

KARL MAYER ROTAL S.r.l. a Socio Unico

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# GENERAL TERMS OF DELIVERY AND PAYMENT

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As of 1<sup>st</sup> August 2017

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## **1. General / Scope of Application**

- 1.1. Apart from job order production, no other than the terms & conditions (Ts&Cs) outlined below shall apply to all sales, deliveries and performances (hereinafter called “services”) provided by KARL MAYER ROTAL S.r.l.
- 1.2. Objections will be entered to any terms & conditions of a customer that differ from these terms & conditions for delivery or payment or the legal provisions. Said terms & conditions shall not become part of any contract even in cases where KARL MAYER ROTAL S.r.l. accepts or processes orders in full knowledge of these contradictory or differing terms & conditions of a customer.
- 1.3. On placing an order, the customer shall accept the terms & conditions for delivery and payment as legally binding.

## **2. Offers, Conclusion of a Contract, Subject and Scope of Performance**

- 2.1. Unless otherwise expressly agreed, offers made by KARL MAYER ROTAL S.r.l. shall be non-binding and subject to confirmation.
- 2.2. Orders placed by the customer shall not be regarded as accepted before these have been confirmed by KARL MAYER ROTAL S.r.l. in writing.  
If KARL MAYER ROTAL S.r.l. should fail to confirm an agreement in writing which it has entered into verbally, KARL MAYER ROTAL S.r.l. invoice or the execution of the order by KARL MAYER ROTAL S.r.l. shall be regarded as confirmation.
- 2.3. Information and data contained in data sheets, brochures or other advertising and information material supplied by KARL MAYER ROTAL S.r.l. shall merely serve as guidelines and will only become binding content for the contract if expressly agreed by KARL MAYER ROTAL S.r.l.
- 2.4. Properties of samples and specimens will not be binding for KARL MAYER ROTAL S.r.l. unless expressly agreed with the customer.
- 2.5. Structure and durability details do not represent a guarantee unless expressly stated as such. The same shall apply to the assumption of procurement risk.
- 2.6. Unless otherwise agreed in writing, KARL MAYER ROTAL S.r.l. delivers within the tolerances admissible in accordance with the relevant German or European Industrial Standards, in particular as per DIN, VDE, EN ISO etc.
- 2.7. Technical changes caused by manufacturing processes or legislative changes or changes resulting from normal product maintenance shall be admissible, provided they are deemed acceptable to the customer.

## **3. Scope of delivery**

- 3.1. Kind and extent of services shall be based on the written order confirmation provided by KARL MAYER ROTAL S.r.l. KARL MAYER ROTAL S.r.l. shall be entitled to render partial services, provided this is deemed acceptable to the customer.
- 3.2. Contracts concluded with representatives of KARL MAYER ROTAL S.r.l. shall be immediately binding for the customer, however, for KARL MAYER ROTAL S.r.l. not until a written confirmation was issued. In the case of a missing order confirmation by KARL MAYER ROTAL S.r.l. the invoice shall be deemed to be the written order confirmation.

## **4. Period of delivery**

- 4.1. The agreement about the period of delivery has to be made in writing.  
The period of delivery shall not start until all essential issues regards the performance of a contract have been clarified with the customer and the customer has met any obligations necessary for the performance of the contract by KARL MAYER ROTAL S.r.l.

This entails in particular the submission of documents by the customer, such as specifications, drawings as well as all the details (order clarification) required for the production of the contractual products. Above all the period of delivery shall not commence before KARL MAYER ROTAL S.r.l. has received all the information required for delivery from the customer or before the customer has provided proof that he - where required - has issued a letter of credit or has made a down payment or payment in advance or has furnished security.

