

General Sale Terms & Conditions of RAY EGELHOF GmbH



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1. Scope

- 1.1. For the legal relationships between RAY EGELHOF GmbH (hereinafter: **RAY EGELHOF**) and entrepreneurs (§14 BGB) as well as legal entities under public law or a special fund under public law (hereinafter: **customer**) in connection with our deliveries and services (hereinafter: deliveries), these generalities apply exclusively. Terms and Conditions of Sale.
- 1.2. Deviating terms and conditions of purchase or business of the customer shall only become part of the contract if and to the extent that we have expressly agreed to their validity in writing. This consent requirement applies in any case, for example even if we carry out the delivery to the buyer without reservation in knowledge of the buyer's terms and conditions.
- 1.3. These terms and conditions of sale also apply to similar future deliveries and repairs, without us having to refer to them again in each individual case.

2. Contracts

- 2.1 In the absence of a special written agreement, a contract is only concluded with our written order confirmation or the delivery of the goods to the customer. Previously submitted offers from us are generally subject to change and non-binding. If the order represents an offer within the meaning of § 145 BGB, we are entitled to accept it within a period of two weeks.
- 2.2 All agreements made between us and the customer for the purpose of executing the contract are set out in writing in this contract, including these Terms and Conditions of Sale. The written contract fully reflects all agreements between the parties on the subject matter of the contract. Verbal promises of the seller before the conclusion of this contract are legally non-binding and verbal agreements of the parties are replaced by the written contract, this also applies to verbal ancillary agreements and any assurances on the part of our employees (such as sellers, fitters and service technicians).
- 2.3 Additions and changes to the agreements made must be made in text form.
- 2.4 Agreements on the quality, durability and availability of the delivery item shall only be regarded as a guarantee if they are expressly designated as such.
- 2.5 The information on the objects of the deliveries (e.g. weights, dimensions, tolerances, technical data, etc.) as well as representations of the same (e.g. drawings and

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illustrations) are only approximate, unless the usability for the contractually intended purpose requires an exact match; they are not guaranteed characteristics, but markings and descriptions of the deliveries. Customary deviations as well as the replacement of components by equivalent parts are permissible as long as they do not impair the usability for the contractually intended purpose.

3. Prices and terms of payment

- 3.1 In the absence of a special agreement, prices are ex works or warehouse including loading in the factory/warehouse, but excluding packaging, freight, postage, insurance, any packaging take-back and unloading. Value added tax at the respective statutory rate is added to the prices. It is also possible for us to invoice the value added tax at the respective statutory rate if the requirements of § 29 UstG for the assertion of compensation are not met.
- 3.2 The services not expressly estimated in our offer, which are necessary for the execution of the order or are carried out at the request of the customer, are calculated according to the specific wage and material costs. Their costs, as well as all necessary ancillary costs, in particular travel and transport costs as well as triggers, shall be borne by the customer, unless otherwise agreed. Surcharges for necessary overtime, night, Sunday and holiday work will be charged additionally. Fees and costs associated with the fulfilment of official requirements at the place of installation shall be borne by the customer. The same applies to the preparation of the prescribed approval documents and drawings. In addition, our general assembly conditions apply.
- 3.3 As far as the delivery of complete combustion plants including their assembly is concerned, the prices of the offer shall only apply when ordering the entire offered system under the condition of uninterrupted assembly and the immediately following commissioning.
- 3.4 In the absence of a special agreement, payment must be made within 30 days of the invoice date (due date) without any deduction to our account specified on the invoice. This also applies with regard to our delivery items if the customer is unable to provide parts and materials that he has to provide as agreed with them for the purpose of Mondays on the contractually agreed date and due to which the agreed assembly of the entire unit cannot be carried out by us.
- 3.5 Discount will only be granted if expressly agreed. A discount agreement shall lapse if the customer is in default of payment with previous invoices.

