

# GENERAL CONDITIONS OF SALE, DELIVERY AND INSTALLATION

real General Contracting GmbH

Zum Lager 1  
D-97900 Kulsheim

phone +49 93 45.6 72-0

info@real-group.com  
www.real-group.com

## 1.0 Validity and Conclusion of Contract

1.1. All services and deliveries of whatever kind to the customer are exclusively subject to our general terms and conditions of business, which the customer recognizes by placing an order or accepting a delivery. Any other conditions are not applicable, even if these are not expressly contested by Real. Our general terms and conditions of business shall also apply for all future business relationships even if they are not expressly agreed in each individual case.

1.2. Consumers, in reference to the above-mentioned business relationships, are understood to be persons with whom a business relationship is established who cannot be classified as acting in an independent, commercial or professional capacity. Entrepreneurs, in reference to the said business relationship, are understood to be natural or legal entities or legally founded partnerships with whom a business relationship is established and who are acting in pursuance of a commercial or independent professional activity. Contracting entities or customers, in reference to the said business relationship, can be both consumers as well as entrepreneurs.

1.3. Offers issued by Real are without engagement. A contract shall take effect – as far as the offer is not explicitly designated as binding – only after written order confirmation (i. e. submitted in written or text form, e. g. per letter, e-mail or fax) by Real. The content of order confirmations, delivery notes and other written confirmations issued by Real is deemed to be accepted as correct by the customer, unless the latter promptly rejects them in writing, within 4 working days from their receipt at the latest. By ordering a work or a product, the principal or customer bindingly declares his intention to conclude the contract. We are entitled to accept the contract proposal inherent in the order within two weeks from receipt of the letter at our premises. Acceptance can be declared either in writing or by handover of the work or product to the principal or customer.

1.4. If the consumer orders the work or the product electronically, we shall confirm receipt of the order immediately. The confirmation of receipt does not constitute a binding acceptance of order. The confirmation of receipt may be combined with the acceptance declaration of order.

1.5. We reserve the right to effect any necessary or appropriate technical modifications on our products. Dimensions, pictures and drawings only serve as preliminary information provided to the customer and require written confirmation by Real to become binding. Information about characteristics and performance features of the products serve as illustration and are not binding.

1.6. Unless otherwise explicitly agreed in detail, the following elements shall apply additionally and in the following order when it comes to the contract content: definitions and specifications indicated in the tender letter, construction drawings and bills of quantities, these General Conditions of Sale, the German Construction Contract Procedures, part B (VOB/B) including amendments as well as general regulations defined by the German Civil Code (BGB).

1.7. Conclusion of contract is subject to correct and punctual delivery by our suppliers. This shall only apply if we are not responsible for the non-delivery, especially in case of a congruent hedging transaction with our supplier. The customer is promptly informed about unavailability of the service. The consideration shall be reimbursed immediately.

1.8. If the consumer orders the work or the goods electronically, we will save the contractual text and send it, if requested, to the customer per e-mail, including these General Conditions of Sale.

## 2.0 Cost estimate / preliminary work

2.1. If the contracting entity requests a binding price quotation, a written cost estimate is required. In this document, the entire works and materials necessary for the corresponding implementation shall be listed and priced separately. The contractor shall be bound

by this cost estimate for a period of 4 weeks from its submission.

2.2. As separately agreed, cost estimates are subject to remuneration.

2.3. Preliminary work, like issuing of bill of quantities, tender documents, plans, drawings and prototypes, requested by the contracting entity are also subject to remuneration.

2.4. If an order is placed on basis of the cost estimate, possible expenses of the cost estimate and of preliminary work will be deducted from the order invoice. When invoicing the order, the total amount can only be exceeded upon approval by the contracting entity.

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### **3.0 Deliveries**

3.1. Delivery dates and periods are only binding if they had been agreed with the customer or confirmed by Real in writing. Delivery periods shall start on the date of order confirmation and after clarification of technical questions as well as receipt of documents and plans to be provided by the customer.

