

# » Standard Terms of Sale

**Romberg GmbH & Co. KG, Werner-von-Siemens-Str.13, 25479 Ellerau, Germany**

**Valid as of July 1st 2019**

## **1. General Terms**

1.1 The following Standard Terms of Sale apply exclusively to all supplies of goods and services (hereinafter referred to as „Standard Terms“). The Standard Terms are an integral part of every contract concluded between Romberg and its customers for supplies of goods and services. These Standard Terms similarly apply to all future supplies, services or offers from Romberg even if they have not been explicitly agreed upon again.

1.2 Different, contrary or supplemental standard business terms of a customer only become part of the contract if and to the extent expressly consented to by Romberg. The foregoing consent requirement is not waived even if Romberg makes a delivery to a customer without having objected to its standard business terms.

1.3 These Standard Terms apply only as to transactions with entrepreneurs within the meaning of Section 14 German Civil Code (BGB), legal entities under public law, or public sector special funds.

## **2. Offer, Conclusion of a contract**

2.1 Offers from Romberg are always subject to change with regard of availability of delivery and date of delivery.

2.2 The written contract concluded between Romberg and the customer, including these Standard Terms, is solely decisive for the legal relationship between Romberg and the customer. The contract reflects all agreements with regard to the subject matter of the contract. Oral agreements are superseded by the written contract to the extent such contract does not provide that oral agreements are intended to remain in effect.

2.3 The contract is concluded by Romberg’s written order confirmation by. The order confirmation may - at the option of Romberg - be replaced by performance of the delivery or service or forwarding of the invoice.

2.4 Documents accompanying an offer submitted by Romberg, such as illustrations, drawings, weights and measurements, are only approximate, unless they are either explicitly identified as binding or the suitability of the subject matter of the delivery or service for the contractually intended purpose requires exact conformity. They do not represent guaranteed characteristics of state but rather descriptions or designations of the delivery or service. Deviations customary in trade and deviations due to legal requirements or representing technical improvements, as well as the replacement of components by equivalent parts, are permitted to the extent they do not impair the suitability for the contractually intended purpose.

## **3. Prices**

3.1 Prices are valid for the scope of delivery or service as set forth in the order confirmation. Additional and/or special services will be invoiced separately. The prices are indicated in EURO ex works plus statutory value added tax. Prices include packaging costs, unless otherwise agreed.

3.2 If the agreed prices are based on Romberg’s price list and if delivery shall be made later than four months after conclusion of the contract, the prices as per Romberg’s price list in force at the date of delivery shall apply (discounts the parties have agreed upon will remain unaffected and apply to the amended prices).

## **4. Delivery, Passing of risk**

4.1 Delivery is always made ex works or ex warehouse at the customer’s risk and expense even if carriage paid delivery is agreed. Risk passes to the customer upon transfer of the good to be delivered (for which purposes commencement of the loading process is decisive) to the carrier, freight forwarder or other third party hired for purposes of delivery. Both shipment method and route will be determined by Romberg to the extent not agreed in writing.

4.2 Deadlines and dates for deliveries and services quoted by Romberg are only approximate unless a fixed deadline or delivery date has been explicitly agreed in writing. To the extent shipment has been agreed, the delivery deadlines and dates relate to the time of transfer to the forwarder or carrier.

4.3 Romberg shall inform the customer immediately, and will give notice of a new delivery date, in the event a delivery deadline or date pursuant to Section 4.2. cannot be met on grounds for which Romberg is not responsible, e.g. force majeure, war, unrest, strike, lock-out, import or export barriers, seizure, embargo, shortages of energy and raw materials, disruptions in production or delivery on the part of a supplier of Romberg, or other unforeseeable impediments which cannot be overcome at reasonable expense. Both parties have the right to revoke the contract in the event of an impediment which is not of a temporary nature and is expected to last for more than four weeks. In such cases, any consideration already provided by the customer shall be refunded by Romberg without delay. In cases of temporary hindrance, the delivery or performance deadlines are extended or postponed by the period during which such hindrance persists plus a reasonable lead time. The customer has no right to assert damage claims against Romberg if delivery is wholly or partially impossible due to a default in delivery by a supplier of Romberg for which Romberg is not at fault. However, Romberg is obligated to assign any potential claims for damages against its supplier to the customer.