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- 3.6 Payment is valid upon receipt by us, in the case of cheques only after redemption. Bills of exchange will only be accepted in exceptional cases and with special prior agreement and only on account of payment. The costs and expenses incurred in discounting shall be borne by the customer.
- 3.7 customer; these are to be replaced by him immediately in cash. Bills of exchange will be accepted without guarantee for correct presentation and protest.
- 3.8 The customer shall be in default of payment by means of a reminder from us, which takes place after the due date has occurred. Even without a reminder, the customer shall be in default upon expiry of the above 30-day payment period. The purchase price shall bear interest during the delay at the applicable statutory default interest rate. We reserve the right to assert further damage caused by default. With regard to merchants, our claim to the commercial maturity interest (§ 353 HGB) remains unaffected.
- 3.9 The purchaser shall only be entitled to withhold payments or offset them against counterclaims to the extent that his counterclaims are undisputed or have been legally established or result from the same order under which the delivery in question is made. In the event of defects in the delivery, the counter-rights of the customer remain unaffected.
- 3.10 If, after conclusion of the contract, it becomes apparent that our claim to the purchaser's purchase price is jeopardised by the customer's inability to pay (e.g. by filing for the opening of insolvency proceedings), we shall be entitled to execute outstanding deliveries only against advance payment or security or in addition in accordance with the statutory provisions for refusal of performance and – if necessary after setting a deadline – entitled to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of unjustifiable items (custom-made products), we can declare withdrawal immediately; the statutory provisions on the dispensability of setting a deadline remain unaffected. The above also applies if bills of exchange or cheques are not credited on time by the recipient.

4. Deadline, impediments to delivery and delay

- 4.1 The delivery time results from the individual agreements of the contracting parties. However, it is only binding if this has been expressly agreed in writing between the parties. Their compliance by us presupposes that all commercial and technical questions between the contracting parties have been clarified and that the customer has fulfilled all obligations incumbent on him, such as the provision of the necessary official certificates or approvals, the payment of a down payment, the opening of a letter of credit or the

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provision by the customer of parts and materials to be provided. If this is not the case, the delivery time or the delivery date shall be extended according to the duration of the action(s) still to be fulfilled. This does not apply if we are responsible for the delay.

- 4.2 If we are unable to meet binding delivery deadlines for reasons for which we are not responsible, we will inform the customer of this immediately, stating the expected new delivery period. This applies in particular to the absence of our quantitatively and qualitatively correct and timely self-supply if we have concluded a congruent hedging transaction and neither we nor our supplier are at fault or we are not obliged to procure in individual cases. If the service is also not available within the new delivery period, we are entitled to withdraw from the contract in whole or in part. We will immediately reimburse any consideration already provided by the customer. If we are only partially supplied by our suppliers, we are entitled to withdraw only because of the undelivered part, unless a partial delivery is not reasonable for the customer. At the request of the customer, we shall assign our claims for damages against the supplier to the customer in such cases in the amount of the damage incurred by him.
- 4.3 If the non-compliance with the delivery time is due to force majeure or other events unforeseeable at the time of conclusion of the contract for which we are not responsible, the delivery time shall be extended according to the duration of the hindrance plus a reasonable start-up period. This also applies if our upstream suppliers are affected accordingly. We will inform the customer of the beginning and end of such circumstances as soon as possible. If the aforementioned circumstances last longer than 6 months from the agreed delivery date or if the delivery becomes impossible or unreasonable for us due to the aforementioned circumstances, we are free to withdraw from the contract without any claims being asserted against us; excluded from this is the repayment of any down payments already made, which are no longer matched by an appropriate consideration as a result of the withdrawal. Insofar as the customer cannot reasonably be expected to accept the delivery as a result of the delay, he may withdraw from the contract by means of an immediate written declaration to us. An event such as a pandemic is unpredictable even if the resulting disabilities have been temporarily overcome but recur.
- 4.4 Force majeure means in particular (i) war (declared or not declared), hostilities, attack, actions of foreign enemies, extensive military mobilization, riots; (ii) civil war, riot, rebellion and revolution, military or other seizure of power, coup, insurrection, acts of terrorism, sabotage or piracy; (iii) currency and trade restrictions, embargo, sanctions; (iv) lawful or unlawful acts of office, compliance with laws or government orders, expropriation, confiscation of works, requisition, nationalization; (v) plague, epidemic, pandemic,

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natural disaster or extreme natural event; (vi) explosion, fire, severe weather, destruction of equipment, prolonged failure of means of transport, telecommunications, information systems or energy; (vii) general labour unrest such as boycott, strike and lockout, strolling strike, occupation of factories and buildings; (viii) lack of work and raw materials, lack of port and unloading capacity, serious transport accidents and other reasons beyond the control of a contractual partner.

