# General Conditions of Sale and Delivery of Romakowski GmbH & Co. KG

(especially for the use of sandwich panels made of PUR/PIR and mineral wool insulating materials)

**I. General and Scope**

1. Our conditions of sale and delivery apply to all of our business relations with the customer if the latter is an entrepreneur (Sect. 14 of BGB). They also apply to all future transactions with the customer without us having to make reference to them again in each individual case.
2. Our conditions of sale and delivery apply in particular to contracts on the sale and/or delivery of sandwich panels made of PUR/PIR and mineral wool insulating materials and accessories. They also apply to sales based on customer's specifications within the meaning of Sect. 375 of HGB (*German Commercial Code*), where the customer is reserved the right to determine the form, measurements, quantity or similar attributes of the products to be delivered.
3. Our conditions of sale and delivery apply exclusively. We do not accept any of the customer's contradictory or deviating terms and conditions, unless we have expressly agreed to their validity in written form. Such consent shall only be valid for the respective individual case, not for earlier or future deliveries.
4. Our conditions of sale and delivery shall still apply even if we carry out the delivery unreservedly with knowledge of the customer's contrary or divergent conditions.

**II. Offer and Formation of Contract**

1. Our offers are always not binding, unless they are expressly marked as binding or have a specific acceptance period. They are also non-binding if we provide the customer with the product or-service descriptions or technical documentation (e.g. drawings, plans, calculations, estimates).
2. A contract with us only takes effect when we have accepted or confirmed the customer's order in writing.
3. All agreements made between us and the customer at the time of signing the contract must be in writing. The same applies to additions and/or amendments to the contract or these general terms and conditions. Our employees are not authorized to agree to change or additions to the contract or these general terms and conditions without taking into account the written form. Changes or additions made verbally or over the phone are only valid without our express subsequent approval if they have been agreed by the customer with our managing directors or Prokurists (authorized officers) or such employees who are authorized to represent our company on the basis of a power of attorney.
4. Our specifications relating to the object of delivery or performance (e.g. weights, measurements, utility values, load capacity, color shades, tolerances or technical data) as well as our product presentations (e.g. drawings, illustrations) are only approximately relevant, unless exact conformity has been expressly agreed as binding. Unless agreed otherwise, the specifications do not represent warranted characteristics but are rather descriptions or designations of deliveries or services. Customary deviations and divergences based on DIN and EN standards are permissible unless they affect the usability for the contractually agreed upon purpose. The same applies to deviations that must be implemented due to statutory regulations or which represent technical improvements, as well as to the replacement of components with equivalent parts.
5. We retain title, copyright and other property rights to all offers and cost estimates that we have made as well as to all illustrations, drawings, calculations, brochures, catalogs, models, tools and other documents or aids that we have made available to the customer. Without our express consent given in writing, such documents and aids may not be made available or disclosed to third parties in any form nor reproduced or otherwise used for purposes beyond those set out in the contract. The customer must return the documents and/or aids to us in full upon request and must destroy any copies possibly made if they are no longer needed during the ordinary course of business or if the negotiations do not result in the formation of a contract.

**III. Prices and Payment**

1. Unless specified otherwise, our current prices for the scope of services and delivery as stated in the order confirmation at the time of signing the contract shall apply. Extra or special services will be charged separately.
2. Our prices are quoted in euro ex works/warehouse including standard packaging, but do not include the applicable statutory sales tax; export deliveries are also subject to customs, fees and other public charges. Extra costs incurred especially due to special packaging (e.g. coated materials or particular quantities/dimensions), special labeling or distribution/stacking of the product delivery or due to special permits by road

authorities, shall be charged separately and are not covered by the agreed upon prices in the absence of any express written agreement to the contrary.

