

**Standard Terms and Conditions of Purchase of the Rogers Germany GmbH (Status: August 2015)**

**I. General / Scope**

- (1) These Standard Terms and Conditions of Purchase (hereinafter also referred to as "AEB") apply to all our business relationships with business partners and suppliers (hereinafter also referred to as "Contractors").
- (2) Our AEB apply in particular for contracts, including services thereof, in connection with the sale and / or the supply of movable items (hereinafter also referred to as "goods"), regardless of whether the Contractor manufactures the goods himself or procures the goods from suppliers (§§ 433, 651 of the German Civil Code [BGB]). Our AEB in their current version, also apply as a framework agreement for future contracts, in connection with the sale and / or delivery of movable items with the same Contractor, without us having to refer to them again in each individual case; we shall inform the Contractor immediately, in the case of amendments to our AEB.
- (3) Our AEB apply exclusively. Deviating, conflicting or supplementary general terms conditions of the Contractor shall only be deemed to constitute a constituent part of the contract, insofar as we have explicitly agreed to their validity in writing. This explicit approval requirement applies under all circumstances, regardless of whether we for example accept deliveries of the Contractor unconditionally, in spite of being aware of the general terms and conditions thereof.
- (4) In individual cases, individual agreements made with the Contractor (including side agreements, supplements and amendments) shall under all circumstances take precedence over our AEB. Decisive for the content of such agreements, is a written contract to this end, or our written confirmation thereof.
- (5) Legally relevant statements and notifications, which have to be submitted to us by the Contractor, pursuant to the conclusion of the contract (e.g. setting of deadlines, notifications of defects, notice of withdrawal or reduction), shall require the written form in order to be valid.
- (6) References to the application of statutory provisions only serve clarification purposes. Even without such clarification, the statutory provisions apply, insofar as they are not directly modified in our AEB or expressly excluded.

**II. Contract conclusion**

- (1) Our order is at the earliest deemed as binding, pursuant to the written submission or confirmation thereof. In the case of obvious errors (for example, typing errors and miscalculations) and incompleteness of the order including the order documents, the Contractor has the obligation to point this out to us, for the purpose of the correction or respectively the completion thereof, prior to acceptance; otherwise the contract shall be deemed as not concluded.
- (2) Orders have to be accepted by the Contractor, stating the reference number within a reasonable period, at the latest within a period of 2 weeks, by way of an explicit written statement.

In the case of a delay or the modification of the content of the acceptance, the statement of the Contractor shall be deemed to constitute a new offer that requires an explicit acceptance by us.

**III. Delivery time / delivery delay**

- (1) The delivery time agreed upon and specified in the order and / or the time of delivery designated therein, is obligatory and binding. Insofar as the installation or assembly of a good / item constitutes a constituent part of the delivery, the readiness for acceptance, also has to be included within the agreed delivery time and / or the completeness thereof, prior to the agreed time of delivery.

The Contractor is obliged to inform us immediately in writing, insofar as he can - for whatever reason - foreseeably not meet the agreed delivery times / times of delivery. Premature deliveries are not permitted.

- (2) Insofar as the Contractor is not able to provision his performance or if at all not within the agreed delivery time or until the agreed time of delivery or is in default, our rights – in particular with regard to withdrawal and compensation for

damages – shall be pursuant to statutory provisions. The provisions in paragraph 3 shall remain unaffected wherefrom.

- (3) In case of default of the Contractor, we are entitled – in addition to further reaching legal claims – to demand a flat rate compensation for our damages due to delay, amounting to 0.5% of the net delivery value for each completed calendar week, however as a whole, not more than 5% of the total net delivery value of the individual order. We reserve the right to prove that we have incurred damages of a greater scope. The Contractor reserves the right to prove that we have incurred absolutely no damages or else only of a slight scope.

**IV. Performance/Delivery/Transfer of risk /Default of acceptance/Shipping documents**

- (1) The Contractor is not entitled to provision the outstanding performance, through a third party (e.g. subcontractors) without our prior written consent. The Contractor bears the procurement risk for his services, insofar as nothing otherwise is agreed upon in a particular case.

The Contractor is not entitled to partial deliveries without our prior written consent.

- (2) The delivery takes place within Germany "free domicile" to the place specified in the order.

Otherwise the delivery takes place DDP Eschenbach, pursuant to INCOTERMS 2010.

Insofar as the place of destination is not specified, and not otherwise agreed upon, the delivery shall be made to our registered office in Eschenbach. The respective place of destination is also the place of performance (Debt to be discharged at creditor's domicile).

- (3) The shipping documents must be provided with the reference number, as specified by us. They must be immediately delivered to us in duplicate, pursuant to the shipping of the shipping notice, and must entail the exact name, the quantity, weight (gross and net), the nature and the packaging of the goods.

