



# General delivery and payment conditions

06/2016

for use in the commercial business dealings of  
Rieder Smart Elements GmbH, Mühlenweg 22, 5751 Maishofen, Austria

## 1. General

The legal definition Article 305 Section 1 of the Federal Civil Code states: General terms and conditions are all of the pre-formulated terms of a contract used in a multitude of contracts, which one of the contract parties (user) stipulates for the other contract party when a contract is signed.

- 1.1. We do not deliver directly to end customers as knowledge of commercial manufacturing and fitting is necessary for our products. If, by way of exception, we supply goods to a consumer directly (e.g. by collection from our factory in Maishofen), our special terms and conditions for deliveries to consumers apply, which are available from our headquarters.
- 1.2. These delivery and payment conditions are an essential part of all offers and contracts concerning the deliveries and services of Rieder Smart Elements GmbH and apply exclusively. Other and/or contradictory terms and conditions shall not be recognised by us.

All manufacturing related time periods begin, at the earliest, with the full acceptance of these general terms and conditions.

Our delivery and payment conditions also apply if we carry out delivery to the client unconditionally while being aware of the client's conditions to the contrary or the client's delivery and payment conditions which deviate from our terms. If the delivery and payment conditions of the contract partners are contradictory, the conditions in this agreement will apply exclusively. In commercial business dealings these conditions also apply if Rieder Smart Elements GmbH, as part of a routine business relationship, does not expressly make reference to them in later contracts.

- 1.3. Sales representatives are not authorised to agree conditions which deviate from these terms and conditions.
- 1.4. Verbal supplementary agreements are not valid. All agreements, supplementary agreements, assurances etc. must be stated in writing or made known to us in writing.

## 2. Offers / Prices / Samples

- 2.1. Offers are subject to change until the conclusion of a contract, subject to prior sale.
- 2.2. Documents which form part of the offer, such as illustrations, drawings, details or areas and dimensions are approximate values, insofar as they are not expressly described as binding. For quality and tolerance the "product characteristics" published on our homepage apply in the valid version on the day the contract is concluded.

- 2.3. All cost estimates, drawings, plans and other documents which are an essential part of the offer, are our property and are protected by copyright.
- 2.4. All prices must be agreed in writing.
- 2.5. All prices are in Euros ex-works or distribution centre plus VAT, transport costs, customs charges and other costs which arise between the conclusion of the contract and handover in accordance with the contract.
- 2.6. Samples and specimens are seen as non-binding illustrative visuals, unless otherwise agreed. Deviations from our offer or samples with reference to, for example, size, quality, weight and colour remain subject to change in accordance with the „product characteristics“, the same applies to the proposed tolerance.
- 2.7. Batches: production is carried out in batches. As experience shows, identical order details can lead to different batches with differences and characteristics which can be recognised by the naked eye, for example, in the surfaces and colour, so it is the responsibility of the client to take into account the desired buffer amounts when making the order for a uniform design and a particular optical impression. In a batch there can also be differences in colour and quality. Different batches also have different behaviour with regard to environmental conditions and weathering.

## 3. (Part) delivery, passing of risk, default of acceptance and default of the debtor

- 3.1. The place of performance is Austria, 5751 Maishofen, Mühlenweg 22, a delivery EXW is agreed in accordance with INCOTERMS 2010. If all other agreements are met, for example, collection of the goods from our stockroom in Kolbermoor, Maishofen still remains the place of performance.
- 3.2. Completion dates are only binding when they have been agreed in writing.
- 3.3. Part deliveries are permissible within the delivery periods stated by us, providing that it does not result in any disadvantages in use.
- 3.4. If the agreed delivery date of ordered goods or goods part deliveries is delayed for reasons which do not concern point 5, Rieder has the right to charge for the resulting additional costs through storage, transport, logistics and overtime to the contractor.
- 3.5. The delivery period is extended in the event of measures as part of industrial action, in particular strikes and lockouts, as well as in the event of unforeseen obstacles which are beyond our control, such as, for example, malfunctions, lack of transport space, traffic delays, delays in the delivery of essential materials, insofar as it can be proven that such obstacles have considerable influence on the delivery of the contract items. This also applies if the circumstances arise for subcontractors. The delivery period extends in accordance

with the duration of such measures and obstacles. If it is impossible to carry out the delivery, we shall be completely free from our obligation. We shall inform the client immediately about the occurrence of such a case.