3.2. As far as Real is not responsible, unforeseen events like force majeure, delays in delivery and transportation or industrial disputes release Real from its obligation of punctual delivery for the time of the corresponding event. Delivery periods are extended by the duration of the incident. If the incident continues over a period of more than 6 months, both parties shall be entitled to resign from the contract. In this respect, the customer shall not have to right to claim for any compensation.

3.3. If Real comes into default, the customer is only entitled to resign from the contract after reminder and expiry of an appropriate extended deadline for execution or rectification of the services. Unless otherwise stated in this General Conditions of Sale, claims for compensation are excluded.

3.4. If the customer comes into default of acceptance or is responsible of any other delay in dispatch, Real is entitled to store the products at the risk and expense of the customer. After setting and fruitless expiry of an extended deadline for acceptance of the products, Real shall have to right to resign from the contract and to claim compensation instead of performance. All other rights remain unaffected.

3.5. If the buyer is an entrepreneur, the risk of accidental loss or deterioration of the goods shall be transferred to the buyer, in case of sales shipment, on handover of the goods to the forwarding agent, freight carrier or any other person or company charged with execution of the dispatch. If the buyer is a consumer, the risk of accidental loss or deterioration of the sold goods shall only be transferred to the buyer on handover of the goods to the buyer, also in case of sales shipment.

3.6. Real is entitled to effect partial deliveries. As long as the customer is in default of fulfillment of an obligation within the scope of the business relationship, our delivery commitment is suspended.

3.7. Unless otherwise agreed, our deliveries and services are deemed to be accepted on initial operation at the latest. Real is entitled to claim acceptance of partial services.

### **4.0 Prices and terms of payment**

4.1. All prices are calculated in accordance with the Real price list valid at the date of order confirmation, unless otherwise agreed or directly stipulated in the order confirmation. They are to be understood ex works plus transportation charges and transport insurance costs as well as legal value added tax. Possible cheque or bill of exchange fees shall be borne by the customer. In case of order placed by means of distance communication, there will be no additional costs for the customer.

4.2. Unless otherwise agreed, the customer shall effect payments as follows: 30 % with order or on receipt of confirmation letter, 30 % at beginning of on-site work and 30 % on completion of main installation. The balance shall be settled within eight days from receipt

of invoice.

4.3. In case of settlement by bank transfer, cheque, bill of exchange or other means of payment where the date of payment execution may differ from the value date, the value date shall be deemed to be the date of payment receipt. Cheques and bills of exchange are subject to special agreement with Real and are only accepted on account of performance; the entire collection and discount expenses shall be charged to the customer. As far as, according to special convention, neither cash payment nor payment by bill of exchange, cheque or bank transfer had been agreed, but another means of payment, the settlement is considered as service instead of fulfillment in case of doubt. The fulfillment agreement shall be dissolved in the event of a claim for refund (in accordance with § 675 section 2 BGB – German Civil Code). In case of a payment with fulfilling effect enabling a refund or return debit, the parties agree, in addition to the initial claim for payment, on a conditional claim for payment deferred due to enforcement of a right of reimbursement or chargeback with the identical content as the initial claim (as in the case of customer claims for example). This conditional claim for deferred payment is secured in the same way as the initial claim for payment. The provisions of clause 6 shall apply without any restriction.

4.4. If the customer exceeds the due date for payment, we reserve the right to claim damages due to delay in payment. The consumer shall pay interest of 5 % above the base lending rate on his debt for the period of this delay. The entrepreneur shall pay interest of 8 % above the base lending rate on his debt for the period of this delay. We reserve the right to provide evidence of higher damages for delay incurred and to assert a corresponding claim against the entrepreneur.

