the product is sent upon request of the Buyer to another location than the place of performance, the Buyer shall bear all costs arising due to this. The Supplier has a right to determine the dispatch type and dispatch route. An insurance of a product against transport damages, transportation losses and breakage is carried out only upon express request of the contracting party at his expense and for his own account.

5.3.

In case of deliveries ex works, dispatch and transport are always carried out at the Buyer's risk. This also applies when delivery is carried out from the warehouse of the third party (drop shipping).

5.4.

If the dispatch of the delivery is delayed for reasons for which the Supplier is not responsible or the Buyer himself has to arrange the transport of the product, the risk shall be transferred with notification of the readiness for dispatch to the Buyer. The Buyer shall bear storage costs after transfer of the risk. For the storage in the factory or in the warehouse of the Supplier, storage costs are monthly 0.5% of the invoice amount. The Supplier reserves the right for the proof of higher storage costs. Furthermore, the Supplier is also entitled to dispose of the delivery otherwise after the unsuccessful expiry of a reasonable period of time and to supply the Buyer in a reasonably extended period of time.

5.5.

Delivered items must be accepted by the Buyer, even if they show minor defects, notwithstanding his warranty claims, und must be immediately adequately insured by the Buyer against theft and damage. If the Buyer does not fulfil his obligation to take out insurance, all costs which can be attributed to the absence of the insurance coverage (e.g., costs for the new order of the damaged or stolen parts, costs of the incorrect storage) shall be borne by the Buyer.

5.6.

If the product should be checked in accordance to special conditions or special goods regulations are agreed, or a delivery is to be carried out outside Germany, the acceptance must be performed without delay in the warehouse of the Supplier after carried out notification of the readiness for dispatch. All acceptance costs (e.g., inspection fees, travel and accommodation expenses, etc.) of the Buyer shall be borne by him. If the Buyer renounces an agreed acceptance or it is not carried out in due time, the product is deemed to be accepted at the time of the transfer of the risk.

6. Warranty

6.1.

For defects of the delivery or service, the Supplier warrants as follows:

Only a deviation of the delivery or service which is not insignificant according to a reasonable discretion with respect to its condition or usability for the contractually agreed purpose is considered as a defect. All those parts that turn out to be defective within 12 months since the transfer of the risk due to the event which has occurred before the transfer of the risk, in particular, e.g., due to lacking design, poor material or deficient execution, must be repaired or newly delivered free of charge at the Supplier's option.

6.2.

The detection of such defects must be notified in writing to the Supplier immediately after delivery, with compelling presentation of informative picture documentation (i.e., at least three pictures of the criticized part) and with detailed description of the defect. After mandatory consultation with the Supplier, the criticized part must be sent to the factory of the Supplier. In case of point 5.6. of these Terms and Conditions, the detected defects of the product must be reported in writing to the Supplier before leaving the warehouse or the factory of the Supplier.

6.3.

Replaced parts become property of the Supplier.

6.4.

A slight deviation within the meaning hereof is not an obstacle to the performance.

6.5.

For the performance of all repairs and replacement deliveries appearing as necessary to the Supplier at his reasonable discretion, after the communication with the Supplier, the Buyer must provide time and opportunity necessary for the Supplier. Otherwise the Supplier is exempt from the warranty.

6.6.

If the remedy of the defect is strongly necessary for reasons of the danger to the operational safety or to prevent excessively great damages, the Buyer must notify immediately specifying the circumstances concerned, whereupon according to the circumstances in due time, in any case after four work days, the Supplier grants a permission to the Buyer to remedy the defect himself or by means of a third party and request from the Supplier reimbursement of the necessary costs. By a change or repair work carried out improperly by the Buyer or the third party or without prior written approval of the Supplier, the warranty is made void for the consequences arising from this.

6.7.

If the contracting party accepts a defective product, even though it recognises the defect, it shall only be entitled to claims and rights in case of defects, only if it reserves the right to them on account of the defect upon acceptance.

6.8.

The costs of the replacement shall be borne by the Supplier, only if the complains of the Buyer turn out to be justified. For the rest, the Buyer bears the costs for this.

6.9.

The Supplier does not warrant for damages that have occurred for the following reasons: unsuitable or improper use, violation of the operating or instruction manual (incl. requirements of TÜV (German Technical Control Board)), defective assembly and/or defective connection or start-up by the Buyer or a third party, natural wear, faulty or negligent handling, unsuitable operating materials or substitute materials, defective construction work, unsuitable foundation, chemical, electrochemical or electrical influences, as long as the Supplier is not responsible for these reasons. No liability shall be assumed for the delivery parts that are subject to premature wear due to their material properties or by the type of their dispatch.