Insofar as a delivery of the required shipping documents is not delivered on time, or insofar as the above information in the shipping documents and indications are (partially) missing, the goods shall be stored until the arrival of the shipping documents and / or the complete information, at the cost and risk of the Contractor.

The delivery also has to be accompanied by a delivery note with the above information. Insofar as the delivery note is missing or is incomplete, we shall not be held liable for delays in processing and payment resulting wherefrom.

- (4) The risk of accidental loss and accidental deterioration of the goods / items is transferred to us, with the handover at the place of performance.

Insofar as an acceptance has been agreed upon, this is decisive for the transfer of risk. Moreover, the statutory provisions of the work contract law apply in the case of an acceptance. The handover or respectively the acceptance shall be deemed equivalent, insofar as we are in default of acceptance.

- (5) Applicable for the onset of our default of acceptance are the statutory provisions. The Contractor must explicitly offer his performance to us, even if an identified or identifiable calendar time has been agreed upon, for any act or involvement on our part (for example, provision of material). Insofar as we are in default of acceptance, the seller may demand reimbursement for additional expenses, pursuant to the statutory provisions (§ 304 of the German Civil Code [BGB]). Insofar as a contract relates to the produce of an item for which the Contractor can not be held accountable (custom-made), the Contractor shall only be entitled to further reaching rights, if we undertake to participate and are responsible for the failure to participate.

**V. Prices / Terms of payment**

- (1) The price stated in the order is obligatory and binding. Unless expressly agreed otherwise, the statutory sales tax is included in this price.

- (2) Insofar as not expressly agreed otherwise in a particular case, the price includes all services and ancillary services of the Contractor (e.g. delivery, installation and commissioning) as well

as all additional costs (e.g. proper packaging, transport costs including any transport and liability insurance). The Contractor is pursuant to our request, obliged to take back the packaging material.

(3) Payment is made, unless otherwise agreed in writing, within 60 days from the date of complete delivery and performance (including any agreed acceptance) and presentation of an auditable and proper invoice to this end with us, at the address listed as the invoice address.

The preconditions of maturity have in any case to be indicated in the order references of the invoices. They should provide an accurate description of each item by maintaining the numbering from the order. Duplicate copies of invoices should be clearly marked.

Insofar as the Contractor is pursuant to agreement, also required to provide material tests, inspection, quality documents or similar information, the presentation thereof is likewise a precondition of maturity.

A payment period prior to the agreed delivery time can only start, pursuant to an explicitly written agreement.

In the case of a bank transfer, payment shall be deemed to be timely made, insofar as our bank transfer order is received by our bank, prior to the expiry of the payment period; we are not responsible for delays caused by the banks involved in the payment process.

(4) We do not owe any default interest. The default interest rate is an annual 5 percentage points above the base rate. Applicable in the case of the onset of our default, are the statutory provisions, whereby possibly in derogation thereof, a written reminder by the Contractor shall in any case be required.

(5) We are entitled to the statutory extent, to offsetting and retention rights as well as the defence of breach of contract. We are in particular entitled to withhold due payments, insofar as we are entitled to claims arising from incomplete or defective performance against the Contractor.

(6) The Contractor is entitled to offsetting and retention rights, only with regard to legally established or undisputed counterclaims.

## **VI. Warranty claims / Incoming goods acceptance and - inspection**

(1) Applicable in the case of our rights in connection with material and legal defects of the goods (inclusive wrong and short delivery as well as improper installation, improper assembly, operation or instruction manual) and in connection with other breaches of duty by the Contractor, are the statutory provisions, insofar as not specified otherwise hereinafter.

(2) Pursuant to the statutory provisions, the Contractor shall in particular be liable for ensuring that the goods have the agreed quality at the time of the transfer of risk to us. Valid as the applicable agreed quality are in any case, those product descriptions which – in particular by name or reference in our order – are the object of the relevant contract or are referenced in the same manner as in these AEB, in the contract. It thereby makes no difference, whether the product description originates from us, the Contractor or the manufacturer.

(3) In derogation from § 442 paragraph 1 sentence 2 of the German Civil Code [BGB], we are also entitled to claims for defects without restriction, insofar as a defect remained concealed to us, due to gross negligence, at the time of the conclusion of the contract.

(4) The statutory provisions (§§ 377, 381 of the German Commercial Code [HGB]) shall apply, with respect to the commercial duty to examine and the requirement to give notice of defects, subject to the following conditions: Our obligation to inspect is limited to defects that are clearly discernable within

the framework of our incoming goods inspection, pursuant to the external assessment of the shipping documents as well as our quality control within the framework of sampling procedures (e.g. transport damage, wrong and short delivery). Insofar as acceptance has been agreed upon, there is no inspection obligation. Moreover, it depends on how far an inspection is feasible, subject to the circumstances of the individual case, in the ordinary course of business.