- 4.2. Alterations requested by the customer after the fact will interrupt the period of delivery. The period of delivery will recommence after an agreement has been reached about the desired alterations.
- 4.3. Any liability to supply as a result of force majeure or other unforeseen incidents outside the responsibility of KARL MAYER ROTAL S.r.l. including, without limitation, strike, lock out, acts of public authorities, subsequent cease of export or import opportunities shall, for their duration and in accordance with their impact, relieve KARL MAYER ROTAL S.r.l. from the obligation to comply with any agreed time for delivery. This shall also apply when these circumstances come to pass at subcontractors of KARL MAYER ROTAL S.r.l. or when these events occur at a point in time at which KARL MAYER ROTAL S.r.l. is already in default. KARL MAYER ROTAL S.r.l. will inform the customer about the commencement and end of such impediments to performance without delay.
- 4.4. Claims for compensation by the customer due to non-fulfilment or delayed fulfilment on the part of KARL MAYER ROTAL S.r.l. shall in any case be excluded, with the exception of the restrictions dealt with in clause 6.5. In each instance KARL MAYER ROTAL S.r.l. will be granted a waiting period of 2 weeks in the case of exceeding the delivery date agreed upon in writing.
- 4.5. KARL MAYER ROTAL S.r.l. delivers goods in unpacked condition. If the customer wishes to have packaging he shall bear the cost.
- 4.6. KARL MAYER ROTAL S.r.l. delivers ex works (INCOTERMS). In cases where KARL MAYER ROTAL S.r.l. arranges transportation, the customer shall bear the cost of shipping and goods in transit insurance.
- 4.7. Price risk, that is, the risk of accidental destruction or accidental degradation will be transferred on provision of goods at KARL MAYER ROTAL S.r.l. factory to the customer even if KARL MAYER ROTAL S.r.l. has taken on services such as loading or transportation.
- 4.8. In cases where the service is delayed for reasons that are the responsibility of the customer, the risk will be transferred to him at the point of receiving the note of readiness for operation. KARL MAYER ROTAL S.r.l. shall in such cases be entitled to charge the customer for the goods as if delivery had taken place, and store them at the customer's expense and risk. Upon the customer's request, KARL MAYER ROTAL S.r.l. shall insure the goods against theft, breakage, transport and fire and water damage.

## **5. Prices, Payment and Delay**

- 5.1. Unless otherwise specified, prices will be calculated in Euros ex works, exclusive of packaging, carriage charges, cargo insurance, assembly and other ancillary expenses. They are quoted exclusive of VAT.
- 5.2. For deliveries exceeding more than four months KARL MAYER ROTAL S.r.l. reserves the right to special arrangements. KARL MAYER ROTAL S.r.l. reserves the right to charge the list prices valid on the date of delivery, provided the completion of contract, that is, the order submitted to KARL MAYER ROTAL S.r.l. dates back more than four months.
- 5.3. Invoices shall become due for payment immediately upon receipt and without any discount. Cheques shall only be accepted on condition of fulfilment. The customer shall agree to receive invoices by electronic transmission.
- 5.4. In the event of delay in payment, KARL MAYER ROTAL S.r.l. will charge interest as per article 5, D.lgs. 231/2002. We reserve the right to further compensation for additional loss against proof.
- 5.5. KARL MAYER ROTAL S.r.l. shall not be obliged to contractual performance until the customer has fulfilled his duties including those arising from other contracts KARL MAYER ROTAL S.r.l. as agreed, in particular any payments due.
- 5.6. The customer shall have no right to make any compensation, retention or reduction unless the counterclaims have been conclusively determined by the court.
- 5.7. If the customer fails to take payments in the time and manner specified by the ordinary course of business which shall include, without limitation, when seizure or protest has been made, payments shall be delayed or insolvency proceedings shall have been petitioned or opened, KARL MAYER ROTAL S.r.l. shall have the right to suspend or cancel, at its sole discretion, further delivery and to declare all its claims arising from the business relationship as immediately payable. Moreover KARL MAYER ROTAL S.r.l. may in such event request for anticipation on the payments or a warranty deposit.
- 5.8. In cases where the acceptance of a service ready for acceptance does not occur in due time or incompletely despite a reasonable period of time and without KARL MAYER ROTAL S.r.l.'s fault, KARL MAYER ROTAL S.r.l. shall store the goods at the customer's expense and risk. KARL MAYER ROTAL S.r.l. shall charge a flat rate for storage of 0.5% of the amount invoiced per month of acceptance delay. Alternatively, KARL MAYER ROTAL S.r.l. reserves the right to charge for storage by the day and ton.

## **6. Warranty, Customer's Duties for Claims for Defects, Liability and Claims for Compensation**

- 6.1. The term of implied/legal warranty for machines and parts delivered by KARL MAYER ROTAL S.r.l. is 12 months, from the date of delivery ex works. This warranty shall not apply to parts subject to natural wear and tear. All defects and flaws detected during the above stated period of time where the cause is demonstrably traceable to faulty material or improper execution will be remedied by KARL MAYER ROTAL S.r.l. The supply of replacement parts is determined on the basis of EXW Mezzolombardo. Replaced parts shall pass into the ownership of KARL MAYER ROTAL S.r.l.
- 6.2. In cases where faulty parts are sent for repair to the delivering factory, the cost of transport both ways shall be borne by the customer. Cost of transport shall be borne by KARL MAYER ROTAL S.r.l. merely in cases where defects have to be remedied that are definitely the responsibility of KARL MAYER ROTAL S.r.l. Damages arising from excessive strain, the use of unsuitable materials, faulty operating conditions, insufficient maintenance, faulty operation, chemical, electromechanical or electric impacts or any other use than the intended shall not be covered by warranty. KARL MAYER ROTAL S.r.l. explicitly declines any liability for other indirect and direct damages.

