

General Terms and Conditions of Business of RASTAL GmbH & Co.KG

1. Scope

- 1.1 All our deliveries, services, quotations and offers are based on these General Terms and Conditions of Business even if they are not expressly mentioned or referred to in negotiations. Our General Terms and Conditions of Business apply to all contracts concluded between ourselves and companies, legal entities of public law or special assets under public law; they also prevail in respect of contracts entered into in the course of future business relationships, regardless of whether or not our General Terms and Conditions of Business have been expressly agreed upon. As a matter of principle, they are deemed accepted no later than upon receipt of the goods.
- 1.2 The terms and conditions of business of any purchaser or third party will not be applied, regardless of whether or not we have expressly objected to their application in any given case. Even if we refer to a written document which contains or makes reference to the terms and conditions of any such purchaser or third party, this is on no account to be construed as indicating our acceptance of, or agreement to, the terms and conditions of the respective purchaser or third party.

2. Quotation, Offer and Contract Conclusion

- 2.1 All our quotations and offers are subject to change; they are submitted without obligation, unless they are expressly designated as binding or unless they include a specific acceptance period. Purchase orders constitute a binding offer on the part of the purchaser which we are free to accept within a period of three (3) weeks, either by sending an order confirmation or by supplying the ordered goods to the purchaser.
- 2.2 The legal relationship between ourselves and the purchaser is solely governed by the written contract of purchase and sale, in conjunction with these General Terms and Conditions. The written contract fully reflects all understandings and agreements between the contracting parties. Oral promises, undertakings or commitments of any nature whatsoever made prior to contract conclusion are not legally binding, and any oral understandings or agreements between the contracting parties will be replaced by the pertinent written contract unless they are expressly stated to remain in binding effect.
- 2.3 Any amendments or modifications to the agreements reached, including any amendments or modifications to these General Terms and Conditions of Business, must be set forth in writing to be effective.
- 2.4 It is understood that any placement of a purchase order implies a tacit agreement on the part of the purchaser to accept over- and under-deliveries of ten percent (10 %), as customary in the trade, and to pay the price corresponding to the quantity delivered.

3. Documents Relating to Offers and Product Manufacture

- 3.1 All information provided by us in respect of the goods or services to be supplied (e.g. weights, dimensions, functional values, load capacity / resilience, tolerances and technical specifications) as well as the media which we use for their representation (e.g. drawings and pictures) is understood to be of an approximate nature only, unless the liability of the said goods or services for their contractually intended purpose requires strict and accurate conformity. The information provided by us is not to be construed as a guarantee given in respect of the exact inherent properties or qualities of the goods or services, but is rather intended as a mere description or characterisation thereof. Variations customary in the trade as well as deviations or modifications required by legal reasons or serving technical improvement are deemed permitted if and to the extent that they do not significantly impair the usability of the goods or services for the contractually intended purpose.
- 3.2 We retain title, ownership and copyright in, of and to all documents prepared by us for the purpose of producing decorations and related items, as well as title, ownership and copyright in, of and to all offers, quotations, estimates, drawings, illustrations, calculations, brochures, catalogues, models, tools and moulds as well as in, of and to any other documents and auxiliary means. This also applies if the purchaser bears the full cost or part of the cost incurred in the preparation of these documents or objects. The purchaser is not permitted to make these documents or objects physically or content-wise available or known to any third party, nor to use or reproduce any of them personally or through a third party, unless we have given our express consent thereto. The purchaser is obliged to return all documents and objects to us at our request and to destroy any copies thereof if and when they are no longer needed in the ordinary course of business or if negotiations have not resulted in the conclusion of a contract between us.
- 3.3 If and to the extent that the products are made or delivered in accordance with drawings / designs, quality samples or other models supplied by the purchaser, the purchaser is obliged to ensure non-infringement of the rights of any third-parties and to hold us free and harmless from any liabilities that may arise vis-à-vis any such third parties.