Our duty to give notice of defects discovered later remains unaffected.

(5) Any costs incurred by the Contractor for the purpose of the inspection and reworking (including any removal and installation costs) shall be borne by the latter, even if it turns out that no default was actually present. Our liability for damages, in the case of unwarranted remedial demands remains unaffected, whereby we shall nevertheless only be liable, insofar as due to established circumstances or through gross negligence, we failed to realise that no default was actually present.

(6) Insofar as the Contractor does not fulfil his obligation for subsequent performance – according to our option, by remedying the defect (rework) or through the delivery of a defect-free item (replacement delivery) – within a reasonable period set by us, we can remedy the defect ourselves and to this end, demand reimbursement from the Contractor for the necessary expenses, or respectively for an appropriate advance payment. Insofar as the subsequent performance by the Contractor fails or is unreasonable for us (e.g. due to special urgency, endangerment of the operational safety or impending occurrence of disproportionate damage), no setting of a deadline is required; we shall as far as possible, inform the Contractor immediately about such circumstances, in advance.

(7) Moreover, we are entitled in the case of a material or legal defect, pursuant to statutory provisions, to reduce the purchase price or to withdraw from the contract. We are in addition, pursuant to statutory provisions, also entitled to compensation for damages and expenses.

(8) The receipt and acceptance of the goods is carried out – within the framework of normal business operation and during our usual business hours – pursuant to receipt or commissioning, insofar as the delivery is in accordance with the contract.

In the case of excess deliveries that exceed the level that is customary in commerce, we reserve the right to return the goods delivered in excess, at the expense of the Contractor.

(9) The sole responsibility of the Contractor for the conformity of the goods is not affected by the acceptance or approval of drawings or patterns that are submitted by the Contractor.

## **VII. Protection provisions**

The Contractor undertakes to comply with the relevant prior art, unless otherwise agreed, and in particular to comply with the rules and guidelines established by the legislator, the supervisory authorities, the trade association and by the German Electro-technology Association (VDE), regarding design, accident prevention and environmental protection.

## **VIII. Product liability**

(1) The Contractor is responsible for all third party claims made for personal injury or material damage, resulting from a defective product supplied by him, and is insofar obliged to waive us, from any liability and any claims resulting wherefrom.

(2) Within the framework of this indemnity obligation, the Contractor is pursuant to §§ 683, 670 of the German Civil Code [BGB], required to reimburse expenses arising out of or in connection with any claims of third parties, including recall actions carried out by us. We will – insofar as possible and reasonable – inform the Contractor of the content and scope of recall measures and give him an opportunity to take a position. Further reaching legal claims remain unaffected.

(3) The Contractor has the obligation to take out and maintain product liability insurance with a reasonable and adequate sum per person / material damage. At our request, the Contractor shall be required to prove insurance cover.

## **IX. Confidentiality**

(1) The Contractor is obliged to treat our orders, the conditions thereof and all related commercial and technical details and documents and information that are made available with confidentiality and to only make use thereof for the processing or execution of the order. At our request, the Contractor shall immediately return to us all documents / information received, after the completion of the order / request. This commitment to confidentiality also applies for a period of 3 years after the end of the business relationship with the Contractor.

Exempt from the obligation to maintain confidentiality is publicly available information.

(2) Statements made by us, as well as tools, moulds, samples, models, profiles, drawings, artwork, teaching or comparable items that are handed over by us, or else drawings or objects, etc. prepared by us or the Contractor, based on such information, may only be used or exploited otherwise or else made known or accessible to third parties, pursuant to our written consent. They have to be protected against unauthorised inspection or use.

In the case of (also imminent) infringements of the above obligations, we can immediately demand the surrender of corresponding materials from the Contractor. The rights of retention of the Contractor shall be excluded in such a case.

(3) The Contractor shall be required to commit his subcontractors, in accordance with this section IX.

## **X. Protection of ownership/ Transfer of ownership / Materials provided /Retention of title**

(1) We reserve the ownership rights and copyright to illustrations, diagrams, drawings, calculations, implementation instructions, product descriptions and other documents. Such documents are to be used by the Contractor, exclusively for the contractual performance.

(2) The above provision shall apply mutatis mutandis to substances and materials (e.g. finished and semi-finished products), as well as to tools, templates, fixtures, models, patterns and other items that we provide to the Contractor for production purposes. Such objects / materials - as long as they are not processed - have to be stored separately and with due care at the expense of the Contractor and to a reasonable extent be secured against destruction and loss as well as be protected against damage of any kind. The Contractor shall, in particular be responsible for ensuring that adequate insurance is taken out and maintained, against the case of fire.

Such objects / materials are to be marked by the Contractor as our property.

Use thereof, by the Contractor for purposes other than the order, is not permitted. The liability relief pursuant to § 690 of the German Civil Code [BGB] is excluded.

