



## **Service and Payment Conditions**

### **1. Contract basic terms**

For the contractual relationship, as well as for pre-contract-signing and the post-contract-signing rights and obligations, the following regulations apply in the indicated sequence in case of deviations:

- a. The above contract text as an individual agreement,
- b. the following service and payment conditions; offers, sales, sales under contract for goods and services, works services and all other services are implemented exclusively on the basis of the following conditions, even in the case where this is not explicitly referred to; the general terms and conditions of the customer are invalidated unless Rudnick + Enners agrees with their validity in writing. General terms and conditions of the customer also do not apply in the case where Rudnick + Enners implements the delivery unconditionally in knowledge of these, without renewed invalidation of them,
- c. the binding layout plan,
- d. the legal stipulations of the Federal Republic of Germany, except for the specifications that refer to another national law.

The validity of the UN Purchase Law is excluded.

### **2. Offers and contract closing, scope of the delivery**

The offers of Rudnick + Enners are subject to change without notice. Drawings, dimensions, weights and other performance data are therefore binding only if this is explicitly arranged in writing. An agreement concluded through an agent is effective only if it is confirmed in writing by one of the managing directors or senior officers of Rudnick + Enners, or by the project manager designated by the company management. The remaining employees of Rudnick + Enners are not authorized to make verbal agreements which exceed the content of the written contract and the written confirmation by the persons previously designated.

Offers, drawings and all documents descriptive of the performances are copyrighted in relation to the customer. Their ownership remains with Rudnick + Enners. The customer shall not make these specifications accessible to a third party, except with the approval from Rudnick + Enners. Their transfer, in particular to competitors, is excluded.

The customer has the right of use of data processing programs, with the arranged performance characteristics in unchanged form, on the devices stipulated. Copies of such programs cannot be made unless this is arranged explicitly.

Rudnick + Enners reserve the right to technical changes in the implementation planning, which turn out to be possible or necessary due to technical developments.



### **3. Prices**

The sale prices apply without packaging costs, dispatch charges and an insurance to be concluded on request by the customer. The offered and/or arranged prices apply for the duration designated in the offer. If no duration for the validity should be designated in the offer, this is max. 6 months following making the offer. If the performance should not have been effective until then because of service obstacles arising within the sphere of responsibility of the customer, then the price is increased by 5%. If charges or other external costs, which are included in the arranged price, change after contract conclusion, or if they are newly levied, Rudnick + Enners is then entitled to a price change in corresponding scope, regardless of the previously-designated regulation.

### **4. Approval and plans, suitability, cooperation of the customer**

The customer obtains the necessary approvals and they are in his area of responsibility. The customer is obliged to check the submitted implementation and installation plan exactly, and to register possible objections. He makes available all documents necessary for a possible installation (e.g. drawings, sketches) in good time before the delivery. Subsequently supplied documents entitle Rudnick + Enners to withdraw from the contract without result, unless these documents do not affect the service obligation of Rudnick + Enners or do so only insignificantly. Rudnick + Enners can demand the payment of any additional costs caused by this, according to their own discretion.

Representations and descriptions in promotional brochures/Internet sites do not represent any assurances of characteristics. It is the responsibility of the customer to demonstrate and to describe the requirements on the subject of service, so that Rudnick + Enners can check the suitability. The customer further informs of all circumstances which are necessary for a risk evaluation, in particular the intended utilization with regard to risk aspects, and likewise all foreseeable faulty applications.

### **5. Delivery, obligation to check**

The delivery schedules are always to be considered as approximations, even if this is not explicitly restated. Compliance with the delivery schedule presupposes fulfillment of all contractual obligations of the customer. If the customer desires changes to the scope of performance or to the installation, which deviate from the contract text confirmed by Rudnick + Enners or from the working plan, then the delivery schedule is extended according to the necessary amount of work. Delivery delays due to force majeure and due to events which complicate the delivery considerably, or which make it impossible (associated with such in particular are operational failure, strikes, lockouts, energy supply difficulties, official arrangements, interruptions of traffic flow and the like, even if they occur with suppliers or their subcontractors), are not the responsibility of Rudnick + Enners, also in case of delivery schedules and delivery deadlines arranged as binding. Rudnick + Enners is entitled in this case to postpone the delivery by the duration of the hindrance, plus an adequate startup time, or to



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resign from the contract with respect to the part not yet fulfilled completely or in part. Rudnick + Enners can appeal on the basis of the designated circumstances only if the customer is informed immediately and if the customer is reimbursed immediately for the payments provided for the part not yet fulfilled.