6.10.

If obviously defective goods are processed further by the Buyer, they are considered as approved.

6.11.

If despite provision of the required time the repair fails or the Supplier refuses the performance of the repair despite the existence of a repair claim and/or no replacement delivery occurs for reasons for which the Supplier is responsible, the Buyer can request at his option a decrease of the payment (reduction) or a cancellation of the contract (withdrawal). In case of only minor contract infringement of the performance, in particular in case of only minor defects, the Buyer is not entitled to a right of withdrawal.

6.12.

The limitation period for the repair service or the newly delivered item is six months from the end of the repair service or delivery of the newly delivered item. The limitation period shall end however at the latest with the expiry of the limitation period for the original delivery item. The Buyer's claims for defects become time-barred with the expiry of 12 months from the transfer of the risk.

6.13.

Returns of goods that are not due to the defects of the goods are accepted by the Supplier only after prior written consent. The costs of the return shall be borne by the Buyer in this case. The goods that were custom-built or procured for the Buyer within the meaning of 2.1 of these Terms and Conditions are in principle excluded from a voluntary take-back.

6.14.

The assignment of claims due to defects to a third party is excluded.

7. Maintenance obligation

7.1.

Owing to statutory rules or the supplier operating and instruction manual, all manufactured or delivered plants must undergo annual maintenance. Due to the specific features of the plants, this maintenance must be necessarily carried out only by the Supplier or a person authorised by him at the expense of the Buyer. If during performed maintenance service wear of the wear parts is determined, they must be replaced at the Buyer's expense.

7.2.

In case of exceeding the maintenance interval, in the absence of the prescribed maintenance on the part of the Supplier or in case of neglected replacement of wear parts, the Supplier shall assume no liability for the damages occurring due to this.

8. Liability

8.1.

The Supplier is liable according to the Product Liability Act, in addition, in case of injury to life, body or health and in case of intent according to the legal provisions, regardless of the legal ground, likewise in case of gross negligence of his legal representatives and managerial employees. The Supplier is also liable in case of the violation of the so-called cardinal obligations, i.e., contractual obligations that in the first place enable the proper performance of the contract and on fulfilment of which the Buyer may rely, likewise in case of fraudulently concealed defects.

8.2.

The compliance with the delivery times and dates shall not be considered as a cardinal obligation.

8.3.

Except in cases of the liability according to the Product Liability Act, for intent, gross negligence or due to injury to life, body or health, the liability is limited to the contractually typical, foreseeable and insurable damage. If damages are covered by a general liability insurance or product liability insurance of the Supplier, the Supplier shall assign these insurance claims to the Buyer and shall be exempted from a possible insurance liability according to the insurance coverage.

8.4.

As for the rest, the Buyer is not entitled to any damage compensation claims and claims for reimbursement of expenses, in particular also not for lack of economic success, loss of profit, indirect damages, consequential damages caused by defects and damages from third-party claims. The above restrictions of liability apply in equal measure to claims for reimbursement of futile expenses according to § 284 BGB (German Civil Code).

8.5.

The procedural distribution of the burden of proof shall remain unaffected by these provisions. For the liability according to the Product Liability Act, for intent or fraud or in cases of injury to life, body or health, the statutory limitation period shall apply. For all other damage compensation claims, a preclusion period of 12 months from knowledge of the damage shall apply.

9. Reservation of title and property rights

9.1.

All delivered goods remain the property of the Supplier until the full payment of the remuneration due including all ancillary claims. In case of acceptance of bills or cheques, the payment is considered to be made only with their final encashment. Ancillary claims include in particular costs for packaging, freight, insurance, bank, daily allowance, reminder fees, as well as lawyer's fees, legal and other costs.

9.2.

The Buyer is obliged to insure at the invoice amount the product subject to the reservation of title against the usual insurable risks, in particular burglary, fire and other damage. He assigns already now all claims against the insurance carriers to the Supplier.

9.3.

Conditioning and processing of the product subject to the reservation of title are carried out for the Supplier as a manufacturer within the meaning of § 950 BGB, without obliging him. The processed product is considered to be the product subject to the reservation of title. In case of processing, connection and mixing of the product subject to the reservation of title with other goods on the part of the Buyer, the Supplier is entitled to the joint ownership of the new item in proportion to the invoice value of the product subject to the reservation of title to the invoice value of other sent goods. If the ownership of the Supplier expires due to connection or mixing, the Buyer transfers already now the property rights to which he is entitled to the new stock or the new item to the extent of the invoice value of the product subject to the reservation of title and keeps it in safe custody free of charge for the Supplier. The co-ownership resulting therefrom is considered as a product subject to the reservation of title.

