

ROSS EUROPA GmbH

Delivery and payment terms

Scope

These terms of delivery and payment terms apply exclusively to commercial dealings with entrepreneurs; for consumers the legal provisions of purchasing law apply.

These terms apply exclusively to all, including future, legal transactions with the Purchaser. ROSS EUROPA GmbH - hereinafter ROSS - does not acknowledge any conflicting or deviating terms and conditions of the Purchaser, unless ROSS has given its written consent to them. All agreements made between ROSS and the Purchaser for the purpose of implementing the contract must be recorded in writing. Changes and additions must also be recorded in writing. These terms also become effective automatically on receipt of deliveries from ROSS; they can be viewed in their current version at www.rosseuropa.com and downloaded as a file.

Offers and order confirmation

1. All offers for ROSS products, including those of any sales representatives of ROSS, are non-binding and subject to change and correction at any time. In any case, the conclusion of a contract requires a written order confirmation from ROSS.
2. ROSS products are intended for use in the Federal Republic of Germany and for export and resale to all countries for which no special export authorisations of the USA and/or the Federal Republic of Germany are required. In cases of existing US or German embargo regulations, ROSS will be released from a delivery obligation.
3. ROSS reserves the right to correct prices and/or terms and conditions of offers and orders if such prices or conditions are incorrect as a result of misprints or omissions or misinterpretation of customer specifications.

Prices, invoices, payments, retention of title

1. The prices in offers and invoices are in EURO, packaging excluded, from ROSS, at the plant of Langen (Hessen), Federal Republic of Germany.
2. The minimum value of goods per shipment is EUR 40.00 plus VAT, transport costs, insurance costs and other additional costs. For lower order values, the difference is payable up to this minimum order value.
3. All accounts are payable net, without deductions, in accordance with the invoices in euros or any other freely convertible currency within 30 days of the date of issue. The Purchaser is only entitled to set-off rights if his counterclaims have been legally established, are undisputed or are recognised by ROSS. The exercise of a right of retention or refusal of payment by the Purchaser is only permissible if his counterclaim is based on the same contractual relationship. Any acceptance of bills of exchange and cheques is only on account of payment. Bills of exchange and cheques are at the expense of the Purchaser.

4. If an order is processed in partial deliveries, the invoicing will be based correspondingly on these partial deliveries. If the Purchaser does meet the ordering cycle, ROSS may invoice the deliverable on the originally agreed dates, as if delivery had taken place on those dates.
5. Notification of quantity and defects as well as complaints of incorrect invoices must be made to ROSS immediately by the Purchaser, otherwise they will not be recognised.
6. ROSS reserves ownership of the delivered items until receipt of all payments from the commercial relationship with the Purchaser. In the case of garnishment or other interventions by third parties, the Purchaser must inform ROSS immediately in writing. The Purchaser is entitled to resell the delivered products in the ordinary course of business. However, he hereby assigns to ROSS all claims in the amount of the final invoice amount (including value added tax) which accrue to the Purchaser from resell with respect to his customers or third parties, irrespective of whether the delivered item was resold without or after processing. The Purchaser remains authorised even to collect these claims after the assignment. Unless otherwise stipulated by mandatory law, however, ROSS is authorised to collect the claim itself if the Purchaser is no longer meeting his payment obligations with regard to the reserved goods, in particular by passing on the proceeds from resale. In such cases, ROSS may require the Purchaser to disclose the assigned claims and their debtors and to provide all other information required for collection, to issue the related documents and to notify the debtors (third parties) of the assignment of claim. The processing or transformation of reserved goods by the Purchaser is always carried out for ROSS. If the deliverable is processed with other items not belonging to ROSS, ROSS acquires co-ownership of the new item in the proportion of the value of the deliverable to the other items processed at the time of processing.

Delivery

1. Delivery is at the expense and risk of the Purchaser. Dispatch is insured only at the request of the Purchaser, for which the Purchaser is required to bear the costs.
2. Delivery dates or delivery times specified by ROSS are only approximate, unless a fixed transaction has been agreed in writing. The beginning of a period requires the clarification of all outstanding issues and compliance with all existing obligations of the Purchaser. Delays in delivery due to force majeure or other unforeseeable circumstances for which ROSS is not responsible do not give rise to any liability on the part of ROSS for delay or for other reasons. Any agreed delivery period is extended by the duration of the incapacity. If the impediment lasts longer than two months, ROSS and the Purchaser are entitled, after expiry of a reasonable written grace period, to withdraw from the contract with regard to the part not yet fulfilled. All claims for damages are excluded except for claims for damages due to non-fulfilment in the amount of the foreseeable damage in cases where the delay is due to intent or gross negligence or the breach of essential contractual obligations on the part of ROSS, if a fixed transaction has been agreed in writing or the Purchaser has failed to fulfil the contract because of a delay attributable to ROSS. In these cases, however, the liability of ROSS is limited to the contractually typical and foreseeable damage.

Warranty and defect rights

1. ROSS warrants that its products and services will be free of defects at the time of the transfer of risk and meet the agreed quality. The agreed quality corresponds to the specifications given in the order confirmation in accordance with the data sheet or special terms.

A precondition for the warranty claims of the Purchaser is the proper discharge by the Purchaser of the duty to inspect and complain under § 377 HGB.

The period of limitation for claims due to defects in the delivered products/services rendered will expire - except in the case of intent and gross negligence - after one year from delivery or service provision. Claims for damages due to defects are subject to limitation if they are based on an injury to life, limb or gross negligence on the part of ROSS, after the expiry of the statutory period.

