

## **General Terms and Conditions Sale, Delivery and Payment of ROSE Systemtechnik GmbH**

Unless provided otherwise in individual cases, all business transactions conducted with us are made exclusively under the following terms.

For the purpose of the present terms and conditions, ROSE is hereinafter referred to as the „Supplier“, whereas the customer is hereinafter referred to as the „Purchaser“.

### **Preface**

Individually agreed contractual provisions negotiated within the framework of contractual relationships shall take priority over the present terms and conditions. Should individual provisions of these terms and conditions be or become void or ineffective and/or conflict with legal provisions, then this will not affect the effectiveness of the remaining provisions. Our documents and data relating to items and services supplied (e.g. drawings, diagrams, weights, dimensions, utility values and other performance data) are to be regarded solely as descriptions and/or identification and not as warranties, guaranteed characteristics, contractually prescribed uses, or similar, and are to be regarded as approximations.

Terms of the customer which are not expressly accepted by us shall not be binding for us even if uncontested in individual cases. Contradictory or deviating subsidiary agreements are subject to our written confirmation.

### **I. Order placement and acceptance**

1. All orders placed to the Supplier either directly by the Purchaser or indirectly by any field representatives of the Purchaser require the Supplier's acceptance in the form of a written order confirmation.

2. Any deviations from the purchase order for articles ordered or supplied which are due to the technological progress, notably with regard to material or design, are reserved.

### **II. Time of delivery / scope of supply**

1. If a time of delivery has been agreed, the following shall apply: The delivery dates stated by the Supplier shall be non-binding unless they have been expressly confirmed by the Supplier as "binding delivery date" in writing. The delivery dates indicated relate to the date of dispatch and shall be deemed complied with at issuance of the ready-for-shipment notice.

2. Delivery periods shall not commence until after an agreement has been reached on all details of a purchase order, including the technical execution of the delivery item. If the Purchaser requests any changes after issuance of the confirmation of order, and if this request is accepted by us, the delivery period will not commence until after confirmation of the most recent change.

3. Notwithstanding our rights resulting from Purchaser's default, delivery times shall be extended by the period of the Purchaser's default, i.e. the period during which the Purchaser fails to meet its obligations towards us either under the present contract or under other contracts (e.g. securities or payments). The same applies accordingly to the delivery dates.

4. Partial deliveries are admissible. For special customized articles Purchaser agrees to accept variations from the purchase order quantity of up to +/- 10 percent at the time of delivery.

5. In case the Supplier is responsible for any delay, the Purchaser shall not be entitled to assert further claims until a period of grace of at least three weeks determined by the Purchaser in the event of a delay has elapsed without success.

### **III. Shipment**

1. Shipment of the ordered goods is ex the Supplier's works at the expense and risk of the Purchaser. In the absence of any special agreements, the Supplier shall select the carrier and the means of transport at its own discretion. The risk shall pass to the Purchaser with the dispatch of the ordered goods ex the Supplier's works, even if freight-free shipment has been agreed.

2. If shipment is delayed by circumstances which the Purchaser can be held responsible for, the risk passes to the Purchaser already at the time when the goods are ready for shipment. The costs incurred by the delay (particularly storage cost) shall be borne by the Purchaser.

3. For standard packaging we invoice the following rates: for a merchandise net value under 50.00 Euros: 3 percent, for a merchandise net value between 50.00 Euros and 250.00 Euros, 2 percent, and for a merchandise net value over 250.00 Euros, 1 percent of the net invoice value (plus statutory VAT). We do not take back packaging.

### **IV. Liability for defects**

1. The Purchaser shall immediately inspect the delivered goods upon receipt and notify the Supplier of any existing defects without delay (2 working days after receipt at the latest) in writing. Any belated notice of defects, i.e. notice failing to comply with the above-mentioned provision, and provided such defects are not so-called "hidden defects", shall not be considered by the Supplier and shall be excluded from warranty.

Notices of defects shall only be accepted by the Supplier as such if they have been given in writing. Notices of defects given to field representatives or carriers or other third parties shall not constitute timely notices in due form.

2. Return of goods to the Supplier, which may become necessary in case of defects, shall only be permissible with the prior written approval of the Supplier. Goods which are returned without the prior approval of the Supplier need not be accepted by the latter. In such case, the Purchaser shall bear the costs of the return shipment.