- 4.5 The occurrence of our default is determined in accordance with the statutory provisions. In any case, however, a reminder by the customer is required. As a rule, their deadline is unreasonable if it is shorter than 4 weeks.
- 4.6 We are entitled to make partial deliveries if this can be used by the customer within the scope of the contractual purpose, the delivery of the remaining ordered goods is ensured and the customer does not incur any significant additional expenses or additional costs as a result, unless we agree to bear these costs. Such permissible partial deliveries may be invoiced by us immediately.
- 4.7 Our rights according to para. 9 of these GTC and our statutory rights, in particular in the event of an exclusion of the obligation to perform, remain unaffected.9
- 4.8 If parts and materials to be provided by the customer are delivered to us before the contractually agreed date for this purpose and if we cannot assemble the parts and materials provided with our own delivery item at this time without disadvantages for our own operating procedures, we shall be deemed authorized by the customer to provide the parts and materials provided at risk and at the expense of the customer, i.e. against a usual storage fee, to be stored until the contractually agreed date of provision. Insofar as the customer requests this in writing, the parts and materials provided shall be re- turned to the customer at his risk and expense for the time being.

5. Place of performance, transfer of risk, acceptance, default of acceptance

- 5.1 Unless otherwise agreed in writing, the place of performance for all obligations arising from the contractual relationship is our registered office in Waiblingen-Neustadt. At the request and expense of the customer, the goods will be shipped to another destination. Unless otherwise agreed, we are entitled to determine the type of shipment, in particular the transport route, shipping company and packaging. We are entitled, but not obliged, to insure deliveries in the name and for the account of the customer.
- 5.2 The transfer of the risk of accidental loss and accidental deterioration of the goods shall be governed by the statutory provisions.

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5.3 If the customer is in default of acceptance, if an obligation incumbent on him (e.g. act of cooperation) is omitted, if dispatch or acceptance is delayed or omitted as a result of other circumstances for which the customer is responsible, we are entitled to demand compensation for the resulting damage, including additional expenses (e.g. storage costs).

6. Ownership

6.1 We retain title to the delivery item until all claims to which we are entitled against the customer from the business relationship have been fulfilled. Further security agreements can be made.

6.2 If the value of all security interests to which we are entitled exceeds the amount of all secured claims by more than 10%, we shall release a corresponding part of the security rights at the request of the customer; we are entitled to choose between different security interests when releasing them.

6.3 The customer shall store the reserved goods for us free of charge. He must treat them with care and insure them sufficiently at replacement value at his own expense, in particular against breakage, theft, fire and water damage. At our request, proof of insurance must be provided to us. The customer hereby irrevocably assigns the claims to which he is entitled against his insurance company in the event of a case of damage, insofar as they relate to our property or co-ownership. If maintenance and inspection work becomes necessary, the customer must carry it out in good time at his own expense.

6.4 The customer is only entitled to resell, process and process our goods within the framework of proper management.

6.5 In the event of the resale of the reserved goods or the new product before full payment has been settled, the customer hereby assigns to us his purchase price claims in the amount of our claim. In this case, the selling price takes the place of the goods. Insofar as we have not reserved the right to collect the assigned claim ourselves or as long as we do not give the customer any other instructions, he is entitled to collect it in trust for us. He must keep the payments received separately and forward them to us immediately until our claim has been settled. If the payment of the third party is made by bank transfer to the bank of the customer, he hereby irrevocably assigns to us the claim to which he is entitled against his financial institution. Furthermore, the customer is obliged to name the third-party debtors to us on request and to notify them of the assignment.

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- 6.6 If the reserved goods are processed by the customer, it is agreed that the processing takes place in our name and for our account as the manufacturer and that we directly acquire ownership or – if the processing is made of materials from several owners or the value of the processed item is higher than the value of the reserved goods – the co-ownership (fractional ownership) of the newly created item in the ratio of the value of the reserved goods to the value of the newly created item. If the reserved goods are combined or inseparably mixed with other items to form a uniform item and if one of the other items is to be seen as the main item, the customer shall, insofar as the main item belongs to him, transfer to us proportionate co-ownership of the uniform item in the ratio mentioned in sentence 1.
- 6.7 The customer may neither pledge the delivery item nor assign it as security until full payment of the purchase price. In the event of seizure as well as confiscation or other dispositions by third parties or if an application for the opening of insolvency proceedings has been filed against the assets of the customer, he must notify us immediately in writing. Should the customer assign his claims to a third party in principle, this assignment – which the customer hereby irrevocably agrees – shall in no case extend to the claims assigned or assigned to us in accordance with the foregoing.
- 6.8 The right of the customer to resell and process the reserved goods as well as to collect the claims assigned to us expires with the cessation of payment, the application for or opening of insolvency proceedings, a protest by cheque or bill of exchange, a seizure or an unsuccessful attempt at enforcement by the buyer. Payments received by the customer thereafter for claims assigned to us must be accumulated immediately on a special account.

