

# GENERAL TERMS AND CONDITIONS

of

**rewaco Spezialfahrzeuge GmbH**

Schlosserstraße 24  
D-51789 Lindlar

- hereinafter called: „**rewaco**“ -

## 1. Scope

- 1.1 The present General Terms and Conditions (AGB) shall apply to all business relationships between **rewaco** and its clients (hereinafter called: „purchaser“). These General Terms and Conditions only apply insofar as the purchaser is an entrepreneur/contractor (§ 14 of the German Civil Code BGB), legal entity under public law or of special fund under public law.
- 1.2 The General Terms and Conditions shall apply in particular with respect to contracts for the sale and/or delivery/supply of goods (hereafter referred to as „ products), irrespective of whether the products are manufactured by **rewaco** itself or purchased from external suppliers (§§ 433, 651 German Civil Code BGB). The General Terms and Conditions shall also apply in their respective version as framework agreement for future contracts concerning the sale and/or supply of goods with the same purchaser without **rewaco** having to refer to these again in each individual case. **Rewaco** will inform the purchaser without delay about any important changes to these Terms and Conditions.
- 1.3 **rewaco's** General Terms and Conditions are exclusively applicable. Conflicting, divergent or supplementary general terms of the purchaser shall only become part of the contract in so far as **rewaco** has given its express written consent to their application. This approval requirement shall apply in any case, for example also if, having knowledge of the purchaser's General Terms and Conditions, **rewaco** carries out the delivery to him without reservation.
- 1.4 Individual agreements reached in an individual case with the purchaser (including collateral agreements, supplements and amendments) shall in all cases have precedence over these General Terms and Conditions. A written contract or a written confirmation by **rewaco** shall be decisive for the contents of such agreements. .
- 1.5 Legally relevant declarations and notifications, which are to be submitted towards **rewaco** by the purchaser after conclusion of the contract (e.g. setting of deadlines, notifications of defects, declarations of withdrawals or losses) require the written form in order to be valid. § 127 subsection 2 German Civil Code does not apply.
- 1.6 References to the validity of statutory regulations shall only have clarifying significance. Therefore, the statutory regulations shall also apply without such a clarification insofar as they are not directly changed or are explicitly excluded in these General Terms and Conditions.

## 2. Offer, order confirmation

- 2.1 The offers from **rewaco** are without obligation and non-binding. This shall also apply if **rewaco** has handed over catalogues, technical documentation (e.g. drawings, plans, computations, calculations, references to DIN standards), other product descriptions or documents – including in an electronic form- to the purchaser.
- 2.2 The purchase order by the purchaser constitutes a binding contractual offer. Insofar as not otherwise derived from the order, **rewaco** is entitled to accept this contractual offer within four (4) weeks after its receipt by **rewaco**.
- 2.3 The acceptance can either be declared in writing (e.g. by order confirmation) or by delivery of the goods to the purchaser.

## 3. Price

- 3.1 Insofar as not otherwise agreed in an individual case the actual prices of **rewaco** at the time of conclusion of the contract apply. Prices shall apply ex warehouse/stock plus the applicable statutory value added tax.
- 3.2 If the goods are shipped at the request of the purchaser (§ 5 subsection1), the purchaser will pay for the cost of carriage ex stock as well as the cost of insurance if requested by the buyer. If **rewaco** does not charge the actual transport costs incurred in individual cases, a flat rate transport fee (excluding transport insurance) of 450.00 EUR will be applicable as agreed. The purchaser will pay any duties, fees, taxes and other public charges. Transport packaging and any other packaging in accordance with the German Packaging Ordinance is non-returnable and becomes the purchaser's property.

## 4. Payment/ Due date / Default (delay)

- 4.1 In the absence of any other agreement (e.g. financing agreement) the purchase price and prices for additional services are due for payment without any deduction, as soon as the object of purchase is handed over and the invoice is received. **rewaco** is entitled to require a deposit of 25% of the purchase price. The deposit is due and to be paid within 14 days from invoicing.
- 4.2 The purchaser defaults upon the expiry of the above mentioned deadlines for payment or deadlines for payment agreed upon separately. In case of default the purchase price an interest rate is charged at the current statutory rate of default interest. **rewaco** reserves its right to claim further default damages. With regard to registered traders **rewaco's** claim for statutory interest after expiry of the payment term (§ 353 HGB, German Commercial Code) remains unaffected.
- 4.3 The purchaser is only entitled to set-off rights and rights of retention if his counterclaims have been established as final and absolute or undisputed. In the case of defaults of the delivery the purchaser's opposing rights remain unaffected in particular according to section 8.7 clause 2 of these General Terms and Conditions.