- 3.6. The scope of supply shall be determined by our written offer and/or our written order confirmation.
- 3.7. Agreed delivery periods begin, at the earliest, with the day of dispatch of the order confirmation countersigned on behalf of the company, but not before the client has supplied the necessary documents, permits, approval or before receipt of an agreed deposit. The client is committed to countersigning the general terms and conditions on behalf of the company and returning them to us via fax/mail.
- 3.8. The client is committed to making sure that there is perfect accessibility and navigability of the building site for transport with the proposed transport equipment. They must also ensure, through safety precautions, that public paths cannot be damaged. However, if damage does occur, the client is liable for any costs which arise. They shall exempt Rieder Smart Elements GmbH from any such claims.
- 3.9. If the goods are delivered to the client (in a separate agreement) – to a building site or stockroom – the risk of accidental destruction and accidental deterioration of the goods passes to the client with the handing over to the carrier/ haulier; this also applies to part deliveries or when the client collects the goods. If, by way of exception, prices are agreed “including shipping” or “delivered site”, it should be understood that the costs for transport are covered by the agreed purchase price. In this case Rieder Smart Elements GmbH shall appoint a haulier/ carrier of their choice in the name and at the risk of the buyer. However, this does not lead to a departure of risk distribution in accordance with EXW / INCOTERMS 2010, so that the client must ensure insurance of the residual transport risk. It is also in the sphere of the client to ensure orderly access and unloading.

#### **4. Material defects**

- 4.1. For the composition and quality of the goods, in particular with regard to colour, size, quality and weight, as well as tolerance, only our delivery quality as agreed in the “product characteristics” and accompanying data sheets apply. All other qualitative characteristics and tolerance must be made in writing and require the consent of Rieder Smart Elements GmbH, an additional charge can be made for this.
- 4.2. Concrete is a natural product. It is to be expected that there can be differences in colour and irregularities on the surface. Changes in colour can also result over time due to the effects of the weather. Differences in colour can also arise within the area of tolerance laid down in the description of the quality of delivery in case of different batches.  
Shades, textures and other tolerance-specific differences (according to the “product characteristics”) of the goods, as well as differences in their appearance (slight irregularities, distortions), which do not negatively affect the usability of the goods, are not to be seen as a performance contrary to the terms of the contract. Wear and tear due to age or caused by the weather is not a material defect.
- 4.3. Light colours require longer drying-out periods and can temporarily display a blue or green tinge. Experiences have shown that blue and green tinges can disappear in the course of time depending on the temperature, air humidity, coating and other environmental influences.
- 4.4. All colours can still become brighter through the drying-out process.
- 4.5. Samples and specimens are to be viewed as non-binding illustrative samples. It should be noted that specimens cannot convey the overall optical impression of a facade, this is because the samples can deviate from the slabs which are to be produced later due to them being stored differently and coming from a different batch.
- 4.6. Each description of the quality of the goods or other descriptions of the goods is not to be understood as a guarantee or warranted quality. The client may only invoke a guarantee or warranted quality, if it has been declared a guarantee explicitly and in writing.
- 4.7. In case of a justified notification of a defect raised in good time by the client we are authorised to correct the defect or make a substitute delivery, according to our choice.
- 4.8. Our advice is non-binding, liability for this is – as far as legally possible – excluded on grounds of cause or amount.
- 4.9. Insofar as we have committed, by way of exception, to building work, the regulations of ÖNORM B 2110 in the respective valid version apply for the guarantee. Personnel from Rieder Smart Elements GmbH solely carry out auxiliary functions and are released from liability. It is the responsibility of the client to inspect the delivered goods as soon as they receive them. Visible defects, deviations in quantities or incorrect deliveries must be made known to us in writing, in commercial business dealings at the latest within five days and in non-commercial business dealings within two weeks. If not reported to us in time, the rights due to material defects are excluded. We must be given the opportunity to jointly observe the reported objections and to be present when

taking samples for material testing. If previously agreed, photos of the loading of goods can be made available to the contractor on request.

- 4.10. A prerequisite for asserting claims due to defects is that the client treats and stores the purchased goods properly and carries out the on-site installation, positioning, assembly or other processing in accordance with current engineering principles, guidelines, standards, the conditions laid down by the approval procedures and our factory regulations.
- 4.11. For the quality specifications of the goods only our product description “product characteristics” and the quality contract apply as agreed.

#### **5. Obligation to provide notification of defects**

- 5.1. It is the responsibility of the client to inspect the delivered goods as soon as they receive them. Visible defects, deviations in quantities or incorrect deliveries must be reported to us immediately in writing, in commercial business dealings at the latest within five days and in non-commercial business dealings within two weeks. If it is not reported to us in good time, the rights due to material defects are excluded. We must be given the opportunity to jointly observe the reported objections and to be present when taking samples for material testing. If previously agreed, photos of the loading of goods can be made available to the contractor on request.
- 5.2. The client undertakes to treat and store the purchased goods properly and carry out the on-site installation, fitting or other processing in accordance with current engineering principles, guidelines, standards, the conditions laid down by the approval procedures and our factory regulations (“Handling instructions”).

#### **6. Technical specifications**

We provide information and suggestions for implementation from a technical point of view taking into account the current legal requirements for the construction industry and the rules of architecture to the best of our knowledge adopting the guidelines of our “Façade Manual”. The client must check the suitability of the ordered goods and the suggested implementation for the intended use. This applies in particular with regard to questions of static, testing approval for the planned use as well as the coating of the slabs which is not carried out by our company. In case of continuous obligations Rieder Smart Elements GmbH is authorised to change the technical data of the ordered contract item, insofar as this is reasonable for the client.

