

Purchasing Terms

ROSS EUROPA GmbH
Purchasing Terms
Date: 1. November 2017

I. Binding terms

The legal relationships between the Supplier and Purchaser is based on these terms and any other agreements. They can be viewed in their current version at <http://www.rosseuropa.com> and downloaded as a file. Other terms and conditions do not apply even if they have not been explicitly contradicted in individual cases. These terms of purchase apply exclusively to commercial dealings with entrepreneurs.

II. Orders

1. Only orders placed and delivery schedules in writing are legally binding for the Purchaser. If the Supplier wishes to deviate from the content of the order, he must clearly point this out in the order confirmation. Delivery requests can be made by remote data transmission or machine-readable data carriers.
2. If the Supplier does not accept the order within two weeks of receipt, the Purchaser is entitled to withdraw. Delivery schedules become binding at the latest if the Supplier does not object within one week of receipt.
3. So far as is reasonable for the Supplier, the Purchaser may demand changes in the deliverable in terms of design and performance. The effects of this, in particular with regard to the additional and reduced costs as well as the delivery dates, are to be settled by mutual agreement in an appropriate manner.

III. Prices/payment

1. The agreed prices are fixed prices and exclude additional claims of any kind. Costs for packaging and transport to the Purchaser's shipping address or place of use as well as for customs formalities and customs are included in the prices. The type of pricing does not affect the agreement on the place of performance.
2. Shipping is at the risk of the Supplier. The risk of any deterioration, including accidental destruction, thus remains with the Supplier until delivery to the shipping address or place of use requested by the Purchaser.
3. Any return obligation for packaging will be governed by the statutory provisions. If, exceptionally, the Purchaser is invoiced for packaging separately, he is entitled to return packaging that is in good condition to the Supplier carriage paid, at a rate of 2/3 of the value given in the invoice. Only environmentally friendly packaging materials should be used.
4. Payment is made in the usual way, within 14 calendar days with 3% discount or after 30 calendar days net, calculated from delivery/provision and receipt of invoice. If early deliveries are accepted, the due date is based on the agreed delivery date.
5. In the event of defective delivery, the Purchaser is entitled to withhold the payment until regular fulfilment.
6. For advance payments, the Supplier must provide reasonable security on request.

IV. Delivery dates and deadlines/default

1. Agreed dates and deadlines are binding. The benchmark for the observance of the delivery date or the delivery time is the receipt of the goods at the Purchaser. If delivery "free at works" has not been agreed, the Supplier must provide the goods in due time, taking into account the usual time for loading and shipping.
2. The Supplier has obligation to the Purchaser to compensate for any delay damage. This does not apply to lost profits and losses from interruption of business.
3. In the case of minor negligence, the compensation is limited to additional freight costs, retrofitting costs and, after a fruitless grace period or if the interest in the delivery ceases to apply, to the additional expenses for cover purchases.

V. Force majeure

Force majeure, labour disputes, riots, official measures and other unforeseeable, unavoidable and serious events release the contracting parties from their obligation to perform for the duration of the disruption and to the extent of their effect. This also applies if these events occur at a time when the affected party is in default. The contractual partners are required to provide the necessary information as soon as reasonably practicable and to adapt their duties to the changed circumstances in good faith.

VI. Confidentiality

1. The contracting parties undertake to treat all non-public commercial and technical details of which they become aware of through the commercial relationship as commercial secrets.
2. Drawings, models, templates, samples and similar items may not be handed over or otherwise made accessible to unauthorised third parties. The duplication of such objects is only permitted within the scope of operational requirements.
3. Subsuppliers must be made subject to a similar obligation.
4. The parties may only advertise their commercial relationship with prior written mutual consent.

VII. Quality/documentation/rights of use

1. The Supplier warrants that all deliveries/services are free of defects, i.e. in particular that they have the characteristics described in the order and that they allow proper, safe and trouble-free operation, under the latest state of the art and the relevant legal provisions such as ProductSG, REACH-VO, ElektroStoffVO and the guidelines of authorities, professional associations and trade associations.
2. In accordance with statutes such as the ProduktSG, ProdHaftG etc, the data sheets/operating instructions/maintenance instructions that are relevant for their products are made available by the Supplier to the Purchaser for unrestricted use and for independent application.

VIII. Defects

The Purchaser's incoming goods inspection is limited to transport damage, random samples and obvious defects; he will immediately notify the Supplier in writing of any outstanding defects in the delivery/provision as soon as they have been determined in accordance with the normal course of business, but no later than 5 calendar days after receipt of the delivery by the Purchaser. Defects which the Purchaser does not detect in random samples are considered to be hidden defects.