7. Warranty

- 7.1 For the rights of the customer in the event of material defects and defects of title of the delivery (including incorrect and short delivery as well as improper assembly or defective assembly instructions), the statutory provisions shall apply, unless otherwise specified below. In all cases, the statutory special provisions remain unaffected in the event of final delivery of the unprocessed goods to a consumer, even if the latter has further processed them (supplier recourse in accordance with §§ 445a, 445b, 478 BGB). Claims arising from supplier recourse are otherwise excluded if the defective goods have been further processed by the customer or another entrepreneur, e.g. by installation in another product.

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- 7.2 The delivered items must be carefully inspected immediately after delivery to the customer or to the third party designated by him. In the case of goods intended for incorporation or other further processing, an examination must in any case be carried out immediately before processing. The delivery items shall be deemed to have been approved by the customer with regard to obvious defects or other defects that would have been recognizable during an immediate, careful examination, unless we immediately receive a written notice of defects. With regard to other defects, the delivery items shall be deemed to have been approved by the customer if we do not receive the written notice of defects immediately after its discovery. Notices of defects to carriers or other third parties have no legal effect on us. At our request, a rejected delivery item must be returned to us carriage paid. In the event of a justified notification of defects, we shall reimburse the costs of the cheapest shipping route; this does not apply if the costs increase because the delivery item is located at a location other than the place of intended use.
- 7.3 If the delivered item is defective, we can initially choose within a reasonable period of time whether we provide supplementary performance by remedying the defect (rectification) or by delivering a defect-free item (replacement delivery). Replaced parts shall become our property and shall be returned to us by the purchaser in accordance with the statutory provisions. Our right to refuse supplementary performance under the statutory conditions remains unaffected. In addition, we have the right to carry out a new supplementary performance in the event of failure of an attempt at subsequent performance, again at our own discretion, unless otherwise results in particular from the nature of the item or the defect or from other circumstances. Only if the repeated supplementary performance has failed, the customer is entitled to withdraw from the contract or to reduce the purchase price.
- 7.4 In the event of defects in parts of other manufacturers that we cannot remedy for licensing or factual reasons, we shall, at our discretion, assert our warranty claims against the manufacturers and suppliers for the account of the customer or assign them to the customer. Warranty claims against us shall only exist in the event of such defects under the other conditions and in accordance with these General Terms and Conditions of Delivery if the judicial enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or, e.g. due to insolvency, is hopeless. During the duration of the legal dispute, the statute of limitations of the relevant warranty claims of the customer against us is suspended.

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- 7.5 If the customer changes the delivery item without our consent or has it changed by third parties and the removal of defects is thereby impossible or unreasonably difficult, the warranty shall lapse to the extent of the changes. In any case, in the case of a justified request to remedy the defect, the customer shall bear the additional costs of remedying the defect resulting from the change.
- 7.6 We are entitled to make the subsequent performance owed dependent on the purchaser paying the purchase price due. However, the customer is entitled to retain a part of the rice that is appropriate in relation to the defect.
- 7.7 In order to carry out the supplementary performance owed by us, the customer must grant us the necessary time and opportunity, in particular to surrender the object complained of for inspection purposes. Our right to remedy the defect at the place of use of the customer remains unaffected by this. Only in urgent cases of endangerment of operational safety or to avert disproportionately large damages does the customer have the right to have the defect remedied himself or by third parties and to demand reimbursement of the necessary expenses from us. The customer shall inform us immediately in writing, explaining the special circumstances from which the right of self-performance arises, about the expected cost framework. The right of self-performance does not exist if we would be entitled to refuse a corresponding supplementary performance in accordance with the statutory provisions.
- 7.8 The direct costs incurred for the purpose of inspection and repair or replacement delivery shall be borne by us in accordance with the statutory provisions, insofar as the complaint proves to be justified. Otherwise, we may demand reimbursement from the customer for the costs incurred as a result of the unjustified request to remedy the defect (in particular inspection and transport costs), unless the lack of defectiveness was not recognizable to him.