3. If, against the background of a justified notice of defect, the Purchaser is entitled to rectification of defects or replacement, the provisions concerning the period of delivery shall take effect accordingly.

4. The existence of a defect which was detected as such and notified in the form of an effective notice of defect shall provide the Purchaser with the following rights:

a. In case of defectiveness, the Purchaser initially has the right to demand subsequent performance from the Supplier.

The Supplier, at its sole discretion, shall decide whether the respective item is completely replaced or the defect is rectified.

b. The Supplier shall furthermore have the right, again at its sole discretion, to effect another subsequent performance if the first subsequent performance failed. Only if the Supplier repeatedly fails to effect subsequent performance shall the Purchaser be entitled to withdraw from the contract or lower the purchase price.

5. The Purchaser may claim damages or compensation for unsuccessful expenditures only in cases of grossly negligent or wilful infringement of the obligation to supply flawless goods. The Supplier shall

provide evidence both of the reason and the amount of damage. The same shall apply to any unsuccessful expenditure.

6. The warranty period for the goods which are the objects of the purchase is twelve (12) months from shipment. The Purchaser shall in any event prove that the defect already existed at the time of the shipment.

## **V. Other Liability for Breach of a Duty of Care by the Supplier**

Without prejudice to the provisions regarding liability for defects and other special provisions laid down in these standard terms and conditions, the following shall apply in cases of a breach of a duty of care on the part of the Supplier:

1. The Purchaser must accord the Supplier an appropriate period in which to remedy the breach of the duty of care, which may not be less than 3 weeks and which is subject to agreement between Supplier and Purchaser. Only after the additional remedy deadline has passed without success may the Purchaser withdraw from the contract and/or demand compensation.

2. Damages claims of any kind may only be asserted by the Purchaser against the Supplier in cases of wilful or grossly negligent breach of a duty of care.

The duty to render compensation in lieu of performance (in case of failure to perform, cf. section 280 III in conjunction with cf. section 281, German Civil Code) and compensation for damage caused by delay (cf. section 280 II in conjunction with cf. section 286, German Civil Code) shall be limited to the negative interest, whereas the duty to render compensation for performance not rendered or not rendered as due (cf. section 282, German Civil Code) shall be limited to the amount of the purchase price. The duty to render compensation in lieu of performance at exclusion of the duty to perform (impossibility) shall not apply.

This limitation of liability to wilful and grossly negligent breaches of duties of care does not apply

3. Where the Purchaser is solely or predominantly responsible for circumstances that would otherwise entitle it to withdraw from the contract or if the circumstances conferring entitlement to withdraw from the contract occur during a delay in acceptance by the Purchaser, withdrawal from the contract is excluded.

## **VI. Product properties, exclusion of exercise risk and warranties**

1. The Supplier will not assume any liability for the suitability of the goods for certain purposes of use unless these product properties were expressly warranted. As a rule, only the product properties of the goods specified in the Supplier's product description, the order confirmation, the system descriptions, and/or the product information shall be deemed as agreed with the Supplier. Public statements or advertising do not constitute contractual product properties of the goods.

2. The Supplier shall neither accept any exercise risk nor warranties of any type unless expressly agreed with the Purchaser in writing.

## **VII. Prices**

The prices are calculated ex Supplier's works in Euros, plus the statutory VAT. The prices are valid for the scope of supply and delivery stated in our order confirmations. Additional and/or special services

and performances are subject to separate invoicing. Fixed material surcharges are calculated on the basis of the daily exchange rates and indicated individually on the invoice.

### **VIII. Terms of payment**

1. All invoices of the Supplier shall be payable net cash, either within 10 days at 3 percent discount or within 30 days (with the exception of invoices for tools).
2. Upon expiration of the term of payment and after receipt of an overdue notice, the invoice amount shall be subject to default interest in the amount of 8 percent above the base rate.
3. If checks are not cleared by the drawee in good time, all other existing claims of the Supplier against the Purchaser shall become due. Any other existing terms of payment shall expire. The same applies when a claim has not been paid when due.
4. Retention of payment or offsetting against any existing counterclaims of the Purchaser shall be excluded unless the claims are undisputed or recognized by declaratory judgment.
5. All claims of the Supplier against the Purchaser, no matter from what legal relationship, shall be payable immediately if events occur which according to legal or contractual provisions entitle the Supplier to withdraw.

