

## **1. General**

- 1.1 Solely the Buyer's conditions set out below apply to the legal relations between the Supplier and Von Roll Deutschland GmbH ("Buyer").
- 1.2 The Buyer does not acknowledge the Supplier's conditions that impede or are contrary to the Buyer's conditions unless the Buyer has expressly approved of the validity of such conditions in writing. The Buyer's Conditions of Purchase shall also apply if the Buyer unconditionally accepts delivery although it is aware of the Supplier's conditions that impede or are contrary to the Buyer's conditions.
- 1.3 The Conditions of Purchase shall only apply in respect of companies within the meaning of § 14 of BGB<sup>1</sup>, if the contract is part of a company's operations, and in respect of legal persons under public law and special public assets within the meaning of § 310, subsection 1, of BGB.
- 1.4 The Conditions of Purchase also apply to all future business transactions entered into with the Supplier.
- 1.5 All the contracting parties' agreements and declarations of relevance in law are subject to the written form in order to be deemed legally valid.

## **2. Conclusion of contract and tender documents**

- 2.1 The Supplier undertakes to accept the Buyer's order within a period of two weeks from receipt of the order, and to forward appropriate confirmation of order to the Buyer. The Buyer shall be entitled to withdraw at any time if no acceptance occurs during this period.
- 2.2 The Supplier's confirmation of order must contain details of the price, discount, binding delivery date and all numbers and signs of the Buyer's order.
- 2.3 The Supplier's offers, drafts, trials and samples are free of charge for the Buyer, and do not constitute any liability on the part of the Buyer.
- 2.4 If nothing to the contrary is agreed in writing, no remuneration or compensation shall be paid for visits or drawing up offers, projects etc.
- 2.5 The Buyer may request, within the scope of what can be reasonably accepted of the Supplier and following conclusion of the contract, that technical alterations be made to the goods and/or the time of delivery be amended. Effects in particular in respect of additional or reduced costs and the delivery dates are to be provided for by way of mutual agreement.

2.6 The Buyer reserves the right to own proprietary rights and copyrights to diagrams, drawings, calculations and other tender documents. These may not be made available to third parties without express, written, approval by the Buyer, and are to be used solely for the manufacturing operations on the basis of the Buyer's order. Once the order has been processed, they are to be returned, without request and free of charge, to the Buyer. In respect of such documents, secrecy is to be observed in dealings with third parties.

### **3. Scope of deliveries and services, passing of risk and packaging**

3.1 The Supplier's deliveries and services are ultimately stated in the order, including Annexes.

3.2 The Buyer shall accept partial deliveries following express agreement only. The remaining residual quantity is to be stated in the case of agreed partial deliveries.

3.3 Insofar as the parties agree on certificates for material inspections, they shall be deemed a key element of the delivery and are to be forwarded to the Buyer in conjunction with the delivery.

3.4 One copy of the delivery note, stating the Buyer's precise order data in addition to the detailed description of the scope of delivery according to products, type and quantity etc., is to be enclosed with the goods. Delays in processing will be unavoidable if the Supplier fails to enclose such a delivery note. The Buyer shall not be responsible for such delays.

3.5 Risk shall pass at the delivery address stated by the Buyer.

3.6 The place of performance in respect of the Supplier's obligation to take back pursuant to § 4 of VerpackV<sup>2</sup>, is the location at which the goods are surrendered.

3.7 The delivery items are to be packed in a manner that is customary in the trade and appropriate.

3.8 On return, charged packaging is to be credited to the full charged value insofar as it is reusable. The credit note is to be submitted as a single copy at all times with details of the invoice with which the amount was debited.

3.9 The Supplier shall ensure that it is able to supply the Buyer with the delivery items or parts thereof, at reasonable conditions, for a period of ten years following the end of the contractual relationship.