#### **7. Billing policy**

The calculation of the glassfibre concrete elements is based on m<sup>2</sup> and the largest slab measurements (length x height or width), which are necessary for the manufacture of the required elements. Scheduled unavoidable waste originating from control elements will be met by the client.

#### **8. Compensation**

- 8.1. Claims for compensation are excluded regardless of the legal nature of the asserted claims. This applies in particular to direct damage, damage to property, lost profit, dealing with damage and inspection costs, handling costs, engineer services, expenses, substitute performance costs, etc. Damage from injury to life, body or health are excluded from this, if we are responsible for a breach of obligation and for other damage which arises from a malicious or gross negligent breach of our obligation.
- 8.2. The aforementioned applies in particular to claims due to faults during contract negotiations, violation of a secondary obligation or other legal claims.
- 8.3. Compensation claims due to incapacity remain unaffected. The same applies insofar as liability due to the provisions of the product liability law is mandatory.
- 8.4. The client shall hold harmless and indemnify Rieder Smart Elements GmbH from all disadvantages which arise through improper use of their goods, for example, due to inadequate engineering, incorrect mounting or/and inadequate care and maintenance.

#### **9. Payments, rights of retention**

- 9.1. Invoices are due for payment immediately after they have been received. Advance payments can be agreed. Payments are to be made exclusively to the banks stated on the invoice.
- 9.2. For the charge of payments on interest and costs the regulation according to the Austrian Civil Code applies.
- 9.3. If the general place of jurisdiction of the client is situated outside Austria, payment must be made in advance or through an irrevocable letter of credit, confirmed by a major Austrian bank or through a public Austrian credit institute.
- 9.4. The client only has the right to set-off, if their counterclaim is legally established, undisputed or acknowledged by us. In commercial business dealings the client can only claim a right of retention, if their counterclaim is based on the same contractual relationship.
- 9.5. In the event of having doubt about the credit-worthiness of the client based on information provided by a bank or based on justified doubt, even if this doubt already existed when the contract was concluded, we are authorised to refuse to perform the services incumbent on us, insofar as the client does not

either make the payments or stands security to the extent of our contractual claim. If the client is not prepared to do this despite being called upon to do so, we are – irrespective of other possible rights – authorised to withdraw from the contract.

- 9.6. If the client falls behind with the fulfilment of a due claim for payment following receipt of the reminder, the filing of an action or the delivery of a court order to pay. The client also falls behind when a period of time for fulfilment has been set according to the calendar and they do not perform the payment within the certain period of time. Irrespective of the aforementioned, the client falls behind 30 days after the date of payment and receipt of an invoice or an equivalent demand for payment. The default in payment of the client entitles us, irrespective of the other rights due to us, to charge interest for late payment of 8 % above the base interest rate. If higher damage caused by default can be proven, we are able to assert the claim for damages; on their part the client is entitled to submit evidence to us that due to the default in payment no or just a small amount of damage has occurred to us.
- 9.7. In the absence of agreement, Article 1170 b of the Austrian Civil Code can also be used with instructions that the legal guarantee for delivery periods of less than three months is to be paid in cash, when requested.

#### **10. Reservation of ownership, securing of an account receivable**

- 10.1. The delivered goods remain our property (reservation of ownership) until the full payment of all claims from the respective sales contract. The client is committed to ensuring the careful treatment of the goods.
- 10.2. In commercial business dealings this reservation of ownership extends to all of the existing claims from the business relationship with the client, including secondary claims.
- 10.3. If the client behaves contrary to the terms of the contract, in particular in case of a default in payment, we are authorised to take back the delivered goods. In case of the return of the goods there is no withdrawal from the contract, except if the client is not a businessman, unless we have expressly declared this.
- 10.4. The client is committed to treating the delivered goods carefully; (in accordance with the "Handling instructions"), in particular they must be insured at their own cost against damage caused by fire, water and theft, to cover the original value.
- 10.5. The treatment or processing of the purchased item is always undertaken by the client for us. If the purchased item is processed with other items which do not belong to us, we acquire joint ownership of the new item in proportion to the value of the purchased item (final invoice total including VAT) with the other processed items at the time of processing.
- 10.6. If the purchased item is inseparably mixed with other items which do not belong to us, we acquire joint ownership of the new item in proportion to the value of the purchased item (final invoice total including VAT) with the other

mixed items at the time of mixing. If the mixing takes place in such a way that the item of the client is viewed as the main item, it is deemed to be agreed that the client transfers proportionate joint ownership to us. The same applies in the case of combining.

