

## GENERAL TERMS AND CONDITIONS

# Sales contracts

of

Eugen Riexinger GmbH & Co. KG  
Egartenring 2  
75378 Bad Liebenzell  
Germany

– hereinafter referred to as „RIEXINGER“ –

Valid as of 01 June 2019

## § 1 Scope of application

1. The General Terms and Conditions shall apply to all purchase contracts of Eugen Riexinger GmbH & Co. KG for all machines and plants manufactured by RIEXINGER, other products and devices including accessories and spare parts.
2. The GTC do not apply to consumers within the meaning of § 13 BGB (German Civil Code).
3. The GTC shall apply in current business relations in the respectively valid form, in particular without express reference, to all future business transactions, also in the case of oral or telephone call-off or follow-up orders.
4. Business correspondence sent by RIEXINGER by e-mail or printed out in the electronic data processing procedure, e.g. order confirmations, invoices, payment reminders etc., are valid and legally binding without signature.
5. The terms and conditions of RIEXINGER shall apply exclusively. Any terms and conditions of the customer that conflict with or deviate from the GTC shall not be recognised unless their validity has been expressly agreed in writing. The terms and conditions of business shall also apply if RIEXINGER unconditionally provides the contractual service to the customer in the knowledge of terms and conditions of the customer which are contrary to or deviate from the present terms and conditions of business.

## § 2 Offer and Conclusion of contract

1. The offers of RIEXINGER are subject to change and are subject to self-delivery, subject to other express written agreements. Orders shall only become binding after written order confirmation by RIEXINGER, unless the order has already been fulfilled or invoiced by RIEXINGER.
2. In electronic business transactions, the parties waive the application of the provisions of Section 312 g, Paragraph 1, Sentence 1 No. 1 to 3 of the German Civil Code (BGB). Confirmations of receipt of order placements made by electronic means (e-mail) do not constitute a binding acceptance of the order. The confirmation of receipt can nevertheless be submitted with the declaration of acceptance. RIEXINGER shall save the text of the contract when placing the order in

electronic business transactions and send these GTC to the customer by e-mail upon request.

3. If an export licence is required for the fulfilment of the performance obligations of RIEXINGER, the contract shall be concluded subject to the granting of an export licence. RIEXINGER is obliged to obtain a corresponding legally effective licence. If the licence is refused, RIEXINGER shall not be subject to any further obligations.
4. Insofar as the customer submits documents, e.g. drawings, calculations etc., he shall be liable for their correctness and shall indemnify RIEXINGER in the event of infringements of third party property rights which arise during the manufacture of goods according to customer specifications.
5. RIEXINGER reserves all copyrights and property rights, in particular reproduction and distribution rights, to illustrations, drawings and other documents provided to the customer by RIEXINGER in connection with the offer. These documents may not be handed over to third parties except in the case of intended resale. If the order does not materialise, the documents shall be returned to RIEXINGER.

## § 3 Prices and Terms of payment

1. The prices quoted by RIEXINGER are net prices in Euro, plus statutory VAT, ex works Bad Liebenzell, unpacked, uninsured, duty unpaid and subject to other regulations. The customer shall bear the transport and packaging costs. Confirmed prices shall only apply upon acceptance of the confirmed quantity. As a rule, binding price quotations shall be made on the basis of a written cost estimate in which all details and the materials and work required for the performance of the contract shall be listed in detail, stating the price. RIEXINGER is bound to such a cost estimate if the order is placed within four weeks after receipt of the cost estimate by the customer.
2. Subject to other agreements, the purchase price shall be due for payment free of costs and deductions immediately after invoicing (date of invoice). Other payment terms result from the invoice. RIEXINGER reserves the right to demand advance payment.
3. In the event of default in payment, RIEXINGER shall be entitled to withhold deliveries from other customer orders and to make all payments owed due immediately. If the payment in

arrears is made, RIEXINGER is entitled to carry out the new performance at its reasonable discretion (§ 315 BGB) and taking into account the agreed terms of delivery. In the case of partial deliveries, RIEXINGER shall be entitled to demand partial payments.

4. Price increases are possible if certain difficulties for the performance of services by RIEXINGER arise after the conclusion of the contract, which the customer did not notify in writing prior to the submission of the offer.
5. RIEXINGER is also entitled to adjust the prices within the framework of changed circumstances and without charging an additional profit if there are more than four months between the conclusion of the contract and the execution of the order and if cost increases unforeseeable for RIEXINGER have occurred, e.g. due to an increase in wage or material costs, the introduction or significant increase in taxes and customs duties, etc.

