

# General Purchasing Conditions

Status 04/13

The following supplementary regulations are part of the Purchasing Conditions of Rosendahl Nextrom GmbH:

- If control boxes are delivered, the document “General Delivery Instructions for the Construction of Control Boxes” (No. INFO EK 04) (EK = EINKAUF = PURCHASING), Index: 04/05, shall basically be applicable.
- If production parts are delivered, the document “General Delivery Instructions for Production Parts” (No. INFO EK 05) (EK = EINKAUF = PURCHASING), Index: 04/05, shall basically be applicable.

## **PREAMBLE:**

Rosendahl Nextrom GmbH (following briefly referred to as “client”) buys goods and orders external services within the business activities exclusively from or with businesspersons in the sense of UGB (Unternehmensgesetzbuch – Company Act) (following briefly referred to as “seller”) on the basis of the conditions described below. These rules shall not be applicable to contracts with consumers. These Purchasing Conditions shall even be valid if they deviate from the contractor’s Delivery Conditions.

They shall even remain binding if single clauses are not effective for whatever reasons.

In case of doubt, the current German version of these Purchasing Conditions and its supplementary regulations in German shall exclusively be applicable.

## **1. RFQ’S (REQUESTS FOR QUOTATION) AND OFFERS**

- 1.1. The client’s RFQ’s are non-committal and free of charge and do not oblige the client to pay any expense allowance. The client’s RFQ’s only are an invitation to potential contractors to make binding offers to the client. RFQ documentation must not be passed on to third parties without written consent given by the client.
- 1.2. By submitting an offer, the contractor declares all the requirements necessary for fulfilling the scope of the RFQ are met. The contractor cannot plead unclarity or incorrectness of RFQ documentation or the fact that a hint at conduct common in the sector is missing. If the contractor thinks RFQ documentation sent to the contractor is faulty or unclear, the contractor shall immediately warn the client while making justified suggestions for solution. Such a written warning shall only be deemed immediate if it is received by the client within three days after RFQ documentation has been sent. If such a written warning relating to deficiencies or doubts about RFQ documentation is omitted, the contractor shall, by making the offer, recognize perfect fulfilment of the scope of the RFQ is possible for the contractor. The deliveries and / or services offered by the contractor shall include all the required materials, equipment, additional work as well as any required work necessary for completely fulfilling the contract even though these items are not explicitly mentioned in the contract.
- 1.3. The contractor’s offers that do not include any explicit deadlines for acceptance can be accepted up to twelve weeks upon entry in the client’s sphere of power. The client shall be entitled also only to accept parts of the offer without giving any further reasons.

## **2. CONCLUDING THE CONTRACT:**

- 2.1. Legally binding contracts shall only be deemed concluded if a written binding offer made by the seller is accepted by the client in writing and after being duly signed. Any conclusion of contract and/or declaration requires written form to become legally effective. This also refers to renouncing these requirements of form. Verbal collateral agreements won’t be accepted.



- 2.2. Unless agreed differently, all the orders made by the client shall be accepted immediately and acknowledged within two working days by means of a written binding acknowledgement of order.
- 2.3. The seller's declarations shall be deemed delivered at the moment the client has received them. If declarations are received by the client outside the business hours, they shall only be deemed received at the following start of the business hours. Business hours are Monday to Thursday 08.00 to 16.30 and Friday from 08.00 to 12.00.
- 2.4. If, in case of conclusion of the contract, an advance payment higher than € 10 000.- is agreed or a client's contractual amounts as a whole exceed this amount, the contractor shall warrant advance payment unless there is a different mutual written agreement.

### **3. ASSIGNING THE COMMERCIAL OBLIGATIONS:**

- 3.1. The seller shall personally fulfil the contractual obligations. Assignment to subcontractors shall only be admissible with the written consent given by the client. Inevitable purchasing of input stock or standard or special parts shall be excluded.

### **4. PRICES:**

- 4.1. The prices agreed between the contracting parties explicitly and in writing shall exclusively be applicable. These prices are fixed prices, which will be valid until the business has been transacted completely. In case of doubt (in particular if nothing particular is regulated relating to the price in the contract), the prices stated in the contractor's offer shall be applicable, including overtime and customary packaging, delivered place of delivery, at the contractor's costs and expenses and risk, including duties on the revenue, excluding the turnover tax but including all the other taxes and duties accruing to the contractor.
- 4.2. Invoicing shall be done as agreed. In this context, the seller pledges to present an invoice corresponding to the respective UStG (Umsatzsteuergesetz – Value Added Tax Act). Unless agreed differently, invoices shall not be presented until the services have been provided completely and include a two weeks' period of payment starting with the receipt stamp at the client's.
- 4.3. The Seller guarantees to the Buyer that it shall supply the BUYER with all required spare and wearing parts or suitable successor models without impairment of the functional, operational or process requirements for the CONTRACT WORKS at market prices and customary delivery times for a minimum of 10 years after acceptance of the overall installation.