- 10.7. The client is entitled and authorised to sell the purchased item in the course of ordinary business. However, they already assign all claims to the total of the final invoice amount (including VAT) of our claim, which arise to them from the resale to their purchaser or a third party and independent of whether the purchased item has been sold on without or following treatment or processing, combining or mixing. To the same extent, the client also assigns the claims (including the right to admit a trust mortgage), which arise through the combination of the purchased item with a property to a third party. If the client is the owner of the property, the assignment in advance covers, to the same extent, the resulting claims from the sale of the property or of property rights.
- 10.8. The client remains entitled to collect the claims assigned to us themselves. However, we are entitled, in case of a default in payment by the client, to cancel the right given to them to collect claims with regard to the claims assigned to us. In this case, the client must give us the necessary information which we need in order to enforce the claims assigned to us. The assignment of the claims from the sale of the goods subject to retention to third parties is only permitted for the client, insofar as it takes place for the purpose of debt recovery (factoring).

#### **11. Place of performance**

Place of performance for the payment of the client is exclusively Austria, 5751 Maishofen, Mühlenweg 22.

#### **12. Place of jurisdiction, applicable law of the contract**

- 12.1. Place of jurisdiction for all disputes arising from and in connection with this contract, including cheques and bills of exchange, is the relevant competent court in Salzburg. Rieder Smart Elements GmbH also has the right to take legal action at the court responsible for the client.
- 12.2. For all legal relations which result from this contract for the parties Austrian law applies exclusively with the exclusion of the UN Sales Convention.

#### **13. Other provisions**

- 13.1. The transfer of rights and duties of the client from the contract concluded with Rieder Smart Elements GmbH requires our written agreement in order to become effective.
- 13.2. Should a provision of this contract, including these delivery and payment conditions, be invalid or become completely or partially invalid, the validity of the other provisions shall not be affected, and the invalid provision will be replaced by a valid provision, which comes closest to the intentions of the contract parties.



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01/2018

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## 1. General

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Our delivery and payment conditions also apply if we carry out delivery to the client unconditionally while being aware of the client's conditions to the contrary or the client's delivery and payment conditions which deviate from our terms. If the delivery and payment conditions of the contract partners are contradictory, the conditions in this agreement will apply exclusively. In commercial business dealings these conditions also apply if Rieder Sales GmbH, as part of a routine business relationship, does not expressly make reference to them in later contracts.

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- 2.7. Batches: production is carried out in batches. As experience shows, identical order details can lead to different batches with differences and characteristics which can be recognised by the naked eye, for example, in the surfaces and colour, so it is the responsibility of the client to take into account the desired buffer amounts when making the order for a uniform design and a particular optical impression. In a batch there can also be differences in colour and quality. Different batches also have different behaviour with regard to environmental conditions and weathering.

## 3. (Part) delivery, passing of risk, default of acceptance and default of the debtor

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- 3.2. Completion dates are only binding when they have been agreed in writing.
- 3.3. Part deliveries are permissible within the delivery periods stated by us, providing that it does not result in any disadvantages in use.
- 3.4. If the agreed delivery date of ordered goods or goods part deliveries is delayed for reasons which do not concern point 5, Rieder has the right to charge for the resulting additional costs through storage, transport, logistics and overtime to the contractor.
- 3.5. The delivery period is extended in the event of measures as part of industrial action, in particular strikes and lockouts, as well as in the event of unforeseen obstacles which are beyond our control, such as, for example, malfunctions, lack of transport space, traffic delays, delays in the delivery of essential materials, insofar as it can be proven that such obstacles have considerable influence on the delivery of the contract items. This also applies if the circumstances arise for subcontractors. The delivery period extends in accordance

with the duration of such measures and obstacles. If it is impossible to carry out the delivery, we shall be completely free from our obligation. We shall inform the client immediately about the occurrence of such a case.

- 3.6. The scope of supply shall be determined by our written offer and/or our written order confirmation.
- 3.7. Agreed delivery periods begin, at the earliest, with the day of dispatch of the order confirmation countersigned on behalf of the company, but not before the client has supplied the necessary documents, permits, approval or before receipt of an agreed deposit. The client is committed to countersigning the general terms and conditions on behalf of the company and returning them to us via fax/mail.
- 3.8. The client is committed to making sure that there is perfect accessibility and navigability of the building site for transport with the proposed transport equipment. They must also ensure, through safety precautions, that public paths cannot be damaged. However, if damage does occur, the client is liable for any costs which arise. They shall exempt Rieder Sales GmbH from any such claims.
- 3.9. If the goods are delivered to the client (in a separate agreement) – to a building site or stockroom – the risk of accidental destruction and accidental deterioration of the goods passes to the client with the handing over to the carrier/ haulier; this also applies to part deliveries or when the client collects the goods. If, by way of exception, prices are agreed “including shipping” or “delivered site”, it should be understood that the costs for transport are covered by the agreed purchase price. In this case Rieder Sales GmbH shall appoint a haulier/ carrier of their choice in the name and at the risk of the buyer. However, this does not lead to a departure of risk distribution in accordance with EXW / INCOTERMS 2010, so that the client must ensure insurance of the residual transport risk. It is also in the sphere of the client to ensure orderly access and unloading.