(2) Tools, fixtures and models that are manufactured for contractual purposes and for which we are separately invoiced by the Contractor, shall become our property. Pursuant to the payment, the ownership of the tools, devices and models shall be transferred to us. Instead of the hand-over, the Contractor shall store the tools, devices and models with due care for us. We as such procure indirect ownership of the tools, devices and models within the meaning of § 868 of the German Civil Code [BGB].

The liability relief pursuant to § 690 of the German Civil Code [BGB] is excluded.

They shall have to be clearly identified by the Contractor as our property, to be stored with due care at the own expense of the Contractor, secured against damages of any kind, secured to a reasonable extent against destruction and loss, and only use made thereof for the purposes of the contract. The Contractor shall, in particular be responsible for ensuring that adequate insurance is taken out and maintained, against the case of fire.

The Contractor will notify us immediately of all not only insignificant damage to such objects. Upon request, he shall be under the obligation to surrender the objects to us in a proper condition, insofar as they are no longer needed by him

for the fulfilment of the contracts concluded with us.

(3) Any processing, mixing or connection (Further processing) of goods / materials, provided by the Contractor, shall be made on our behalf. The same shall apply mutatis mutandis, in the case of the further processing of goods delivered by us, so that we are considered the manufacturer and at latest acquire the ownership of the product, pursuant to the further processing, in accordance with the statutory provisions.

(4) Retention of title by the Contractor shall only apply, insofar as this relates to our obligation to pay for the products / goods, for which the Contractor has exercised the retention of title. This therefore in any case, excludes all other forms of retention of title, especially the extended, the forwarded and the prolonged retention of title.

## **XI. Industrial property rights**

1) The Contractor is in accordance with the provisions of paragraph 2, responsible for ensuring that no industrial property rights of third parties in European Union countries or other countries are violated, on account of the products delivered by him, by way of the manufacture thereof both in-house or through a third party.

(2) The Contractor is obliged to indemnify us from all claims by third parties against us, arising from the infringement of the intellectual property rights referred to under paragraph 1, as well as to reimburse us of all necessary expenses related to such claims. This entitlement is independent of any fault of the Contractor.

## **XII. Assignment**

The Contractor is not entitled to assign his claims arising from the contractual relationship to third parties. This does not apply, insofar as this relates to monetary claims.

## **XIII. Statute of limitation**

(1) The mutual claims of the parties are subject to the statute of limitation of the statutory provisions, insofar as not specified otherwise hereinafter.

(2) In derogation from § 438 paragraph 1 no. 3 of the German Civil Code [BGB], the general statute of limitation for claims for defects is 3 years, from the date of the transfer of risk. Insofar as an acceptance has been agreed upon, the statute of limitations period begins with the acceptance.

Pursuant to the receipt of our written notice of defects by the Contractor, the statute of limitation is suspended, until the Contractor rejects our claims or declares the remedy of the defects or otherwise rejects the continuation of negotiations with regard to our claims.

In the case of reworked and replaced parts, the agreed statute of limitations starts anew from the date of the remedy of defects, unless we have to assume on account of the conduct of the Contractor that he did not see himself obliged to take action, but only made the replacement delivery or remedy of defects as a gesture of goodwill or similar reasons.

The 3-year statute of limitation applies mutatis mutandis to claims arising from legal defects, whereby the statutory limitation period for in rem claims by third parties (§ 438 paragraph 1 No. 1 of the German Civil Code [BGB].) remains unaffected; Claims based on legal defects, moreover do not in any case expire, as long as a third party - particularly in the absence of a statute of limitation - can still assert claims against us.

(3) The limitation periods of the commercial law including the aforementioned extension apply – to the statutory extent – for all contractual claims for defects. Applicable insofar as we are also entitled to non-contractual claims for damages, on account of a defect, is the normal statutory limitation period (§§ 195, 199 of the German Civil Code [BGB]), unless the application of the limitation periods of commercial law in the individual case leads to a longer limitation period.

## **XIV. Choice of law/ Place of jurisdiction**

(1) Applicable for these AEB and for all legal relationships between us and the Contractor is the law of the Federal Republic of Germany, under the exclusion of the international uniform law, in particular the UN sales law. The requirements

and effects of retention of title are subject to the law of the respective location of the case, insofar as, the choice of law in favour of German law is inadmissible or ineffective.

(2) Insofar as the Contractor is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a public special fund, exclusively applicable - also internationally – as the place of jurisdiction for all disputes arising from the contractual relationship is Weiden i. d. Opf. (*Weiden in der Oberpfalz*)

#### **XV. Code of Ethics**

On the company website at [www.rogerscorp.com](http://www.rogerscorp.com) you can check our business- and ethical principles. We expect from our suppliers/partners to comply with our principles.