3. If changes in the material prices, wages, freight charges or any other cost factors should occur after forming the contract, we reserve the right to make a price adjustment, provided that the period between the contract formation and the agreed upon delivery date is more than two (2) months. At the request of the customer we shall demonstrate the change in the cost factors.
4. Unless agreed otherwise, the invoiced amounts are due and payable immediately upon receipt of the invoice without any discount. An invoice will only be deemed as paid if the full amount of the invoice has been credited to the account indicated on the invoice. The deduction of cash discounts requires separate agreement. Technical personnel, drivers and field service staff are not authorized to collect debts.
5. We are authorized to send invoices electronically via e-mail to an e-mail address provided by the customer. The customer must ensure that electronic invoices can be sent to the e-mail address that it provided. It shall in particular adapt technical equipment accordingly such as filter programs or firewalls. Automated replies sent to us (e.g. out-of-office messages) shall not be taken into account and do not contradict the receipt of an invoice. The customer may revoke its consent to the electronic submission of invoices at any time. It may then receive the invoice by mail sent to the last known address.
6. The customer is in default of payment at the time of receipt of a reminder after the claim became due, no later than thirty (30) days after the due date and receipt of our invoice or an equivalent payment summary.
7. If the customer is in default, we are entitled to demand default interests in the amount of 9 percentage points above the base interest rate. We are moreover entitled to demand payment of a lump-sum compensation in the amount of EUR 40. The lump sum compensation shall be credited to the payable damages if the damages are based in the costs of the legal action. This in no way affects the right to assert of any further damages caused by the default.
8. If the customer is in default with the payment of deliveries or services that are based on the same legal relationship, we are authorized to demand advance payment and retain the products not yet delivered or services not yet performed. If we become, after formation of the contract, aware of any circumstances, that result in our claim to payment being jeopardized by the customer's lack of performance, we may set the customer a suitable grace period, in which it can at its discretion make payment in return for our service or provide collateral security. We are authorized to withdraw from the contract in case period passes without result. This applies even if we are not required to perform in advance, but must carry out preparatory activities to ensure the timely performance of the order. Agreed delivery periods are extended in such case by the period occurring between our setting of deadline and the provision of the consideration or the collateral security.
9. The customer shall be entitled to set-off rights only if its counterclaims have been determined as legally valid, uncontested or acknowledged by us. It is only authorized to assert a right of retention if its counterclaim is based on the same contractual relationship.

**IV. Delivery and Delivery Periods**

1. Periods and deadlines promised by us for deliveries and services are only approximate, unless a period/deadline has been confirmed or agreed upon.
2. Adhering to the delivery schedule presupposes the clarification of all technical questions, the timely receipt of all documents to be provided by the customer (e.g. official approvals, releases, etc.) and the timely and proper performance of all other collaborative actions provided by the customer or others. If the delivery shall be made to the construction site, the customer must take all precautions for ensuring an unrestricted and safe access to the construction site and the respective point of delivery there. If the customer fails to fulfill such obligations, the delivery period shall be extended accordingly. This shall not apply if the delay may be attributed to us.
3. The delivery period is fulfilled by us if the products have left the factory/warehouse prior to expiry of the delivery period or the customer has been notified about the object of delivery being finished or ready for shipment, unless an obligation to deliver has been agreed as an exception. If an acceptance inspection is to be performed, the acceptance date is authoritative, except in case of a justified refusal of acceptance, alternatively the notice of readiness for acceptance.

4. Operational disturbances, either internally or at third party premises, on which production or transport depend and which arise due to the occurrence of unforeseen obstacles outside of our scope of influence (in particular force majeure and other exceptional circumstances, such as industrial disputes, acts of sovereign power and traffic disturbances), result in a reasonable extension of the delivery period, as long as they affect production or delivery of the contractual subject matter.
5. Partial deliveries are only permissible to a reasonable extent.
6. In case of culpable non-compliance with a delivery period or delivery date, the customer must set us a reasonable grace period in writing, which may not be less than two (2) weeks. The customer is authorized to withdraw from the contract in case the grace period passes without result. This in no way affects further statutory claims and rights on part of the customer due to delayed delivery.
7. If we default on delivery, the customer's claim for compensation of damages due to the delay shall be limited to 0.5% for every completed week of default, but no more than 5% of the net price of the delivery or the partial delivery, with which we are in debtor's default. This does not apply to intent, gross negligence or agreement involving business to be settled on a fixed date.
8. If the customer expresses the wish to delay the shipment of the products, and should we comply with this wish as an exception, we are entitled to demand a flat-rate storage fee in the amount of 1.0% of the net price of the respective delivery or partial delivery, starting with the notice of completion or readiness for shipment for every completed week. If we are able to demonstrate greater additional expenses, we are entitled to assert these.
9. If the customer delays acceptance, fails to cooperate or our delivery is delayed for other reasons which can be attributed to the customer, in particular because there is, e.g., no adequate or suitable delivery point on the construction site, we are entitled to demand compensation for the resulting damage. In such case, we shall calculate a flat-rate compensation. It shall amount to 1.0% for every completed week of delay, but in total not more than 10% of the net price of the respective part of the entire delivery, which cannot be delivered on time or according to the contract due to the delay. Proof of greater damage and our statutory rights and claims (e.g. reimbursement of additional expenses, suitable compensation, termination) remain unaffected.
10. Unless specified otherwise, we do not take back packaging and transport packaging within the meaning of Verpackungsverordnung (*Germany's Packaging Ordinance*) (as of January 1, 2019 within the meaning of Verpackungsgesetz (*Germany's Packaging Act*)), they become the property of the customer.
11. We also do not take back any residual materials or processing wastes which are left over after processing or finishing of the delivered products. We are only willing to take back as an exception if and to the extent that the customer expressly agrees to assume the communicated costs of disposal.