#### **§ 4 Performance data, Product description**

1. The product description of RIEXINGER or the manufacturer shall be deemed agreed as the quality of the goods. Assurances and guarantees shall only apply after express written confirmation by RIEXINGER.
2. The information, drawings, performance descriptions, dimensional and weight specifications or other performance data contained by RIEXINGER on the basis of catalogues, price lists, brochures, other advertising or in the documents forming part of the offer are, within the scope of customary practice in the industry, only approximately correct and therefore only of limited relevance. Any reference to DIN standards shall only serve to provide a more detailed description of the goods, whereby no guarantee shall be established, subject to express agreement.
3. RIEXINGER is entitled to make design changes without prior notice, insofar as these are customary in the trade and reasonable for the customer. The customer cannot demand a retrofitting of already delivered products within a current series.

#### **§ 5 Retention of title**

1. RIEXINGER retains ownership of the products until all claims against the customer have been settled, even if the specific product has already been paid for.
2. The customer must inform RIEXINGER immediately of any execution measures of third parties against the reserved goods and hand over the documents necessary for an intervention. This also applies to impairments of any other kind. Irrespective of this, the customer shall inform the third parties in advance of RIEXINGER's existing rights to the products. The customer shall bear the intervention costs incurred by RIEXINGER insofar as the third party is not in a position to do so.
3. In the event of the resale of the reserved goods, the customer already now assigns to RIEXINGER by way of security the claims against his customers arising from the aforementioned transactions until the fulfilment of all claims of RIEXINGER. In the event of processing of the reserved goods, their transformation or their combination with another item, RIEXINGER shall acquire direct ownership of the manufactured item. This shall be deemed to be reserved goods.
4. If the security value of the RIEXINGER claims against the purchaser exceeds 20%, RIEXINGER shall, at the request of the purchaser and at its own discretion, release the securities to which it is entitled to the corresponding extent.
5. RIEXINGER revocably authorises the customer to collect the claims assigned to RIEXINGER. This authorisation shall expire even without revocation in the event of over-indebtedness or insolvency of the customer or if the customer is threatened with insolvency or if a significant deterioration of its assets has occurred. In the event of the expiry of the direct debit authorisation, the customer shall immediately notify the third party debtor in writing of the assignment of the claim in favour of RIEXINGER and inform RIEXINGER thereof. The customer is obliged to provide RIEXINGER with all information and documents required for the assertion of the assigned claims.

#### **§ 6 Warranty**

1. The customer is obliged to inspect the goods upon receipt. Defects, shortages or wrong deliveries must be noted immediately on the delivery note or consignment note, but at the

- latest five working days after receipt and always before processing or use in writing to RIEXINGER. Otherwise the delivery shall be deemed to have been approved.
2. Damage resulting from unsuitable or improper use, faulty or improper assembly or commissioning by the customer or third parties, normal wear and tear, faulty or negligent handling, use of unsuitable equipment, improper storage as well as climatic, chemical, electro-chemical and electrical effects shall be excluded from the warranty, insofar as they are not attributable to the fault of RIEXINGER. The same applies to damage resulting from non-observance of the operating instructions and the assembly and maintenance instructions contained therein as well as from improper modifications or repair work by the customer or third parties and from the effects of parts of third-party origin as well as from continued use despite the occurrence of an obvious defect.
  3. A warranty requires the proper use of the products. The warranty shall expire as soon as the products are modified by the customer, third parties or by the installation of third-party parts contrary to the agreement, unless the defect is not causally connected with the modification.
  4. The warranty obligation shall lapse if RIEXINGER has not been given reasonable time or opportunity to carry out the repairs or replacement deliveries necessary at its discretion. Only in urgent cases of danger to operational safety, to prevent disproportionately large damage or if RIEXINGER is in default with the rectification of the defect, shall the customer be entitled to rectify the defect himself or have it rectified by third parties against reimbursement of the necessary costs by RIEXINGER. The prerequisite for this is the immediate notification of the damage to RIEXINGER. For third-party products supplied, e.g. hose lines etc., the warranty shall be limited to the assignment of the claims to which RIEXINGER is entitled against its suppliers. The right to reduce the purchase price or to withdraw from the contract remains subordinate to RIEXINGER.
  5. In order to carry out the warranty procedure, defective delivery items must be returned by the customer free of charge to the factory in Bad Liebenzell in the condition in which they were at the time of the discovery of the defect. Should this not be possible, the warranty shall be limited, at the discretion of RIEXINGER, to a replacement delivery free of charge and carriage paid within the European Union and the European Economic Area or to rectification at the place of the customer's main place of business. Additional costs incurred by rectification measures at another location, e.g. travel costs, accommodation, catering, time expenditure, shall be borne by the Customer. RIEXINGER shall be entitled to make the subsequent performance dependent on the prior payment of these additional expenses and to have the subsequent improvement carried out by the manufacturer. In the case of replacement deliveries, the goods complained about shall become the property of RIEXINGER at the time at which RIEXINGER acknowledges the complaint, at the expense of the customer. Additional costs incurred due to difficult access to the plant or due to insufficient working space or due to delivery to an area outside the European Union or the European Economic Area shall always be borne by the customer.
  6. If the customer chooses to withdraw from the contract due to a defect after subsequent fulfilment has failed, he shall not be entitled to compensation for damages. If he chooses compensation for damages after failed subsequent performance, the goods shall remain with the customer if this is reasonable for him. The compensation for damages shall then be limited to the difference between the purchase price and the value of the defective item. This shall not apply if RIEXINGER has fraudulently caused the breach of contract. The customer may only assert claims for damages under the conditions specified in § 9.
  7. Insofar as the parties have not excluded the customer's claim for reimbursement of expenses pursuant to Section 478 (2) of the German Civil Code (BGB) by granting equivalent compensation, the customer shall be obliged to refuse subsequent performance in the event of a resale of the goods to a consumer pursuant to Section 439 (3) of the German Civil Code (BGB) if it is only possible at disproportionate cost. In the event of a resale of the item by the customer to an entrepreneur, he shall also oblige the latter to refuse subsequent performance in the event of a resale of the item to a consumer if it is only possible at unreasonable cost. Accordingly, RIEXINGER shall only reimburse the customer for the expenses required for subsequent performance within the scope of § 478 paragraph 2 BGB if they are not disproportionate within the meaning of § 439 paragraph 3 BGB.