- 4.4 If, after the contract has been concluded, it becomes apparent that **rewaco's** entitlement to the purchase price is at risk as a result of insufficient financial status of the purchaser (e.g. as a result of an application to open insolvency proceedings) **rewaco** will be entitled to withdraw from the contract and- if applicable after setting a deadline- to cancel the contract (§ 321 BGB, German Civil Code). In the case of contracts concerning the production of specific items (individual productions) **rewaco** can withdraw immediately, without any deadline; this shall not affect the legal provisions concerning the dispensability of setting a deadline.
- 4.5 If partial payments are agreed upon and the purchaser is a legal body or if, under the terms of the agreement, the credit is intended for a business already being carried out by the purchaser, the entire residual debt will be due – irrespective of the expiration date of any incoming trade bills - including the agreed accrued interest until the due date, if the purchaser falls into arrears, partly or completely and with at least 10% at three-year credit agreement and for 5% of the price to be paid. The entire residual debt will also be due if the purchaser generally ceases payment or if insolvency proceedings for his assets are initiated. If **rewaco** claims settlement of the residual debt, this debt will be reduced by the interest and other term related costs of instalments, which are cancelled. If **rewaco** claims payment of the residual debt, this will be reduced by the interest and other term related costs of the instalments, related to the period after the due date of the residual debt.

Instead of claiming the residual debt, **rewaco** will be entitled to give the purchaser a two-week period to pay the outstanding balance with the declaration that in the case of non-payment within the period the fulfilment of the contract will be rejected.

After unsuccessful expiry of the grace period **rewaco** will be entitled to demand fulfilment or to withdraw from the contract by written declaration, or else to claim damages for non-fulfilment.

- 4.6 Payment orders, cheques and bills of exchange are only accepted upon special agreement and only in lieu of payment by charging for all collection and discount fees.

## **5. Delivery, risk transfer, delivery periods, delayed delivery**

- 5.1 Delivery is ex stock which is also the place of performance. At the purchaser's request and expense the goods can be sent to another destination (sales by delivery to a place other than the place of performance). Provided nothing else has been agreed upon, **rewaco** is entitled to determine the method of dispatch/shipment (in particular the transport company/carrier and the transport route). Only packed goods will be shipped. The purchaser bears the costs of packaging. Only at the purchaser's express wish goods will be sent without packaging
- 5.2 The risk of accidental loss, destruction or accidental deterioration shall pass to the purchaser with the handing over of the object of delivery at the latest. In the case of sales by delivery to a place other than the place of performance the risk of loss, destruction or deterioration of the goods, as well as the risk of delay passes already with the delivery of the goods to the carrier, the freight forwarder or any third party in charge of carrying out the shipment. If acceptance has been agreed this will apply to the transfer of risk. In other respects the statutory provisions according to the law governing the sale of goods or services also apply if acceptance is agreed. Delivery respectively acceptance is seen as equivalent if the purchaser is in default of acceptance.

- 5.3 If the purchaser is in default of acceptance, fails to perform an act of cooperation or if **rewaco's** delivery is delayed for any other reason, for which the purchaser is responsible, then **rewaco** will be entitled to demand compensation for any loss thereby incurred including any additional expenses (e.g. storage costs). For this purpose **rewaco** will charge a lump sum compensation amounting to 10.00 EUR per calendar day, commencing with the delivery deadline or – in the absence of a delivery deadline- with the notification that the goods are ready for dispatch.
- 5.4 In case of unauthorised cancellation of the contract by the purchaser, **rewaco** will be entitled to claim 20% of the gross order value as flat compensation charge (compensation instead of performance). The proof of higher damages as well as statutory claims (in particular reimbursement of additional expenses, reasonable compensation, termination/cancelling) remains unaffected; the flat rate is to be offset against further monetary claims. It shall be up to the purchaser to prove that **rewaco** did not incur damages at all or that such damage was substantially lower than the amount claimed.
- 5.5 The delivery period is individually agreed upon or specified by **rewaco** upon acceptance of the order. Should this not be the case, then the delivery period will be about 8 weeks from conclusion of the contract. If not all issues relating to the execution of the contract have been clarified by then the delivery date will be postponed until final clarification.
- 5.6 Insofar as **rewaco** cannot meet binding delivery deadlines for reasons which are beyond the control of **rewaco** (non-availability of the service), **rewaco** will immediately inform the purchaser and at the same time inform of the new expected delivery deadline. If the service is not available in the new delivery period either, **rewaco** will be entitled to withdraw from the contract in whole or in part; any advanced payments made by the purchaser will be reimbursed by **rewaco**. A case of non-availability of the service in this sense is, in particular, the not punctual delivery by suppliers/subcontractors from **rewaco**, if **rewaco** has concluded a congruent covering transaction, if neither **rewaco** nor its supplier are to blame or if **rewaco** is not required to determine procurement in individual cases.
- 5.7 A delivery delay of **rewaco** shall be subject to the statutory provisions. In any case, a reminder by the purchaser is required.
- 5.8 The rights of the purchaser subject to sections 8 and 9 of these General Terms and Conditions and **rewaco's** statutory rights remain unaffected in particular upon exclusion of the obligation to perform (e.g. impossibility or unreasonableness of the performance and/or supplementary performance).