4.5. If the customer does not meet his payment obligations in accordance with the contract, suspends his payments or if Real finds out about circumstances that call the customer's creditworthiness into question, Real shall be entitled to fix a due date for settlement of the entire balance and to demand payments in advance or the provision of security. In these cases, Real shall have to right to withdraw from the contract, even without fixation of an extension period, as far as the contract has not yet been fulfilled.

4.6. The customer shall only have the right to offset if his counterclaims had been legally determined or recognized by us. The customer shall only be entitled to exercise his right of lien if his counterclaim is based on the same contractual relationship.

4.7. In case of subsequent modifications regarding execution, design or dimensions indicated in our offer or confirmation letter due to customer request, technical requirements, unforeseen difficulties or other circumstances beyond Real's control, Real shall be entitled to also charge these additional expenses to the customer.

4.8. Our claims for remuneration against entrepreneurs shall become statute-barred after five years.

#### **5.0 Distance selling contract with revocation clause**

5.1. The consumer has the right to revoke his declaration of intent regarding conclusion of the contract within two weeks from conclusion of contract or two weeks from receipt of the goods. This revocation does not have to stipulate any reasons and shall be addressed to the contracting entity in writing or declared by return of the goods; punctual dispatch shall be sufficient for observance of the deadline.

5.2. We reserve the right to only start implementation of the order after expiry of the two-week revocation period.

5.3. When exercising his right of revocation, the consumer shall be obliged to return the goods if they can be sent by parcel shipment. The costs of the return shipment up to an order value of 40 EUR shall be borne by the consumer, when exercising his right of revocation, unless the delivered goods do not correspond to the ordered goods. In case of an order value of more than 40 EUR, the consumer does not have to bear the costs of the return shipment.

5.4. The consumer shall provide for value replacement regarding deterioration of the goods caused by intentional operationalisation. The consumer shall be entitled to check the goods carefully and thoroughly. A depreciation due to use exceeding the mere examination making it impossible to sell the goods as „new“ has to be borne by the consumer.

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## 6.0 Reservation of title

6.1. In case of contracts with consumers, we retain title of the goods until complete settlement of the purchase price. In case of contracts with entrepreneurs, we retain title of the goods until complete settlement of all claims within the scope of a current business relationship.

6.2. The customer shall be obliged to treat the goods with care. As far as maintenance and inspection services are required, the customer must have them effected regularly at his own expense. The customer shall be obliged to promptly report access of third parties to the goods, in case of a seizure for example, as well as potential damage or destruction of the goods. Furthermore, the customer shall inform us immediately about any possible changes in possession of the goods or any changes in residence. If the customer behaves contrary to contract, especially in case of delay in payment or breach of an obligation under this agreement, we shall be entitled to withdraw from the contract and to claim return of the goods.

6.3. The customer shall only be entitled to sell the products in the proper course of business subject to agreement of a corresponding reservation of title already hereby assigning the resulting claims amounting to the sum of open claims to Real as well as any rights arising from the reservation of title. This entitlement shall be irrevocable. We reserve the right to collect the amount receivable ourselves, as soon as the entrepreneur does not duly comply with his payment obligations and gets into default of payment.

6.4. If the products are processed or combined, the customer already transfers the ownership amounting to the price of the reserved product to Real as security and stores the goods for Real free of charge. Treatment or processing of the reserved goods will be effected by the customer on behalf of Real without any obligations arising from that for Real. In case of processing of goods which we do not own, we shall acquire co-ownership of the new item in proportion of the value of the goods we have provided in comparison with the other items processed. The same shall apply if the goods are mixed with other items not belonging to us.

6.5. If the value of Real's securities exceeds the nominal value of outstanding receivables by more than 10 %, Real will release securities on demand.

6.6. If Real loses its ownership of products supplied under reservation of title, as they had become an essential element of real estate or a building, Real shall be entitled to remove the supplied products from the real estate or building and to store them at the customer's expense until payment of all current and future receivables within the scope of this business relationship has been made. By separating them from real estate or the building, these items shall become Real's property again. The customer shall be obliged to promptly inform Real about any existing liens or other third-party rights, to redeem them and furthermore to ensure replacement of unencumbered property of Real.