4.4 Partial deliveries are permitted if a partial delivery is suitable to use by the customer for the purpose intended by the contract, the delivery of the remainder is assured and the customer does not thereby incur significant additional expenditures or additional costs as a result (unless Romberg states that it will assume such expenses).

## **5. Payment, Set-off and Retention**

5.1 To the extent not otherwise agreed in writing, invoices from Romberg are due and payable within 30 days on a pure net basis. In the event of late payment, the customer is obligated to pay default interest in the amount of 8 percentage points p.a. above the respective base interest rate. If Romberg has accepted a cheque, it is deemed as fulfilment of the payment obligation when irrevocably credited to Romberg’s account.

5.2 All amounts owed fall immediately due and payable in the event of a significant deterioration in the customer’s financial situation, the cessation of payment, over-indebtedness, application for composition or insolvency proceedings with regard to the customer’s assets or the non-honouring of a cheque or bill of exchange. In the foregoing cases, Romberg is entitled to demand the provision of security or, if the customer finally refuses performance and/or provision of a security following demand, Romberg may revoke the contract or demand compensation for damages due to non-performance.

5.3 The customer may only set off counterclaims or retain payments due to such claims in the event such counterclaims on the part of the customer are undisputed or have been finally determined by a court.

## **6. Retention of title**

6.1 Romberg retains title to all goods delivered (goods subject to retained title) upon repayment of all claims to which Romberg is entitled based on the business relationship with the customer.

6.2 If the customer breaches the contract, in particular in the case of non-payment of the purchase price when due, Romberg may revoke the contract as permissible by law and demand surrender of goods subject to retained title. If the customer does not pay the purchase price when due, the foregoing rights may only be asserted if the customer has been given a reasonable grace period for payment or such a grace period is not required by law.

6.3 The return of goods subject to retained title or their attachment by Romberg does not represent revocation of the contract. The customer is required to bear transportation costs associated with the return of such goods. Romberg may resell goods subject to retained title which have been returned. The proceeds from realisation, less costs of sale, will be set off against outstanding amounts payable to Romberg.

6.4 The customer may sell goods subject to retained title in the ordinary course of business. The customer now assigns in advance all claims to which it becomes entitled by virtue of such sale (including VAT) as against buyers or other third parties to Romberg. Romberg hereby accepts such assignment. The customer is entitled to collect the assigned claims in its own name. This is without prejudice to Romberg’s right to collect the claims. However Romberg will not collect such claims as long as the customer timely complies with its payment obligations and is not in default of payment. If this should occur, Romberg may demand that the customer provide notice of the claims subject to assignment and their debtors, provide all information required for collection, submits all associated documents and informs the debtors (its customers or third parties) of the assignment, documentation of which must be provided to Romberg without delay.

6.5 Goods subject to retained title are processed or combined with other products on behalf of Romberg as manufacturer without giving rise to obligations on the part of Romberg. If goods subject to retained title are processed or inseparably combined or mixed with other goods not belonging to Romberg, Romberg acquires co-ownership of the new item created in the ratio of the value of the goods supplied under retention of title to the value of the other goods processed at the time of processing, combination or mixture. Co-ownership rights arising in this manner are deemed to be goods subject to retained title within the meaning of these terms and conditions. If the combination or mixing takes place in such a way that the customer’s new item is to be regarded as the main item, then it shall be deemed to have been agreed that the customer shall transfer co-ownership pro rata. Apart from that a new item resulting from processing, combination or mixture is subject to the provisions regarding retention of title. The customer is obligated to keep goods subject to retained title in custody for Romberg in the exercise of prudent business care and to insure such goods against theft, fire and water damage at its cost and expense. The customer hereby assigns any future claims it may have against the insurer and Romberg hereby accepts such assignment.

6.6 The customer may not pledge or assign by way of security any goods subject to retention of title until payment in full of obligations secured by such goods. If, in violation of this contract, possession of goods subject to retained title is transferred to a third party for purposes of security, the customer now assigns in advance its expectant right to such goods (Anwartschaftsrecht) and right of re-transfer (Rückübertragungsrecht) under this contract to Romberg. Romberg accepts such assignment. The customer must give Romberg immediate written notice in the event of attachment by a third party.