8. Claims of the customer against RIEXINGER pursuant to § 478 para. 1 BGB (German Civil Code) require proof that the customer had to take back the item or repay a part of the purchase price as a reduction due to a justified claim of his customer. Warranty processing by the customer without legal basis or as a gesture of goodwill shall not justify any claims against RIEXINGER. Claims according to § 478 BGB become time-barred according to § 479 BGB.
9. The time of the transfer of risk is decisive for the contractual condition of the products. Claims for material defects shall become statute-barred twelve months after the transfer of risk. If, in the event of a warranty claim, the product is repaired or replaced, the limitation period shall not be restarted.
10. The above warranty provisions do not constitute a restriction of the merchant's obligation to inspect the goods and give notice of defects under Section 377 of the German Commercial Code (HGB).

## § 7 Delivery, acceptance

1. Delivery times are non-binding, subject to an express calendar provision in writing. Delivery periods shall generally commence upon dispatch of the written order confirmation, subject to the timely and contractual fulfilment of the customer's obligations. In the event of advance performance obligations on the part of the customer, the delivery period shall only commence upon receipt of the advance performance by RIEXINGER.
2. Delivery dates stated by RIEXINGER shall apply subject to timely delivery by suppliers or manufacturers. The contract is therefore concluded subject to the condition of self-delivery.
3. Delivery is ex works Bad Liebenzell. The delivery period shall be deemed to have been met if the products have left the warehouse or the works of RIEXINGER in Bad Liebenzell by the expiry of the delivery period or if RIEXINGER has notified readiness for dispatch. Insofar as an acceptance has to take place, the acceptance date and alternatively the notification of readiness for acceptance shall be decisive - except in the case of justified refusal of acceptance.
4. Events of force majeure, catastrophes, war, industrial disputes, lack of own supply according to § 2 number 1), for which RIEXINGER is not responsible, entitle RIEXINGER to

postpone the delivery by the duration of the hindrance plus a reasonable start-up time or to withdraw from the contract due to the unfulfilled part without the customer being able to claim damages. In the event of delays in delivery of more than four months, the customer shall be entitled to refuse delivery and to withdraw from the contract. The customer shall not have any further rights or claims due to non-delivery or late delivery for such reasons, even if these reasons only occur when the delivery period has already been exceeded or RIEXINGER was in default.

5. If the delivery period stated by RIEXINGER is exceeded by more than two weeks in cases other than those mentioned under point 3) (force majeure), claims arising from non-compliance with the delivery period shall only exist if the customer sets RIEXINGER a period of grace of at least two weeks by registered letter.
6. Insofar as a contract for work and services exists, the customer shall be in default with the acceptance of the work if he does not carry out the acceptance within one week after handover, notification of completion or invoicing. Acceptance shall be deemed to have taken place if the customer uses the work without complaint for a period of 14 days after handover, notification of completion or invoicing and RIEXINGER has pointed out this consequence upon handover, in the notification of completion or upon invoicing.

## § 8 Assumption of risk

1. Delivery shall be made at the risk and for the account of the customer, ex works Bad Liebenzell. If a different type of delivery is agreed, the risk - also in the case of delivery free domicile - shall pass to the customer upon handover to the forwarding agent or collector. RIEXINGER shall bear the risk until delivery to the place of receipt if RIEXINGER carries out the delivery. In the event of partial deliveries, the above shall apply.
2. Delivered products shall be accepted by the customer without prejudice to the rights under § 6, even if they have minor defects.
3. At the customer's request, transport insurance can be taken out at the customer's expense.