IX. Liability for defects

1. In the case of delivery of defective goods, the Purchaser may, if the respective legal and following preconditions are met and unless otherwise agreed, demand the following:
 - a) Before the start of production (processing or installation), the Purchaser will first of all give the Supplier the opportunity to sort out and to remedy the defect or to replace or substitute it, unless this is unreasonable for the Purchaser. If the Supplier is unable to do this or if he does not comply with it immediately, the Purchaser can withdraw from the contract without further notice and return the goods at the risk of the Supplier. In urgent cases he can carry out the remedy of the defect himself after consultation with the Supplier or have it done by a third party. Resulting costs are borne by the Supplier. If the same goods are repeatedly delivered with defects, the Purchaser is entitled to withdrawal after written reminder in the event of a further defective delivery of the unfulfilled delivery.
 - b) If the defect is determined only after the start of production despite observance of the obligation in accordance with Section VIII (notification of defects), the Purchaser may - in accordance with § 439 (1), (3) and (4) BGB - remedy and replace the transport costs required for the purpose of supplementary performance and claim installation costs or reduce the purchase price.
 - c) In the case of a culpable breach of duty beyond the delivery of defective goods (e.g. in the case of a duty to inform, instruct or investigate), the Purchaser may demand compensation for the resulting consequential damage as well as for the consequential damages suffered by the Purchaser in accordance with Section X of the contract. Defective consequential damage is the damage suffered by the Purchaser caused by the delivery of defective goods to other legal assets rather than to the goods themselves. For further claims for reimbursement and damages due to the delivery of defective goods under § 437 BGB or directly under the regulations specified in it, the Purchaser only has an entitlement if this is contractually agreed.
2. Any parts to be replaced by the Supplier are to be provided by the Purchaser to the Supplier immediately on request and at his expense.
3. Claims arising from liability for defects lapse after 24 months from the delivery of the goods or replacement parts.
4. Claims for defects do not arise if the defect is due to violation of operating, maintenance and installation regulations, unsuitable or improper use, defective or negligent treatment and natural wear, as well as interference in the deliverable by the Purchaser or a third party.
5. In the case of defective deliveries, claims of the Purchaser arising from the Product Liability Act, tort and transaction without order will remain unaffected by this Section.

Quality and durability guarantees require a written agreement.

X. Liability

1. Unless some other liability provision is made elsewhere in these Terms and Conditions, the Supplier is only required to compensate for the damage which arises directly or indirectly as a result of defective delivery, breach of official safety regulations or other legal grounds attributable to the Supplier.
2. The liability for damages is only established if the Supplier is at fault for the damage caused by him.
3. If the Purchaser is the subject of non-prescriptive rights owing to a no-fault liability to third parties, the Supplier will assign them to the Purchaser insofar as he is directly liable. The principles of § 254 BGB (German Civil Code) apply mutatis mutandis to compensation for damages as between the Purchaser and the Supplier. This also applies to the case of a direct claim of the Supplier.
4. The obligation to pay compensation is excluded insofar as the Purchaser has effectively limited his liability to his customer. The Purchaser will endeavour to agree any limitations of liability to the legally permissible extent including in favour of the Supplier.
5. For any measures of the Purchaser to defend against damages (for example, a recall action), the Supplier is liable, as far as he is legally bound.
6. The Purchaser will inform the Supplier immediately and in full if he wishes to make use of his assistants in accordance with the above provisions. He must give the Supplier the opportunity to investigate the claim. The parties will agree on the measures to be taken, in particular in settlement negotiations.

XI. Protected rights

1. The Supplier is liable for claims arising from the infringement of protected rights (trademarks, patents, utility models) in the event of contractual use of the deliverables.
2. He will indemnify the Purchaser and his customers from all claims arising from the use of such protected rights.
3. This does not apply to the extent that the Supplier has produced the deliverables according to drawings, models or other equivalent descriptions or information given by the Purchaser and does not know or in connection with the products developed by him is not required to know that this infringes protected rights.
4. Insofar as the Supplier is not liable under clause 3, the Purchaser will indemnify him from all claims of third parties.
5. The parties undertake to inform themselves without delay of any known risks of injury and alleged cases of infringement and give themselves the opportunity to counteract such claims by mutual agreement.
6. At the request of the Purchaser, the Supplier will notify the use of published and unpublished own and licensed intellectual protected rights and industrial protected rights in the deliverable.

XII. Use of equipment and confidential information of the Purchaser

Models, matrices, templates, samples, tools and other means of production as well as confidential information provided to the Supplier by the Purchaser or paid by him in full may only be used for deliveries to third parties with the prior written consent of the Purchaser.

XIII. Retention of title

The Supplier retains ownership of all goods delivered by him until complete payment; in this respect, all deliveries are considered to be a single delivery transaction. For current accounts, the retention of title is considered a security for the balance claim. If the goods are combined by the Purchaser with other objects to form a single object and the other object is to be regarded as the main object, the Purchaser is required to transfer co-ownership pro rata to the Supplier, insofar as the main object belongs to him. If the Purchaser resells the delivered goods as intended, he hereby assigns all claims arising from the sale against his customers with all ancillary rights to the Supplier until the complete repayment of all his claims. If the Supplier so requests, the Purchaser will be required to disclose the assignment to third party buyers and to provide the Supplier with the information required to assert his rights and to hand over documents. The Supplier will release the securities held by him insofar as their value exceeds the claims to be secured by more than 20% in total.

XIV. General provisions

1. In determining the amount of the compensation claims to be fulfilled by the Supplier in accordance with Sections IV, IX, X and XI, the economic circumstances of the Supplier, the nature, extent and duration of the commercial relationship, any causal and/or defect contributions of the Purchaser in accordance with § 254 BGB and a particularly unfavourable installation situation of the Supplier must be taken appropriately into account in favour of the Supplier. In particular, the compensation, costs and expenses to be borne by the Supplier must be commensurate with the value of the deliverable.
2. If a party ceases payments or if insolvency proceedings or an out-of-court settlement procedure are instituted against its assets, the other party is entitled to withdraw from the contract for the unfulfilled part.
3. If any provision of these Purchasing Conditions is or becomes invalid, this will not affect the validity of the other provisions. The parties are required to replace the ineffective provision by a provision which is as similar as possible in economic effect.
4. The law of the Federal Republic of Germany applies exclusively, unless otherwise agreed. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
5. The place of performance and legal venue is the registered office of the Purchaser, such that the Purchaser is in any case entitled to sue the Supplier also at the legal venue of his registered office.