If Rudnick + Enners is in delay with the delivery, the customer is entitled to make damage restitution claims only in the case where he has set an adequate additional period of time.

Further claims based on the delay are excluded. The upper limit of liability of Rudnick + Enners for all claims is stipulated at 20% of the contract sum. Reimbursement for loss of profit is not paid. Partial deliveries are permissible and are liable for payment.

After transfer of the materials or installation, the customer has to immediately check the goods or the work, including documentation, for contract conformity, fitness for use and freedom from deficiencies. He has to carry out a test operation, in case of which all expected requirements on the goods/work are tested (load-carrying capacity, performance capability and sim.). Within 12 workdays from delivery of the goods/transfer of the works, this is considered as being unconditionally accepted as deficiency-free, unless the test or the test operation has uncovered deficiencies and these were communicated in writing within a notice period of 12 work days from delivery of the goods/transfer of the works. All these complaints are to be directed to the company management (managing director/senior officer) and not to an agent. With reference to the above-mentioned obligation to check, also included here is the control-check as to whether the machine satisfies the safety requirements of the Machinery Directive in its application.

## **6. Passage of risk**

With the transfer of the purchased object to the person implementing the transport, the risk passes to the customer. This applies also for the case that Rudnick + Enners takes over the forwarding costs in accordance with separate agreement. Damages incurred during transit are to be recorded immediately on the delivery note and identified by the responsible agencies with the dispatch company (forwarding agency, haulage contractor etc.) for the assertion of damage compensation claims. In case of installation, the performance is considered as accepted with the expiry of 12 workdays following written communication about the completion of the performance. If the customer has made use of the performance, or a part of the performance, the acceptance is considered as having been granted after six workdays following the beginning of use.

## **7. Deficiencies**

Insignificant deviations, e.g. in color and shape, or of any other type which do not impair the value or the aptitude of the subject of service according to the service consideration, are not a deficiency. In particular, the usual appearances of wear on wear parts are not a deficiency.



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Furthermore, impairment resulting from inappropriate or unsuitable utilization, work which a third party or the customer himself has carried out on the subject of service, natural wear, results from incorrect or careless handling - in particular excessive demand, processing of non-specified input materials, unsuitable operating resources, replacement materials, defective state or unsuitability of the structural system provided by the customer, chemical, electrochemical or electrical influences, are not deficiencies insofar as they cannot be attributed to a fault of Rudnick + Enners.

The customer is also obliged to operate and to maintain the objects strictly according to the operation and maintenance directions. Deficiency claims are valid only if the subject of service has been operated and maintained properly (in accordance with maintenance plan), and possible changes of the supplied system were carried out within the statutory limitation period of the deficiency claims only with written approval of Rudnick + Enners. The deficiency claims are further validated only if a maintenance agreement has been concluded with Rudnick + Enners, and the maintenance has been implemented, unless the customer can demonstrate and prove that possible defects and damages, even following a maintenance agreement, would not have occurred or would not have been identified, and thus the results of possible defects would be the same. No liability for defects is assumed for the delivery/installation of used materials. The function of the system depends considerably on an intermeshing of the planning, project planning, the construction of the switchgear cabinets and the installation on site. If one of these service phases is implemented incorrectly by a third party, the liability for defects of Rudnick + Enners is voided.

The immediate investigation and complaint of the subject of service, in accordance with Item 5, is a significant obligation of the customer. Obvious deficiencies are to be notified in writing within two weeks following receipt of the goods, in case of installation after two weeks, otherwise the liability for defects is excluded. Redhibitory defects which cannot be detected within this notice period, also in case of the most careful testing, are to be communicated in writing immediately after discovery. Provided that there is a considerable deficiency present in this respect, Rudnick + Enners, according to its own choice, is entitled to subsequent fulfillment in the form of a deficiency removal or is entitled to the delivery of a deficiency-free subject of service. The deficiency removal has failed, at the earliest, when Rudnick + Enners has carried out two unsuccessful attempts at the deficiency removal. In case of deficiency removal, the expenditure is borne by Rudnick + Enners up to the amount of the purchase price/works wages. Rudnick + Enners does not have to take over expenditures which arise from the subject of service being transferred to a location other than the place of performance. Rudnick + Enners can refuse the deficiency removal/subsequent fulfillment for so long until the customer has paid at least a remuneration in the amount of the value of the already implemented performance.