### **5. DELIVERY/SERVICE:**

- 5.1. Deliveries shall be furnished according to the Incoterms 2010 in the version applicable at the moment the order is placed, namely DAP (place of destination named by the client) or, if the contractor is in delay, DAP (place of destination of the end customer). The contractor shall ensure customary packaging. Shipping and packaging costs as well as the costs for a possible transport insurance shall be borne by the contractor.
- 5.2. Adequate shipping documentation, above all exact information on the contents while stating the article numbers and order numbers, shall be enclosed to all the deliveries. Otherwise the client shall be entitled not to accept deliveries/services without getting into default of acceptance. The exact position with the clear and unequivocal name, article number and single weights shall also be stated on the delivery note. Depending on the model, deliveries/services shall have CE marking or a Declaration of Conformity/Supplier Declaration. Before delivery customs tariff numbers and declarations of origin or long-term supplier declarations shall be provided.

In the event of infringement of this obligation, the contractor shall pay lump-sum damages to the amount of € 70.00 to the client for each incorrect delivery – notwithstanding the client's opportunity of claiming damages going beyond this.

- 5.3. The contractor warrants the contractor's deliveries conform to the provisions of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH). Above all, the contractor warrants the substances contained in the products delivered by the contractor are pre-registered or have been registered upon expiry of the transitional periods as far as this is required by the provisions of the REACH Regulation and that adequate MSDS (Material Safety Data Sheets) conforming to the provisions of the REACH Regulation are provided or information stipulated acc. to Art. 32 REACH is given to the client. As far as the contractor delivers products in the sense of Art. 3 REACH, the contractor shall, above all, also warrant to fulfil the contractor's obligation to pass on certain information acc. to Art. 33 REACH.
- 5.4. The delivery and service shall be handed over by the agreed date at the stated place of destination on workdays during the receiving times from Monday to Thursday from 06.30 - 15.00 and Friday from 06.30 - 12.00. In case of premature delivery, the client shall be entitled to charge the resulting additional costs (storage costs, etc.) on the contractor's account. All the deliveries made to the clients shall be free from reservation of ownership. If the contractor can foresee the delivery item cannot be delivered within the delivery period, the contractor shall inform the client immediately and in writing, give the reasons and name the probable delivery time as far as possible. If the contractor fails to state the delivery time, the client shall be entitled to claim reimbursement of all the other costs accruing to the client because of the circumstance the client has not got such a message.

## **6. STATING THE DELIVERED QUANTITY:**

- 6.1. For stating the delivered quantity, the client's determination at receipt shall be decisive. In case of partial deliveries or partial services, the client shall be entitled to put them to use even before the overall delivery is completed without fulfilment according to the contract being recognized.

## **7. TERMINATION OF THE CONTRACTUAL RELATIONSHIP:**

- 7.1. Basically the contractual relationship shall be terminated by adequate mutual fulfilment. The contractor cannot terminate the contractual relationship before complete fulfilment.
- 7.2. For an important reason, however, dissolution of the contractual relationship shall be admissible. Important reasons entitling the client to terminate the contractual relationship prematurely particularly include the following:
- non-fulfilment of the agreed delivery or service date independently from a possible grace period;
  - the fact the client knows the seller will fully or partly be incapable of delivering in time;
  - instigation of bankruptcy proceedings or proceedings against the client's assets according to the Company Re-Organization Act;
  - refusal of an application for instigating bankruptcy proceedings because of a lack of assets;
  - infringement of the secrecy agreement;
  - infringement of the client's incorporeal rights

