

## Terms and Conditions of Purchase of ROSE Systemtechnik GmbH

### 1. Scope of validity

- 1.1 The following terms and conditions apply exclusively to all contractual relationships between the suppliers and ourselves. We do not recognize any terms and conditions which conflict with or differ from these unless we had already specifically accepted their validity in writing. Our terms and conditions also apply even if we accept or pay for the delivery without reservation while having knowledge of the supplier's contradictory conditions or of those which differ from our own Terms and Conditions of Purchase.
- 1.2 All agreements entered into between ourselves and the supplier for the purpose of executing this contract shall be in writing.
- 1.3 Our Terms and Conditions of Purchase apply only in respect of entrepreneurs within the meaning of § 310 Abs. 1 BGB.

### 2. Drawings and documentation

We reserve title or copyright to purchase orders and other orders placed by us, to drawings, illustrations, calculations, descriptions, models, tools and other documentation and aids ("confidential information") made available to the supplier by us or by third parties. Without our express prior permission, the supplier shall not make this confidential information – neither as such nor as regards content – available to third parties, nor disclose it, nor make use of it himself or by third parties, nor make copies of it. At our request, the supplier shall return to us in full this confidential information and any copies of it if it is no longer required in the proper course of business. The obligation to maintain confidentiality also applies following the expiry of this contract; it expires if and insofar as the knowledge contained in the supplied documents and objects etc. has become generally known.

### 3. Prices / terms of payment / processing costs in the event of faulty invoicing

- 3.1 The price shown in the order is binding. In the absence of another deviating written agreement, the price includes delivery DAP (Incoterms 2010) including packaging. The use of returnable packaging requires a separate agreement.
- 3.2 Invoices must include details of the order number, project number and parts number shown in our order. The supplier shall reimburse us for all processing costs incurred as a result of failure to meet this obligation unless he can prove that he is not responsible for the default. The processing costs shall be a flat rate sum of 50 EUR. The supplier has the right to prove that no damage at all was incurred by us or is considerably less than the flat rate sum. If we are entitled to further claims for damages, these shall remain unaffected.
- 3.3 Unless anything else has been agreed in writing, we settle all invoices with our next possible payment run with 3% cash discount. Payment runs will be done on 5th, 15th and 25th of every month.
- 3.4 We are entitled to offsetting and retention rights to the statutory extent.
- 3.5 As security for a down payment / advance payment, the Supplier shall provide us with a directly enforceable limited guarantee (valid for at least 6 months) on first request from a major European bank, should the sum agreed in the purchase- or work and service contract exceed € 25,000. The wording of the guarantee has to correspond to the sample text according to the tender. The claims arising from the guarantee must not expire before the respective secured claim against the contractual partner. Alternatively, it is at our discretion to accept a guarantee letter from an affiliated company.

### 4. Delivery time

- 4.1 The delivery time stated in the order is binding.
- 4.2 The supplier undertakes to inform us immediately and in writing if circumstances occur or which he recognizes the consequence of which is that the stipulated delivery time cannot be adhered to.

### 5. Liability for default

#### 5.1 Delay in delivery

In the event of a delay in delivery, we shall be entitled to the statutory claims, in particular the claim for damages instead of performance after the fruitless expiry of a reasonable grace period. In addition, we are entitled to demand a contractual penalty of 0.3 % of the delayed delivery value per working day of delay, but not more than 5 % in total. We are entitled to claim the contractual penalty in addition to performance. § Section 341 para. 2 BGB (German Civil Code) shall apply. If we accept performance, we may claim the contractual penalty up to 10 working days after receipt of the delayed delivery. Otherwise, the Supplier's liability shall be governed by the statutory provisions.

#### 5.2 Liability for material defects

The supplier warrants that all deliveries/services correspond to the state of the art, the relevant legal stipulations and standards, requirements and guidelines of the authorities and professional and trade associations. Furthermore, the supplier warrants that all goods supplied by him are free from defects and demonstrate the agreed characteristics and are suitable for the relevant purpose.

#### 5.2.1 Obligation of examination and defect notification

Insofar as a quality assurance agreement exists between ourselves and the supplier, it is decisive for the obligations in respect of defects and complaints which we owe. Without such an agreement, we are obliged to examine the goods when we receive them in respect of their identity, completeness and transport damage insofar as and as soon as this is customary in the ordinary course of business. Notices of defects are deemed to be asserted in due time if they were sent within ten (10) days of discovery of a defect. In any case, notices of hidden material defects are deemed to be asserted in due time if reports are sent to the supplier in the same way within ten (10) working days following their discovery.

#### 5.2.2 Flat charge for supplementary performance and additional expenses

At our option we are entitled to demand from the supplier supplementary performance by way of repair or the delivery of a defect-free object. The costs of supplementary performance shall be borne by the supplier.

These also include our additional costs for the processing of justified material defects and legal deficiencies. For each delivery, these amount to a flat charge of 50 EUR. The supplier is entitled to demonstrate that the actual costs are not at all or considerably less than the flat charge.

In the event that we are entitled to further claims for damages and reimbursement of expenses, these are not affected. Furthermore, the supplier shall bear in particular all the transport, road, work and material costs, the installation and disassembly costs and the costs of determining the cause of the damage which are necessary for the purpose of carrying out supplementary performance.