2. If the products or services do not have the agreed quality at the time of the transfer of the risk, ROSS warrants by subsequent performance that ROSS will either repair the parts in question or replace the products or services with products or services that are free of defects.

In the event of requested cost estimates for repairs, a service charge of EUR 68.00 plus VAT will be charged, but this charge will not apply if a repair order or a replacement order for a new part is issued.

3. ROSS can remedy the deliverable several times due to a defect or, at its due discretion, switch from subsequent improvement to subsequent delivery. ROSS shall bear all costs arising from the remedy, in particular transport, travel and material costs, insofar as they are not caused by the products being moved to a place other than the place of performance. The Purchaser can set ROSS a reasonable deadline of at least two weeks to cooperate with the supplementary performance and, if the subsequent performance fails during this period, demand a reduction after the expiration of the deadline or, if the defect is not insignificant, withdraw from the contract.
4. ROSS shall not be liable for ordinary wear and tear, material provided by the Purchaser or processing of the Products by the Purchaser, damage resulting from improper storage or improper installation or operation or due to defective, improper maintenance or damage resulting from changes or repairs performed by the Purchaser on ROSS products. For products or services that ROSS receives from a third party for the purpose of resale to the Purchaser, ROSS assigns all warranty claims against this third party to the Purchaser. However, ROSS remains bound to assume the above warranty for the Purchaser if the Purchaser has previously tried in vain to enforce the assigned warranty claims against the third party.

For the use of mufflers by the Purchaser: Restricting the exhaust port of a valve may affect the valve's function. If the Purchaser uses mufflers, it must be ensured that the exhaust port is resistant to clogging through contamination. The flow capacity of the muffler must be greater than the exhaust capacity of the valves. ROSS assumes no responsibility and disclaims all liability for any malfunction or damage that may occur in connection with a ROSS® valve through the use of a muffler of unsuitable size, design or improper maintenance.

Compensation

1. The liability of ROSS, irrespective of the legal grounds, is limited to damages caused by ROSS or its vicarious agents intentionally, through gross negligence or by breach of essential duties. In cases of negligent breach of duties essential for the fulfilment of the purpose of the contract, the liability of ROSS shall be limited in level to typical damages for comparable transactions of this kind that were foreseeable at the conclusion of the contract or at the latest when the breach of duty was committed.

2. Any further liability for damages than specified above is excluded to the extent permitted by law.
3. Claims for damages according to the Product Liability Act, for lack of a guaranteed quality or for injury to life, limb or health or due to other mandatory statutory provisions remain unaffected.
4. No shift in the burden of proof to the detriment of ROSS is triggered by the above provision.
5. Claims and rights due to defects are subject to limitation, except in the case of intent or gross negligence, 12 months after commissioning of the products, but no later than 18 months after delivery. Claims for damages due to defects become subject to limitation after the expiry of the statutory period of time if they are based on an injury to life, body or health or gross negligence on the part of ROSS.

Technical advice, reservation of the right of change

The application, use or processing of the purchased products are the exclusive responsibility of the Purchaser. The technical advice given by ROSS in spoken and written form is only a non-binding indication, including with regard to any industrial property rights of third parties, and does not exempt the Purchaser from his own examination of the products for their suitability for the intended processes and purposes. If, however, a possible liability of ROSS is raised, it will be limited to the value of the goods actually delivered by ROSS, to the extent permitted by law. Design changes due to technical requirements or due to technical improvements remain reserved.

Use of software

If software is included in the scope of delivery, the Purchaser is granted a non-exclusive right to use the supplied software including its documentation. It is provided for use on the intended deliverable. Use of the software on more than one system is not permitted. The Purchaser may only reproduce, revise, translate or convert the software from the object code into the source code to the extent permitted by law (§§ 69 a ff. UrhG). The Purchaser undertakes not to remove the manufacturer's information - in particular copyright notices - or to change it without the prior express consent of ROSS.

All other rights to the software and documentation, including copies, remain with ROSS or the software manufacturer. Sublicensing is not permitted.

E-commerce

If the Purchaser purchases products or services through a website or any other ROSS e-commerce process, the following rules apply in addition:

The Purchaser is responsible for the security of his password and acknowledges that purchases made using his password are binding on him.

After successful registration, an order can be made. By entering the personal data and clicking the button "send order" in the final step of the order process, the binding order of the goods contained in the shopping cart is executed.

The confirmation of receipt of the order follows immediately after the order has been sent. The purchase contract is concluded with the order confirmation from ROSS, but the goods will be shipped only after receipt of payment (down payment, prepayment or credit card payment).

The order confirmation is given electronically. It is at the discretion of ROSS to declare an order confirmation.

ROSS has made every reasonable effort to ensure that all websites and access points are secure; however, ROSS disclaims all liability for misuse of the information that has been transferred to these websites and/or access points, or from these websites and/or access points, by outsiders who are not employees of ROSS.

The customer agrees that ROSS may use cookies via the customer's website or other e-commerce processes.

Place of performance, jurisdiction, applicable law

The place of performance and jurisdiction is Langen (Hessen), such that ROSS is in any case entitled to sue the Purchaser at the legal venue of his registered office. The law of the Federal Republic of Germany applies, to the exclusion of UN sales law. Should individual provisions of the contract or of these terms of delivery and payment be ineffective, this will not affect the validity of the remaining provisions. In such a case, the parties are required to replace any ineffective provisions by effective provisions coming as close as possible to the economic purpose of the invalid provision. The same applies to the case of a regulatory gap.

Date: 05/2022