4. Pricing – Payment

- 4.1 The prices cover the scope of goods and services to be delivered as stated in the pertinent order confirmation. Additional or special services will be invoiced separately. Unless otherwise specified in the order confirmation, all prices are quoted in EURO on an ex works basis; they are exclusive of packing, statutory value-added tax, export customs duties and fees as well as other public charges.
- 4.2 If and as far as the agreed-upon prices are based on our list prices, with delivery scheduled to be made more than four (4) months after contract conclusion, our list prices applicable at the time of delivery will apply (less the agreed-upon percentage discount or fixed discount amount). We are furthermore entitled to adjust prices on a case-by-case basis if economic conditions undergo significant changes (e.g. penal / anti-dumping duties, exchange rate fluctuations, commodity price increases etc.).
- 4.3 As a matter of principle, first orders are only delivered against advance payment, unless stated otherwise in the order confirmation.
- 4.4 Unless otherwise specified in the order confirmation, the purchase price is due for payment within thirty (30) days from receipt of the invoice. Should the purchaser fail to effect payment by the due date, any outstanding amounts will accrue interest from their due date at a rate of five percent (5 %) per year; we reserve the right to claim higher interest and further damages in case of delay/default on the part of the purchaser.
- 4.5 In the event of a defect being detected, the purchaser is entitled to exercise a right of retention only if it is evident that the items supplied were already defective at the time of delivery. In this case, the purchaser's right of retention is, however, limited to the extent that the amount withheld is in reasonable proportion to the scope of the defect(s) and commensurate with the expected costs to be incurred for subsequent performance under the terms of the contract (including, but not limited to, a remedy of the defect(s)). The purchaser is not entitled to assert claims and rights in respect of defects if the purchaser has failed to make payments by their due date and as far as the amount due (inclusive of any payments already made) is adequately proportionate to the value of the defective delivery.
- 4.6 The period allowed for payment is thirty (30) days net after receipt of invoice. For deliveries and invoices to addresses located within the territory of the Federal Republic of Germany, we grant a discount of two percent (2 %) if payment is received within a period of fourteen (14) days after invoice receipt.
- 4.7 The purchaser is entitled to set off the purchaser's own claims or to withhold payments in respect of any such counterclaims only on the proviso that the purchaser's counterclaims are undisputed or have been established as res judicata claims with final and absolute effect.
- 4.8 The purchaser agrees to the transfer of the purchaser's data to credit agencies to the extent that such data transfer is required for establishing the purchaser's creditworthiness.
- 4.9 We are entitled to make deliveries or provide services solely against provision of advance payment or security if after conclusion of the contract we become aware of circumstances that raise serious doubts about the purchaser's creditworthiness and which may jeopardise the purchaser's payment of amounts owed to us under the applicable contractual relationship, including receivables from other individual contracts to which the same framework agreement (master contract) applies.

5. Terms of Transport

- 5.1 The selection of means and routes of transport is at our discretion. Any additional costs arising from special transport requests specified by the purchaser as well as container shipment expenses are for the purchaser's account.
- 5.2 Unless otherwise agreed upon, packing is charged at five percent (5 %) of the goods value. Packing cases, boxes, crates and special shipping cartons are charged by us at cost and are not returnable.
- 5.3 Unless otherwise agreed, the goods are supplied on Euro pallets. Purchasers not subscribing to the Euro pallet exchange pool will be charged with the corresponding costs.

