

1 Scope of application

- 1.1 These General Terms and Conditions of Sale (GTCS) apply to all current and future transactions between RICO Elastomere Projecting GmbH – as well as its Group companies (hereinafter referred to as “RICO”) – and other companies (hereinafter referred to as “the Contractual Partner”), in particular transactions for all goods and services provided by RICO. Agreements concluded at a later date (including oral agreements) are deemed to have been concluded in addition to these GTCS, regardless of whether reference is made to the GTCS. Agreements that deviate from these GTCS require RICO’s written approval. Any general terms and conditions of the Contractual Partner do not apply either in whole or in part, including in cases where such terms and conditions are not expressly rejected.

2 Conclusion of the contract

- 2.1 Offers made by RICO are subject to change and non-binding. Details provided in catalogues, brochures, price lists, displays at exhibition stands, newsletters, advertisements or other media, such as websites and the like, as well as all written and oral statements regarding RICO’s goods and services do not constitute offers and are non-binding, unless they are expressly made part of the contract and are set out in writing.
- 2.2 RICO signifies its acceptance of the Contractual Partner’s offers or orders either by providing a written order confirmation, delivering the goods in question, or providing the service in question. Special agreements, including those made with RICO’s representatives or agents, require RICO’s written confirmation in order to be valid. Any amendments, subsidiary agreements, objections or supplements are only valid if made in writing (see point 11.2, below).
- 2.3 All offer-related and project documentation, samples, etc. provided by RICO are confidential, and may not be disclosed to third parties (except professional representatives of the Contractual Party which are bound by a duty of confidentiality) without RICO’s written approval. Furthermore, such documentation must be returned to RICO as soon as possible on request.
- 2.4 In the case of blanket orders, RICO is entitled to immediately procure the required material for the entire order and immediately produce the entire quantity ordered.

3 Prices

- 3.1 Prices offered by RICO are based on costs at the time of the initial offer. If costs increase prior to the time of delivery for reasons beyond RICO’s control, e.g. due to collective agreements, increases in material prices, etc., RICO may adjust its prices accordingly.
- 3.2 Prices offered by RICO are quoted ex works from RICO’s premises, excluding loading and VAT. Any fees, taxes and/or duties incurred in connection with delivery must be borne by the Contractual Partner. Any agreed shipment of goods will take place at the (reasonable) expense of the Contractual Partner, and RICO will determine the shipping route and method. Shipment will take place at the Contractual Partner’s risk, including in cases where it is expressly agreed that RICO will bear the shipping costs (i.e. delivery free of charge). The risk is transferred to the Contractual Partner upon handover of the goods to the carrier, including in the case of part-deliveries, even if these were arranged by RICO and RICO bears the shipping costs. In case of mold deliveries without immediate handover of goods (e.g. in case of storage at RICO), the risk is already transferred to the Contractual Partner when the Acceptance Protocol is signed.

4 Delivery, assumption of risk and place of fulfillment

- 4.1 The place of performance and fulfillment is RICO’s domicile at Am Thalbach 8, A-4600 Thalheim bei Wels, Austria. All notified and agreed delivery dates and deadlines are not fixed dates, but are approximate, and are subject to change due to unforeseen events and impediments for which RICO is not responsible (in particular, but not limited to disruption of operations; official measures and interventions; problems with energy and raw material supplies, e.g. due to the shutdown of a supplier that is difficult to replace; strikes; impediments on shipping routes; delays in customs clearance and the like). Consequently, delays do not entitle the Contractual Partner to refuse to accept the goods or services, or to enforce claims for compensation.

- 4.2 The Contractual Partner must ensure reasonable conditions that allow for proper execution of delivery. If parts or vehicles provided by the Contractual Partner are delayed, the delivery deadline will be extended accordingly. If an agreed delivery date is exceeded by more than four weeks, the Contractual Partner is entitled to impose a grace period for delivery of a further four weeks. If this grace period expires without delivery, the Contractual Partner is entitled to withdraw from the contract, but only if the Contractual Partner gave written notice of the threat to withdraw from the contract when granting the grace period. In the event that RICO is unable to deliver within the grace period through no fault of its own, the Contractual Partner may only withdraw from the contract three months after the originally agreed delivery date at the earliest (under the aforementioned conditions). Claims for compensation by the Contractual Partner based solely on delayed delivery or non-performance are excluded, unless proof of intent or blatant gross negligence on RICO's part is provided.
- 4.3 If performance of the contract is not possible for reasons beyond RICO's control, the contract will lapse without giving rise to claims for compensation or loss of earnings on the part of the Contractual Partner.
- 4.4 RICO is entitled to make part-deliveries or advance deliveries and to invoice them accordingly. If call-off deliveries are agreed, the goods or services ordered are deemed to have been called off six months after placement of the order at the latest.
- 4.5 If delays in deliveries by RICO to the Contractual Partner occur due to circumstances within the latter's control, RICO may charge the Contractual Partner a monthly flat-rate fee of 1% of the invoice amount for the additional storage costs incurred.
- 4.6 The return of goods requires RICO's written approval. The delivery note number or invoice number must be included when goods are returned. Returned goods must be sent to RICO's domicile at the Contractual Partner's expense and risk.