## **8. WARRANTY/DAMAGES:**

- 8.1. The seller shall be liable for all the defects of the seller's deliveries/services for two years from adequate acceptance at the client's. In the event of partial deliveries, the warranty period shall start upon provision of the last partial service. In the event there are hidden defects, the period shall not start until this hidden defect becomes known. If the client notifies the defect within this period, all the warranty claims and rights to claim damages can be put forward for additional three years upon notification while excluding limitation of actions/foreclosure.
- 8.2. The seller shall warrant the delivery/service fulfils the required specifications and/or has the characteristics and properties promised in the contract. Above all, the seller shall be obliged to comply with all the regulatory requirements when delivering the seller's goods. The delivery/service shall be to the state of the art while conforming to the applicable standard. Adequate marking conforming to EU Directives shall also be provided by the seller correctly and completely. If a product is not to the state of the art and/or implies risks and hazards, the seller shall fulfil a corresponding warning duty.
- 8.3. The client shall not be obliged to immediately review the delivery/service at handing-over or notification of defects (entrepreneurial notification of defects). It is sufficient to notify the defects within the warranty period.
- 8.4. In the event of warranty, the client shall be entitled to require free repair, replacement or subsequent delivery of the defective delivery/service at the client's discretion, to have the defect repaired or have the delivery replaced by a third party or to immediately repudiate the contract and require adequate rebate or refund of payments already made.
- 8.5. If the defect is eliminated by the seller, the respective service period shall start again for the whole delivery/service concerned by incorrectness upon acceptance of the repair/replacement by the client.
- 8.6. In addition to the warranty claims described above, the seller shall be liable for all the damage accruing to the client due to belated and/or defective delivery/service provided by the seller or persons the seller has asked for support.
- 8.7. In the event of default of delivery, the seller shall, up to complete delivery/service, be obliged to pay a penalty to the amount of 1% of the total invoiced value of goods but no more than 10% of the total invoiced value of goods for each week of default that has started. Claiming damage going beyond this won't be affected by this. If delay exceeds one week, the contract can be repudiated by the client without giving reasons. The penalty due up to that moment and possible other costs relating to damages shall be borne by the contractor.

## **9. INCORPOREAL RIGHTS:**

- 9.1. All the plans, sketches, cost estimates, technical documents that can also be part of the offer, sample catalogues, figures and pictures the client provides to the seller so that the seller can fulfil the seller's contractual obligations remain material and intellectual property of the client. These tools must not be used by the seller outside the business relationship between the client and seller without express approval. Making these tools accessible to third parties or passing them on to third parties is explicitly prohibited. After the order has been carried out, the tools will have to be returned to the client free of charge or returned along with the delivery.

## **10. SECRECY:**

- 10.1. The contracting parties pledge to keep all the mutual industrial and business secrets that are made known during the contractual relationship secret.

### **11. LEGAL SUCCESSION:**

11.1. All the contractual stipulations shall be transferred to single or total legal successors.

### **12. EMPLOYER'S LIABILITY INSURANCE:**

12.1. The contractor shall be obliged to have an employer's liability insurance reasonable in relation to the order volume and provision of the delivery or service. The existence of this insurance shall, upon the client's request, be evidenced to the client by presenting an acknowledgement of the insurance.

### **13. FORCE MAJEURE:**

13.1. Force majeure denotes events that come from outside, are unforeseeable and cannot be averted by means of reasonable means. If suppliers or transporting companies fail to keep deadlines, this is, by no means, an event of force majeure – just like possible labour disputes.

### **14. SEVERABILITY CLAUSE:**

14.1. If single clauses of the General Terms and Conditions as well as of the contractual relationship are ineffective or void, this shall not affect legal effectiveness of the other clauses. Ineffective clauses will automatically be replaced by clauses coming as close to the economic purpose of the ineffective clause as possible. In this context, it is particularly important to mind the sense and purpose of the agreement.

### **15. BAN ON COMPENSATION:**

15.1. Money, warranty, damage or other claims must not be offset against by the seller.

### **16. PLACE OF PERFORMANCE / PLACE OF JURISDICTION, APPLICABLE LAW:**

16.1. For delivery and payment, the client's registered office shall be regarded as being the place of performance even if handing over is done at a different place as agreed.

16.2. The contracting parties agree the competent court in 8010 Graz shall be responsible for settling all the disputes indirectly or directly arising from this contract, above all also as far as interpretation and usability of the contractual relationship are concerned.

16.3. This contractual relationship is exclusively subject to Austrian law. Uniform Sales Law (UN-Convention on Contracts for the International Sale of Goods of 11 April 1980, BGBl. (Bundesgesetzblatt – Federal Law Gazette) 1988/96) as well as reference standards that may be applicable (Private International Law Act, European Convention on Contracts for Debts, etc.) shall explicitly be excluded.

16.4. If the contractor does not have the contractor's registered office in Austria, the international arbitration clause shall apply. Any disputes arising from the present contract shall be finally decided according to the arbitration rules of the International Arbitration Court of the Economic Chamber of Austria by an arbitrator nominated according to these rules. The language for negotiations shall be German. The place of jurisdiction shall be in Vienna.