**V. Transfer of Risk and Acceptance**

1. The risk of accidental loss and accidental deterioration of the products is transferred at the latest with the transfer to the customer.
2. If we have agreed to ship the products ourselves, the risk of accidental loss and accidental deterioration of the products is already transferred to the customer with their delivery to the forwarder, freight carrier or the person or entity otherwise designated to carry out the delivery, even if we bear the costs of the shipment. This also applies to deliveries where we assume the assembly, installation or other performance obligations in addition to shipping. If the customer does not provide any special instructions, we are entitled to determine on our own the type of shipment (in particular transport company, transport route, packaging). We will only take out transport insurance at the express request and expense of the customer.
3. If acceptance must be carried out, this is decisive for the transfer of risk. It must be performed promptly on the acceptance date, at the latest after our notice of readiness for acceptance. The customer may not refuse the acceptance in case of an insignificant deficiency. Acceptance shall be deemed as having been effected if the customer fails to accept the performance within a reasonable period that we set for the customer, even if it is obligated to do so.
4. The risk of accidental loss and accidental deterioration of the object of delivery shall also pass to the customer even if it defaults on the acceptance of the performance.

**VI. Reservation of Title Clause**

1. We retain the title to the products until fulfillment of all claims arising from the business relationship

with the customer, provided that these already occurred at the time of formation of the contract. In case of an open account, the retained title serves as collateral security for the respective balance claims. Due to the retention of title, we are entitled to request the return of the delivered products if we are withdrawing from the contract.

2. The customer is obligated to store the products properly and treat them with care, and in particular insure such at its own expense against fire, water, breakage, theft and other damages sufficiently at their replacement value.
3. The customer may not pledge or provide the products as collateral security until receipt of the entire payment. With regard to distraints or any other third-party actions, the customer must inform us immediately in writing. If the third party is not able to reimburse us for the costs of legal proceedings and out-of-court actions, the customer shall be liable for the loss incurred.
4. The customer is entitled to resell the products as part of a proper business transaction, unless it is in default on payment. At the time of forming the contract, the customer assigns to us all rights that arise in connection with the resale to its customers or third parties by way of collateral security. The customer remains entitled to collect these claims even after the assignment. We are authorized to collect the claim ourselves, but agree not to do so as long as the customer is not in default on payment and has in particular not filed a petition for opening insolvency proceedings. If this is the case, we may demand that the customer informs us about the assigned claims and their debtors, provides us with all the information necessary for collection, hands over the relevant documents and notifies the debtors about the assignment.
5. If the products bought are processed and redesigned by the customer, this is done on our behalf. If the products are processed with other objects not belonging to us, we become part owners of the new product in proportion to the value of the other objects processed at the time of processing. The same applies to the object resulting from such processing as the object delivered with reservation of title.
6. If the products are combined with other movable objects not belonging to us in such a way that they become an integral part of a uniform object, we become part owners of the new object in proportion to the value of the product to other combined objects processed at the time of combination. If the products are inseparably mixed with other movable objects not belonging to us, we become part owners of the mixed objects in proportion to the value of the products to the other mixed objects at the time of mixing. If the combination or mixing takes place in such a way that the customer's object shall be regarded as the main item, it is agreed that the customer shall proportionally assign to us part ownership. The customer shall hold for us the resulting sole or joint ownership. The same applies to the object resulting from such combination or mixing as the object delivered with reservation of title.
7. The customer shall also assign to us the claims for securing our claims against it which arise through the combination of the products with property vis-a-vis a third party.
8. If the products are installed by the customer in its property as an integral part, it shall assign to us the claims arising from the sale of the property in the amount of the value of the products to secure our claims against it.
9. We agree to release the collateral securities to which we are entitled at the written request of the customer insofar as the realizable value of the collateral securities exceeds the claims to be safeguarded by more than 10%; the selection of the collateral securities to be released shall be at our discretion.