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<sup>1</sup> German Civil Code

<sup>2</sup> German Ordinance on Packaging

#### **4. Prices**

- 4.1 The agreed prices are fixed prices. This also applies to framework orders for the entire term of the agreement. If no prices are stated, the Supplier's current list prices are deemed applicable subject to reductions that are customary in the trade.
- 4.2 In the absence of an agreement to the contrary, all prices are DAP (pursuant to INCOTERMS® 2010) to the place specified by the Buyer, including the cost of packaging and conservation.
- 4.3 All prices are to be construed as "franco domicile" to the delivery address stated by the Buyer, including statutory value added tax and packaging. The Buyer is entitled to determine the type of packaging, means of transport, transport route and transport insurance.

#### **5. Terms of payment**

- 5.1 In the absence of an agreement to the contrary, payments are to be effected at the Buyer's discretion either within 14 days following receipt of invoice by way of deduction of a 3% trade discount, or within 30 days following receipt of invoice without deductions. However, the period shall not commence prior to performance in full by the Supplier. The choice of the means of payment is incumbent upon the Buyer.
- 5.2 If early deliveries are accepted, the due date for payment shall be based on the agreed delivery date. If the charged goods arrive after the invoice, the date on which the goods are received shall be deemed the date of invoice.
- 5.3 The Buyer is to be provided with duplicate invoices upon delivery of the goods but nevertheless separate of the goods. The order number and date are to be stated in each invoice. Invoices that are not written out appropriately shall be deemed not issued.
- 5.4 Insofar as a delivery or service is to be exempt from value added tax, the Supplier undertakes to furnish the respective proof or collaborate on bringing about such proof. In respect of deliveries within the European Union, the Supplier is to state its VAT ID number, furnish proof of its corporate structure and collaborate on providing proof of exports as shown in the books and vouchers.
- 5.5 In the case of a faulty delivery, the Buyer shall be entitled to withhold payment proportionate to the value until delivery is performed properly. On the other hand, effected payments shall not constitute any recognition of the delivery as per agreement.
- 5.6 Without prior written approval – which may not be unreasonably refused – the Supplier is not entitled to assign to a third party a claim against the Buyer to which the Supplier is entitled, or make arrangements for a third party to collect such a claim.

## **6. Reservation of title and provision of materials**

- 6.1 Extended reservation of title on the part of the Supplier in respect of the goods delivered to the Buyer shall not be recognised.
- 6.2 The Buyer reserves the right in respect of ownership of all the substances, parts, containers, tools, measuring equipment and the like (“provided materials”) made available to the Supplier. The materials provided by the Buyer are solely intended for processing and honouring the order. Duplications of provided materials may neither be made available to third parties nor be used for purposes other than those agreed upon.
- 6.3 The Supplier shall process the materials and assemble the parts on behalf of the Buyer. In the case of blending, mixing or processing the Buyer’s materials with others that are not part of the Buyer’s items, the Buyer shall acquire co-ownership of the new item in the proportion of the value of the materials and parts made available by the Buyer to that of the other processed items at the time of blending, mixing or processing. If the Supplier’s item is to be regarded as the principle item, it shall be deemed agreed that the Supplier shall assign proportionate co-ownership to the Buyer. The Supplier shall store gratuitously on behalf of the Buyer the items that are wholly and co-owned by the Buyer.

## **7. Delivery period**

- 7.1 The agreed delivery date is binding. Receipt of flawless delivery items at the place of receipt and/or point of use stated by the Buyer shall be deemed authoritative in respect of adhering to the delivery date or period.
- 7.2 If the Supplier realises that the agreed delivery time cannot be met for whatever reasons, it is to inform the Buyer in this respect without delay in writing by stating the reasons for and the duration of the delay.
- 7.3 In the event of default in delivery, the Buyer shall be entitled to request a conventional penalty of 0.2% of the order value – at most however not more than 10% – for each full week in which the delay occurs. The Buyer reserves the right to lodge further reaching, statutory, claims. The Buyer undertakes to declare the reservation in respect of the reservation of title at the latest upon settling the invoice.
- 7.4 If the agreed delivery time is not adhered to, the Buyer shall be entitled to withdraw from the contract following the expiry of an appropriate additional period set by the Buyer, irrespective of further-reaching, statutory, claims. If the Supplier is responsible for the delay, the Buyer may at its discretion request compensation for the damage it has suffered due to the delay, following expiry of the above-mentioned period assert a claim for damages instead of performance, or request compensation for expenses incurred in vain.