- 6.3. Faulty assembly or commissioning by the customer or third parties or, modifications or inappropriate repairs carried out by the customer or third parties will result in loss of warranties and/or granted guarantees. The warranty obligation of KARL MAYER ROTAL S.r.l. applies only to the customer. It will expire when the goods are sold by the customer to third parties.
- 6.4. Minor variations from the agreed or common condition do not constitute a defective product or service. The general operating instructions or examples of application contained in the KARL MAYER ROTAL S.r.l. product brochures or other advertising media do not release the customer from his duty of examining whether the products are suitable for the exact purpose intended. Special wishes of application by the customer shall only be binding if KARL MAYER ROTAL S.r.l. has confirmed to the customer in writing that the products delivered will be suitable for the use intended by the customer.
- 6.5. The customer shall inspect the products upon their receipt and if any vices, defects or quality deficiencies pursuant to article 1497 of the civil code (hereinafter "defects") are detected, the customer shall serve notice on KARL MAYER ROTAL S.r.l. specifying the relevant complaints, under penalty of forfeiture, within eight days as of receipt of the products. Failure by the customer to serve such notice within the above term, the products are deemed to be accepted even if they are defective.
- 6.6. If the defects are not detectable by means of diligent inspection at the time they are received, the customer shall serve notice on KARL MAYER ROTAL S.r.l. specifying the relevant complaints, under penalty of forfeiture, within eight days as of discovery of the defect and, in any case, no later than sixty days as of delivery. Otherwise the products are deemed to be accepted even if they are defective.
- 6.7. The customer shall only be entitled to reduction or withdrawal if KARL MAYER ROTAL S.r.l. fails to carry out supplementary performance within a reasonable period or when this does not remedy the defect despite several attempts (a minimum of 3).
- 6.8. Except in case of wilful misconduct or gross negligence, KARL MAYER ROTAL S.r.l. shall, in case of vices, quality deficiencies or non-conformity of products, only be held to repair such products or to deliver products replacing the defective products. This warranty absorbs and replaces the warranties and liabilities provided for by statute and excludes any other liability of KARL MAYER ROTAL S.r.l., be it of a contractual or non-contractual nature, however deriving from delivered products (e.g. compensation of damages, lost profits etc.) etc.
- 6.9. In the event of default, KARL MAYER ROTAL S.r.l. shall be liable at 0.5% of the value of delayed service for each full week, however, limited to a maximum of 5% of this value. Any liability going beyond the liability for damages shall be excluded irrespective of the legal nature of the claim being asserted.

## **7. Ownership Reservation**

- 7.1. All products of KARL MAYER ROTAL S.r.l. are sold under retention of title. Until invoices are fully settled, the products remain the property of KARL MAYER ROTAL S.r.l. pursuant to article 1523 of the civil code.
- 7.2. The customer takes on all risks relative to the goods at the moment the goods are delivered and shall guard and store them properly; furthermore, the customer undertakes to enter into an insurance contract with a leading Italian insurance company in relation to the goods covering all potential risks, such as, without limitation, fire, theft, water etc.
- 7.3. Until the last price instalment is paid, the customer shall not resell, modify or transform the goods. Moreover, the customer shall not pledge the goods and/or constitute rights over them in favour of third parties.
- 7.4. In case of an Italian customer, KARL MAYER ROTAL S.r.l. reserves the right to request, in relation to each delivery, the signing of a written document bearing a certified date, as well as the registration of the reservation of title agreement with the relevant register held by the chancellery of the Court of the place where the machines are located pursuant to article 1524 of the civil code. KARL MAYER ROTAL S.r.l. also reserves the right to confirm the reservation of title agreement in each invoice relative to subsequent deliveries so that it is effective towards the creditors of the buyer pursuant to article 11, paragraph 3, of Legislative Decree 231/2002.
- 7.5. Any attachments or captures by third parties of goods subject to reservation of title that were delivered by KARL MAYER ROTAL S.r.l. must be reported to KARL MAYER ROTAL S.r.l. without delay. Any costs of intervention that may arise shall in any case be borne by the customer.
- 7.6. In the case of a transfer of his business to a third party, the customer shall be obliged to inform the third party about the reserved property of KARL MAYER ROTAL S.r.l. and the extended and expanded retention of title and has to transfer the duties arising hereof to the third party.
- 7.7. In cases where the total value of the securities existing for KARL MAYER ROTAL S.r.l. exceeds the claims of KARL MAYER ROTAL S.r.l. by more than 10% and upon the customer's request, KARL MAYER ROTAL S.r.l. shall release those securities at its own choice.
- 7.8. In cases where the customer is in default of payment, KARL MAYER ROTAL S.r.l. shall be entitled to take back goods subject to retention of title after the successful expiration of a period of grace set by KARL MAYER ROTAL S.r.l., even if KARL MAYER ROTAL S.r.l. has not rescinded the contract.

