

## **RAUCH Furnace Technology GmbH**

### **GENERAL TERMS AND CONDITIONS**

These Terms and Conditions are a translation of the "Allgemeine Geschäftsbedingungen" (AGB) of RAUCH Furnace Technology GmbH. In the event of any discrepancy or dispute as to the interpretation of any of these provisions, the original German text shall prevail. The terminology used shall be interpreted in accordance with Austrian law and practices.

#### **§ 1. Application of general terms and conditions, conclusion of contract**

1.1 These Terms and Conditions apply to all offers, deliveries and performances of RAUCH Furnace Technology GmbH and for all other business relationships between RAUCH Furnace Technology GmbH and the respective Contractual Partner (hereinafter: "Contractual Partner"). The version of the Terms and Conditions valid at the time of conclusion of contract is applicable.

1.2 These Terms and Conditions also apply to all future business relationships between RAUCH Furnace Technology GmbH and the respective Contractual Partner without any repeat agreement required.

1.3 The application of other general terms and conditions is hereby explicitly repudiated and shall not become part of the contract even if they are known unless their application is explicitly granted in writing by RAUCH Furnace Technology GmbH. In particular, acts of performance or silence on the part of RAUCH Furnace Technology GmbH do not imply acceptance of other general terms and conditions.

1.4 By submitting the order (the purchase order) the respective Contractual Partner bindingly declares their tender.

1.5 A supply contract only becomes effective if the acceptance of order (order acceptance) has been explicitly confirmed in writing on the part of RAUCH Furnace Technology GmbH.

1.6 Subsidiary agreements, assurances and changes to the Terms and Conditions and to the supply contract are only valid with an explicit written confirmation by RAUCH Furnace Technology GmbH and apply only to the respective individual case unless otherwise agreed.

1.7 The Contractual Partner agrees to apply the technical information supplied by or permanently transferred by RAUCH Furnace Technology GmbH only in accordance with the intent of the contract. The reproduction or dissemination of this information by the Contractual Partner is permitted only with the explicit written consent of RAUCH Furnace Technology GmbH.

#### **§ 2. Scope of delivery, prices**

2.1 The scope of delivery includes only those goods and services listed in the supply contract. In particular the following are not included unless otherwise agreed:

- foundations
- cable channels
- all piping for supply units, connectors and disposal

- connecting cables outside of the furnaces, facilities and thermal systems
- laying of piping and corresponding facilities
- pipe and pit covers
- charging baskets and racks
- the tools, small materials and auxiliary materials and supplies required for the assembly, commissioning and operation
- training of personnel in the operation, assembly and commissioning of the delivered equipment

2.2 The prices stated in offers, purchase orders, order takings and agreements do not include any performances or obligations of RAUCH Furnace Technology GmbH unless they are explicitly stated. In particular, RAUCH Furnace Technology GmbH does not cover incidental expenses (for packaging, transport, insurance, etc.), taxes, customs duties or other charges which arise from the system of government in the country of origin or destination unless explicitly confirmed in writing.

### **§ 3. Terms of payment, collaterals**

3.1 Payment for the supplies and performances (or prorated payments for partial deliveries and performances) shall be rendered to the registered office of RAUCH Furnace Technology GmbH in accordance with the methods of payment stated in the purchase order (order acceptance).

3.2 In the case of payment by bill of exchange, any discounted interest and applicable fees and commissions are on the Contractual Partner's account.

3.3 The Contractual Partner shall neither delay (partial) payment nor defer it beyond the agreed due date in any other way. RAUCH Furnace Technology GmbH and the Contractual Partner shall come to a separate agreement on which reasons may justify a delay. If the Contractual Partner defaults on at least one (partial) payment, RAUCH Furnace Technology GmbH is in any case entitled to defer any commitments to this Contractual Partner, in particular any supply and assembly obligations.

3.4 Any default interest is determined in accordance with § 352 UGB. Dunning charges and other collection costs are borne by the Contractual Partner. These are considered to be included in the collaterals granted by RAUCH Furnace Technology GmbH.

3.5 The received goods remain the property of RAUCH Furnace Technology GmbH until full payment by the Contractual Partner is received.

3.6 The Contractual Partner may only process or sell on the goods supplied by RAUCH Furnace Technology GmbH which are not yet fully paid for if there is no default with any (partial) payment to RAUCH Furnace Technology GmbH or with the explicit permission of RAUCH Furnace Technology GmbH; the Contractual Partner hereby transfers to RAUCH Furnace Technology GmbH the claims resulting from such sales and all ancillary rights against the Contractual Partner's purchaser until payment in full has been received by RAUCH Furnace Technology GmbH. The Contractual Partner hereby agrees to note this assignment including the date in their accounting records and to forbear from any subsequent change to such a disclaimer until payment in full has been received by RAUCH Furnace Technology GmbH. Third

party payments to the Contractual Partner resulting from the resale shall immediately become the property of RAUCH Furnace Technology GmbH and shall immediately be paid to RAUCH Furnace Technology GmbH by the Contractual Partner. The Contractual Partner hereby declares to rescind any conflicting prohibitions of assignment.