- 7.5 Force majeure, industrial action or other unavoidable and unforeseeable events shall only release the Supplier from its obligations to perform for the duration of the disruption and to the extent of their effects. The Supplier undertakes, within the scope of what is acceptable, to provide the necessary information and to adjust its obligations in good faith in line with the changed circumstances. The Buyer shall be wholly or partially released from the obligation to accept the ordered delivery/performance and shall, insofar, be entitled to withdraw from the contract if the delivery/performance can no longer be utilised – with due regard to the economic aspects – due to the delay experienced by the Buyer as a result of such circumstances.
- 7.6 In the case of delivery earlier than agreed, the Buyer reserves the right to return the goods at the Supplier's cost. If goods are not returned in the case of premature delivery, the goods shall be stored at the Buyer's premises at the Supplier's cost and risk up until the agreed delivery time.

## **8. Warranty, liability for defects**

- 8.1 The Supplier assures and guarantees that the deliveries and services comply with the agreed specifications. If these deliveries and services do not comply with the agreed specifications, the Buyer shall be entitled to lodge the appropriate, statutory, claims.
- 8.2 All items delivered by the Supplier and all services it renders must comply with the latest state-of-the-art technology, the pertinent legal provisions and regulations issued by authorities, trade organisations and professional associations. General internationally recognised norms such as DIN, ISO, VDI, VDE are to be adhered to. The Supplier shall be required to obtain the Buyer's written approval in cases where variations from these regulations are necessary in individual cases.
- 8.3 The Supplier undertakes, following an appropriate request, to enter into a quality assurance agreement.
- 8.4 If the Supplier has reservations in respect of the type of design requested by the Buyer, it shall be required to inform the Buyer in writing in this respect without delay.
- 8.5 The Supplier shall ensure that it acquires in good time all the information required in respect of the intended use of its deliveries and services. The Supplier shall ensure that its deliveries consist of all the services required for proper, safe and efficient utilisation.
- 8.6 Deliveries shall, at all times, be accepted subject to the proviso of a quantity and quality inspection. The Buyer undertakes to inspect the goods in respect of possible faults within an appropriate period following delivery by the Supplier. Timely notification of defects shall be deemed to have been given insofar as the Supplier receives such notification in the case of identifiable defects within a period of 10 workdays following delivery or, if the fault was not identifiable during a proper inspection, within a period of

10 workdays once they have been identified. The Buyer reserves the right that additional deliveries be recognised as per agreement.

- 8.7 The Buyer shall be entitled to exercise the unrestricted statutory rights in the event of a fault. The place of warranty is deemed the stated point of use. The Buyer shall be entitled, at its own discretion, to request that the Supplier remedy defects or provide a replacement delivery. If the Supplier does not honour its obligation to render subsequent performance in accordance with the option chosen by the Buyer within an appropriate period, or if the subsequent performance fails, the Buyer shall be entitled without delay to exercise its rights in respect of abatement, withdrawal, claims for damages instead of performance or reimbursement of expenses. Subsequent performance shall be deemed to have failed if an attempt at remedying defects or a replacement delivery does not give rise to a fault-free delivery by the Supplier. The Supplier undertakes to carry all the expenses required in respect of remedying defects or providing a replacement delivery. Furthermore, the Buyer is entitled to retain payment proportionate to the value until the service is rendered properly.
- 8.8 The Buyer's claim in respect of performance shall continue to exist up until claims for compensatory damages instead of performance are lodged in writing or in court. Should the Buyer withdraw from the contract due to the existence of a defect, the Supplier shall also be required to reimburse the Buyer in respect of the contractual costs.
- 8.9 The Buyer shall be entitled to the right of recourse pursuant to Sections 478 and 479 of BGB by way of the appropriate application against the Supplier if the Supplier has merely delivered parts for the item newly manufactured by the Buyer.
- 8.10 If the Supplier is in default in respect of providing a replacement delivery or remedying defects, the Buyer shall be entitled to carry out the replacement delivery or remedy defects at the Supplier's cost or commission a third party in this respect. The same applies if the matter on hand is urgent and the Supplier cannot be reached in time or is not able to rectify defects or provide a replacement delivery in good time. The Supplier is to be informed in this respect without delay.
- 8.11 The Buyer's claims in respect of defects shall become statute-barred in accordance with the statutory provisions starting from the receipt of the delivery by the Buyer. In the case of exchanged or repaired parts, the limitation period shall begin afresh unless the rectifying cost is to be considered insignificant. If the Supplier reviews the existence of a defect or action taken to remedy a defect, the statute of limitations shall be suspended up until the Supplier informs the Buyer of the outcome of the review, informs the Buyer that the defect has been rectified or refuses to continue to rectify the defect. A review shall, in particular, be deemed applicable if the Supplier has instituted the review or has forwarded the delivery to a third party in respect of an examination.

