

**1. General Provisions**

1.1 All supplies and services of RESOM GmbH (RESOM) are subject to the conditions hereinafter set forth. Standard-form contract conditions of the orderer (buyer) shall not apply.

1.2 In case of any provision not included in these General Conditions of Sale, not the standard-form contract conditions of the orderer or buying contractor shall apply but the statutory provisions.

**2. Offer / Acknowledgment of Order**

2.1 Unless a set term is expressly stated, offers from RESOM are without engagement and a contract is only considered as being concluded when the order is acknowledged by RESOM.

2.2 Purchase Orders without preceding offer according to item 2.1 do not become binding for RESOM unless and to such extent as acknowledged by RESOM. The same applies where the orderer modifies the offer from RESOM.

**3. Sales References**

3.1 Data contained in catalogues, brochures and folders, as well as general information in data sheets and drawings accompanying quotations are approximate and without engagement, unless expressly stated as binding.

3.2 In particular cases, RESOM reserves the right to alter the design and, where there is a shortage of raw material, to use other materials unless opposed by overriding concerns of the orderer known to RESOM.

3.3 Regarding all sales references and other documents made available to the customer, RESOM reserves the right of ownership and copyright; they must neither be used for other purposes nor copied, reproduced or made available to a third party; they do not confer title nor imply the grant of any license for reproduction of RESOM products or parts.

3.4 All sales references and other documents made available to the customer are to be returned to RESOM immediately upon request; they must be returned without being requested if the order is not placed with RESOM.

**4. Prices, Packing, Insurance**

4.1 The prices are quoted ex works or manufacturing plant, respectively, (INCOTERMS 2010), excluding packing, erection and start-up.

4.2 The sales price does not include any sales, excise, turnover or freight transportation tax etc. nor any export, import or other duties to be additionally charged by RESOM, as the case may be, in accordance with official regulations at the time of fulfillment of the contract.

4.3 Unless the orderer (buyer) expressly determines otherwise, RESOM shall insure the ordered goods against the usual transport risks and charge the cost incurred to the orderer.

**5. Erection and Start-Up**

Provided that erection/assembly, supervision of erection and/or start-up/commissioning have to be carried out by RESOM, the relevant Conditions for assembly and commissioning shall additionally apply; they will be available upon request.

**6. Passing of Risk**

6.1 Risk shall pass to the orderer (buyer) pursuant to the INCOTERMS 2010 rules agreed upon. In the absence of such agreement the risk shall pass to buyer on delivery of the goods to the first carrier. This shall also apply to partial shipments or where RESOM has undertaken to assume supplemental services and payments, such as the cost of dispatch, carriage and erection.

6.2 If dispatch is delayed by reasons beyond RESOM's control risk shall pass to buyer upon notice of readiness for dispatch.

**7. Delivery Date**

7.1 The delivery period commences when all commercial and technical requirements for the performance of the contract have been clarified, documents to be supplied by the orderer have been received by RESOM, any official authorisation or release that may be required has been issued and (advance) payments provided for in the contract have been credited to RESOM's bank account.

Adherence to the time of delivery shall be subject to the timely fulfillment of the contractual obligations by buyer. The goods are deemed to have been delivered in time if handed over to the first carrier or declared ready for dispatch to buyer before expiration of the delivery period agreed upon. Partial deliveries are permitted to a reasonable extent. Minor defects do not affect buyer's obligation to take delivery of the goods; in that respect the delivery period shall be deemed to have been observed.

7.2 If delivery is delayed by unforeseen events beyond RESOM's control (Acts of God), the delivery period shall be reasonably extended, at the latest by six months, however. Acts of God are considered to be also strikes, lockouts, sabotage, operating breakdown incurred through no fault of RESOM, important tools or work pieces becoming useless through no fault of

RESOM, non-or delayed issuance of official authorizations, as well as any other unforeseen events.

**8. Terms of Payment**

8.1. Payments shall be made within 30 days from the date of invoice, unless otherwise stipulated in RESOM's offer and/or acknowledgement of order. In case of partial shipments RESOM shall be entitled to issue invoices in part accordingly.

8.2. Payments shall be made exclusively to one of RESOM's accounts and shall be effected post-free and exempt of charges at the date due without any deduction. Fees, expenses or sundries incurring to RESOM by accepting bills or cheques upon specific agreement between RESOM and buyer shall be at buyer's expense. Determination when payment becomes due shall be in respect of the date of invoice or notice of readiness for dispatch. The date of fulfillment of all kind of payments shall be that on which the sum paid is actually at RESOM's disposal.

8.3 Withholding of payment because of counterclaims or setting payments off against any counterclaims is only permissible if such counterclaims are uncontested or legally ascertained.

**9. Reservation of Property Right**

9.1 RESOM reserves the property rights in the goods supplied until payment in full has been made in respect of any claims whatsoever resulting out of RESOM's business transactions with buyer including supplementary claims. If buyer is in default of payments, RESOM shall without formal notice be entitled to taking back the goods as security. Claiming the right of property and distraint of delivery items by RESOM shall not be deemed as cancellation of the contract, unless the Customer Loan Act applies. Where special regulations or any other provisions are applicable in the country of buyer or of destination of the goods in respect of the validity of the reservation of property rights, buyer himself shall undertake to carry out the terms of such regulations or provisions to safeguard RESOM's rights.

9.2 Buyer is entitled to dispose of delivery items in the course of regular business. Claims arising at buyer during the period of RESOM's property right and resulting from such or unjustified dispositions shall even now be assigned to RESOM. Subject to revocation at any time, buyer shall be authorized to collect the claims.