6. Period of Delivery and Service

- 6.1 Any terms and dates announced by us in respect of deliveries or services to be rendered are to be taken as approximate only unless a fixed term or date is expressly promised or agreed upon. If we are expected to arrange for the shipment of goods, the delivery terms and dates indicated refer to the time the goods are transferred to the forwarding agent, freight carrier or other third party assigned to transport the goods.
- 6.2 Without prejudice to any of our rights arising from a delay/default on the purchaser's part, we are entitled to an extension of the periods originally agreed upon for the delivery of goods and performance of services, or to a postponement of such delivery and service performance dates, by the period of time in which the purchaser fails to meet its contractual obligations towards us.
- 6.3 We are not to be held liable in case of impossibility of delivery or delay in delivery if and to the extent that these circumstances are attributable to events of force majeure or to other events beyond our control that were unforeseeable at the time of contract conclusion, e.g. operational disturbances or breakdowns of any nature; difficulties in the procurement of materials or energy; delays in transit; strikes; lawful lockouts; shortage of labour, energy or raw materials; difficulties in obtaining necessary official approvals; measures imposed by public authorities; or failure on the part of our suppliers to deliver goods correctly and timely. Should occurrence of any of these events make it significantly more difficult or even impossible for us to deliver the goods or perform the service, and unless the impediment is temporary, we are entitled to withdraw from the contract. If the impediment is of a temporary nature, the goods delivery and service performance periods will be extended, and the goods delivery and service performance dates will be postponed, by the period of time during which the impediment subsists, plus a reasonable recovery lead time. If due to the delay, the purchaser cannot be reasonably expected to take delivery of the goods or services, the purchaser is entitled to withdraw from the contract by submitting to us a written statement to this effect without delay.
- 6.4 We are entitled to perform partial deliveries on condition that the partial delivery is usable by the purchaser within the scope of the contractually intended purpose, that the supply of the outstanding goods is guaranteed and that the purchaser is not required to incur substantially higher expenses or additional costs, unless we agree to assume these expenses or costs.
- 6.5 If, for any reason whatsoever, we should come into delay with a delivery or service, our liability will be limited in accordance with the stipulations set forth in Clause 9 hereof.

7. Place of Performance and Transfer of Risk

- 7.1 The place of performance in respect of all obligations arising from this contractual relationship is our registered office, unless stipulated otherwise.
- 7.2 The risk passes to the purchaser at the latest upon handover (i.e. upon commencement of loading) of the delivery items to the forwarding agent, freight carrier or other third party designated to ship the consignment. This also applies in case of partial deliveries or if we have agreed to provide additional services (e.g. dispatch / shipment). If dispatch / shipment or handover is delayed due to circumstances that are caused by or lie within the responsibility or control of the purchaser, the risk will pass to the purchaser from the date on which the delivery item is ready for dispatch as per our notification to this effect addressed to the purchaser.
- 7.3 At the purchaser's express request and expense, we will insure the consignment against theft, breakage, transport, fire and water damage or other insurable risks.
- 7.4 Storage costs incurred after the transfer of the risk are to be borne by the purchaser. If we undertake the storage of the goods, the storage costs charged to the purchaser will amount to zero point twenty-five percent (0.25 %) of the net invoice amount for each full week. The purchaser is entitled to provide evidence of lower storage costs.