6.7. The customer shall be obliged to sufficiently insure the products supplied under a reservation title or the items obtained by connection, mixture or processing against all common risks, especially fire, burglary and water, and to treat them with care.

## 7.0 Warranty

7.1. The entrepreneur shall be obliged to check delivery immediately on receipt and to promptly inform Real about any possible objections as well as about any apparent or hidden defects in writing, within one week after receipt or discovery. The entrepreneur shall only retain the right to claim for warranty or replacement regarding non-conformity with guaranteed characteristics if he checks delivery immediately on receipt, or, at the latest, before processing, consumption, utilization, installation oder resale, and communicates us his objections within one week in writing. On expiry of these deadlines, or within six months after delivery at the latest, any claims for warranty or damages shall be excluded. For observance of the deadline, punctual dispatch shall be sufficient. The entrepreneur shall bear the full burden of proof for all claim prerequisites, especially for the defect itself, the moment of its detection and the timeliness of its notification. Consumers, however, shall inform us about apparent defects in writing within a deadline of two months starting at the date when nonconformity of the goods is determined. Compliance with this deadline is based on receipt of this information at our premises. If the consumer fails to submit this information, his warranty rights shall expire within two months after he had discovered the defect. This shall not apply in case of malice by the seller. The consumer shall bear the burden of proof for determination of the point of time when the defect had been discovered. As far as there are any existant claims

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against us for subsequent performance or any legal rights of withdrawal and reduction, they shall lapse two years after delivery or reception.

7.2. In case of any defects, first of all, we provide for subsequent rectification or delivery of new items at our option. Real shall obtain ownership of replaced components, as far as this had not been the case before. As far as we seriously and definitely reject fulfillment, reject rectification of the defect and subsequent performance due to unreasonably high costs, if subsequent performance fails or if it is unacceptable for the customer, the customer can, at his discretion, only claim for price decrease or cancellation of the contract as well as for compensation, within the scope of liability limitation, instead of work performance. In case of minor breach of contract, especially in the event of minor defects, the contracting entity, however, shall not be entitled to withdraw from the contract. If the customer chooses compensation due to failed subsequent performance, the customer shall keep the goods if this can reasonably be expected from him. Compensation shall therefore be limited to the difference between purchase price and value of the defective item. This shall not apply if we have caused this breach of contract maliciously. Warranty claims shall not apply if the supplied products are defective due to incorrect maintenance and cleaning, due to damage, improper use, treatment or repair. In case of third-party articles and products which are combined with Real's goods and services or which are used in combination with these products, any claims for warranty or compensation against Real shall be excluded, whereas Real assigns all liability claims to the customer to which Real is entitled vis-à-vis the supplier of the third-party delivery. Unless otherwise agreed, Real does not assume any liability for operativeness of our goods and services, as far as they have been combined with third-party products by the customer or operated in combination with them. If the customer receives a faulty installation manual, we shall merely be obliged to provide a correct installation manual, and this only if the error contained in the installation manual is contrary to a proper installation.

7.3. As far as Real is not responsible for the breach of obligation in the context of a defect, the customer shall not have the right to cancel the contract. The customer's claims for defects that do not concern any construction work or corresponding performance of design and supervision services shall lapse within one year after reception of the work carried out for entrepreneurs and within two years after reception of the work carried out for consumers. In case of second-hand goods, the limitation period shall be one year from dispatch of goods. This shall not apply if the customer had not reported the defect to us in due time (article 1 of this agreement). The short limitation period shall not apply if we can be reproached with gross negligence or in case of harm to body or health caused by us or loss of life of the customer. Our liability according to the German Product Liability Act shall also remain unaffected.

7.4. In case of fraudulent concealment of defects or assumption of any guarantee regarding quality, any further claims shall remain unaffected. We will not provide the customer with any guarantees in the legal sense.