3.7 Should the goods delivered by RAUCH Furnace Technology GmbH which have not yet been fully paid for be mixed or combined by processing with other items, then the Contractual Partner hereby cedes their co-ownership and any claims for damages from RAUCH Furnace Technology GmbH arising from it until payment in full has been settled.

#### **§ 4. Delivery and/or completion**

4.1 Unless otherwise agreed in writing, deliveries on the part of RAUCH Furnace Technology GmbH is ex works (EXW) A-4810 Gmunden, as defined in the 2020 version of Incoterms. This shall also apply if the shipment as agreed is performed by RAUCH Furnace Technology GmbH.

4.2 The period for delivery and/or completion shall be agreed in writing and shall commence on the day of acceptance of the order by RAUCH Furnace Technology GmbH. The commencement of this period shall, however, be delayed until the day of receipt of the agreed deposit in the payment account of RAUCH Furnace Technology GmbH and/or final written clarification of any parts of the contract which contain any unresolved technical details.

4.3 The period includes only business days of RAUCH Furnace Technology GmbH; bank holidays and any company holidays which are announced separately are not included. The period is particularly extended if the Contractual Partner does not settle their (partial) payments as mutually agreed upon, does not provide details, objects or the promised support required for the implementation or does not approve the plans submitted for approval within a reasonable period of time.

4.4 If the period is interrupted by any requests for changes with respect to goods/services, it shall re-commence effective with the written agreement by RAUCH Furnace Technology GmbH to the request for changes.

4.5 Deferring an agreed date is agreed if the completion is delayed for reasons which RAUCH Furnace Technology GmbH are not responsible for, for example effects of social conflicts (strike or lockout), the lack of means of transport, governmental decrees, imposed embargo, customs regulations or energy-related measures, etc. The same also shall apply if such circumstances should arise involving subsidiary companies of RAUCH Furnace Technology GmbH. Should the Contractual Partner incur any damage due to a delay for which RAUCH Furnace Technology GmbH is responsible, they may, provided an appropriate contractual agreement, claim for compensation for delay to the exclusion of any further claims. The compensation for delay shall however not exceed 5% of the value of the part of the total delivery which could not be used in time or in breach of contract due to the aforementioned delay.

#### **§ 5. Transport, assembly, acceptance**

5.1 The goods are shipped either packaged or unpackaged at the discretion of RAUCH Furnace Technology GmbH.

5.2 The cost of packing shall be met by the Contractual Partner. The costs for shipping and insurance shall also be met by the Contractual Partner and are charged directly by the shipping company.

5.3 The Contractual Partner also bears the risk of transport in the case of free delivery. For the interpretation of international commercial terms such as CIF, FOB, etc. the latest version of the Incoterms issued by the International Chamber of Commerce shall be valid.

5.4 The Contractual Partner bears the transfer risk regardless of the agreed payment and delivery arrangements.

## **§ 6. Specifications and plans**

6.1 Weights, dimensions, consumption data, power ratings and generally all specifications listed in the catalogues are guidance values and are therefore not to be regarded as binding. It is exclusively incumbent on RAUCH Furnace Technology GmbH, and the Contractual Partner hereby agrees to this, to make changes or modifications to the delivery item if it will in their opinion improve the plant itself or its operation.

6.2 The Contractual Partner explicitly agrees to only use the plans and specifications submitted by RAUCH Furnace Technology GmbH and its subsidiary companies strictly in accordance with the purpose of the contract. The Contractual Partner is in no case entitled to disclose such drawings and technical information relating to the goods delivered and/or the assembly to third parties or to reproduce them unless prior written permission of RAUCH Furnace Technology GmbH, who remains the sole owner, has been granted.

## **§ 7. Assembly**

7.1 The Contractual Partner is required to co-operate with RAUCH Furnace Technology GmbH in a way that allows for assembly to be performed under the best possible conditions to ensure operation and performance of the system in due form.

7.2 If the scope of delivery includes assembly onsite, then the Contractual Partner is required to check the supplied material for completeness and proper condition and (unless otherwise agreed) shall at their own expense ensure further transport to the assembly site or storage in a covered place sheltered from climatic conditions to keep it in perfect condition until the beginning of assembly.

7.3 Guarding, storage and insurance against fire, accidents, theft, etc. shall be borne by the Contractual Partner. The Contractual Partner also has to ensure that the complete material is handed to the assembly staff of RAUCH Furnace Technology GmbH at the commencement of assembly in perfect condition. It is self-evident that the work cannot be performed in harmful and dangerous places, that the staff of RAUCH Furnace Technology GmbH are adequately housed and that medical attendance is provided for onsite. At the request of RAUCH Furnace Technology GmbH the Contractual Partner shall supply the necessary materials, transportation, energy sources, liquids in general and manpower free of charge, even if this was not specified in the contract.