8. Warranty; Liability for Material Defects

- 8.1 The warranty period is six (6) months from the date of risk transfer. Goods offered or sold as items of inferior quality or as exhibiting minor visual imperfections ("2A items") do not carry any warranty.
- 8.2 Customary shape and colour variances from the agreed-upon design as well as insignificant impairments on the usability of the goods in respect of their designated purpose are not deemed to constitute a material defect.
- 8.3 Ceramic cups, mugs and jugs are supplied in run-of-kiln quality, unless otherwise agreed upon. With this type of quality, the purchaser must generally accept the following properties of material, none of which is deemed to constitute a defect: flow marks on the glaze surface, pinholes, small ferrous or other inclusions, tolerances in respect of glaze colour and shine, colour transitions as well as unevenness in the glaze. Individual samples submitted for approval or demonstration purposes are not to be considered as representing a qualitative average.
- 8.4 We are committed to meeting the purchaser's colour specifications based on standard colour charts (Pantone, HKS etc.), notwithstanding our effort, minor variations in colour cannot be entirely avoided for technical reasons. These colour differences do not constitute a defect in material. Slight deviations between approval samples and serially produced items may also occur because the samples are produced under simulated manufacturing conditions.
- 8.5 Owing to the commercially accepted tolerances of the items to be decorated with print motifs as well as due to further technical circumstances, a completely homogeneous printing image cannot be guaranteed. For the same reasons, slight offsetting effects cannot be avoided in multicolour (polychrome) printing. Minor deviations of serially produced items against their approval samples or test prints / press proofs, respectively, do not constitute a material defect.
- 8.6 Due to manufacturing tolerances and the circumstances described in Clauses 8.2 to 8.5 hereinabove, a small portion of the items produced and supplied by us may exhibit minor deviations from the agreed-upon condition. If this portion is less than five percent (5 %) of the overall production volume of the item, the purchaser is obliged to accept the delivery.
- 8.7 Unless indicated otherwise, all glasses, cups and mugs offered by us are produced for the purpose of being used as drinking vessels. The items are non-stackable. Any warranty and liability is excluded if the items are used for other purposes beyond their intended scope.
- 8.8 The glass cups, mugs and drinking glasses offered by us are commercially available products made of soda lime industrial glass, unless specified otherwise. The items must not be exposed to open flames; their resistance to thermal shock is limited.
- 8.9 The dishwasher suitability of an item varies depending on the material combination used, the colours / inks employed and the cleaning conditions.
- 8.10 After having been delivered to the purchaser or to a third party designated by the purchaser, the items supplied must be carefully inspected without delay. The items will be deemed accepted unless we receive, within seven (7) workdays from the date of delivery of the items, or else within seven (7) workdays from the detection of a defect, or from any earlier point in time at which a defect was detectable by the purchaser in the normal use of the delivery item without closer inspection, a written complaint (notice of defects) specifying the apparent defect(s) or any other defect(s) detectable upon immediate careful inspection. At our request, the item which is the subject of the complaint must be returned to us freight free. If the complaint is found to be justified, we will reimburse the costs of the most economical shipping method; this does not apply if the costs increase because the delivery items are located at a place other than the contractually agreed-upon place of delivery.
- 8.11 If the items supplied exhibit a material defect, we are entitled to a reasonable period of time during which we will choose to either remedy the defect or replace the defective items. If such subsequent performance fails, i.e. in case of impossibility, unreasonableness, refusal or inappropriate delay in the rectification of the defect or replacement delivery, the purchaser is entitled, at the purchaser's choice, to either withdraw from the contract or demand a reduction of the purchase price.
- 8.12 If the cause of the defect is attributable to our fault, the purchaser is entitled to damages if the conditions set forth in Clause 9 hereof are met.
- 8.13 The warranty becomes void if the purchaser modifies or alters, or causes or allows a third party to modify or alter, a delivery item without our consent, thus rendering defect rectification impossible or unreasonably difficult. The purchaser is obliged to bear the additionally incurred damage rectification costs arising from any such modification or alteration of a delivery item.

9. Liability for Damages on Account of Fault

- 9.1 Our liability for damages, whatever their legal basis may be – including, but not limited to, impossibility of performance, delays in performance, defective/faulty or incorrect delivery, violation/breach of contract, non-fulfilment of obligations during contract negotiations as well as wrongful acts (torts) – is limited in accordance with the stipulations contained in Clause 9 hereof; provided that these actions or omissions are subject to proof of fault.
- 9.2 We do not accept any liability in cases of individual negligence on the part of our executive bodies, legal representatives, employees and other persons employed in the performance of our obligations unless material contractual obligations are breached. Material contractual obligations are defined as obligations intended to protect the purchaser's contractually essential legal positions which the contract is specifically meant to grant to the purchaser by virtue of its subject matter and purpose. Material contractual obligations also include obligations whose performance is indispensable for proper contract fulfilment and on whose performance the purchaser consistently and rightfully relies.
- 9.3 If and to the extent that we are liable for damages on the merits under Clause 9.2 hereof, our liability is limited to the damage which we foresaw at the time of contract conclusion as a possible consequence of a breach of contract, or which we should have been reasonably able to foresee by the exercise of due care and diligence. Indirect damage and consequential damage resulting from the defect of an item of delivery are eligible for compensation only if and to the extent that occurrence of the respective damage can be typically expected when the delivery item is used for its intended purpose.
- 9.4 If we are held liable for ordinary negligence, our liability for damages in respect of property damage as well as in respect of any further economic loss resulting therefrom is limited to an amount of EUR 10,000,000.- for any one occurrence, also in cases involving a breach of material contractual obligations.
- 9.5 The aforementioned scope of liability exclusion and liability limitation also applies to our executive bodies, legal representatives, employees and other persons employed in the performance of our obligations.
- 9.6 If and to the extent that we provide technical information or consultancy services beyond the contractually agreed scope of performance which we owe to the purchaser, the said information and services will be provided free of charge and without any liability whatsoever on our part.
- 9.7 The limitations set forth in Clause 9 hereof do not affect our liability in respect of willful conduct, warranted properties of the delivery items, injury to life, body or health as well as in respect of the German Product Liability Act ("Produkthaftungsgesetz").