## 6. Acceptance

- 6.1 The purchaser is obliged to accept the object of purchase within a period of 14 days from receipt of the delivery notification.
- 6.2 In the case of not accepting **rewaco** is entitled to make use of its legal rights. Should **rewaco** demand compensation, this amount will be 25% of the purchase price. Compensation will be valued higher or lower if the seller proves a higher damage or the purchaser proves a lower damage or the absence of damage.

## 7. Reservation of title

- 7.1 **rewaco** shall retain the ownership of the delivered goods until all claims resulting from the business relationship, with respect to the purchaser, including claims arising in future –even from contracts concluded at the same time or at a later date- are settled. This also applies if claims are added to a current account and the balance is drawn and recognized.
- 7.2 The purchaser is entitled to sell or process the goods in the proper course of business. In that case the purchaser assigns to **rewaco** all claims arising from the resale to customers or third parties. Even after the assignment the purchaser will still be entitled to collect all these claims. **rewaco's** authorisation to collect the debt itself remains unaffected by this; however, **rewaco** will not exercise this right as long as the purchaser duly complies with its financial and other obligations. Upon request, the purchaser needs to inform **rewaco** of the ceded rights and the respective debtors, supply all information and relevant documents necessary to assert **rewaco's** rights and inform the debtors of the assignment.
- 7.3 In the event the purchaser acts contrary to the contract, in particular late payment, **rewaco** will be entitled to take back the delivered goods at any time. The taking back or seizure of the goods by **rewaco** will only lead to withdrawal from the contract, if this is required by law or with **rewaco's** express written consent. For the purpose of the retrieval of goods the purchaser will grant **rewaco** the irrevocable right to enter its premises and storage rooms unhindered and remove the goods.
- 7.4 Insofar and as long as the retention of title exists, the purchaser is not entitled to pledge goods or other objects manufactured with these goods, nor offer them as security without **rewaco's** permission. Financing agreements (e.g. leasing) involving the transfer of ownership of **rewaco's** retention rights require **rewaco's** prior written consent unless the party providing the financing is obliged under the agreement to pay the portion of the purchase price directly to **rewaco**.
- 7.5 In the case of court seizures or other third-party claims, the purchaser shall notify **rewaco** immediately in writing. The purchaser may not make any agreements with his customers which could infringe **rewaco's** rights.
- 7.6 Should the value of the existing securities provided, exceed the claims to be secured by more than 20%, **rewaco** will release guarantees to this extent, at the purchaser's request.
- 7.7 If **rewaco** takes back the purchased item, **rewaco** and the purchaser will agree on **rewaco** remunerating the usual purchase value of the purchased item at the moment of withdrawal. On the purchaser's request, which can only be expressed immediately after withdrawal of the purchased item, a publicly certified and sworn expert to the purchaser's choice, e.g. *die Deutsche Automobil Treuhand GmbH (DAT)*, will determine the generally accepted market value.
- 7.8 The purchaser is liable for all costs of seizure and exploitation of the subject of purchase. The costs of disposal are 5% of the resale value without provision of evidence and can be higher or lower if **rewaco** proves higher or lower costs.

- 7.9 In case a comprehensive insurance has been agreed upon, this will be immediately contracted by the purchaser with an appropriate liability for the duration of the retention of title and the provision that **rewaco** will be entitled to the rights resulting from the insurance contract. The purchaser authorizes **rewaco** to apply for its own insurance certificate for the comprehensive vehicle insurance as well as for information regarding the aforementioned insurance relationship. If, despite **rewaco's** written notice, the purchaser does not meet his obligations, **rewaco** is entitled to contract a comprehensive insurance at the purchaser's expense, disburse the insurance premiums and enforce them as parts of the claim arising from the contract.
- 7.10 During the retention of the property, the purchaser has the obligation to keep the purchased object in proper conditions and to have all maintenance work scheduled by the manufacturer/ importer as well as necessary repairs- barring emergencies- carried out immediately by **rewaco** or a workshop approved by the manufacturer/importer for the care of the purchased item.