9.4.

Only within the scope of a proper course of business and so long as the Buyer is not in default, he is entitled to resell, process or connect with other items the product subject to the reservation of title or fit it otherwise. Any other disposal of the product subject to the reservation of title is impermissible.

9.5.

The Supplier must be immediately notified of distraints carried out by a third party or other accesses to the product subject to the reservation of title. All investment costs, e.g., costs of the third party proceedings according to § 771 ZPO (German Code of Civil Procedure), shall be borne by the Buyer.

9.6.

All claims of the Buyer arising from the resale of the product subject to the reservation of title are already assigned herewith to the Supplier. They serve in this extent for the security as the product subject to the reservation of title. The Supplier is entitled to collect himself the claim existing against the third party. The Supplier can also assert the extended reservation of title. In this case, the Buyer is obliged to notify the Supplier of the assigned claim, the debtor as well as all information required for a collection and deliver the corresponding documents to the Supplier as well as inform the debtor of the Buyer of the assignment.

9.7.

If the transformation or connection of the goods is carried out in such a way that the new item of the Buyer can be considered a main item, it is deemed as agreed that the Buyer transfers proportionally the joint ownership to the said item to the Supplier. If the delivery item is connected to a piece of real estate, the Buyer also assigns to the Supplier the claim for securing of the Supplier's claims against the Buyer arising against third parties due to the connection of the delivery item with a piece of real estate.

9.8.

In case of the Buyer's conduct which is contrary to the contract, in particular in case of not insignificant default of payment, pledging, assignment as security or other transfer of ownership to a third party, the Supplier is entitled to demand the delivery item back. The Buyer is obliged to surrender the delivery item. The expenses arising due to this are borne by the Buyer. The taking back of the delivery item by the Supplier does not constitute a withdrawal from the contract, unless it is expressly declared by the Supplier in writing.

9.9.

The Supplier shall undertake to release the securities to which he is entitled upon the Buyer's request insofar as the realisable value exceeds the claim to be secured by more than 10%.

9.10.

If the delivery is intended for a foreign Buyer, the foreign Buyer is obliged to secure the property rights of the Supplier in the delivery item according to the statutory provisions of the country for which the delivery item is intended as well as provide all cooperation which is required for the protection of the reservation of title. Apart from that, the foreign Buyer must additionally observe the German law.

9.11.

To all offer documents as well as all documents and information which the Buyer receives in the course of sale and delivery process from the Supplier the Supplier reserves the existing property rights, copyrights and other industrial property rights as well as his know-how. They may be made available to the third parties only with his consent and used by the Buyer only according to the contract.

For each case of the culpable violation of point 9.11., the Buyer is obliged to make a payment of EUR 10,000.00 (contractual penalty). Any exceeding claims for damages of the Supplier shall remain unaffected.

The only exception is the information which is already publicly known independently from the sale and delivery process regarding which the Buyer proves that this information has already been in his possession before its communicating or which has been made accessible to the Buyer by a third party authorised to dispose of it independently from the sale and delivery process.

10. Place of performance, applicable law, court of jurisdiction, non-disclosure, written form and partial invalidity

10.1.

The place of performance for the payment and the delivery is the registered office of the Supplier.

10.2.

Only the German law with the exception of the uniform UN Convention on Contracts for the International Sale of Goods (CISG) applies for these Terms and Conditions and the entire legal relationships between the Supplier and the Buyer. Within the scope of these Terms and Conditions, under "Incoterms" the international rules for the interpretation of trade terms of the International Chamber of Commerce in force at the time of contract conclusion must be understood.

10.3.

The following provisions in the order listed below apply to the contractual relationships:

A) the individual agreements concluded between the parties.

B) these Terms and Conditions.

C) the legal provisions, in particular the provisions of the German Commercial Code and those of the German Civil Code.

10.4.

The court of jurisdiction for all disputes arising from the contractual relationships of the parties is Aue. However, the Supplier also has the right to bring a legal action against the Buyer in the Buyer's court of jurisdiction. In the event of dispute the German version of these Terms and Conditions shall apply.

10.5.

Oral subsidiary agreements, reservations, changes and additions on the part of the Supplier's employees in connection with the conclusion of the contract become binding only by written confirmation of the Supplier.

10.6.

If one provision of these Terms and Conditions or one provision within the framework of other agreements should be or become invalid, the validity of all other provisions and agreements shall remain unaffected by this.



Peter Riedel
General Manager