10. Reservation of Title

- 10.1 The items of delivery remain our property until all our claims arising from the business relationship have been fully settled by the purchaser.
- 10.2 The purchaser is permitted to resell the delivery items. In the event that the delivery item is resold, the purchaser hereby assigns to us, by way of security and without any express statement to this effect being required, the claim which it holds against its own customers as a result of the resale, including all ancillary rights and also including outstanding account balances, if any. However, the scope of claim assignment is limited to the amount equal to the price charged by us in respect of the delivery items. The claim portion assigned to us is to be satisfied with priority.
- 10.3 The purchaser is entitled to collect the claim which the purchaser has assigned to us by virtue of Clause 10 hereof until such entitlement is revoked. The purchaser is obliged to forward to us without delay any payments received towards the value of the assigned claim until the amount of our secured claim is covered. In case of a legitimate interest, including, but not limited to, situations involving delay / default in payment, suspension/cessation of payments, opening of insolvency proceedings, protest of a bill of exchange or strong evidence of excessive indebtedness or impending insolvency on the part of the purchaser, we are entitled to revoke the purchaser's entitlement to collect claims. Furthermore we may, after having set a reasonable deadline, and warning to do so, disclose the assignment by way of security, realise the assigned claim and require the purchaser to disclose the security assignment to the purchaser's own customers.
- 10.4 If we can show a legitimate interest, the purchaser is obliged to provide us with all information and documents that may be required to assert and enforce our rights vis-à-vis the purchaser's customers.
- 10.5 As long as we retain title to the items of delivery, the purchaser is not permitted to subject these items to any type of pledge or transfer by way of security. The purchaser is obliged to notify us without delay of any levy, seizure, attachment or other type of disposal or intervention by a third party in respect of the purchaser. The resale of the delivery items is only permitted to resellers within the scope of ordinary business operations and only with the proviso that the consideration owed in respect of the items delivered will be paid to us. The purchaser is also obliged to agree with its customer that they will acquire ownership of the items only after this payment has been made.
- 10.6 If and to the extent that the realisable value of all security interests owed to us exceeds the amount of all secured claims by more than ten percent (10 %), we will release, at the purchaser's request, a certain portion of the security interests. This requirement will be deemed met if the estimated value of the securities assigned to us amounts to or exceeds one hundred and fifty percent (150 %) of the value of the secured claims. It is at our discretion to decide which security interest(s) we wish to be released.
- 10.7 In the event of a breach of obligation on the part of the purchaser, including, but not limited to, delays/default in payment, we are entitled to require the purchaser, even without prior notice, to surrender/return to us the delivery items or the new goods, and/or we may furthermore withdraw from the contract after giving due notice in accordance with the applicable provisions. The purchaser is obliged to surrender/return the items. If we exercise our right to request surrender/return of the delivery items, this does not constitute a declaration of withdrawal from the contract on our part, unless expressly stated otherwise.

11. Final Provisions

- 11.1 The place of jurisdiction for any disputes arising from or in connection with the business relationship entered into between ourselves and the purchaser is our registered office. Any mandatory provisions of applicable law relating to exclusive jurisdiction will not be affected by this clause.
- 11.2 The relationship between ourselves and the purchaser is exclusively governed by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 does not apply.
- 11.3 If and to the extent that any provision has been inadvertently omitted from the contract or from these General Terms and Conditions of Business, the resulting gap will be deemed to be filled with legally valid provisions which the parties to the contract would have adopted, in consideration of the economic goal of the contract and the purpose of these General Terms and Conditions of Business, if they had been aware of the gap.

Data Protection Notice:

The purchaser acknowledges that we store data from the contractual relationship for data processing purposes in accordance with Section 28 of the German Federal Data Protection Act ("Bundesdatenschutzgesetz") and that we reserve the right to transfer this data to third parties (e.g. insurance companies, credit agencies) to the extent required for contract fulfilment.