7.5. Any further claims, especially due to subsequent damage, shall be excluded to the extent permitted by law. Any claims for compensation, even based on positive breach of contract, unlawful act and especially product liability or other legal reasons shall only become effective against us in case of intent or gross negligence, as far as this is legally permissible. In the event of slight negligence, we shall assume liability if essential contractual obligations are infringed and if the infringement is based on our business organisation. These claims shall expire after six months, whereas the deadline shall be counted from the date of dispatch.

7.6. Unless otherwise agreed in this contract, further claims are excluded.

## **8. Liability**

8.1. In case of slightly negligent breaches of obligation, our liability shall be limited to the contract-typical, immediate average damage predictable for the type of work in question. This applies also to slightly negligent breaches of obligation committed by our representatives and agents.

8.2. We shall not accept liability towards entrepreneurs in case of slightly negligent infringements of insignificant contractual obligations.

8.3. The above-mentioned liability limitations shall not apply to claims of the customer for product liability. Furthermore, the liability limitations shall not apply to harm of body or health caused by us or loss of life of the customer.

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## 9.0 Intellectual property rights

9.1. The customer shall immediately inform Real about any third party claims asserted on account of a breach of industrial property rights by delivery of goods.

9.2. The customer shall give Real all necessary assistance in defending its intellectual property rights.

9.3. If the customer is prevented from using the supplied products due to third party rights, Real shall, at its own discretion, either obtain the right for further use by the customer or replace the products by other items not infringing any intellectual property rights.

9.4. All other rights of the customer are excluded, unless otherwise stipulated in the present agreement.

## 10.0 Installation

10.1. Unless otherwise agreed in the relevant purchase order, the customer shall execute any masonry, chasing and pick work at his own expense. The customer shall provide for electrical connections and the necessary power connections as well as power supply during the installation period at his own expense.

10.2. The customer makes sure that, at the agreed installation date and during the entire installation period, Real technicians can access the construction area without any obstruction and reasonably approach the building with construction vehicles of a load capacity up to 7,5 t maximum permissible weight.

10.3. In case of interior fit-out, all necessary conditions enabling fitting work have to be fulfilled before start of the work, unless otherwise agreed, especially all masonry, plastering, flooring and ceiling works as well as all other preliminary works have to be completed in order to make sure that installation can start straight away on arrival of the Real fitters. The customer shall be liable for any additional costs arising from any incorrect position or execution of foundations as well as non-conformity with installation conditions.

## 11.0 General Conditions

11.1. Modifications and amendments of the contract are to be made in writing.

11.2. The invalidity or voidness of one of the above-mentioned provisions shall not affect validity of the other provisions. If a provision of these general conditions of sale becomes invalid, it shall be replaced by a valid provision, under consideration of the other provisions, that best reflects the economic purpose of the invalid provision.

11.3 The privity of contract between Real and the customer shall be subject exclusively to German law. Application of standard international purchasing law is excluded.

11.4. As far as the customer is a merchant in the sense of the German Commercial Code (Handelsgesetzbuch), a legal entity of public law or of special fund under public law, the exclusive place of jurisdiction for all litigations directly or indirectly arising from this contractual relationship shall be Kuelenheim/Baden provided that we shall also be entitled to sue the customer at its general court of jurisdiction. The same shall apply if the customer's general court of jurisdiction is outside Germany or if the place of registered or habitual residence is not known at the moment when proceedings are instituted.

11.5. The customer is aware of the fact that, in our usual course of business, his personal data are recorded and treated to the extent necessary for business purposes. Hereby, the customer gives his consent and is deemed to be informed in the sense of § 33 subparagraph 1 German Federal Data Protection Act (Bundesdatenschutzgesetz).

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real General Contracting GmbH

Gezeichnet:



Michael Betz  
CEO

Gezeichnet:



Marcus Beinert  
CFO

real General Contracting GmbH

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