Because of possible deficiencies, a right of retention may be made applicable if need be, regardless of other regulations in these stipulations, in the amount of twice the deficiency removal costs. The statutory limitation period for deficiency claims is 12 months, calculated from passage of risk.



## **8. Installation, acceptance**

The customer has to make available to Rudnick + Enners, free of charge, the necessary storage and workplaces on the construction site, the existing access roads, as well as sufficiently-secured utility power connections. The customer has to provide the following performances regarding the installation: General fire precautions; the bricklaying work necessary for the project implementation, demolition work, concrete and reinforced concrete work; all performances which are associated with the building installation or dismantling of other building parts and equipment; provision of compressed air, provision of cranes, forklifts and lifting platforms; primary power supply of the switchgear cabinets; lighting equipment; waste disposal of packaging material and auxiliary materials; waste containers (also for the waste disposal of building materials); sanitary rooms, snow clearance and road-deicing grit distribution in case of winter construction sites, provision of barriers not explicitly designated, paneling, access doors, fences and other fault-control devices; on-schedule and managed coordination of the performance and delivery to be provided by the customer; the making available of corresponding operating resources, as well as personnel in the necessary scope for the acceptance; accommodation rooms for the installation and operational startup personnel; guarantee of storage of the materials of Rudnick + Enners safe against theft; installation locations which are closed off, climatically protected, cleared and free from other module assemblies; free approach to the installation locations; necessary load-bearing capacity of the ground and its suitability for use by lifting platforms and forklifts. An existing installation location which is closed off, climatically protected, cleared and free from other module assemblies.

Delays during the installation, which are not which are the responsibility of Rudnick + Enners, can lead to additional costs and are to be invoiced separately after installation completion. Provided that soiling of the system is caused by other disciplines during the installation, the cleaning of the system is to be taken over by the customer.

On request by Rudnick + Enners, the customer confirms the acceptance and the receipt of the technical documents, declaration of conformity and operating instructions.

Within the framework of the assembly work, Rudnick + Enners is liable exclusively for proper installation. Any further liability is excluded, provided that intent or gross negligence are not to blame, or injuries to persons did not occur. If defects occur during the installation, Rudnick + Enners has the right to subsequent fulfillment. The customer has the right to eliminate the deficiency himself or to have it eliminated by third parties only in urgent cases where danger arises for operational safety, and to preclude disproportionately larger damages, or with delay of the deficiency removal, and to demand reimbursement of the necessary costs, where Rudnick + Enners is to be notified immediately.

Rudnick + Enners is not liable for damage or defects within the framework of the assembly work, which can be attributed to an intervention by the customer or third parties. Furthermore, every case of



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liability is excluded for measures of our fitters which are additionally demanded by the customer and which were not arranged beforehand and were not authorized explicitly by Rudnick + Enners.

Damages or deficiencies occurring during the installation are to be reported immediately, at the latest within a notice period of one week. The same applies for hidden deficiencies or damages occurring from the time of the discovery. If this is not the case, Rudnick + Enners is exempt from any liability.

For work, travel, or maintenance time, provided that the latter is initiated by the customer, a full hourly rate is calculated. For the first and second overtime hours, a surcharge of 25% is levied per day, for the third and every further overtime hour, a surcharge of 50% is levied per day (basis is the 8 hour day). Work on Saturdays is billed with a surcharge of 25%, work on Sundays with a surcharge of 50% and work on holidays with a surcharge of 100%. In addition, an accommodation allowance is to be provided for the fitters, provided that nothing other is contractually regulated. The working time of the fitters to be compensated by the customer begins with the start of the journey to the customer and ends with the return of the fitter to us or to his residence. Travel days or nights which have been begun are calculated proportionally. The installation service is due and payable immediately following address of the invoice. A right of retention exists only for reasons which are inherent to the installation service itself. Set-off is basically excluded, provided that it does not involve claims which have been determined as legally-binding or have been acknowledged.

### **9. Damage restitution**

The assertion of damage restitution or repayment of expenditures (in the following "damage restitution") based on defects is excluded, insofar as Rudnick + Enners cannot carry out a subsequent fulfillment for reasons which are not their responsibility. Restitution claims for deficiency damage and damages as consequence of deficiency, which are based on the delivery of deficiency-burdened subjects of service, basically have as prerequisite that Rudnick + Enners has caused the deficiency deliberately, through gross negligence or through a negligent, considerable violation of obligation, provided that nothing other is arranged. The same applies for restitution claims based on a violation of a durability guarantee possibly submitted by Rudnick + Enners.