5 Payment

- 5.1 Payments to be made to RICO (prices) are due as follows:
- Molds: 33% on placement of the order, 33% on shipment of sample parts, 34% after invoicing.
 - Products: 100% within 14 days of invoicing.
- 5.2 Payments must include VAT and be transferred to the account specified by RICO so that RICO has access to the full amount on the final due date at the latest. All related interest and fees must be paid by the Contractual Partner.
- 5.3 In the event that warranty or other claims are enforced, the Contractual Partner is not entitled to withhold or offset payments.
- 5.4 In the event of a delay in payment by the Contractual Partner, RICO is entitled to demand immediate payment of all receivables from the Contractual Partner (regardless of the transaction from which they arose). RICO may withhold fulfillment for the duration of the delay in payment. After the delay has been rectified, RICO may claim a reasonable deadline for fulfillment. Default interest of 5% above the base interest rate plus VAT is agreed. Furthermore, the Contractual Partner is obliged to compensate RICO for all additional costs incurred as a result of the payment delay (in particular, but not limited to reminders, debt collection, storage, legal representation, etc.). The aforementioned rights do not affect any other statutory or contractual claims on RICO's part.
- 5.5 Cancellations and changes to orders after conclusion of the contract are only possible with RICO's express written permission. Without prejudice to the enforcement of claims in excess of the actual damage suffered, in the aforementioned cases of default by the Contractual Partner, RICO is entitled, without providing proof of damages, to demand a contractual penalty of 30% of the agreed order value, not subject to judicial mitigation.

6 Retention of title

- 6.1 Goods delivered by RICO remain the property of RICO until complete fulfillment of the contract (incl. payment) by the Contractual Partner. Goods subject to retention of title may not be pledged, mortgaged or otherwise encumbered with the rights of third parties.

- 6.2 If the items delivered are processed by the Contractual Partner or by a third party on the Contractual Partner's behalf before retention of title expires, or the items are mixed or combined with other items, RICO will become part-owner of the new or combined items in accordance with the ratio of the receivable concerned to the value of the new or combined item, provided that RICO otherwise no longer fully retains title to the goods.
- 6.3 Without RICO's express approval, the Contractual Partner is not permitted to resell goods delivered by RICO, to resell items newly produced as a result of mixing or combining goods with those delivered by RICO, or to rent or pledge goods delivered by RICO prior to full payment of the amount due to RICO. If such reselling does take place, the amount receivable by the Contractual Partner from its customer is deemed to be assigned to RICO, and RICO will accept the assignment, or the Contractual Partner is obliged to assign the related receivable to RICO, make the necessary announcements and ensure that the third-party debtor is notified. Regardless of this obligation, RICO is also entitled to ensure that the third-party debtor is notified. The Contractual Partner undertakes to provide RICO with all related information, and to inform RICO without delay of any restrictions on rights to goods which are RICO's property.
- 6.4 If the Contractual Partner defaults on its payment obligations to RICO or breaches an obligation arising from the agreed retention of title or assignment of receivables, the entire outstanding receivable will become payable immediately, and the Contractual Partner will be obliged to pay compensation for any damage caused. In this case, RICO is also entitled to demand the surrender of items which are its property, and to collect the items from the Contractual Partner or a third party. In such cases, the Contractual Partner waives the right to retain the items on any grounds whatsoever. The Contractual Partner is obliged to bear the costs of returning goods which are subject to retention of title or to compensate RICO for such costs, which will not constitute withdrawal from the contract.

7 Right of retention

- 7.1 In certain cases, namely when insolvency proceedings are opened against the Contractual Partner (or such proceedings are rejected due to lack of assets) or if execution of the Contractual Partner's assets (including by third parties) is unsuccessful, RICO is entitled to retain products and/or goods as security for its receivables from the Contractual Partner until all outstanding receivables arising from the business relationship are settled in full, including receivables that are not yet due.

8 Warranty and damages

- 8.1 RICO guarantees and is liable for the provision of its own goods and services exclusively in accordance with the following provisions. All claims of the Contractual Partner against RICO arising from warranties, as well as all claims for compensation, above and beyond the following provisions, are fully excluded regardless of the legal grounds on which they are based (in particular those arising in relation to product liability).
- 8.2 In any case, it is hereby agreed that all details provided in brochures, price lists, displays at exhibition stands, advertisements or other media, e.g. websites, etc., are not deemed to have been agreed unless RICO gives its express contractual approval in writing, and that by definition such details therefore do not form the basis for warranty or liability claims on the part of the Contractual Partner.
- 8.3 The Contractual Partner must enforce any warranty claims, claims for compensation and other liability claims within three months of the handover of goods or provision of services or (in the case of latent defects or subsequent damage which the Contractual Partner was under no circumstances able to identify, including when using goods or services and by means of careful examination) within three months of objective recognition of the defect or damage. In this regard, it is agreed that the Contractual Partner is obliged to examine the goods and/or services provided by RICO as precisely as possible, using all reasonable financial means, without delay – i.e. without undue delay depending on the type of goods and/or services concerned, and within one month of the handover of goods or provision of services at the latest – and to provide RICO with written notification of any objectively recognizable or actually identified defects or damage without delay. Failure to comply with this obligation will result in forfeiture of all of the Contractual Partner's claims.