**VII. Defects in Quality**

1. The customer must inspect the object of delivery immediately after delivery at its premises or at a third party designated by it during the course of properly conducted business and, if a deficiency is noted, shall inform us thereof immediately in writing. If the customer fails to comply with this obligation, the delivery shall still be deemed approved. If a deficiency becomes noticeable later on, the deficiency must be reported immediately upon discovery in writing, otherwise the delivery is deemed approved even in this case.
2. We shall at our discretion repair or replace free of charge all parts or services that have a material deficiency, the cause of which had already existed at the time of transfer of risk – this must be demonstrated by the customer. Replaced parts become our property.
3. If the faulty product was installed in another object or attached to another object in accordance with its nature and intended purpose, we are obligated as part of supplementary performance to reimburse the customer for the necessary expenses for removing the faulty product and installing

or attaching the repaired or delivered product, provided that this does not result in a disproportionate burden for us. If the amount of the expenses is disproportionate, we are entitled to limit the reimbursement of expenses to a reasonable amount. When establishing this amount, it is necessary to take into account in particular the value of the object in a flawless condition and the significance of the deficiency. If a dispute should arise between us and the customer with regard to the suitability of the amount, an arbitrator shall decide in accordance with Art. VIII of these terms and conditions.

4. To carry out all necessary repairs and replacement deliveries, the customer must give us the requisite time and opportunity in accordance with prior coordination. If we have culpably failed to remedy a deficiency within a suitable period of time set by the customer, the latter is entitled to remedy on its own or have the deficiency remedied by a third party and demand reimbursement of the necessary expenses from us. In urgent cases where operational safety is at risk or there is a need to prevent disproportionately great damage. In such case, we must be informed immediately in writing.
5. If a reasonable number of attempts to repair or replace the faulty product should fail, the customer may withdraw from the contract or reduce payment within the scope of the statutory provisions without prejudice to any damage claims under Art. X (Liability).
6. We shall not be responsible for any transport, travel, labor or material costs for the purpose of supplementary performance, insofar as these have increased, because the object of delivery has been moved to a different location than the customer's place of business after delivery, unless the relocation corresponds with its intended use.
7. The customer's warranty claims become time-barred in twelve (12) months after the delivery of the object. If acceptance must be carried out, this is decisive for the start of the period. The 12-month statute of limitations does not apply if the law according to Sect. 438 Para. 1 (2) of (Bauwerke und Sachen für Bauwerke (*Structures and corporeal things for structures*)), Sections 445a, 445b of BGB (Rückgriff des Verkäufers (*Seller's recourse*)), Sect. 478 (Rückgriff des Unternehmers (*recourse by the company*)) and Sect. 634a Para. 1 (2) of BGB (Baumängel (Structural defects)) prescribes longer periods and in cases of injury to life, limb or health of persons, for a willful or grossly negligent breach of duty on the seller's part, in case of fraudulent concealment of a deficiency and insofar as we have undertaken a warranty on the characteristics of the object of delivery.
8. Warranty claims are invalid in case of normal wear and tear or damage that arises after the transfer of risk as a result of improper or inappropriate use, faulty or negligent treatment, excessive operational demands, installation of unsuitable materials, unsuitable consumables, unsuitable building site or which occur due to particular external influences, which were not presupposed in accordance with the contract (e.g. above-average environmental loads like humidity, heat, cold, wind, pressures, etc.). If improper installation or assembly work is carried out by the customer or a third party or changes or repairs are performed, no warranty claims are granted for such and the resulting consequences.
9. Damage claims or other claims taking their place for reimbursement of futile expenses are otherwise subject to the provisions under Art. X (Liability).
10. The above provisions in no way affect the seller's right to recourse under Sections 445a, 445b of BGB and the company's right to recourse in case of final deliveries to consumers in accordance with Sect. 478 of BGB.

**VIII. Arbitration**

1. If a dispute should arise between us and the customer with regard to the suitability of a reimbursement claim for expenses (Art. VII. Para. 3 (4) of these terms and conditions), legal proceedings with regard to the dispute and the related legal claims are not accepted without an arbitration opinion.
2. The parties shall agree on the arbitrator within two (2) weeks after receipt of the written request by a party. If no agreement should be reached within this period, the arbitrator shall be appointed by the Internationaler Verband für den Metallleichtbau (IFBS e.V. (*International Association for Lightweight Metal Construction*)) at the written request of a party. The arbitrator must be independent and impartial and a publicly appointed expert.
3. The arbitration opinion shall be prepared in writing. Decision-making standards for the arbitrator shall be Art.VII. Para. 3 of these terms and conditions and the generally accepted rules of good practice. The arbitrator's findings and the result are binding for the parties. A judicial review may

only take place within the scope of Sect. 319 of BGB.

