

General Terms and Conditions of the *Rau GmbH* for Acquisition, Sale and Delivery of Machines, Plants and Plant Components

I. Offers / Conclusion of Agreement

1. These terms are applicable to all performances and deliveries carried out by the Rau GmbH on behalf of the contractual partner. All offers are subject to confirmation and not binding. Their purpose is to provide contractual partners with basic information before inspecting the machinery / placing an order. Order confirmations are executed in writing only.
2. All information (technical descriptions, pictures, drawings, measurements / dimensions, weights, types, dates of manufacture, original prices, capacities, informations on condition and on attached or loose accessories etc.) included in the offers – regardless if given in writing or verbal – is not binding unless explicitly designated as binding (in writing).
3. Amendments, changes or subsidiary agreements need to be set out in writing to take effect.
4. In the event that offered machines are not located at the stocks of the Rau GmbH, the Rau GmbH provides the interested party with the address and the name of a contact person. In this case the interested party obligates itself not to pass these information to third parties and not to circumvent the Rau GmbH by contracting directly with the owner of the offered machine. The interested party must not negotiate and have conversation on prices with anybody else but the Rau GmbH. Any damage to the Rau GmbH resulting from an evasive transaction has to be compensated by the violator of these terms.
5. Indicated prices are binding for a period of 3 months maximum (errors excepted).
6. By sending offers to the Rau GmbH the offering party agrees that the Rau GmbH is allowed to offer the goods to third parties. As far as pictures or drawings belong to the offer, the offering party agrees that this material can be copied, passed and made publicly available (e.g. in the online-database of the Rau GmbH or within online advertisements). In case the offering party does not own the rights deriving from those pictures / drawings it indemnifies the Rau GmbH from any possible claims of the copyright owner / holder / photographer. This shall also apply if any third party lodges claims deriving from other rights against the Rau GmbH due to the (public) offering of the goods.
7. As far as the Rau GmbH contracts with a private end user (non-entrepreneur) by solely using telecommunication, the following provisions shall be valid:

You can revoke your contractual declaration in written form within two weeks – without having to state any reasons – or by returning the ordered items. The two weeks time limit commences upon receipt of this instruction at the earliest. The revocation of the goods must be sent to: *Rau GmbH*, Am Kirmesplatz 2, 35781 Weilburg, info@rau-online.de, Fax: +49(0)6471-30163

In case of a valid revocation all exchanged services must be returned and any benefits therefrom surrendered. As far as received attainments can not be returned in full or in worse condition, you will be liable for compensation to that extent.

II. Delivery Obligation

1. For the scope of delivery the written order confirmation is decisive.
2. The vendor's delivery obligation expires without substitution if a machine has accidentally been sold twice, if the machine has been destroyed or if it has been heavily damaged. This exclusion of liability is not valid in cases of gross negligence or intent. The burden of proof rests with the buyer.

III. Prices and Payment

1. Prices quoted are applicable for collection from the vendor's stocks or from the location of the goods. The legally valid rate of VAT (value added tax) is not included in the offered prices. Yet installed machinery is offered 'ex works and location' – which means that the buyer has to pay for dismantling, packaging, transport, insurance etc.).
 2. Except when otherwise stipulated the payment has to be made without any deductions immediately before the collection / dismantling of the machines.
- Cheques and acceptance bills are only accepted after explicit agreement – subject to discounting. The value date is at the day when the counter value is available. Discount charges, stamp duty and collection charges are due immediately.
3. In case that the buyer is an entrepreneur and late with his payments, the Rau GmbH shall be entitled to demand late interest at a rate of 8 % above the official discount rate of the German State Central Bank.
 4. In the event that our payment conditions are not met or that the Rau GmbH receives information that the buyer is not credit-worthy, after one reminder all payments will be due immediately. In this case the vendor has the right to execute remaining deliveries subject to pre-payments or security deposits. Furthermore the Rau GmbH shall in this case be entitled to withdraw from the contract after setting an adequate period of grace (14 days).
 5. Retaining payments or setting-off against buyer's claims being contested by the Rau GmbH is excluded.

IV. Delivery Time

1. A delivery date is met if the goods have left the stocks of the Rau GmbH until the expiration of this period. It is met as well if the readiness for dispatch has been announced by the Rau GmbH during this period.
2. In the event of unforeseen occurrences from outside the vendor's sphere of influence the delivery date is adequately prolonged. This provision is valid as well if the obstacles came into existence during a present delay.
3. Compensation claims of the buyer resulting from delivery delays caused by the Rau GmbH do not include the right to immediately withdraw from the contract. Compensation claims are limited to 0,5% of the net order value for every week after the stipulated delivery date – the upper limit for compensation is 3% of the order value.
4. In the event that a delivery delay is caused by the buyer, the Rau GmbH shall be entitled to charge a rental fee - starting 14 days after the readiness for dispatch has been announced by the Rau GmbH. The rental fee for storage at the Rau GmbH's stocks is 1% of the order value per month (2% when stored inside our buildings). In case the purchased machines are located at a third parties' place the rental fees charged by this third party have to be paid in full by the buyer.