#### **4. Material defects**

- 4.1. For the composition and quality of the goods, in particular with regard to colour, size, quality and weight, as well as tolerance, only our delivery quality as agreed in the “product characteristics” and accompanying data sheets apply. All other qualitative characteristics and tolerance must be made in writing and require the consent of Rieder Sales GmbH, an additional charge can be made for this.
- 4.2. Concrete is a natural product. It is to be expected that there can be differences in colour and irregularities on the surface. Changes in colour can also result over time due to the effects of the weather. Differences in colour can also arise within the area of tolerance laid down in the description of the quality of delivery in case of different batches.  
Shades, textures and other tolerance-specific differences (according to the “product characteristics”) of the goods, as well as differences in their appearance (slight irregularities, distortions), which do not negatively affect the usability of the goods, are not to be seen as a performance contrary to the terms of the contract. Wear and tear due to age or caused by the weather is not a material defect.
- 4.3. Light colours require longer drying-out periods and can temporarily display a blue or green tinge. Experiences have shown that blue and green tinges can disappear in the course of time depending on the temperature, air humidity, coating and other environmental influences.
- 4.4. All colours can still become brighter through the drying-out process.
- 4.5. Samples and specimens are to be viewed as non-binding illustrative samples. It should be noted that specimens cannot convey the overall optical impression of a facade, this is because the samples can deviate from the slabs which are to be produced later due to them being stored differently and coming from a different batch.
- 4.6. Each description of the quality of the goods or other descriptions of the goods is not to be understood as a guarantee or warranted quality. The client may only invoke a guarantee or warranted quality, if it has been declared a guarantee explicitly and in writing.
- 4.7. In case of a justified notification of a defect raised in good time by the client we are authorised to correct the defect or make a substitute delivery, according to our choice.
- 4.8. Our advice is non-binding, liability for this is – as far as legally possible – excluded on grounds of cause or amount.
- 4.9. Insofar as we have committed, by way of exception, to building work, the regulations of ÖNORM B 2110 in the respective valid version apply for the guarantee. Personnel from Rieder Sales GmbH solely carry out auxiliary functions and are released from liability. It is the responsibility of the client to inspect the delivered goods as soon as they receive them. Visible defects, deviations in quantities or incorrect deliveries must be made known to us in writing, in commercial business dealings at the latest within five days and in non-commercial business dealings within two weeks. If not reported to us in time, the rights due to material defects are excluded. We must be given the opportunity to jointly observe the reported objections and to be present when taking sam-

ples for material testing. If previously agreed, photos of the loading of goods can be made available to the contractor on request.

- 4.10. A prerequisite for asserting claims due to defects is that the client treats and stores the purchased goods properly and carries out the on-site installation, positioning, assembly or other processing in accordance with current engineering principles, guidelines, standards, the conditions laid down by the approval procedures and our factory regulations.
- 4.11. For the quality specifications of the goods only our product description “product characteristics” and the quality contract apply as agreed.

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#### **6. Technical specifications**

We provide information and suggestions for implementation from a technical point of view taking into account the current legal requirements for the construction industry and the rules of architecture to the best of our knowledge adopting the guidelines of our “Façade Manual”. The client must check the suitability of the ordered goods and the suggested implementation for the intended use. This applies in particular with regard to questions of static, testing approval for the planned use as well as the coating of the slabs which is not carried out by our company. In case of continuous obligations Rieder Sales GmbH is authorised to change the technical data of the ordered contract item, insofar as this is reasonable for the client.

#### **7. Billing policy**

The calculation of the glassfibre concrete elements is based on m<sup>2</sup> and the largest slab measurements (length x height or width), which are necessary for the manufacture of the required elements. Scheduled unavoidable waste originating from control elements will be met by the client.

#### **8. Compensation**

- 8.1. Claims for compensation are excluded regardless of the legal nature of the asserted claims. This applies in particular to direct damage, damage to property, lost profit, dealing with damage and inspection costs, handling costs, engineer services, expenses, substitute performance costs, etc. Damage from injury to life, body or health are excluded from this, if we are responsible for a breach of obligation and for other damage which arises from a malicious or gross negligent breach of our obligation.
- 8.2. The aforementioned applies in particular to claims due to faults during contract negotiations, violation of a secondary obligation or other legal claims.
- 8.3. Compensation claims due to incapacity remain unaffected. The same applies insofar as liability due to the provisions of the product liability law is mandatory.
- 8.4. The client shall hold harmless and indemnify Rieder Sales GmbH from all disadvantages which arise through improper use of their goods, for example, due to inadequate engineering, incorrect mounting or/and inadequate care and maintenance.