4. The arbitrator shall determine at his own discretion the process for preparing the arbitration opinion. In such case, the arbitrator must observe the stipulations set forth in these terms and conditions.
5. The arbitrator must give each party the opportunity to present their opinion of the dispute in writing within a period of at least four (4) weeks. The arbitrator must have at least one hearing, in which the parties and their counsel may participate, in order to orally discuss the dispute.
6. The arbitration opinion must be justified and submitted in writing. The justification must include material assumptions on which the expert assessment is based.
7. The parties shall equally share the costs and expenses of the arbitrator. Each party shall bear their own costs arising in connection with the arbitration opinion, such as lawyer fees.

**IX. Defects in Title**

1. In case of defects in title, the provisions on defects in quality (Art. VII), in particular the period cited in Art. VII. 7., shall apply accordingly.
2. Unless specified otherwise, we are obligated to provide the delivery free of third party industrial property rights and copyrights only in Germany. If a third party brings forward any justified claims against the customer as a result of violation of industrial property rights arising from contractual use of the deliveries rendered by us, we only assume liability if the customer informs us immediately in writing about the claims asserted by the third party, does not acknowledge any violation and ensures that we are able to exercise each and every defensive measures and settlement negotiations.
3. The customer's claims due to violation of third party industrial property rights are excluded insofar as the customer is responsible for the violation of industrial property rights or such is caused by special requirements of the customer, by a use that we do not foresee or by the fact that the products are changed by the customer or used in a way that is contrary to the contract.

**X. Liability**

1. Damage claims against us only exist if we or our vicarious agents have acted intentionally or through gross negligence. In case of a violation of essential contractual obligations, we also assume liability for ordinary negligence. In such case, our obligation to pay is limited to the foreseeable damage that is contractually typical.
2. The above limitation of liability does not apply to injury to life, limb or health of persons and to claims based on Produkthaftungsgesetz (*Product Liability Act*). It also does not apply to a liability for malicious concealment of deficiencies or defects and for assumption of a warranty.
3. Insofar as our liability is excluded or limited, this also applies to the personal liability of our employees, workers representatives and vicarious agent.

**XI. Competent Court, Place of Fulfillment and Applicable Law**

1. Sole competent court, even internationally, for all disputes arising directly or indirectly from the contractual relationship with merchants, legal persons under public law or special funds under public law is Dillingen (Donau). We are, however, entitled to assert claims against the customer before the court which has jurisdiction for the customer's place of business.
2. Place of fulfillment is our place of business in Buttenwiesen/Thürheim, unless specified otherwise in particular cases.
3. The contractual relationship shall be governed by German law excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

**XII. Force majeure/impossibility**

1. In cases of "force majeure/impossibility" we shall be released from the obligation to perform the contractual obligation concerned for the duration and to the extent of the effect. Agreed performance dates shall thus be extended accordingly by the periods during which the "force majeure" event or its effects persist.
2. Force majeure shall be deemed to exist in the event of external events beyond our reasonable control, which are unforeseeable and cannot be averted by exercising reasonable care, and which at least temporarily prevent us from fulfilling one or more contractual obligations under the contract. Cases of "force majeure" are in particular natural events (for example earthquake, fire, flood, storm, lightning or other natural events), wars, civil wars, riots, strikes, terrorist attacks, lawful lock-outs, plagues (including epidemics and pandemics), general disruptions of logistics, telecommunications or the power and energy supply,

import and export bans, legal provisions or measures by the government or courts or authorities (e.g. quarantine orders) or other circumstances beyond our reasonably foreseeable control. Essentially, this relates to the usual supply of steel products for our panel facings (coils) as well as the components for the production of insulation materials.

3. In view of the current Russia-Ukraine conflict and/or the further spreading COVID 19 pandemic as well as the associated risks for which we are not responsible with regard to the supply of raw materials and/or energy sources required for our production and/or the availability of our own workforce, it cannot be ruled out that the fulfilment of our contractual performance obligations can only be ensured with a time delay or not at all. The fulfilment of our contractual performance obligations is thus expressly subject to the proviso of a sufficient supply of raw materials and energy sources for production as well as the availability of our own workforce. We are entitled to postpone the performance of the affected services for the duration of the impairment. Agreed performance dates shall be extended accordingly.
4. In the event of "force majeure" or an impediment in accordance with clause 3, we shall immediately inform the customer of the nature of the event and its beginning and - if possible - the expected end.
5. If we are prevented from providing the services for more than three consecutive months by an event of "force majeure" or its effects or an impediment according to clause 3 or its effects, both parties are entitled to withdraw from the affected contract insofar as the contract is affected by the impediment to performance.