## § 9 Limitation of liability

1. The liability of RIEXINGER for contractual breaches of duty as well as from tort is limited to intent and gross negligence as well as to compensation for the typical damage incurred. This shall not apply in the event of injury to life, body and health of the customer, claims for breach of cardinal obligations, i.e. obligations arising from the nature of the contract and the breach of which jeopardises the achievement of the purpose of the contract, as well as compensation for damage caused by delay (§ 286 BGB). In this respect RIEXINGER shall be liable for any degree of fault. Insofar as it concerns damages which do not result from the injury to life, body and health of the customer, RIEXINGER shall, however, only be liable for the typically occurring damage. The aforementioned exclusion of liability also applies to minor negligent breaches of duty by RIEXINGER's vicarious agents.
2. Liability in the event of a delay in delivery shall be limited to 0.5% of the value of the delivery for each full week of the delay within the framework of a lump-sum compensation for delay, but not more than 5% of the value of the delivery.
3. Insofar as liability for damages which are not based on injury to life, body and health of the customer is not excluded for slight negligence, the liability of RIEXINGER is limited to € 5,000,000 for property damages and to € 500,000 for financial losses, whereby such claims become statute-barred within one year, beginning with the origin of the claim or, in the case of claims for damages due to a defect, from acceptance.
4. Insofar as the liability for damages towards RIEXINGER is excluded or limited, this shall also apply with regard to the personal liability for damages of RIEXINGER's employees, workers, staff, representatives and vicarious agents.
5. RIEXINGER shall not be liable for lost profits, lost savings, damages from claims of third parties and other indirect and consequential damages as well as for the loss of recorded data, unless RIEXINGER has created a special basis of trust in this respect. RIEXINGER shall only be liable for the replacement of data if the customer has ensured that the data can be reconstructed from other data material at reasonable expense.

6. For claims for reimbursement of expenses - with the exception of claims according to § 635 para. 2 BGB - § 8 shall apply accordingly.

## § 10 Set-off and Rights of retention

1. The customer is not entitled, irrespective of his rights after notification of defects, to assert a right to refuse performance or a right of retention against due payment claims of RIEXINGER, insofar as it is not based on the same contract, or to declare the set-off with a disputed or not legally established claim. Even in the case of an ongoing business relationship, each individual order shall be regarded as a separate contractual relationship.
2. The customer is not entitled to assert a right to refuse performance in accordance with § 320 BGB or a right of retention in accordance with § 273 BGB unless these rights are based on a defect in the purchased item for which RIEXINGER has already received that part of the payment which corresponds to the value of its performance or on counterclaims of the customer which are undisputed, legally established or acknowledged by RIEXINGER.

## § 11 Copyrights, infringements of industrial property rights, data protection

1. The customer undertakes not to make or have made any copies or imitations of the products of RIEXINGER. Violation of this obligation shall constitute grounds for RIEXINGER to claim damages and injunctive relief from the customer.
2. If a third party asserts a claim against the customer due to the infringement of an industrial property right through the use of a product provided by RIEXINGER, the customer shall immediately notify RIEXINGER thereof in writing. RIEXINGER shall, at its own discretion and at its own expense, satisfy or defend against such claims or terminate the dispute by way of settlement. The Customer shall support RIEXINGER in its defence in every reasonable manner. RIEXINGER shall bear all financial burdens arising from the judgment against the Customer, including any damages awarded to a third party and the costs of proceedings. RIEXINGER will bear the costs of a settlement if RIEXINGER agrees to the settlement. The customer grants RIEXINGER the sole authority to decide on the legal defence and on settlement negotiations. He shall grant

RIEXINGER the necessary powers of attorney in the individual case.

6. The customer is informed in accordance with § 26 of the Federal Data Protection Act that the data required for invoicing and other order confirmations are processed and stored by means of EDP.

## **§ 12 Limitation of own claims and form of declarations**

1. Claims of RIEXINGER for payment are subject to a limitation period of five years in deviation from § 195 BGB. With regard to the beginning of the limitation period § 199 BGB applies.
2. Legally relevant declarations and notifications which the customer has to make to RIEXINGER or a third party must be made in writing.

## **§ 13 Place of performance, choice of law, place of jurisdiction**

1. Unless otherwise stipulated in the contract, the place of performance and payment shall be the registered office of RIEXINGER. The statutory regulations on the places of jurisdiction shall remain unaffected, unless something else arises from the special regulation in point 3.).
2. The law of the Federal Republic of Germany shall apply to this contract.
3. The exclusive place of jurisdiction for contracts with merchants, legal entities under public law or special funds under public law shall be the court responsible for the registered office of RIEXINGER.