

General terms and conditions of purchase 09/01 of Rosenheimer Förderanlagen GmbH

A. Order placement

1. For our orders we do not accept any other terms and conditions of purchase than those set forth below, also if later during regular business relations they should not be expressly referred to. Alterations of these terms and conditions, unless not part of a collateral written contract. In particular any deviations or supplements of these terms and conditions of the supplier are herewith rejected. Silence on our behalf regarding order confirmations, which refer to deviations or supplements of the terms and conditions, is not be regarded as acceptance. We reserve the right to cancel the order due to any alteration of our terms and conditions. By carrying out the delivery the buyer assents to our terms and conditions of purchase.
2. Our orders must be immediately confirmed by the supplier. We reserve the right to cancel the order, if we do not receive order confirmation within 8 days.
3. Only written orders are legally binding. Orders placed any other way will only become binding when confirmed in writing. Subsequent agreements or subsidiary agreements must be confirmed by us in writing in order to become legally binding.
4. If during execution of the order additional performance is required for proper production of the item, which is not covered in the scope of performance agreed in the contract, the supplier must place an additional order prior to execution of such additional performance. If an additional contract is required by the supplier, it must be granted by our purchase department.
5. We reserve the right to withdraw from the contract within 8 days after having received the order confirmation without giving reasons and without any obligation.

B. Price, Scope of delivery and scope of performance

1. The prices provided in the contract are fixed prices, unless expressly otherwise agreed, and increases in prices during the period of delivery shall not be accepted. In case of subsequent increase of prices we reserve the right to withdraw from the contract with regard to outstanding goods without compensation. All prices are free ex works or free ex point of reception determined by us including packaging and all incidental charges. Rail and express station is Kolbermoor.
2. All necessary performances required for a proper delivery and a proper manufacturing and assembly process are part of the scope of performances even if they are not expressly quoted in the contract.
3. If we deliver or provide the material required for installations and assemblies as part of the supplier's performance, the scope of performance of the supplier also comprises off loading the truck as well as transport from the stock location of the plant parts to the assembly location. The scope of performance for installations and assemblies also includes the conventional documentation.
4. If design, development or similar performances are part of the order, the supplier is obliged to furnish all design and manufacturing drawings as well as documentation, manuals etc. In case of software development the delivery of the software in its source and object program form as well as the documentation of the program development and application is included in the scope of performance.

C. Delivery dates, Contract penalty

1. The delivery dates quoted in our order are dates of receipt of the delivery / making delivery and they have to be adhered to. Should the supplier be able to foresee his inability to deliver parts of the order or the entire order in due time, he must inform us immediately, quoting the reasons and the period of delay latest within the first third of the delivery period. In case of an unacceptable extension of the delivery period, we reserve the right to withdraw from the contract without compensation. Part deliveries are only acceptable upon our approval.
2. Should the supplier be delayed in performance we reserve the right without prejudice to further claims for compensation and unless otherwise agreed, to demand a contract penalty to the extent of 0.5% of the order value per day of the delay, at most however 5% of the order value. Subject to the contract penalty according to § 341 clause 3 BGB we reserve the right to claim compensation up to the final payment, latest however within 14 days of acceptance of the performance.
3. In case of doubts about the supplier's ability to deliver or his willingness to do so before or after due date, in particular if the supplier informs us at this early stage about his inability to deliver or his unwillingness to do so, and if we have an urgent interest in clarification, we may set a time limit for the supplier before or after due date for giving an explanation about or furnishing proof of his ability to deliver or his willingness to do so on pain of refusal of the performance once the deadline has expired. For the rest § 326 BGB applies accordingly.

D. Delivery and passage of risk; Accident prevention rules and plant rules.

1. The delivery must include a delivery note. In case of direct shipment to our customer a neutral delivery note must be used and a dispatch note signed by the carrier must be furnish for our checking the invoice.
2. In case of contract of purchase the risk passes with the delivery of the goods to us, in case of contracts of work and services the risk passes after acceptance.
3. In case of installations and assemblies the supplier is responsible for adhering to all accident prevention rules, in particular those of the association of commercial and industrial workers' compensation insurance carriers as well as to other plant rules of our customers known to him or other rules at construction sites known to him. With respect to the contents of published rules the supplier is obliged to gather information himself.