#### **9. Payments, rights of retention**

- 9.1. Invoices are due for payment immediately after they have been received. Advance payments can be agreed. Payments are to be made exclusively to the banks stated on the invoice.
- 9.2. For the charge of payments on interest and costs the regulation according to the Austrian Civil Code applies.
- 9.3. If the general place of jurisdiction of the client is situated outside Austria, payment must be made in advance or through an irrevocable letter of credit, confirmed by a major Austrian bank or through a public Austrian credit institute.
- 9.4. The client only has the right to set-off, if their counterclaim is legally established, undisputed or acknowledged by us. In commercial business dealings the client can only claim a right of retention, if their counterclaim is based on the same contractual relationship.
- 9.5. In the event of having doubt about the credit-worthiness of the client based on information provided by a bank or based on justified doubt, even if this doubt already existed when the contract was concluded, we are authorised to refuse to perform the services incumbent on us, insofar as the client does not

either make the payments or stands security to the extent of our contractual claim. If the client is not prepared to do this despite being called upon to do so, we are – irrespective of other possible rights – authorised to withdraw from the contract.

- 9.6. If the client falls behind with the fulfilment of a due claim for payment following receipt of the reminder, the filing of an action or the delivery of a court order to pay. The client also falls behind when a period of time for fulfilment has been set according to the calendar and they do not perform the payment within the certain period of time. Irrespective of the aforementioned, the client falls behind 30 days after the date of payment and receipt of an invoice or an equivalent demand for payment. The default in payment of the client entitles us, irrespective of the other rights due to us, to charge interest for late payment of 8 % above the base interest rate. If higher damage caused by default can be proven, we are able to assert the claim for damages; on their part the client is entitled to submit evidence to us that due to the default in payment no or just a small amount of damage has occurred to us.
- 9.7. In the absence of agreement, Article 1170 b of the Austrian Civil Code can also be used with instructions that the legal guarantee for delivery periods of less than three months is to be paid in cash, when requested.

#### **10. Reservation of ownership, securing of an account receivable**

- 10.1. The delivered goods remain our property (reservation of ownership) until the full payment of all claims from the respective sales contract. The client is committed to ensuring the careful treatment of the goods.
- 10.2. In commercial business dealings this reservation of ownership extends to all of the existing claims from the business relationship with the client, including secondary claims.
- 10.3. If the client behaves contrary to the terms of the contract, in particular in case of a default in payment, we are authorised to take back the delivered goods. In case of the return of the goods there is no withdrawal from the contract, except if the client is not a businessman, unless we have expressly declared this.
- 10.4. The client is committed to treating the delivered goods carefully; (in accordance with the "Handling instructions"), in particular they must be insured at their own cost against damage caused by fire, water and theft, to cover the original value.
- 10.5. The treatment or processing of the purchased item is always undertaken by the client for us. If the purchased item is processed with other items which do not belong to us, we acquire joint ownership of the new item in proportion to the value of the purchased item (final invoice total including VAT) with the other processed items at the time of processing.
- 10.6. If the purchased item is inseparably mixed with other items which do not belong to us, we acquire joint ownership of the new item in proportion to the value of the purchased item (final invoice total including VAT) with the other

mixed items at the time of mixing. If the mixing takes place in such a way that the item of the client is viewed as the main item, it is deemed to be agreed that the client transfers proportionate joint ownership to us. The same applies in the case of combining.

- 10.7. The client is entitled and authorised to sell the purchased item in the course of ordinary business. However, they already assign all claims to the total of the final invoice amount (including VAT) of our claim, which arise to them from the resale to their purchaser or a third party and independent of whether the purchased item has been sold on without or following treatment or processing, combining or mixing. To the same extent, the client also assigns the claims (including the right to admit a trust mortgage), which arise through the combination of the purchased item with a property to a third party. If the client is the owner of the property, the assignment in advance covers, to the same extent, the resulting claims from the sale of the property or of property rights.
- 10.8. The client remains entitled to collect the claims assigned to us themselves. However, we are entitled, in case of a default in payment by the client, to cancel the right given to them to collect claims with regard to the claims assigned to us. In this case, the client must give us the necessary information which we need in order to enforce the claims assigned to us. The assignment of the claims from the sale of the goods subject to retention to third parties is only permitted for the client, insofar as it takes place for the purpose of debt recovery (factoring).

#### **11. Place of performance**

Place of performance for the payment of the client is exclusively Austria, 5751 Maishofen, Mühlenweg 22.

#### **12. Place of jurisdiction, applicable law of the contract**

- 12.1. Place of jurisdiction for all disputes arising from and in connection with this contract, including cheques and bills of exchange, is the relevant competent court in Salzburg. Rieder Sales GmbH also has the right to take legal action at the court responsible for the client.
- 12.2. For all legal relations which result from this contract for the parties Austrian law applies exclusively with the exclusion of the UN Sales Convention.

