

ROHR Spezialfahrzeuge GmbH

General Terms of Procurement

of ROHR Spezialfahrzeuge GmbH, Straubing

Applicable to B2B transactions with businesses, legal persons organized under public law and special funds organized under public law

§ 1 Applicability

(1) All deliveries, services and offers of our suppliers are exclusively governed by these General Terms of Procurement. They are incorporated into all agreements we make with our suppliers regarding the supplies or services offered by them.

They also apply to all future deliveries, services or offers to us as customer even if they are not expressly agreed again.

(2) Terms and conditions of our suppliers or of third parties are not applicable even if we do not expressly object to their applicability in the individual case. Even if we refer to a letter which contains or refers to the terms and conditions of the supplier or of a third party this does not constitute agreement to the applicability of such terms and conditions.

§ 2 Orders and Instructions

(1) To the extent our offers do not expressly contain a binding period we are bound by them for one week after the date of the offer. The timely receipt of the acceptance declaration by us is decisive for the timeliness of the acceptance.

(2) We may change the time and place of the delivery and the type of packaging at any time by providing written notice at least 10 calendar days prior to the agreed delivery date. This also applies to changes of product specifications to the extent they can be realized within the scope of the normal production process of the supplier without material additional effort/costs; however, in such cases, the notice period pursuant to the preceding sentence amounts to at least 20 calendar days.

We will reimburse the supplier for the proven and reasonable additional costs incurred because of the change, respectively. If such changes lead to delivery delays which cannot be avoided by reasonable efforts in the normal production and business operations of the supplier, the originally agreed delivery date is postponed accordingly. The supplier will notify us in due time prior to the delivery date, however, no later than within 5 work days after receipt of our notice pursuant to sentence 1, about the additional expenses or delivery delays to be expected by it upon diligent consideration.

(3) We may terminate the contract at any time by written notice, stating the reason, if we are no longer able to use the ordered products in our business operations because of circumstances arising after formation of the contract. In this case we will compensate the supplier for the partial service/works provided by it.

§ 3 Prices, Terms of Payment, Invoice Details

(1) The price set forth in the order is binding.

(2) Unless there is a written agreement providing otherwise, the price includes delivery and transport to the shipping address set forth in the contract, as well as packaging.

(3) To the extent the agreement made does not include the price of packaging and the price for the packaging is not expressly agreed, it shall be charged at the demonstrable cost rate (unless it is only provided on loan). Upon our request the supplier shall take back the packaging at its expense.

(4) Unless agree otherwise, we shall pay the purchase price with an early payment discount of 3% within 14 days as from delivery of the goods and receipt of an invoice, or in full within 30 days. The receipt of our transfer order by our bank is sufficient for the timeliness of payments owed by us.

(5) In case of defective delivery we may withhold prorated payment in the amount of up to three times the amount likely required to remove the defects, until the delivery is properly effected. If and to the extent payments for defective deliveries have already been made we may withhold other due payments up to the amount of such payments.

- (6) Our order number, the article number, delivery quantity and delivery address must be stated in all order confirmations, delivery documents and invoices. If one or more of these data are not provided and if the processing by us is delayed within our ordinary course of business as a result, the payment periods stated in paragraph 4 shall extend by the period of the delay.
- (7) For as long as individual documents and/or the data pursuant to the preceding paragraph 5 are wholly or partly missing and the processing by us is delayed within our ordinary course of business as a result, the payment periods shall extend by the period of the delay.
- (8) In case of late payment we owe default interest in the amount of five percentage points above the base rate pursuant to Section 247 of the German Civil Code (BGB). We are not liable for interest on maturity.
- (9) Apart from that we are entitled to set-off and retention rights, and to raise the objection of non-performance of the contract, within the scope permitted by statutory law.
- (10) The Supplier may only set off undisputed or finally adjudicated claims against our claims.

§ 4 Delivery Time, Delivery, Transfer of Risk

- (1) The delivery time (delivery date or period) stated in the order is binding. Early deliveries are not permitted.
- (2) The supplier shall inform us in writing immediately if circumstances arise or become recognizable according to which the delivery time cannot be met.
- (3) If the day on which the delivery must be effected at the latest can be determined on the basis of the contract, the supplier is in default upon the end of this day; a reminder by us is not required.
- (4) In case of late delivery we are fully entitled to the statutory rights, including the right of rescission and the right to demand damage compensation in lieu of performance after fruitless expiration of a reasonable grace period.
- (5) In case of delivery delays we may demand a contractual penalty in the amount of 0.5% of the respective order value for each commenced week of the delivery delay, up to a maximum of 5% of the respective order value upon prior warning. The contractual penalty shall be credited against the default damages to be compensated by the supplier.
- (6) The supplier may not make partial deliveries without our prior written consent.
- (7) The supplier may not engage third parties (e.g. sub-contractors) to provide the supplies/services owed by it without our prior written consent. The supplier bears the procurement risk for its supplies/services.
- (8) The risk is only transferred to us if and when the goods are handed over at the agreed destination, even if shipment has been agreed.