## **§ 8. Acceptance**

8.1 If explicitly demanded by the Contractual Partner, acceptance shall take place within 10 days after notification of the completed assembly or announcement of readiness of acceptance in accordance with the arrangements and conditions agreed upon conclusion of contract. If an acceptance is not required or not performed for reasons which are not the responsibility of RAUCH Furnace Technology GmbH, then the system shall be considered as unconditionally accepted by the Contractual Partner and is subject to the guarantee in accordance with the following article. The costs incurred for the technical staff required for the acceptance are fully borne by the Contractual Partner, regardless of where the acceptance takes place.

8.2 The same applies to the costs resulting from operating the system during the acceptance (energy, consumables and operating materials). The acceptance is regarded as completed if the agreed performance has been delivered. The Contractual Partner shall not operate the system before the final acceptance, not even for preliminary testing, for safety reasons.

## **§ 9. Performance guarantee**

RAUCH Furnace Technology GmbH guarantees that the delivered item complies with the technical conditions and performance stipulated in the contract. The proof of the agreed Validity performance shall be provided by RAUCH Furnace Technology GmbH in the acceptance tests. If such evidence is provided, the Contractual Partner may not demand any further tests.

## **§ 10. Material warranty**

10.1 The warranty period is:

6 months in the case of continuous operation (7 days per week and 24 hours per day)  
12 months in the case of single-shift operation and 8-hour workdays, excluding parts subjected to severe thermal stresses.

10.2 Excluded from the warranty are the wear parts specified in the supply contract or offer. Should these not be exactly specified in the offer or supply contract, then the wear parts standard in the industry are excluded from warranty. The warranty does not cover defects due to faulty or negligent operation, or intervention and uses that are not anticipated in the contract. Defects shall be immediately reported to RAUCH Furnace Technology GmbH in writing, namely: apparent defects within 14 days after acceptance of the delivery; hidden defects within 14 days after discovery of the defect.

10.3 Defective parts will be repaired or replaced free of charge at the discretion of RAUCH Furnace Technology GmbH if the defect is due to faulty design, faulty materials or poor workmanship. The Contractual Partner agrees to grant RAUCH Furnace Technology GmbH a reasonable period of time and opportunity to eliminate the defect. The right of the Contractual Partner to make claims for defects shall become time-barred 6 months after the time of the valid complaint and at the latest with expiry of the warranty period.

10.4 For pure delivery of goods, i.e. without assembly and start of operation, the warranty period shall commence with the delivery ex works or in the case of a supply delay which is not the responsibility of RAUCH Furnace Technology GmbH with the notification of readiness for dispatch.

10.5 For deliveries, including assembly and assembly supervision and start of operation, the warranty period shall commence with the acceptance or start of operation and a corresponding acceptance report signed by both parties and irrevocably ends no later than 18 months after the last delivery or its provision.

10.6 For replaced or repaired parts the warranty expires concurrently with that of the main delivery.

10.7 The warranty lapses if the Contractual Partner or any third party performs any modifications or repairs to the system without the written consent of RAUCH Furnace Technology GmbH or if the Contractual Partner does not immediately apply appropriate measures to prevent the worsening of the damage and to grant RAUCH Furnace Technology GmbH the opportunity to remedy the defect.

10.8 Only in urgent cases of danger to operational safety and to prevent major damage (upon which RAUCH Furnace Technology GmbH shall be informed immediately) or if RAUCH Furnace Technology GmbH is in default with regard to the elimination of the defect has the Contractual Partner the right to remedy the defect themselves or by a third party and to claim the incurred justifiable costs from RAUCH Furnace Technology GmbH.

## **§ 11. Disclaimer**

11.1 Further claims of the Contractual Partner, for whatever legal reason such as breach of contractual secondary obligations (e.g. consultation, advice, operating instruction), tortious acts (e.g. damage to property, physical and personal injuries, product liability) and in particular a right to compensation for damages not suffered by the delivery item itself, are excluded.

11.2 This disclaimer shall not apply to intent or gross negligence and the lack of explicitly assured properties if the warranty was aimed to protect the Contractual Partner against damages that are not suffered by the delivery item itself.

11.3 Should one party be obligated to pay damages, then this shall only apply to the amount of objective damage; in particular an obligation to compensate for the loss of profit is excluded.

## **§ 12. Applicable law, place of performance, court of arbitration**

12.1 The exclusive application of Austrian law is agreed. The application of uniform international sales law, in particular the Vienna Convention on Contracts for the International Sale of Goods and the conflicting rules of international private law are excluded.

12.2 The place of performance for the performances of RAUCH Furnace Technology GmbH and for the performances of the Contractual Partner is solely A-4810 Gmunden, which also applies if the agreed commissioning or exchange occurs in a different place.

12.3 Exclusively the court locally and factually competent for A-4810 Gmunden is agreed on for all disputes and claims arising out of or in connection with the respective contract unless another court of jurisdiction has been explicitly mutually agreed.