### **IX. Retention of title**

1. All goods supplied by the Supplier shall remain in the ownership of the Supplier until settlement of the total purchase price and all claims resulting from the business relationship (extended retention of title).  
The Purchaser shall make no use of the retained goods except as part of its regular business activities. The goods shall not be assigned as collateral to any third party as part of the Purchaser's regular business activities.
2. If the goods are sold as part of the Purchaser's regular business activities the paid purchase price shall take the place of the goods. The Purchaser shall be deemed to have assigned to the Supplier here and now its claims to payment arising out of any sale of the goods. The Purchaser shall be authorised to collect these receivable accounts so long as he meets its payment obligations towards the Supplier. In light of the retention of title (advance assignment of any given outstanding purchase price), any assignment to third parties, notably to credit institutions, will be considered contrary to contract and therefore inadmissible.  
The Supplier shall be entitled at any time to inspect the Purchaser's documents of sale and to advise the Purchaser's customers of the assignment.
3. If the Purchaser's claim from the resale has been entered in a running account, the Purchaser here and now assigns its claim under the running account against its customer to the Supplier, which accepts said assignment. The assignment is effected in the sum that the Supplier had charged the Purchaser for the resold goods subject to the retention of title.
4. In the event that execution is levied against the goods in the hands of the Purchaser, the Supplier is immediately to be informed by being sent a copy of the minute of execution and an affidavit in said regard to the effect that the goods against which execution is levied are goods supplied by the Supplier and that they are subject to a retention of title.
5. If the value of the collateral provided under the terms of the preceding paragraph exceeds for the foreseeable future the amount of the outstanding payable accounts that it has to secure by more than

20 percent, the Purchaser shall be entitled to require from the Supplier the release of collateral to the extent of the excess.

6. Enforcement of the Supplier's rights under its retention of title does not release the Purchaser from its contractual obligations. The value of the goods at the time of their being taken back is merely set off against the existing claim by the Supplier against the Purchaser.

7. The processing or alteration of the conditional goods by the Purchaser shall in all cases be deemed to have been carried out on behalf of the Supplier, as contemplated by section 950, German Civil Code, without any binding effect on us. The processed or altered goods are conditional goods as contemplated by the present agreement.

The Supplier also becomes the co-owner of the new items created as a result of processing or alteration, and the Supplier's joint ownership portion is determined according to the ratio of the invoice value of the item supplied to the value of the other items at the time at which they are connected. The Purchaser agrees to safekeep the newly created goods at no cost the Supplier.

If, in the course of processing or alteration, the conditional goods are commixed or commingled with other items that are not in the ownership of the Supplier in such a manner that the Supplier's ownership in the conditional goods expires (cf. sections 947, 948 German Civil Code), the Purchaser's rights of ownership and/or co-ownership in the commingled items or the single item shall transfer to the Supplier in the proportion to the invoice value of our conditional goods to the total invoice values of the other commixed or commingled items. The Purchaser agrees to safekeep these goods at no cost the Supplier.

## **X. Right to cancellation of the Supplier**

The Supplier may cancel the contract for the following reasons:

a. If, contrary to the assumption of financial solvency prior to contract conclusion, the Purchaser turns out to be non-creditworthy. Non-creditworthiness may be implicitly assumed in case of check protests, suspension of payment on the part of the Purchaser or unsuccessful execution at the Purchaser. The assumption of non-creditworthiness is not restricted to relationships between the Supplier and the Purchaser.

b. If it can be proven that the Purchaser has provided incorrect information pertaining to its creditworthiness and such information is of vital importance.

c. If the goods of the Supplier subject to retention of title are disposed of in any manner other than the Purchaser's regular business dealings, notably through transfer by way of security or forfeiture. Exceptions to this will be acceptable only to the extent the Supplier has consented to the disposal in writing.

## **XI. Place of performance and jurisdiction**

1. The sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship, to the extent the Purchaser is a company, juristic person or legal entity or separate asset under public law, shall be the Supplier's location. All obligations arising from the contractual relationship shall be fulfilled at the Supplier's location.

2. In that case, especially in the event of cross-border shipments, German law shall apply, the validity of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded.

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