#### **13. Other provisions**

- 13.1. The transfer of rights and duties of the client from the contract concluded with Rieder Sales GmbH requires our written agreement in order to become effective.
- 13.2. Should a provision of this contract, including these delivery and payment conditions, be invalid or become completely or partially invalid, the validity of the other provisions shall not be affected, and the invalid provision will be replaced by a valid provision, which comes closest to the intentions of the contract parties.



**RIEDER**

# Liefer- und Montagebedingungen

01/2017

Betonwerk Rieder GmbH, Mühlenweg 22, 5751 Maishofen, Österreich

## 1. Verbindlichkeit des Angebotes:

Das vorliegende Angebot erstellen wir auf Grund nachfolgender Lieferbedingungen. Unser Angebot besteht aus den Angebotspositionen, den Lieferbedingungen und der aktuellen Preisliste für Zusatzleistungen.

Alle mit dem Auftrag zusammenhängenden Lieferungen und Leistungen erfolgen auf Grund dieser Bedingungen.

Abweichungen von diesen Bedingungen, insbesondere durch Übersendung anders lautender Einkaufsbedingungen bedürfen zur gegenseitigen Rechtswirksamkeit unserer schriftlichen Anerkennung.

Soweit in diesen Liefer- und Montagebedingungen nichts anderes geregelt, gelten die einschlägigen NORMEN, insbesondere die ÖNORM B2110.

Die übergebenen Pläne unterliegen nicht der Prüfpflicht durch die Betonwerk Rieder GmbH. Planänderungen werden nur auf schriftliche Anordnung des Auftraggebers berücksichtigt.

## 2. Preisbildung:

Die Produktion der Elemente erfolgt nach den übergebenen Unterlagen. Vom AN werden keine Naturmasse genommen.

Die Preise wurden nach den zum Angebotstag gültigen Lohn-, Material- und Transportkosten ermittelt und gelten als veränderlich. Änderungen des Leistungsumfanges oder der statischen Grundlagen berechtigen uns zu einer entsprechenden Preiskorrektur. Die Kalkulation erfolgte unter der Annahme, dass alle Fertigteile mit vollen LKW-Zügen geliefert und ohne Unterbrechung montiert werden können. Sollte dies baustellenbedingt nicht möglich sein, werden zusätzliche Anfahrten für LKW, Kran und Montagepersonal in Rechnung gestellt.

Konstruktiv nicht notwendige Arbeiten wie das Ausmörteln der Fugen und Montagelöcher, Verfugen (sofern nicht eigene Position im Leistungsverzeichnis) sowie das Entfernen von Holzkeilen ist im Liefer- und Montageumfang nicht enthalten. Diese Arbeiten werden nur über gesonderten Auftrag durchgeführt und verrechnet.

## 3. Preisbindung und Besicherung:

An unser Angebot halten wir uns 3 Monate (ausgenommen Bewehrungsstahl) gebunden. Kalkulationsbasis für Bewehrungsstahl ist der Großhandelspreisindex vom Angebotsdatum gemäß dem österreichischen Güteschutzverband für Bewehrungsstahl.

Der Auftraggeber hat für die Besicherung der beauftragten Leistungen eine

Bankgarantie gemäß unserer Vorlage über 100% der Bruttosumme, mit dem Auftragschreiben, vorzulegen bzw. den entsprechenden Betrag über eine Vorauszahlung abzudecken.

## 4. Lieferung:

Die Baustelle muss mit LKW-Sattel- bzw. Hängerzügen ohne Allrad und ohne gelenkte Aufliegerachse sowie mit Autokränen auch bei schlechten Witterungsverhältnissen einwandfrei befahrbar sein.

Sondergenehmigungen für die Zufahrt zur Baustelle müssen durch den Auftraggeber beigebracht werden.

Eine Einhaltung der vertraglich vereinbarten Lieferfristen bedingt eine termingerechte Übergabe der kompletten Planunterlagen und eine rechtzeitige Freigabe von Produktions- und Schalungsplänen.

Eine entsprechende Vorlaufzeit für Planung, Statik und Schalungsbau ist zu vereinbaren.

Die übergebenen Pläne unterliegen nicht der Prüfpflicht vom Betonwerk Rieder GmbH.

Planänderungen werden nur nach schriftlicher Anordnung des Auftraggebers berücksichtigt. Erfolgen nachträglich bauseits gewünschte Planänderungen verlängert dies entsprechend die Vorlaufzeit.

Der Abruf von Lieferungen muss mindestens 5 Tage vor dem gewünschten Liefertermin im Werk schriftlich erfolgen. Die Bauteile sind zum vereinbarten Liefertermin vom Auftraggeber abzunehmen und werden maximal 2 Wochen kostenlos gelagert.

Verzögerungen bei der Anlieferung der Fertigteile auf die Baustelle, verursacht durch höhere Gewalt, Unfälle oder Straßensperren liegen nicht im Einflussbereich des Auftragnehmers.

In diesen Fällen können keine Schadensforderungen seitens des Auftraggebers geltend gemacht werden.