## **9. Product liability, indemnification and liability coverage**

- 9.1 Insofar as the Supplier is responsible for product damage, it undertakes to indemnify the Buyer, insofar, at the first request, from third party claims for damages if the cause is within its authority or area of organisation and it is liable in dealings with outside parties.
- 9.2 As part of its liability for cases of damage within the meaning of sub-section 9.1, the Supplier also undertakes to reimburse expenses that may apply pursuant to Sections 683 and 670 of BGB and pursuant to Sections 830 and 840 and 426 of BGB that arise as a result of or in conjunction with a call-back campaign launched by the Buyer. The Buyer is to give the Supplier the opportunity – where possible and if it can be reasonably expected – to comment on the content and scope of the call-back campaign that is to be launched. This shall not affect other statutory claims.
- 9.3 The Supplier undertakes to maintain a product liability insurance policy with – flat rate – coverage of € 5 million for each case of personal/material damage. This shall not affect further-reaching claims for damages on the part of the Buyer insofar as it is entitled to assert such claims.

## **10. Construction protection and industrial proprietary rights**

- 10.1 Insofar as the ordered parts emanate from own construction, the Supplier undertakes neither to deliver these now nor at a later date, or make available for sale, to another party. Models, drawings, samples and the like, which the Buyer makes available to the Supplier to execute the order shall remain the Buyer's property and are to be returned by way of notification once the order has been processed.
- 10.2 The Supplier shall be liable to the Buyer for ensuring that no third party rights are violated in conjunction with its delivery. The Supplier is aware that the Buyer markets the end products worldwide.
- 10.3 If third parties therefore lodge claims against the Buyer, the Supplier shall undertake to indemnify the Buyer against such claims at the first written request. The Buyer is not entitled to enter into any agreements with the third party – without approval by the Supplier – in particular in respect of effecting a compromise.
- 10.4 The Supplier's obligation to indemnify refers to all expenses that the Buyer may incur in conjunction with the claims lodged by a third party.

## **11. Force majeure**

If a party is prevented from honouring its obligations due to cases of force majeure, this shall not constitute any contractual violation or an obligation to pay compensatory damages.

## **12. Secrecy**

The Supplier undertakes to maintain strict secrecy regarding all diagrams, drawings, calculations and other documents and information received from the Buyer. Sub-section 2.6 applies accordingly.

## **13. General provisions**

13.1 The court with jurisdiction for the Buyer's registered office is deemed the place of jurisdiction for both contracting parties. However, the Buyer is also entitled to bring an action at the court with jurisdiction for the Supplier's registered office.

13.2 The legal relationship is subject to German law by way of exclusion of the United Nations Convention on Contracts for the International Sale of Goods dated 11.04.1980.

13.3 The Supplier is not entitled to forward the order to third parties without prior (written) approval by the Buyer.

13.4 Insofar as nothing was expressly agreed to the contrary, the delivery address or point of use requested by the Buyer is deemed the place of performance in respect of the delivery obligation. The Buyer's registered office is deemed the place of performance for all other obligations of both contracting parties

13.5 Should individual provisions be invalid or lose their validity due to circumstances that occur at a later date, this shall not affect the validity of the other provisions.