## **8. Transfer of Risk**

- 8.1. Shipping shall always be at the customer's risk ex works in accordance with the latest version of INCOTERMS even in cases where free delivery has been agreed. The customer shall be fully responsible for proper storage of goods arriving at the destination. The arrangement of insurance against fire, theft etc. shall be the responsibility of the customer.
- 8.2. In cases where shipping or delivery is delayed by the customer, the risk will, in both cases, be transferred to the customer on the day of readiness for shipment; however, upon request by and at the expense of the customer, KARL MAYER ROTAL S.r.l. shall be obliged to take out insurance as instructed by the customer.

## 9. Liability

- 9.1. Unless in case of justified objection which shall have been raised in accordance with the procedure and deadlines set forth in paragraph 5 above, the customer shall not be entitled to any further rights or remedies. In particular, KARL MAYER ROTAL S.r.l. shall not be responsible for any compensation based on breach of contract or default, for any direct or indirect damage or loss of profit due to the use, the inability to use, or the incorporation of the Products in other products, unless under warranties granted in paragraph 6 or in cases of willful misconduct or gross negligence on KARL MAYER ROTAL S.r.l.'s part.
- 9.2. If KARL MAYER ROTAL S.r.l. is liable towards the customer, any damages shall in no case exceed the value of the object of the agreement within which the damaging conduct of KARL MAYER ROTAL S.r.l. has occurred.
- 9.3. The reasons and amounts for the aforementioned liability limits will also apply to the benefit of legal representatives, employees and other proxies and/or vicarious agents of KARL MAYER ROTAL S.r.l.

## 10. Place of jurisdiction

- 10.1. Any dispute arising between the parties in connection with the interpretation, validity or performance of the present general terms & conditions of sale and of all the relevant agreements, shall be of the exclusive competence of the referred to the Court of Bolzano. In all other cases the competent court shall be determined according to current law.
- 10.2. The content and interpretation of offers, order confirmations and any other correspondence with KARL MAYER ROTAL S.r.l. shall be governed by the law of the Republic of Italy as well as the Italy text of the terms & conditions for delivery and payment dated 1 November 2016. The law of the Federal Republic of Italy shall apply to the exclusion of the United Nations Treaty governing contracts for the international sale of goods dated 11 April 1980 (CISG) as well as the Italian conflict of laws.

## 11. Industrial property and copyright

- 11.1. KARL MAYER ROTAL S.r.l. shall in principle not be obliged to check whether the details or specifications provided by a customer that serve as a basis for KARL MAYER ROTAL S.r.l. offers or order confirmations infringe any third party property rights. Any risks detected by KARL MAYER ROTAL S.r.l. shall be reported to the customer.
- 11.2. KARL MAYER ROTAL S.r.l. reserves all intellectual property and copyrights to its quotes, drawings and other documentation relating to its offers. They may not be made accessible to third parties or given access to in any other way. The reproduction of such items shall only be permitted within the scope of operational requirements and copyright regulations. The same shall apply to products manufactured with the help of these means of production. Upon request, or when no order is placed, all offer documentation must be returned without delay to KARL MAYER ROTAL S.r.l.

## 12. Final remarks

- 12.1. Amendments and additions to this contract have to be made in writing. The requirement stipulating written form cannot be waived verbally.
- 12.2. If individual provisions of these terms & conditions for delivery and payment or further agreements should be or become ineffective, this shall not affect the validity of the remaining provisions of the contract. The contracting parties shall strive to replace such an ineffective provision by a provision the economic result of which comes as close as possible to that of the ineffective provision. The same shall apply to any contractual loopholes.
- 12.3. The present general terms & conditions of sale has been drafted in both Italian and English languages. In case of problems of interpretations the Italian version shall prevail.
- 12.4. Upon issue of these terms & conditions for delivery and payment any previous provisions expressed in other words shall cease to be valid.

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Date, stamp and signature

In accordance with Articles 1341 and 1342 of the Italian Civil Code, the Supplier declares to accept the following clauses:

Art.1.2. (no applicability of the general purchase terms & conditions of the customer); Art.3.1 (entitlement to partial performance); art.4.3. and 4.4. (limitation of liability in case of late performance); art.4.8 (transfer of risks); art.5.2. (price variation); art. 5.5. and 5.7. (right to suspend performance of the contract); art.5.6. (limitation of the right of the client to raise set-off objections) art.6 (warranty, customer's obligations in relation to complaints for vices, defects, liability and claims for compensation); art.9 (limitation of liability), art.10.1. (competent court)

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Date, stamp and signature