## 5. Montage:

Wird die Montage von Fertigteilen durch Betonwerk Rieder GmbH durchgeführt, sind vom Auftraggeber die Achs- und Höhenpunkte festzulegen. Betonwerk Rieder GmbH übernimmt keine Haftung für die Positionierung des Bauobjektes.

Bauteile, Hilfsmittel und Oberleitungen welche die Montage behindern oder gefährden sind vor Montagebeginn vom Auftraggeber zu entfernen. Freileitungen im Montagebereich müssen im Auftrag des Auftraggebers vom EVU

abgeschaltet und geerdet werden.

Der Montage- und Arbeitsbereich für Leitern und Hebebühnen muss eben und befestigt sein. Auflager für Fertigteile auf Ortbetonteilen sind bauseits fertigteilgerecht, maßgenau und in tragfähigem Zustand zu übergeben.

Die Zufahrt zum unmittelbaren Einbaubereich, muss mit LKW-Sattelzügen, bei jeder Witterung, ohne Behinderung möglich sein.

Für das Aufstellen des Montagekrans benötigen wir einen Arbeitsplatz von min. 4,00m Breite und die Reichweite des Krans für die Montage der Elemente beträgt max. 8,00m.

Für die Verkehrsabsicherung ist der AG verantwortlich.

#### 6. Abrechnung:

Die Abrechnung erfolgt nach tatsächlich ausgeführten Mengen gemäß Plan, Lieferschein bzw. Naturmaßen.

Alle Fertigteile werden nach den größten Ausmaßen hohl für voll verrechnet. Aussparungen und Nebenleistungen werden nach dem tatsächlichen Aufwand gemäß Auftrag bzw. Preisliste verrechnet.

Betonwerk Rieder GmbH übernimmt grundsätzlich keine Baustelleneinkosten wie Bauwesensversicherung, Beheizung, Bauschutt, Abfall oder generelle Baustellenreinigung. Baustrom und Wasser sind vom Auftraggeber beizustellen. Eine Beteiligung an allgemeinen Schäden an der Baustelle wird ebenfalls ausgeschlossen.

#### 7. Qualität:

Temperaturbedingte Schwind- und Dehnungsrisse können bei Fertigteilen auftreten. Solche Risse sind systembedingt und stellen keinen Mangel dar. Eine Garantie für 100% Farbgleichheit kann aufgrund der naturgegebenen Schwankungen der Einsatzmaterialien nicht gegeben werden.

#### 8. Paletten und Lagerböcke bei Lieferungen ohne Montage:

Erfolgt die Auslieferung von FT auf Paletten, Böcken etc. so werden diese mit Einsatzgebühren wie folgt berechnet:

100x120cm	EUR 10,90
Kantholz 10/12 bis 1,20 m Länge	EUR 6,00
Rieder U-Bock	EUR 200,00
Rieder A-Transportbock	EUR 300,00

Diese Einsatzgebühren werden bei Rückgabe in gleicher Höhe gutgeschrieben. Alle Preise zuzüglich Mehrwertsteuer.

Der Auftraggeber ist dafür zuständig, dass die Paletten, Böcke und Transporthölzer auf seine Kosten ins Produktionswerk retourniert werden, andernfalls werden diese mit den vorstehenden Preisen in Rechnung gestellt.

#### 9. Abnahme und Gewährleistung:

Grundsätzlich leisten wir für unsere Produkte im Umfang der ÖNORM max. 3 Jahre ab Liefer- bzw. Montageabschluss Gewähr. Voraussetzung bei Lieferaufträgen ist die strikte Einhaltung unserer Montage- und Nachbehandlungsvorschriften.

Bei Lieferaufträgen haben Mängelrügen sofort bei Übernahme auf der Baustelle zu erfolgen und müssen auf dem Lieferschein vermerkt werden.

Bei Lieferung mit Montage erfolgt eine gemeinsame Abnahme vor Ort, Mängelrügen haben in diesem Zusammenhang zu erfolgen.

Werden Fertigteile bauseits ausbetoniert, vergossen, verfugt oder weiter in die Konstruktion eingebaut, so gelten diese als einwandfrei abgenommen. Spätere Mängelrügen werden nicht mehr angenommen.

Bei reinen Lieferverträgen werden grundsätzlich kein Deckungs- und Haftrücklass gewährt.

Der Einbehalt eines Haftrücklass erfolgt nach ÖNORM B 2110 (in Deutschland gemäß VOB) und wird erst ab einer Haftungssumme von mindestens EUR 1.000,- anerkannt. Die Bezahlung eines Haftrücklass erfolgt gegen Vorlage einer Bankgarantie.

#### 10. Gerichtsstand:

Für alle aus dem Vertragsverhältnis entstehenden Streitigkeiten wird ausschließlich das sachlich für den Hauptsitz der Lieferfirma zuständige Gericht als zuständig vereinbart.