8. Industrial property rights, copyrights

- 8.1 In the event that the delivery item infringes an industrial property right or copyright of a third party, we shall, at our discretion and at our expense, modify the delivery item in such a way that no rights of third parties are violated, but the delivery item continues to fulfil the contractually agreed functions, or provide the customer with the right of use by concluding a license agreement with the third party. In all other respects, the statutory provisions shall apply.

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8.2 Claims of the customer are excluded if he is responsible for the infringement of property rights. Claims of the customer are also excluded if the infringement of property rights is caused by special specifications (such as technical drawings, drafts, formulas or other information) of the customer, by an application not foreseeable for us or by the fact that the delivery is changed by the customer or used together with products not delivered by the supplier.

9. Liability

9.1 Our liability for damages, regardless of the legal grounds, in particular from impossibility, delay, defective or incorrect delivery, breach of obligations arising from the contractual relationship, violation of obligations in contract negotiations and tort, is, insofar as it depends on a fault in each case, in accordance with this para. 9.

9.2 We are not liable in the event of simple negligence, unless it is a breach of essential contractual obligations or damages resulting from injury to life, limb or health. Essential to the contract are the obligations whose fulfilment makes the proper execution of the contract possible in the first place and on the observance of which the contractual partner regularly relies and may rely. In this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage. Liability under the Product Liability Act remains unaffected by this section.

9.3 Indirect damages and consequential damages resulting from defects in the delivery item are only compensable if such damages are typically to be expected when the delivery item is used as intended.

9.4 The above exclusions and limitations of liability apply to the same extent in favour of our organs, legal representatives, employees and other vicarious agents.

9.5 Insofar as we provide technical information or act in an advisory capacity and this information or advice does not belong to the contractually agreed scope of services owed by us, this is done free of charge, without obligation and to the exclusion of any liability.

10. Prescription

10.1 Notwithstanding § 438 Abs. 1 Nr. 3 BGB (German Civil Code), the general limitation period for claims arising from material defects and defects of title is one year from delivery. Insofar as acceptance has been agreed, the limitation period begins with acceptance. This period does not apply to claims for damages of the customer from injury to life, limb or health or from our intentional or grossly negligent breaches of duty or our

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vicarious agents, which in each case become statute-barred in accordance with the statutory provisions.

10.2 The statutory limitation period for building materials (§ 438 para. 1 no. 2 BGB), as well as other statutory special regulations on the statute of limitations (in particular § 438 para. 1 no. 1, para. 3, §§ 444, 445b BGB) remain unaffected.

10.3 The above limitation periods of the sales law also apply to contractual and non-contractual claims for damages of the customer based on a defect in the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases.

11. Secrecy

11.1 We reserve the ownership or copyright to all offers and cost estimates submitted by us as well as to the documents and aids made available to the customer (e.g. drawings, calculations, model tools). The customer may not make these accessible, use or reproduce them to third parties as such or in terms of content without our express consent. They must be returned at our request and any copies made must be destroyed if they are no longer needed in the ordinary course of business or if the negotiations do not lead to the conclusion of a contract. Excluded from this is the storage of electronically provided data for the purpose of usual data backup.

11.2 The above shall apply mutatis mutandis to documents of the Purchaser; however, these may be made accessible to third parties to whom we have legitimately transferred deliveries.

12. Transferability of rights

With the exception of the assignment of pecuniary claims, the customer may only transfer his rights under the contract in whole or in part to third parties with our prior written consent.

13. Final provisions

13.1 Unless otherwise agreed, the law of the Federal Republic of Germany shall apply exclusively to disputes between us and the customer in connection with these Terms and Conditions of Sale and agreements concluded under their inclusion.

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13.2 If the customer is a merchant, a legal entity under public law or a special fund under public law, the agreed place of jurisdiction for all disputes arising directly or indirectly from or in connection with the contractual relationship shall be our registered office in Waiblingen-Neustadt. However, in all cases we are also entitled to bring an action at the place of performance of the delivery obligation in accordance with these General Terms and Conditions of Purchase or a priority individual agreement or at the registered office of the supplier or before other competent courts. Mandatory statutory provisions, in particular on exclusive responsibilities, remain unaffected.

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