#### 5.2.3 Price-reduction or withdrawal

In the event of irreparable defects, we shall be immediately entitled to the statutory rights of rescission, price-reduction and compensation for damages; in the event of remedial defects, we shall be entitled to the statutory rights of rescission, price-reduction and compensation for damages after the unsuccessful expiry of a reasonable period set by us for repair or product replacement delivery or after two unsuccessful attempts of repair or product replacement.

#### 5.2.4 Claim for damages instead of (the whole) performance

In addition to the right of rescission or in the event of failed supplementary performance, we are entitled to claim compensation instead of (the whole) performance according to the legal provisions.

#### 5.2.5 Compensation for futile expenses

Rather than claiming damages in place of performance, we can claim reimbursement for wasted expenditure as a result of expecting to receive services free of defects.

#### 5.2.6 Indemnification in the event of assertion of third party industrial property rights

If a third party asserts rights in respect of the supplied goods and claims are asserted against us as a result, the supplier is obligated to indemnify us against such claims when first called upon in writing to do so. The indemnity obligation relates to all expenses which we necessarily incur in connection with the claims asserted by a third party.

#### 5.3 Recovery of consequential damages caused by defects; violation of general contractual diligence obligations

The supplier is liable in accordance with the statutory provisions for all losses which we incur as a result of the defectiveness of the purchased item in respect of other legal interests than the purchased item itself and our other assets.

#### 5.4 Infringement of other contractual obligations

The supplier is liable in accordance with the statutory provisions for losses which we incur as a result of the violation of other contractual obligations in addition to the delivery of defective products.

#### 5.5 Place of fulfilment for rectification

The place of fulfilment for rectification is the place where the supplier shall deliver the goods.

### 6. Limitation period for claims in respect of defects

#### 6.1 Material defects

The claims stated in 5.2. and 5.3. in respect of material defects lapse in 60 months starting from delivery to us. Recourse claims relating to the delivery chain acc. to §§ 445a, 445b BGB remain unaffected.

#### 6.2 Legal deficiencies

Claims on the basis of legal deficiencies are subject to statutory limitation.

### 7. Product liability – indemnity – liability insurance protection

- 7.1 Insofar as the supplier bears responsibility for a product defect, he is obligated to indemnify us to that extent and at first request against claims for damages made by third parties if the cause lies in his field of control and organization and he himself is liable in relation to third parties. In this connection the supplier is also obligated to compensate us for all expenses which we incur as a result of or in connection with a recall action which we carry out. Insofar as it is possible, we shall inform the supplier accordingly and in advance and give him

- 7.2 the opportunity to make a statement. Other legal claims are not affected by this.
- 7.3 The supplier shall take out an appropriate level of insurance against risks resulting from product liability and shall submit to us for inspection on request the insurance policy and/or his insurance certificate.
- 7.4 The supplier shall mark the delivery items in such a way that they are permanently recognizable as his products unless otherwise stipulated by means of an individual agreement.
- 7.4 By marking the products or, if this is impossible or impractical, the supplier shall ensure by other suitable means that if a defect occurs to products he can immediately determine which other products might be affected. The supplier shall inform us about his marking systems or other measures in such a way that we can carry out our own investigations to the extent necessary.

#### **8. Data protection**

- 8.1 Within the scope of executing the contract we also process personal data of our contractual partners and their employees (e.g. contact data, other personal data relating the execution of the contract). These data are assigned to the supplier's legal person and processed only by us or companies in the Phoenix Mecano group. All our employees are obliged to comply with data secrecy in writing and are instructed about the data protection regulations to be observed. You can find our data protection declaration at [www.rose-systemtechnik.com/en/data-protection/](http://www.rose-systemtechnik.com/en/data-protection/). The supplier also undertakes to make use of personal data relating to our employees and of which he becomes aware while executing the contract solely for the purpose of processing business transactions and not to use them for other purposes.
- 8.2 If the Supplier receives access to personal data during the performance of the contractual services, he shall observe the applicable data protection regulations, in particular collect, process and/or use personal data exclusively for the purpose of the performance of the contractual services (purpose), obligate its employees to data secrecy and instruct them on the data protection regulations to be observed.

#### **9. Miscellaneous**

- 9.1 The place of jurisdiction for all and any disputes arising between ourselves and the supplier and relating to every transaction to which these Terms and Conditions of Purchase apply is at our option Bad Oeynhausen or the registered seat of the supplier. Bad Oeynhausen is the exclusive place of jurisdiction for any claims and actions against us. The legal regulations regarding exclusive jurisdiction are not affected by this.
- 9.2 The relationships between us and the supplier are governed solely by the laws of the Federal Republic of Germany with the exception of the UN Convention on Contracts about the International Sale of Goods (CISG).
- 9.3 If individual provisions of these General Terms and Conditions of Purchase are or become fully or partially invalid, the validity of the other provisions shall not be impaired. The invalid provision shall be replaced by a legally effective provision which comes closest to the intended purpose of the invalid provision.
- 9.4 The English-language version of these terms and conditions of purchase is solely for advisory purposes. Only the German-language version is valid in a court of law.

#### **10. Code of Conduct**

- 10.1 We are committed to the Phoenix Mecano Group's Code of Conduct, available at <https://www.rose-systemtechnik.com/en/downloads/general-terms-and-conditions-of-business/>. As part of his corporate responsibility, Supplier undertakes to act legally and ethically in accordance with our Code of Conduct when manufacturing products or providing services. Upon our request, the Supplier will sign our Code of Conduct for Suppliers.

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