6.7 If the value of security provided pursuant to Section 6.1 exceeds the secured obligations by more than 110%, Romberg must, on request of the customer, release securities up to the coverage level of 110% of the secured obligations.

6.8 The customer requires the written consent of Romberg in order to assign its rights under a purchase agreement to a third party. The customer warrants that it has not already otherwise disposed of such rights.

## **7. Non-conforming Products**

7.1 Delivered goods must be inspected immediately upon delivery. They are deemed to have been approved if Romberg is not provided written notice of obvious defects, or of other defects subject to discovery upon an immediate, careful inspection, within seven business days of delivery and otherwise immediately upon discovery of any other defect.

7.2 Romberg must be provided access to goods which have been objected to. The customer is obligated to grant Romberg the opportunity to inspect the goods. Upon request of Romberg, the goods objected to must be returned to Romberg carriage free. In the case of justified complaints, Romberg will reimburse the least expensive means of shipment.

7.3 In the case of material defects, Romberg is entitled and obligated to attempt cure or replacement within a period to be set by Romberg. In the event an attempt at cure fails, i.e. in cases of impossibility, impracticality, refusal or delay in cure or replacement, the customer may, at its option, reduce the price to an appropriate degree or revoke the contract.

7.4 The warranty period runs for one year following delivery of the goods.

## **8. Liability**

8.1 To the extent Romberg is at fault, liability on the part of Romberg for damages, regardless of legal basis, in particular based on impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations associated with contract negotiations and tortious acts, is determined by the following provisions:

8.2 Romberg is not liable in cases of simple negligence of its executive bodies, legal representatives, employees or other vicarious agents, in cases of gross negligence of non-senior employees or other vicarious agents to the extent a breach of a material contractual obligation is not involved. Material obligations are the obligation to make timely and defect-free delivery and installation, as well as duties to advise, protect and care which shall enable the customer to use the subject of the contract in accordance with its terms or have the purpose of protecting life and limb of employees of the customer or third parties or protecting the property of the customer from significant damage.

8.3 To the extent Romberg is liable for damages as provided in Section 8.2., such liability is limited to damages which Romberg upon conclusion of the contract foresaw a potential consequence of a breach of contract, or, in consideration of the circumstances which Romberg knew or should have known, Romberg should have foreseen upon exercise of a reasonable degree of care. Furthermore, indirect damages or consequential damages resulting from a defect in the object delivered are only subject to compensation to the extent such damage may typically be expected upon the intended use of the object delivered.

8.4 The foregoing liability limitations and restrictions apply in the same way in favour of the executive bodies, legal representatives, employees or other vicarious agents of Romberg.

8.5 The restrictions set out in Section 8.1. to 8.4., above, do not apply in cases of liability based on wilful conduct, for guaranteed quality characteristics, for injury to life, limb or health or for liability based on the German Product Liability Act (Produkthaftungsgesetz).

## **9. Place of performance and Jurisdiction**

The place of performance for deliveries and payments is Hamburg. In the case of merchants, legal entities under public law, or public sector special funds, Hamburg is agreed as the place of jurisdiction for all disputes including summary proceedings on documentary evidence. At its option, Romberg may also file suit against the customer at the court of competent jurisdiction at the place of the customer’s registered office.

## **10. Applicable law**

The legal relationship between the customer and Romberg is exclusively governed by the laws of the Federal Republic of Germany. The terms of the United Nations Convention on the International Sale of Goods (CISG) do not apply.

## **11. Written form**

11.1 All additions or amendments to agreements reached between the parties, including these Standard Terms, must be in writing in order to be valid. This written form requirement may only be waived in writing. With the exception of managing directors and holders of commercial powers of attorney (Prokuristen), Romberg’s employees are not authorised to make oral agreements deviating from the foregoing.

11.2 Communication by fax or e-mail is sufficient to comply with the written form requirement.

Valid as of July 1st 2019. All prior terms of sale are hereby superseded.