

General Terms and Conditions of Purchase

Unless other terms or conditions have been agreed upon in writing, solely the following terms and conditions of purchase shall apply to all present and future orders. Even should we not explicitly object to the contractor or service provider's (subsequently jointly referred to as „Contractor“) terms and conditions of business, they do not become part of the contract.

1 Placing and Acceptance of Orders

1.1

Only written orders and agreements are binding. In particular, our employees are required to confirm oral supplementary agreements or commitments that go beyond the contents of the written contract or change these terms and conditions of purchase to our disadvantage.

1.2

The Contractor must confirm the order with the duplicate copy accompanying the order or by resending our fax to us with a comment acknowledging acceptance. Confirmation must occur without delay, i. e., no later than within 14 calendar days. Should we have no confirmation within 14 calendar days after the order date, we are entitled to cancel the order without the Contractor deriving claims from the cancellation.

1.3

The Contractor is required to check our order as well as our specifications concerning the quality of the product and our drawings. By confirming the order, the Contractor acknowledges the correctness of the order and the drawings as well as the technical feasibility.

1.4

The purchase order shall not be given to a third party for the purpose of production or delivery without our prior written consent.

2 Period of Delivery and Period of Production

2.1

The agreed-upon deadlines are binding. Should a delivery period be given, it begins with the Contractor's receipt of the order. Should a calendar week be given, the latest possible delivery date is the last work day (Friday) of this week. Compliance with a delivery date depends on the arrival of the delivery/provision of the service at the agreed-upon address. Should an acceptance procedure have been agreed upon or be statutory, compliance depends upon successful acceptance by a person authorized by us to do so.

2.2

As soon as the Contractor realizes that punctual fulfillment of his delivery and/or service obligation (subsequently jointly referred to as „Delivery“) is wholly or partially impossible, he must notify us immediately and give the reasons for and the anticipated length of the delay.

3 Delivery / Acceptance

3.1

Delivery must be in due time; including delivery papers containing all information customary in the trade, in particular our order and article numbers; as well as all documents given in our order. The Contractor has not fulfilled his delivery obligation until the proper delivery and shipping papers as well as the documents required to be included according to the contract (certificates, drawings, Contractor's declaration, etc.) have arrived. Until we receive these documents, we will not be able to inspect the incoming goods and may store the delivery at the Contractor's expense and risk.

Should direct delivery to our plant has been agreed upon, our normal times of business (Mo. – Th. 7.00 – 16.30, Fr 7.00 – 14.30, except for long weekends and plant shutdowns. Up-to-date information can be found at www.Rotzler.de.)

3.2

We are entitled to specify the shipment mode as well as the carrier. Otherwise, the Contractor must choose the mode of transportation most advantageous for us.

3.3

Should delivery occur earlier than agreed-upon and should we not have available storage space, we reserve the right to return the Delivery at the Contractor's expense and risk. Otherwise we will store the goods at our plant at the Contractor's expense and risk until the agreed-upon delivery date. Early receipt of the goods does not obligate us to pay before the due date originally agreed upon.

3.4

Should delivery be delayed, we may charge a contractual penalty of 0.5% of the agreed-upon total price of the Delivery for every full week of delay. This contractual penalty is limited to a maximum amount of 5% of the agreed-upon total price of the Delivery. Further statutory rights are not affected. The Contractor may prove that damages are smaller than the contractual penalty. Our reception of the delayed Delivery does not mean that we waive any rights to which we are entitled. We reserve the right to claim this contractual penalty until final payment has been made.

3.5

A partial delivery is allowed only when we have agreed to it in writing. The receipt of a partial delivery does not mean that we waive any rights to which we are entitled.

4 Work at Our or Our Customers' Premises / Testing at the Contractor's Premises

4.1

Should the Contractor's employees or agents work at our or a customer's plant, they must observe the accident-prevention regulations and all other safety rules, as well as the applicable plant regulations. They may not begin work without knowledge of these regulations.

4.2

Assembly and installation must be accepted. Unless there is another agreement, the Contractor must notify us of the acceptance date in writing 1 week in advance. Acceptance has occurred when our authorized agent has accepted the Contractor's services expressly and in writing as conforming to the contract. We may still assert a claim based on defects at the time of final payment.

4.3

The hours worked, as well as the material provided by the Contractor, must be confirmed by our authorized agent in writing immediately after the work has been completed, or, at the latest, on the same day.

4.4

Upon previous agreement, we or our customer may perform a quality-control test concerning the contractual product to be delivered and the manufacturing processes associated with this product at the Contractor's premises or in its delivering plant. Each time, the Contractor's interests concerning secrecy must be taken into account. In the case of a government contract, testing may also be performed by a government institution. There will be no separate compensation for this.