E. Invoicing, Payment conditions

1. After dispatch the invoice must be sent to us by post. The invoice must under no circumstances be included in the shipment. The invoice must include all order data. Part invoices are only possible, if respective part deliveries have been ordered.
2. Payment is made, unless otherwise agreed, after 14 days with 3% discount or net after 60 days. The period of payment begins with receipt of the invoice, however, no sooner than with receipt of the delivery or acceptance of the performance, unless otherwise agreed.
3. In case of defects we reserve the right to postpone payment to an appropriate extent until complete clarification and to deduct a discount for the retained payment even after this time according to number 2.
4. First installments to be made by us must be secured in advance by the supplier by way of bank guaranty on first request/bank guaranty. For this purpose the ROFA sample must be used.

F. Warranty including remedy of defects; Inspection

1. The supplier must adhere to the approved engineering rules, existing safety rules and the agreed technical data, measurements, weights and other characteristics with respect to his deliveries and performances. Manufacturing on the basis of drawings or approved samples must comply with the specifications. Unless no further requirements are agreed in the order, deliveries and performances must be carried out in standard quality and in compliance with the DIN, VDE, VDI or similar national or European standards. In particular, they must be carried out in such way that they comply with the applicable legal regulations at the location specified by us, in particular with respect to technical work equipment, dangerous substances, accident prevention, emission protection and ordinance on workplaces.
2. The supplier must check our designs, drawings and other specifications for the execution of the performance or for the materials or parts delivered by us or performances of other suppliers, as far as they affect him, with regard to completeness, correctness and suitability for the purpose intended. Should any doubts occur in this respect, the supplier must inform us hereof immediately in writing. If he fails to inform us immediately, he becomes liable himself in this respect.
3. Within the scope of the legal warranty claims we have the right to demand remedy of defects or replacement delivery (supplementary performance) on the basis of a contract of purchase as well as a contract of work and services. In this case the supplier is obliged to pay for all expenses incurred (even for us) due to the remedy of the defects or the replacement delivery. In case of withdrawal from the contract these expenses including our costs for assembly and disassembly at the customer's must be paid by the supplier as contractual costs. In urgent cases we have the right, at the supplier's expense, to remedy defects ourselves or have them remedied by a third party or to find replacement by other means. Section C no. 3 of these General terms of purchase is accordingly applicable to §§ 634 ff BGB.
4. The period of warranty is 12 months from acceptance of the ROFA plant by our customer, latest, however, 24 months from the passage of risk, insofar as no longer periods have been assigned by law or have been agreed by individual agreement. If the supplier remedies a defect or furnishes replacement, the period of warranty for the individual parts being remedied or replaced begins anew. Due to our written claim of defect the statute of limitations of our warranty claims is interrupted for all defects ascribed to the appearance of the claimed defect.
5. The period of inspection and complaint (§§ 377, 381 A b s. 2 HGB) is three weeks from delivery at the point of reception, three weeks from detection of defects latent during inspection. If in individual cases a longer period is appropriate, it is applicable. These regulations also apply to excess or short delivery (§ 378 HGB).
6. We reserve the right to inspect the supplier's manufacturing (also accompanied by our customer).

G. Warranty and security deposit

Until expiry of the warranty period we can claim a warranty deposit to the extent of 10 % of the value of the contract. In case that the supplier becomes insolvent prior to our final payment, we can claim - without prejudice to further rights - an additional security deposit for the security of our warranty claims to the extent of further 20% of the contract value for the duration of the warranty period. Warranty deposit and additional security deposit can be cleared off by the supplier by an unlimited and absolute guaranty of a German major bank or savings bank (in case of foreign suppliers an internationally active major bank with Munich as place of jurisdiction for the guaranty) according to ROFA sample.

H. Product liability

If we are charged from product liability due to national or international laws, the supplier is obliged to indemnify us from claims for compensation against third parties, as far as he is responsible for the defect causing liability action. Within this scope the supplier is also obliged to pay such expenses, which incur due to or in connection with a call back action initiated by us or other measures remedying or preventing defects. The supplier waives any plea of the statute of limitations, unless we can plead the statute of limitations towards the claimant ourselves.

I. Infringements of an industrial property right

1. With respect to his delivery or performance the supplier is liable for the prevention of infringement of industrial property rights of any third party within the German Republic. The supplier's obligation to assume liability also extends to the export country, if the supplier knows to which country his delivery/performance will be exported to. The damage and loss of earnings resulting hereof must be paid by the supplier.
2. If, contrary to section 1, a third party asserts claims against us, the supplier must pay for all expenses incurring for us due to this claim.

K. Assignment of claims, Subcontractors

1. Claims from deliveries and performances can only be assigned to a third party with our approval. As far as the claims don't result anyway from a mutual commercial business and the effects of sentence 1 apply to § 354 a HGB, the following applies: We commit ourselves to approval, if the supplier grants his suppliers the rights to prolonged retention of title or assigns claims to his house bank for security and the assignee commits himself to indemnify us from the claims of the supplier (or his trustee) and to assign an absolute guaranty of a German major bank or savings bank in case of payment of the claims.
2. The supplier is obliged to fulfill his obligations resulting from contracts with us with his own company and its employees. The use of subcontractors is only permitted with our approval.