9.3 Distraints or any other such measures imposed by third parties must be reported by buyer without delay to RESOM.

9.4 During the period of reservation of property rights buyer undertakes to fully insure the goods supplied at his own against risks and damages, such as robbery, breakage, fire and water and, upon request, to furnish proof thereof to RESOM. In case that buyer fails to furnish such proof requested within a reasonable period of time, RESOM shall be entitled to take out such insurance at buyer's expense.

**10. Warranties**

10.1 RESOM undertakes at its discretion to repair or to replace any goods supplied or parts thereof resulting defective prior to passing of the risk (e.g. owing to faulty design, defect in material or workmanship, failure to reach the performance figures quoted).

10.2 In case of failure of repair or replacement buyer shall be entitled at his discretion to claim redhibition or abatement.

10.3 Notice of defects must be given within three weeks from the date of delivery. As exception from this rule, defects which are not perceptible even on inspection of the goods supplied must be notified immediately after their detection. The complaint must specify the nature of the found defects or faults and whether they have been discovered at once or only after subsequent treatment or processing of the supplied goods or parts. RESOM shall be entitled to have the defectiveness checked by its own staff. Especially the compliance RESOM's maintenance and service instructions will be checked.

10.4 After mutual consent buyer shall grant to RESOM reasonable time and opportunity to proceed with the repairs or replacements as RESOM may deem necessary at its discretion. If buyer fails to do so RESOM shall be relieved of any warranty or liability. Only in the event of extraordinary cases such as jeopardizing safety of operation or risking excessive damages - whereupon RESOM shall immediately be notified - or if RESOM should be in delay of remedying the damage, buyer shall be entitled to remedy the defect himself or to have it remedied by a third party and to recover the cost necessarily incurred from RESOM.

10.5 RESOM shall bear the direct cost arising from repair or replacement for warranty claims provided they have proven justified and defect has been correctly notified in due course, i.e. the cost for the replaced part including carriage as well as reasonable cost for dismantling and assembly of the part and provided it can in so far be equitably claimed in the individual case - the cost for making available any of its mechanics and assistants. Any further costs shall be borne by buyer.

10.6 The limitation period for warranty claims on goods supplied amounts to 12 months from the date of delivery. Warranty claims will only be accepted if the required maintenance and care procedures were carried out and documented.

10.7 Warranty claims in respect of parts replaced and repairs shall expire after three months, but not before the warranty period for the goods originally supplied.

10.8 Concerning any further claims Paragraph 12.2 shall apply.

**11. ALLOCATION OF LIABILITY FOR DAMAGE CAUSED BY THE PRODUCT**

11.1 The Supplier shall not be liable for any damage to property caused by the Product after it has been delivered and whilst it is in the possession of the Purchaser. Nor shall the Supplier be liable for any damage to products manufactured by the Purchaser, or to products of which the Purchaser's products form a part. If the Supplier incurs liability towards any third party for such damage to property as described in the preceding paragraph, the Purchaser shall indemnify, defend and hold the Supplier harmless. If a claim for damage as described in this Clause is lodged by a third party against one of the parties, the latter party shall forthwith inform the other party thereof in writing. The Supplier and the Purchaser shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damages lodged against one of them on the basis of damage allegedly caused by the Product.

**12. Liability for Patent Infringement**

12.1 Unless otherwise indicated by RESOM, the goods supplied are to the best of RESOM knowledge of the published prior art free from any third party rights in the Republic of Austria. Should despite this the goods supplied hereunder or part thereof, at the moment of conclusion of contract, infringe a third party patent already granted and published in the Republic of Austria or - if the goods supplied expressly comprise a specific process right - infringe on patented process rights for which infringement buyer is sued in legal proceedings, RESOM shall at its own expense and at its discretion within reasonable time procure for buyer the right to continue to use the goods or part thereof or to modify or replace them with non-infringing goods or process or to withdraw from the contract. RESOM assumes no additional liability, e.g. for processes, applications, products etc. if third-party patents are infringed by a design or specification furnished by buyer, the latter shall conduct the defense of RESOM against any claim and relieve RESOM in case of implementation.

**13. Further Liability of RESOM; Buyer's Right to Cancellation**

13.1 In case buyer suffers loss or damage owing to a delay imputable to RESOM, buyer shall be entitled to claim indemnification for delay, amounting to 0,5% for every full week of delay, but not exceeding 5% in total, of the value of that part of the whole consignment delivery of which has been delayed and that could not be used in due time as stipulated in the contract.

13.2 Any further claims other than expressly stated in these conditions, on legal grounds whatsoever, mainly such as for loss of profit and consequential damages from defects, are excluded unless based on RESOM's liability for deliberate action or gross negligence or breach of material contract provisions or on statutory provisions regarding liability for personal injury, material damage to private property.

13.3 The statutory buyer's right to cancellation in case of delay and impossibility remains unaffected.

**14. Place of Fulfillment, Jurisdiction, Applicable Law**

14.1 Place of fulfillment shall be Graz. RESOM shall also be entitled to sue buyer before the Court having jurisdiction over buyer's place of business.

14.2 Supplementary to all contractual provisions contracts shall be governed by the law of the of Austria. The uniform UN Law on Sales (CISG) is not applicable. To contracts with relations to foreign countries the International and Austrian Conflict Rules shall also not apply.

**Note**

Pursuant to the German Federal Law for Protection of Data it is indicated that RESOM has stored buyer's data and this data is processed.

RESOM GMBH