## 8. Guarantee

- 8.1 The statutory regulations shall apply to the rights of the purchaser in case of defects of quality and title (including wrong delivery and shortfall in delivery as well as improper assembly or faulty assembly instructions) unless agreed otherwise in the following. Special legal provisions remain unaffected in case of final delivery of the good to a consumer. (Supplier recourse §§ 478, 479 BGB, German Civil Code).
- 8.2 **Rewaco's** liability for defects is first and foremost based on the established agreement about the nature of the goods. All product descriptions serve as an agreement about the quality structure of the products which are the object of the individual contracts. Declarations by **rewaco** concerning the quality of the goods will only constitute a guarantee in case of doubt if they have been explicitly stated as such by **rewaco**.
- 8.3 In the absence of any agreement upon product quality, the existence of defects shall be determined in accordance with the statutory provisions (§ 434 subsection.1 s 2 and 3 BGB, German Civil Code). **Rewaco** does not assume any liability for public statements of third parties (e.g. adverts). The customer cannot derive any further rights from material defects, which do not or do not significantly affect the value and suitability of the goods for the use as intended by **rewaco**.
- 8.4 The purchaser's claims for defects expect the purchaser to have met his legal duty to examine the goods and give notice of any defects (§§ 377, 381 HGB, German Commercial Code). Should a defect be revealed during inspection or subsequently, this is immediately to be reported in writing to **rewaco**. The notification is considered to be immediately if it takes place within two weeks, the dispatch of the notification in due time will be sufficient for keeping the term. Irrespective of this obligation for inspection and reporting of complaints the purchaser must report obvious defects in writing (including wrong delivery or short delivery) within two weeks from delivery whereby the timely dispatch of the notification will also be considered sufficient in order to be valid. Should the purchaser fail to carry out the proper inspection and/or the notification of defects, **rewaco's** liability for the not notified defects will be excluded.
- 8.5 The purchaser can claim supplementary performance from **rewaco** or other companies authorised by the manufacturer with regard to servicing of the goods, wherever the place of performance of the supplementary performance might be; in the latter **rewaco** shall be informed immediately by the purchaser in writing.

- 8.6 Should the delivered item be defective, **rewaco** will be entitled to choose whether to repair or replace the defective goods or services (rectification or replacement delivery). **Rewaco's** right to refuse supplementary performance within the provisions of the law remains unaffected.
- 8.7 **rewaco** is entitled to make the supplementary performance dependent upon the payment of the due purchase price by the purchaser. However, the purchaser is entitled to withhold an appropriate proportion of the purchase price in relation to the defect.
- 8.8 The purchaser is obliged to grant **rewaco** the time and occasion for the supplementary performance as required, and in particular to hand over the goods which are object of complaint for inspection. In case of a replacement, the purchaser shall be obliged to return the defective item to **rewaco** in accordance with regulations.
- 8.9 The expenses which are necessary for the purpose of inspection and subsequent performance, in particular transport, route, work and material costs will be taken by **rewaco** if there indeed is such a defect. Should however a demand for removal of defects by the purchaser prove to be unjustified, **rewaco** will be entitled to claim the resulting costs from the purchaser.
- 8.10 Should the purchased object have a defect covered by a warranty, the purchaser will have to contact the nearest service provider authorised by the manufacturer or importer for the service of the purchased item. This company will decide if the required service will be carried out on the spot or in its workshop. In the latter case he will provide free towing of the purchased item.
- 8.11 If the subsequent performance has failed or a reasonable deadline, which is to be set by the purchaser, for the supplementary performance has expired unsuccessfully, or if it is dispensable according to the statutory regulations, the purchaser is entitled to cancel the purchase contract or to reduce the purchase price. However, in case of an insignificant defect there will be no right of withdrawal.
- 8.12 If **rewaco's** operating and maintenance instructions are not adhered to, components are replaced or consumables/materials used which do not comply with the original specifications, or if products are modified by unqualified staff, **rewaco's** liability for defective products will be cancelled insofar this is the cause of a defect. In case of a defect and should one of the aforementioned be the case, the customer will have to prove that the defect has not been caused by one of the earlier mentioned conditions.
- 8.13 Claims by the purchaser for compensation for damages or reimbursement of futile expenses shall only exist subject to the provisions of point 9 and shall otherwise be excluded.