L. Disposal of materials

1. Materials/parts provided remain our property and the supplier must store them separately and use them only for our order. The supplier is liable in case of damage or loss even if caused through no fault of his own.
2. Processing or alteration is carried out by the supplier on our behalf. If the goods provided by us are processed with other goods of a third party, we gain co-ownership of the new goods proportional to the value of our goods to the other goods at the time of processing.
3. If the goods provided by us are connected to other goods of a third party, we gain co-ownership of the new goods proportional to the value of the goods provided by us to the other connected goods at the time of connecting. If the connection is carried out in such way that the goods of the supplier must be considered as the main item, we agree that the supplier transfers proportionate co-ownership to us and keeps the co-ownership for us. The above rules apply respectively, if the supplier commingles or mixes the goods provided by us with other goods.
4. The supplier shall insure the goods of which we have sole ownership or co-ownership including the new goods resulting from processing against damage, loss, etc.

M. Property rights, Rights of use

1. All items, models, tools, samples, drawings, designs and documents of any type handed to the supplier remain our property. The supplier must not disclose such items and on request return them to us free of charge at any time. The supplier must not show such items to a third party nor make them accessible any other ways, nor duplicate them nor use them for his own purposes.

2. The same applies to moulds, tools or similar devices or resources for the manufacturing of the delivery item, which are produced according to such documents or manufactured completely or partially at our expenses. Alterations can only be carried out with our permission. It is agreed that the above items will become our property (at the time of payment, if payment is agreed) and that these items will be kept free of charge and properly on our behalf. In case of having paid for the named items before finishing, we gain ownership in the partially finished product according to the above rules.

3. The supplier is committed to insure the items named in paragraph 1 and 2 and owned by us against damage, loss, etc.

4. In such cases as mentioned under B number 4 we reserve the exclusive spatiotemporally unrestricted right to use the constructions, developments, etc. in any possible way.

If in respect to the order improvements occur at the supplier's, we gain the free, not exclusive right of use for commercial application of the improvement and possible industrial property rights hereof.

5. The title of the goods ordered is passed at delivery, unless property rights already exist according to the above regulations. The supplier waives retention of title with respect to all deliveries being executed.

N. Special provisions for the cession of the right to use cranes, lifting equipment or other technical resources

For the cession of the right to use cranes lifting devices, supplementary devices for such or other technical resources the following special provisions apply

a) In case of also ceding the operating personnel by the ceding party is obliged to duly transport the items or the goods to be lifted or transported by means of his servants to the location specified by us and to supervise such action. In this respect the contract is a contract of work and services. The contract also is a contract of work and services if and insofar as the ceding party is only committed to assemble or disassemble the equipment.

b) The ceding party is obliged in all cases to take out a crane indemnity insurance with a limit of indemnity of an overall minimum of EURO 1 Million as well as - in case of ceding the operating personnel - a hook load insurance with a limit of indemnity of a minimum of EURO 250,000.- each for bodily injury, physical damage and financial losses caused hereby. A special discount for this is only granted if agreed with us. We reserve the right to demand proof of insurance coverage and insight into the insurance contracts at any time.

c) Otherwise the above General Terms and Conditions for Purchase apply.

O. Place of fulfillment, Place of jurisdiction, Applicable law, Others

1. Place of fulfillment for delivery and payment is Rosenheim.

2. We reserve the right to collect, store, change, transmit or use data of the customer resulting from our business relation, as far as the other party is able to dispose of these themselves. We reserve the right at our own option to take legal action at the customer's legal domicile.

3. Place of jurisdiction for all disputes - including action on a dishonored bill and checks - is Traunstein as long as the customer is full merchant, legal person under private law or public-law special fund or has not other general place of jurisdiction. We reserve the right at our own option to take legal action at the customer's legal domicile.

4. The contractual relations are subject to German law. The application of the UN Convention on International Sale of Goods in its relevant version is excluded (UN law).

5. Legal nullity of individual parts of the contract of individual contractual provisions does not affect the legal validity of the contract in all other parts. In this case the contractual parties are obliged to replace a null provision by such a provision which comes closest to the commercial purpose of the null provision and is effective. This does not apply in case of nullity due to violation against §§ 305 to 310 BGB. In this case the legal provisions are applicable provided that supplementary interpretation of the terms of the contract exist in order to plug a gap.

6. The above terms and conditions also apply to possible follow-up business, too.