5 Pricing and Payment

5.1

The agreed-upon prices are fixed prices, include packaging, and are DDP to the named place of destination (Incoterms® 2010). A separate bill for each order must be sent to our address.

5.2

Unless other terms have been agreed upon, we may choose between paying within 14 days with a 3% discount or within 30 days net.

5.3

Should we receive the bill after arrival of the goods, the arrival date of bill determines the date used for calculating the time limit for payment stipulated in Section 5.2.

5.4

We reserve the right to choose the means of payment. The payment period stipulated in Section 5.2 begins after the goods have been received completely and in accordance with the contract, and after receipt of the documents specified in Section 3.1, but not before the agreed-upon delivery date. We have set-off and retention rights to the extent allowed by law. Payment does not indicate that we forgo any rights to which we are entitled.

6 Packaging

Should there be no agreement as to the type of packaging, the Contractor must so package the goods that they are sufficiently protected against damage during transportation. In doing so, the Contractor must especially take the sensitivity of the goods to be delivered into account. Additionally, the packaging must be environmentally friendly, must not require any special disposal, and must cause no contamination of the goods to be delivered.

7 Assumption of Risk

We assume risk according to DDP to the named place of destination (Incoterms® 2010). This condition also applies when we, by way of an exception, use our own transportation personnel. Should an acceptance procedure have been agreed upon or is statutorily required, risk is assumed upon the successful acceptance of the goods by a person authorized to do so by us.

8 Quality and Liability for Defects

8.1

The Contractor warrants that the delivered goods are free of defects of title and of defects in quality upon delivery at the destination agreed upon and that they comply with and conform to the current state of the art, the applicable laws, the safety and accident prevention regulations, as well with all relevant technical standards. Should there be differences between the German and other versions of the standards, the German version applies.

8.2

The Contractor is responsible for the quality of the goods. He must therefore implement appropriate quality management measures in order to make certain that the quality requirements for all manufacturing phases (including material purchasing) are defined, and are adhered to and documented during all manufacturing phases. He must above all ensure that appropriate manufacturing and testing methods recognize and effectively correct any variations in quality at an early stage.

8.3

The Contractor must carry out a comprehensive pre-shipping inspection. In doing so, he must above all follow the agreed-upon quality-control protocols.

After the goods have arrived, we will examine them for identity, shortages, obvious defects, as well as for visible transportation damage. There is no obligation to further examine the goods. We will report defects to the Contractor within 14 days after their discovery. In this respect, the Contractor waives objections based upon the delayed notification of defects.

8.4

Should there be defects, we shall also be entitled to demand delivery of defect-free replacement goods instead of rectification of defects. In addition, we may, after a reasonable additional extension period has expired and after notifying the Contractor, at the Contractor's expense ourselves undertake the remedy of the defect, have the defect remedied by a third party, or procure replacement goods elsewhere. This right also applies should, because there is particular urgency, it no longer be possible to set a grace period. This settlement of costs does not apply when the Contractor is not responsible for the defect.

8.5

The Contractor must bear all expenses caused by the remedy at or delivery of replacement goods to the place at which the article is in use. This settlement of costs does not apply when the Contractor is not responsible for the defect. We will inform the Contractor of the place at which the article is in use at his request.

8.6

The period of limitations for claims due to defects is 36 months after delivery, or, when this has been agreed upon or is required by statute, after acceptance.

8.7

Unless the effort for the supplementary performance is negligible or is an explicit act of goodwill by the Contractor, should the Contractor repair or replace the goods after a notice of defects, the period of limitations according to Subsection 8.6 with respect to this defect begins anew.

8.8

Should more than 10% of a Delivery be shown to be defective, it will be assumed that the entire shipment is affected by this defect (subsequently referred to as a „Serial Defect“). The Contractor may prove that parts of the Delivery are defect-free. Should there be a Serial Defect, the Contractor must upon our request inspect the Delivery at our plant and sort out defective pieces. Should he not comply with this request within an appropriate period of time and also not provide the above evidence to the contrary, we may return the complete Delivery and demand the delivery of replacement goods.

9 Third-party Industrial Property Rights

9.1

The Contractor warrants that no third-party industrial property rights, e. g., patents, utility patents, or other rights; or business or trade secrets, will be violated by the use of the delivered goods, even in the country of end use. In this respect he must exempt us from any possible third party claims.

9.2

The Contractor is not liable to the extent that he manufactures the goods solely according to our drawings and models and he did not know or was not required to know that the manufacture of these goods violated third-party rights.

10 Liability

10.1

Should claims based on product liability be raised against us by a customer or other third party, the Contractor must exempt us from such claims at our first written request if and insofar as the damage has been caused or contributed to by a defect in the products provided by the Contractor. This condition does not apply in those cases of fault-dependent liability in which the Contractor is not culpable.