Otherwise, the previously-designated claims, regardless of whatever legal grounds, are excluded in particular because of violation of obligations arising from, and in connection with, the debt circumstance, arising from fault prior to or on contract conclusion, and arising from illicit handling. This does not apply for claims according to the product liability law in cases of intent or gross negligence, in case of damage to health, in case of injuries to the body or health, assumption of a guarantee for the existence a property or in case of negligent considerable violations of obligation.

In the case of simple negligence, the liability of Rudnick + Enners, regardless of the above-mentioned regulations, is limited to foreseeable and typical damage. Changes of the burden of proof are not associated with the regulations previously designated. As far as the liability of Rudnick + Enners is



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excluded or limited, this applies also for the personal liability of the employees, staff, employed free-lance personnel, agents and assistants of Rudnick + Enners.

#### **10. Reservation of ownership**

Until the settlement of all claims (including balance claims from current account) which accrue to Rudnick + Enners from whatever legal grounds with respect to the customer, now or in the future, the following securities are conceded which will be released at the choice of Rudnick + Enners, insofar as their value sustainably exceeds the claim.

Until the complete payment of the remuneration and all secondary claims, the subject of service remains in the ownership of Rudnick + Enners. The customer may neither pawn nor otherwise encumber the subject of service until this time. In particular, the customer insures that he does not transfer the subject of service, either within the framework of a leasing relation, nor in any other form, to third parties, regardless of whether only for security, without the written approval of Rudnick + Enners. Rudnick + Enners may demand that the subject of service is identified as their property. Only with written approval from Rudnick + Enners may the customer change the subjects of service, still in the ownership of Rudnick + Enners, alter their location or transfer them to third parties.

In case of access by third parties (e.g. also encumbrance on real property), the customer is obliged to make reference to the ownership of Rudnick + Enners and to notify Rudnick + Enners immediately. The customer bears the costs for the defense of this access. The customer is obliged to handle the subject of service carefully, he is obliged in particular to insure this sufficiently at the reinstatement value, at his own expense, against fire, water and theft damage. The customer transfers in advance payment of the insurance in the insurance issue to Rudnick + Enners. Provided that maintenance and inspection work is necessary, the customer must carry it out in good time at his own expense.

Until the passage of title of ownership, the customer may not connect the subject of service with a ground site or with a building for a temporary objective only, or with another object to form a uniform whole.

If an object is delivered to Rudnick + Enners for repair, the customer and Rudnick + Enners are agreed that Rudnick + Enners should be entitled to a contractually-agreed lien on the object based on the works wage. The customer affirms that he is the owner of the object.

Before contract conclusion, the customer informs whether he wants to sell the subject of service or a follow-on product in regular business transactions. The customer will also submit for his part only the subject of service or its follow-on product subject to reservation of ownership (extended reservation of ownership).



#### **11. Payment**

The amounts are to be paid and offered to Rudnick & Enners, without deduction, in accordance with contract text:

A set-off and/or a retention by the customer is possible only insofar as it is implemented with respect to a claim which is undisputed or which has been determined as legally binding. If the customer does not make payment at the due date of payment, Rudnick + Enners can demand payment of interest in the amount of 8 percentage points above the base interest rate. The legal claims based on delay are unchanged by this.

#### **12. Retirement and claim for damages**

If the contract is not implemented for reasons for which the customer is responsible, or if Rudnick + Enners refuses completion of the contract because the customer did not comply with his obligations, in spite of allotment of additional period for settlement, then the customer is obliged to pay 15% of the arranged price, including sales tax, without concrete damage verification. The customer reserves the right to verify that no damage, or a lesser case of damage, has arisen for Rudnick + Enners, and for this case he must pay only the verified damage. Rudnick + Enners can verify and validate a higher amount than the amount consolidated as a lump sum.

#### **14. Disputes**

The place of jurisdiction for both parties is at the location of Rudnick + Enners and this applies also for change and check liabilities.

#### **15. Miscellaneous**

Assignments through the customer are not possible. The contract and these conditions also remain binding even in case of the legal ineffectiveness of individual clauses. If a clause is ineffective, a regulation which satisfies the economic objective of the ineffective clause is put in its place.