§ 5 Ownership Protection

- (1) We reserve ownership or copyrights in orders and instructions placed by us as well as in drawings, illustrations, calculations, descriptions and other documents provided to the supplier. The supplier may not make them available or disclose them to third parties, nor may the supplier use them directly or via third parties or reproduce them without our express consent. Upon our request, the supplier shall fully return such documents to us if they are no longer required by it in the ordinary course of business or if negotiations do not result in the formation of a contract. In this case, copies made hereof by the supplier, if any, shall be destroyed; this only excludes the retention within the scope of statutory retention obligations and the storage of data for back-up purposes within the scope of standard data back-up.
- (2) Tools, equipment and models which we provide to the supplier or which are manufactured for contractual purposes and are separately charged to us by the supplier remain or become our property. The supplier shall label them as our property, store them diligently, safeguard them from damages of any kind and only use them for purposes of the contract. Each of the parties shall bear 50% of the costs of maintenance and repair of these items unless agreed otherwise. To the extent that such costs are based on defects of such items manufactured by the supplier or on improper use by the supplier, its employees or other vicarious agents, however, they are borne solely by the supplier. The supplier will inform us immediately about any damages to these items which are not merely immaterial. Upon request, it shall surrender these items to us in proper condition if they are no longer required by the supplier for purposes of fulfilling the contracts made with us.
- (3) Any retention of title by the supplier is only valid to the extent it relates to our payment obligations for the respective products in which the supplier retains title. In particular, so-called "all monies" clauses and "mixed goods" clauses are prohibited.

§ 6 Warranty Rights and Liability

(1) In case of defects we are fully entitled to the statutory rights. In deviation therefrom, however, the warranty period amounts to 36 months.

(2) The commercial inspection and notification obligations are subject to statutory law (Sections 377, 381 of the German Commercial Code – HGB), with the following provisos:

Our inspection obligation is limited to defects which are openly apparent under visual inspection, including of the delivery documents, during our incoming goods inspection and in random tests during our quality control (e.g. transport damages, incorrect or short deliveries). There is no inspection obligation to the extent acceptance is agreed. Apart from that, it is decisive to which extent an inspection is feasible in the ordinary course of business in consideration of the circumstances of the individual case. Our obligation to notify defects discovered later remains unaffected. In all cases, our notification (notice of defects) is deemed as immediate and timely if it is received by the seller within eight work days after discovery of the defect.

(3) If a material defect becomes apparent within six months after the transfer of risk, it is presupposed that the defect was present when the risk was transferred, unless this presupposition is inconsistent with the nature of the item or the defect.

(4) We do not waive warranty rights by accepting or approving provided models or samples.

(5) The limitation period for warranty rights is suspended upon receipt of our written notice of defects by the supplier. In case of replacement delivery and removal of defects, the warranty period for replaced or repaired parts starts anew, unless we had to assume on the basis of the behavior of the supplier that the supplier did not consider itself obligated to undertake the measure, but only provided the replacement delivery or repair for reasons of goodwill or similar.

(6) The costs incurred by the supplier for purposes of inspection and repair (including de-installation and installation costs, where applicable) are borne by the supplier even if it becomes apparent that there was not in fact a defect. Our liability for damage compensation in case of unjustified request to remove defects remains unaffected; however, insofar we are only liable if we have recognized, or failed to recognize due to gross negligence, that there was no defect.

(7) Apart from that, we may reduce the purchase price or rescind the contract in accordance with statutory law if there is a material or title defect.

(8) If as a consequence of the defectiveness of contractual products delivered by the supplier, we accept the return of products manufactured and/or sold by us, or if our purchase price is reduced or other claims are asserted against us as a result, we reserve the right to declare rescission vis-a-vis the supplier, provided that an otherwise required setting of a grace period is not necessary for our claims for defects.

(9) Further, we are entitled to compensation of damages and costs in accordance with statutory law.

§ 7 Product Liability

(1) The supplier is responsible for all claims asserted by third parties because of personal injury or damage to property and based on a defective product supplied by the supplier, and the supplier shall indemnify us from and against the resulting liability. If we are obligated to recall products from third parties because of a defect of a product supplied by the supplier, the supplier shall bear all costs associated with the recall.

(2) The supplier shall maintain product liability insurance with a coverage sum of at least EUR 5,000,000 at its expense. Unless agreed otherwise in the individual case, this liability insurance policy does not have to cover the risk of recall or punitive or similar damages. Upon request, the supplier shall send a copy of the liability insurance policy to us at any time.

§ 8 Industrial Property Rights

(1) The supplier guarantees that industrial property rights of third parties in countries of the European Union, North America or other countries in which it manufactures the products (or in which it has the products manufactured) are not infringed in connection with supplier's deliveries.

(2) The supplier shall indemnify us from and against all claims asserted against us by third parties due to the infringement of industrial property rights set forth in paragraph 1, and reimburse us for all necessary expenses in connection with this assertion of claims. We are entitled to such indemnification/reimbursement claim regardless of any culpability of the supplier.

§ 9 Spare Parts

(1) The Supplier undertakes to keep spare parts for products delivered to us available for a period of at least 10 years after the delivery.

(2) If the Supplier intends to cease production of spare parts for the products delivered to us, it shall inform us hereof immediately after making such decision. Subject to paragraph 1 above, such decision must be made at least 6 months prior to cessation of the production.

§ 10 Confidentiality

(1) The supplier shall keep the terms and conditions of the order and all information and documents provided for this purpose (excluding publicly available information) confidential for a period of five years after formation of the contract, and only use such to fulfill the order. Upon request, the supplier shall return such information/documents to us promptly upon processing inquiries or fulfilling orders.

(2) Without our prior written consent the supplier may not make reference to the business relationship in advertising materials, brochures etc., or exhibit delivery items produced for us.

(3) The supplier shall commit its sub-suppliers in accordance with this § 10.

§ 11 Assignment

The supplier may not assign its claims under the contractual relationship to third parties.

§ 12 Place of Performance, Venue, Applicable Law

(1) Place of performance for both parties and exclusive venue for all disputes under the contractual relationship is Straubing.

(2) The contracts made between us and the supplier are subject to the law of the Federal Republic of Germany excluding the Convention on the International Sale of Goods ("CISG" – UN Convention on the International Sale of Goods). The contract language is German.

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