## 9. Other liability

- 9.1 Insofar as not otherwise derived from these General Terms and Conditions including the following provisions, **rewaco** shall be liable according to the relevant statutory regulations in case of a breach of contractual and non-contractual duties.
- 9.2 **rewaco** is liable for damage compensation- irrespective of their legal grounds – in cases of intent or gross negligence. In case of simple negligence **rewaco** is only liable
- a) for damages resulting from the destruction of life, personal injury or health damages;
  - b) for damages arising from the breach of an important contractual obligation; however, in this case **rewaco's** liability is limited to compensation for the typically foreseeable resulting damage. In this respect an essential contractual obligation is any obligation which ensures the due performance of this agreement and which the contractual partner may typically expect to be met. This liability, however, is limited to the typical foreseeable damage upon conclusion of the contract.
- 9.3 Further contractual and tort claims by the customer are excluded. **rewaco** is specifically not liable for damages not incurred to the delivered good itself, neither for loss of profits or other financial losses incurred by the customer.
- 9.4 The liability limitations as referred to in paragraphs 2 to 3 do not apply if **rewaco** has maliciously concealed a deficiency or assumed a guarantee for the condition of the good. The same is applicable to claims according to product liability law of the ordering party/customer.
- 9.5 The purchaser may only rescind or cancel the contract on the ground of breach of duty, which is not based on a defect of the goods, if **rewaco** can be held responsible for that breach of duty. A free right to cancel for the purchaser (in particular according to §§ 651, 649 BGB, German Civil Code) shall be excluded. As for the rest, the statutory provisions and legal consequences are applicable.
- 9.6 Should **rewaco's** liability be excluded or limited, the same will also apply to the personal liability of **rewaco's** employees, workforce, staff members, representatives and agents.

## 10. Prescription

- 10.1 Deviating from § 438 Section 1 No 3 BGB the general period of limitation for claims arising from material defects and defects of title shall be 1 year after delivery or in case of an agreement with purchase on delivery. The shortening of the limitation period shall not apply to liability for damages arising from injury to life, limb or health based on a breach of duty in negligence within the responsibility on the part of **rewaco** or due to a deliberate or grossly negligent breach of obligation of one of the legal representatives or vicarious agent of **rewaco**. For damages, based on a grossly negligent breach of duty on the part of **rewaco** or their legal representatives or vicarious agents the differing limitation period is also not applicable.
- 10.2 The limitation periods as mentioned under the law governing the sale of goods or services shall apply to compensation claims by the purchaser resulting from contract as well as non-contractual claims, based on a defect in the goods, unless application of the regular statutory limitation period (§§ 195, 199 BGB, German Civil

Code) would, in individual cases, lead to a shorter limitation period. Limitation periods resulting from the product liability law remain unaffected. Otherwise, according to point 8, only legal limitation periods will apply to compensation claims by the purchaser.

## 11. Property rights, confidentiality

- 11.1 On placing the order, the purchaser is obligated to check voluntarily any possible infringement of industrial property rights, based on the specifications he provides and, should the situation arise, draw **rewaco's** attention to the fact that the order involves parts effectively protected by industrial property rights. The purchaser will accept any liability for claims which could be asserted by a beneficiary against **rewaco** through execution
- 11.2 **rewaco's** trade secrets as well as all confidential information about **rewaco** is to be treated with the utmost confidentiality and may not be made accessible to third parties without express notice by **rewaco**, unless the purchaser proves that he is entitled to use trade secrets and confidential information.

## 12. Miscellaneous

- 12.1 Transferences of the purchaser's rights and duties resulting from the contract require **rewaco's** written approval.
- 12.2 The law of the Federal Republic of Germany is applicable for these General Terms and Conditions as well as for all legal relations between **rewaco** and the purchaser, being excluded international uniform law and in particular the United Nations Convention on Contracts for the International Sale of Goods. The prerequisite for and effects of the reservation of title according to point 7 are subject to the law of the place where the respective product is stored if, under said law, a choice of law made in favour of German law is not permitted or is void.
- 12.3 The place of performance for all obligations of both parties is **rewaco's** business location.
- 12.4 If the purchaser is a business person in the meaning of the Commercial Code, a legal person under public law or a public law special asset, the exclusive legal venue/place of jurisdiction –international too- for all disputes resulting directly or indirectly from the contractual relationship will be **rewaco's** business location in Lindlar. However, **rewaco** will also be entitled to take legal action against the purchaser at the purchaser's place of general jurisdiction.