- 8.4 The burden of proof in the event of damage or defects, and – in the latter case – regarding the existence of defects at the time of the handover of goods or provision of services always rests with the Contractual Partner; section 924 Allgemeines Bürgerliches Gesetzbuch (Austrian Civil Code) is excluded.
- 8.5 If the Contractual Partner (or a third party under the Contractual Partner's control) does not use the goods or services in a professional manner, or disregards assembly, installation, operating, storage, maintenance or service requirements (regardless of whether they are statutory, based on technical standards or the technical state of the art, or specified by RICO), the Contractual Partner or third party will not be entitled to enforce warranty claims or other claims for compensation, or claims for remedy of defects.
- 8.6 If RICO provides goods or services on the basis of information, drawings, plans, models or other specifications supplied by the Contractual Partner, RICO is not obliged to inspect such information or specifications. In such cases, RICO will provide goods and/or services solely on the basis of the Contractual Partner's information and specifications, and the goods and/or services provided must only be in accordance with such information and specifications. RICO accepts no responsibility regarding the intended purpose of the Contractual Partner, or the purpose of intermediate or finished products manufactured by the Contractual Partner or a third party. With regard to any defects, problems or damage arising due to the fact that the goods and/or services provided by RICO in accordance with the Contractual Partner's information and specifications consequently do not satisfy the Contractual Partner's intended purpose, the Contractual Partner will not be entitled to any claims whatsoever against RICO.
- 8.7 In the case of legitimate (or voluntary) liability or warranty on RICO's part, RICO is entitled to determine the form of the warranty or liability (e.g. correction, replacement, completion, a price reduction, or cancellation of the contract). In such cases, the Contractual Partner is not entitled to withdraw from the contract.
- 8.8 In case of liability on RICO's part (on any legal grounds whatsoever) above and beyond the simple remedy of defects (correction, replacement, supply of missing parts), it is agreed that RICO will only be liable in cases in which it is at fault due to blatant gross negligence or intent; the Contractual Partner bears the burden of proof for these high degrees of culpability (reversal of the burden of proof pursuant to section 1298 Austrian Civil Code is expressly excluded). However, in cases of blatant gross negligence, RICO assumes no liability for lost profits, for consequential damages or pecuniary loss, or for damages arising as a result of recalls or recall costs. In all cases (i.e. also in all other cases) RICO's liability is limited to a maximum of EUR 1,000,000.00.
- 8.9 If the parties to the contract expressly agree contractual penalties, these constitute full, lump-sum compensation for damages, and the Contractual Partner is not entitled to demand additional compensation.

9 Intellectual property rights

- 9.1 RICO expressly reserves the industrial property rights, copyright and ownership rights related to all of its own plans, sketches, drawings, models, brochures, construction specifications and the like (including digital data and software), as well as to plans, sketches, drawings, models, brochures, construction specifications and the like provided to it. Unless otherwise expressly agreed in writing, these rights are not transferred to the Contractual Partner either in full or in part. The Contractual Partner must pay damages to RICO for any infringements of such rights.

10 Contractual penalty

- 10.1 In case of breach (including partial breach) of points 2.3 or 9 of these GTCS, the Contractual Partner is obliged to pay a contractual penalty of EUR 100,000.00 to RICO, without prejudice to RICO's right to claim compensation in excess of this amount from the Contractual Partner in the form of full recompense.

11 General provisions

- 11.1 If any provisions of agreements concluded by the parties to the contract or of these GTCS are or become ineffective, this does not affect the effectiveness of the remaining agreements or terms and conditions. The ineffective provision is to be replaced by an effective provision which approximates as closely as possible to the intended purpose.

- 11.2 Where these GTCS or other agreements with RICO refer to the written form, written confirmation, a signature or the like, this always refers to and requires signature in accordance with the commercial register and by authorized representatives of the company. The written form requirement is also satisfied if the document in question is signed as described above and sent by fax or e-mail.

12 Jurisdiction and applicable law

- 12.1 It is agreed that the ordinary Austrian court of substantive jurisdiction for RICO's domicile in A-4600 Thalheim bei Wels, Austria, will adjudicate on any disputes arising from agreements between the parties to the contract or from these GTCS (including with regard to the termination or nullity of the agreements or these GTCS).
- 12.2 All agreements between the parties to the contract are subject to Austrian substantive law, to the exclusion of the conflict of laws rules of international private law. The UN Convention on Contracts for the International Sale of Goods is excluded.