10.2

To the extent that the cause of the damage lies in the Contractor's area of responsibility, proof that the defect caused the damage is sufficient; otherwise, the Contractor carries the burden of proof.

10.3

In any event, the Contractor bears the part of the expenses proportional to his share of the causation or fault, including the costs for any assertion of legal rights or recall. This condition also applies when there are discernible or imminent Serial Defects.

10.4

The Contractor must cover his risk of liability with an appropriate insurance policy and, upon our request, prove that sufficient coverage exists.

10.5

The Contractor must bear damages arising from noncompliance with these terms and conditions. He is also liable for every even ordinarily negligent act of his employees, representatives, or other agents.

10.6

Claims for damages of any sort against us are excluded when we, our representatives, or our agents have caused the damages by ordinary negligence. This exclusion of liability applies neither to cases of bodily harm nor when we have violated essential contractual obligations endangering the fulfillment of the purpose of the contract. However, in such cases our liability is limited to damages which are foreseeable and typical for the contract.

11 Tooling, Prototypes, Drawings, Tools

11.1

Tooling and tools also includes models for the manufacture of castings, dies; and the cutting and deburring tools, injection and punching tools, clamping and mounting devices for pieces to be machined; as well as all other tools, devices, and tooling necessary to manufacture the parts ordered by Rotzler. Hereinafter these items are jointly referred to as "Tools".

11.2

Tools made on our behalf and paid for by us become our property as soon as payment is completed. Should we make a deposit or partial payment, we acquire joint ownership to the Tools in the amount of our deposit or partial payment. Transfer of possession will be substituted with the Contractor borrowing the Tools from us with the diligence of a prudent businessman. The Contractor is liable for all damage occurring to the Tools and must insure them at his own expense (fire, theft, etc.). The Tools owned by us must be stored separately from items not owned by us. Our property must be noted on the Tools themselves and in the Contractor's account books. The Contractor may use the Tools neither for his own purposes nor make them available to third parties. After the business association has ended, the Tools must be surrendered upon our request without delay, otherwise they must be stored for at least 10 years. Thereafter, the Contractor may dispose of them as long as he has informed us thereof in writing three months in advance and we have given our written permission. Should we object to disposal, the Contractor must return the Tools to us free of charge. Should we not reply within 1 month after arrival of the information concerning disposal, permission is considered to have been given.

11.3

The Contractor may neither use for his own purposes, nor offer, supply or make available to third parties items manufactured according to documents (such as drawings, models, etc.) that we prepared, or that were manufactured according to our confidential instructions or with our Tools or copies of our Tools.

11.4

We may demand the return of documents as well as of other items of all kinds, e. g., models, drawings, tools, etc., that we have provided the Contractor at any time without having to provide a reason. The Contractor must return these items without charge within 7 calendar days after our demand. The Contractor can only claim a right of retention in cases of proportionally paid costs by providing evidence of an agreement differing from these conditions in every case. This condition also applies should the Contractor be insolvent.

12 Confidentiality

12.1

The Contractor obligates himself to maintain confidentiality with respect to third parties regarding all details of our order, e. g., number of pieces, technical construction details, commercial conditions, etc., as well as information requiring confidentiality he has consciously or by accident received orally or in physical form from us („Confidential Information“). The Contractor may use the Confidential Information only for carrying out the current order and not for his own purposes.

12.2

The Contractor must return information, documents, as well as other items of any kind, provided by us without charge and without having been requested as soon as they are no longer needed to carry out the order.

12.3

Unless he is not at fault, the Contractor must pay a contractual penalty of 15% of the value of the order in case of a violation of Subsections 12.1 or 12.2. We reserve the right to claim this contractual penalty until final payment has been made. In addition, we have the right to terminate the complete contractual relationship with the Contractor without notice and without compensation for especially severe violations, and, when applicable, to demand the return of payments already made. In particular, an especially severe violation has been committed when the Contractor gives knowledge obtained from us or provided by us to competing third parties.

12.4

Placing our company on a reference list or using products or services supplied to us for advertising purposes is permitted only after obtaining our written permission.

13 Assignment

Rights accruing to the Contractor under this contract may be assigned or pledged only with our written consent. This condition does not apply to monetary claims. However, we may perform to the Contractor with the effect of a full discharge.

14 Place of Performance, Place of Jurisdiction, and Applicable Law

14.1

The place of performance for all deliveries and services is the destination we provide.

14.2

The place of jurisdiction is the court that is competent at our place of business. However, we also have the right to initiate legal proceedings in the court of competent jurisdiction for the Contractor's place of business.

14.3

German law applies. Application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.