After a fruitless expiration of a period of grace (set by the vendor), the Rau GmbH shall be entitled to dispose of the machine otherwise and to claim any resulting disprofit. As far as the machine has been sold to a third party after the buyer made his payment, the buyer's indemnity claim is limited to the reliance interest.

5. Valid delivery dates require that the buyer fulfilled his contractual obligations.

V. Insurance / Passing of Risk

1. As soon as the goods are handed over to the forwarder, freight carrier or collecting customer all risk is transferred to the buyer. Irrespective of the mode of transport / delivery all risk is at the latest transferred to the consignee as soon as the shipment leaves the facility where it has been loaded. At buyer's request and expense the Rau GmbH can insure the goods against transportation hazards.
2. In the event that the delivery is delayed due to circumstances beyond the control of the Rau GmbH all risk is transferred to the buyer as soon as the vendor has declared readiness for dispatch. At buyer's request and expense the Rau GmbH shall be obligated to insure the goods against damages.
3. The vendor shall be entitled to partial delivery.

VI. Retention of Title

1. The Rau GmbH retains title of the goods delivered until full settlement of all demands arising from contractual relationships between the Rau GmbH and the buyer.
2. The buyer is not entitled to pledge the goods or to assign them by way of security. In the event that the goods have been impounded, seized or disposed by any third party the Rau GmbH has to be informed immediately.
3. Any behaviour of the buyer contrary to contract – in particular: Delay of payment – shall entitle the Rau GmbH to withdraw from the contract after sending a demand note; restitution of performances will be the consequence.
No withdrawal from the contract are the assertion of the retention of title and the seizure by the vendor.
4. The Rau GmbH shall be entitled to insure the delivered goods at the buyer's expense (against fire, water and other hazards) unless the buyer has not verified an own insurance.
5. As long as the goods remain in the sphere of the vendor, a complete payment does not indicate an agreement of indirect possession (as mentioned in § 930 BGB). Such an agreement must be made in written form.
6. In the event that the buyer mixes, combines or processes the goods delivered with other goods, the Rau GmbH shall become co-owner of the resulting goods.

VII. Guarantee Claims / Liability

1. Used industrial equipment, machinery and parts of plants are sold in the condition as they are. Accessories are only included as far as they are available and as far as they have been declared as subject of the transaction (in writing).
Any warranties or guarantees are excluded – unless certain characteristics have explicitly been warranted.
The buyer has the right to inspect the goods closely and carefully before making his purchase decision.
2. In the event that the Rau GmbH should guarantee that machinery is crack- or break-free, this guarantee is limited to damages excluding the usage.
Even when declared as crack- or break-free, all parts subjected to wear (as gear wheels, bearings, bushes, linings, mixing tools, breaker plates etc.) can never be subject of a warranty. Welded and tacked machinery is considered as crack- and/or break-free.
3. The implied warranty at the sale of new machinery to other traders / entrepreneurs is limited to 1 year.
4. The implied warranty at the sale of used machinery to consumers / private end users is limited to 1 year.

VIII. CE-Mark

With sending an order the buyer declares that he will follow the legal safety regulations at the place of installation of the purchased machinery. If a machine should not carry the CE-mark or should not be equipped with necessary safety installations it is the obligation of the buyer to retrofit the equipment at his own expense. In the event that any third party lodges claims against the Rau GmbH due to damages in conjunction with the machinery, the buyer indemnifies the Rau GmbH from those claims.

IX. Court of Jurisdiction, Applicable Law, Battle of Terms

Place of payment and exclusive court of jurisdiction – for trials by the record and for actions filed under the summary proceedings based on bills of exchange, promissory notes and checks as well – for both parties and concerning all present and future claims arising from the business relationship is at the domicile of the Rau GmbH provided that the contractual partner is an entrepreneur, a legal person governed by public law or a special fund under public law.

All contractual and business relationships between the Rau GmbH and its clients are deemed exclusively subject to German law.

Terms and conditions of the contractual partner - including purchase and payment conditions / deviating agreements in respect of the place of jurisdiction - have no effect. Defensive conditions of others have no effect. Deviating, opposing or supplementary general terms and conditions of the contractual partners do not become subject(s) of the contract even when they have been noted and remained undisputed unless their validity was expressly approved in writing by the Rau GmbH.