

# **General Terms and Conditions of Purchase of RHODIUS Abrasives GmbH**

**Version: 01.01.2023**

## **1. Scope/General**

- 1.1** The following terms and conditions of RHODIUS Abrasives GmbH (Buyer) shall apply to all contracts concluded between the Buyer and the Seller for the delivery of goods and other services.
- 1.2** The Buyer's terms and conditions of purchase shall also apply to all future business relations, even if they are not expressly agreed upon again.
- 1.3** The Terms and Conditions of Purchase shall apply exclusively; the Buyer shall not recognize any terms and conditions of the Seller that conflict with or deviate from the Buyer's Terms and Conditions of Purchase, unless the Buyer has agreed to their validity in writing.
- 1.4** The Buyer's terms and conditions shall also apply if the Buyer accepts the Seller's delivery without reservation in the knowledge that the Seller's terms and conditions conflict with or deviate from the Buyer's terms and conditions.
- 1.5** All agreements between the Buyer and the Seller must be in text form to be effective.

## **2. Conclusion of the contract and Amendments to the contract**

- 2.1** Unless expressly agreed otherwise, cost estimates addressed to the Buyer shall be binding and shall not be remunerated.
- 2.2** Orders of the Buyer shall be legally binding for both parties if they are accepted by the Seller in text form within two weeks of receipt at the latest. A delayed order confirmation shall be deemed to be a new offer and shall require confirmation by the Buyer. Deviations from the order as well as additions and subsidiary agreements shall require the express confirmation of the Buyer in text form in order to be effective. The Seller shall adhere exactly to the data of the order and shall be obliged to clearly indicate any deviations in its confirmation.
- 2.3** Delivery call off within an framework supply agreement shall become binding if the Seller does not object within two working days of receipt.
- 2.4** The Quality Assurance Guideline for Suppliers (QSL) and the delivery and packaging regulations of the Buyer are an integral part of this contract and must be strictly observed by the Seller. In case of non-compliance, the contract shall not be duly fulfilled.
- 2.5** If, after the conclusion of the contract, material circumstances change which have become the basis of the business, any claims for adjustment of the contract shall generally be governed by § 313 BGB (German Civil Code). There shall be no right to adjust the contract insofar as the Seller's price calculation is affected. The risk of

possible increases in material, wage, energy and/or manufacturing costs shall be borne solely by the Seller, even if the price increases could not have been foreseen.

### **3. Delivery and Performance**

- 3.1** The delivery periods specified by the Buyer by calendar day/week are binding. The Seller shall be entitled to early delivery only if the Buyer agrees, in which case early payment shall not be due.
- 3.2** Any foreseeable exceeding of the agreed delivery period or the existence of circumstances that could prevent the Seller from performing in the agreed quality - whether due to reasons for which the Seller is responsible or not - shall be notified to the Buyer in text form without delay. Additional costs, in particular additional air and express freight costs, shall be borne by the Seller.
- 3.3** Deviations of the delivery or service from the contractual agreements are only permissible with the prior consent of the Buyer in text form.
- 3.4** Unless expressly agreed otherwise in text form, the receipt of the goods or the performance of the other service at the Buyer's place of business shall be decisive for compliance with the delivery date or the delivery period. If another different place of performance has been agreed, the Seller shall deliver the goods to the place of destination in due time at its own risk and expense, taking into account the time for loading and shipment to be agreed with the carrier.
- 3.5** If agreed deadlines are not met, the Seller shall be in default without the need for a reminder and shall be liable in accordance with the statutory provisions.
- 3.6** The unconditional acceptance of a delayed delivery or service shall not constitute a waiver of the Buyer's claims arising from the delay.
- 3.7** Partial deliveries, as well as excess or short deliveries of more than 5%, are only permissible with the prior consent of the Buyer in text form.
- 3.8** The values determined during the incoming goods inspection shall be authoritative for quantities, weights and other dimensions unless proven otherwise.

### **4. Transfer of risk**

The transport risk shall be borne by the Seller - even if the delivery goods are collected by the Buyer or shipped at the Buyer's request. The risk of accidental loss or accidental deterioration of the delivered goods shall pass to the Buyer only upon acceptance by the Buyer or its agent at the agreed place of delivery or at the place where the other performance of the Seller is to be rendered.

### **5. Prices, Delivery note, Invoice and Payment**

- 5.1** The price stated in the order shall be binding. Unless expressly agreed otherwise, the price shall include delivery DDP (Delivered Duty Paid, Incoterms 2020) to the

destination named in the Buyer's order, including packaging and transport. If, on the basis of a separate agreement in text form, third-party costs may exceptionally be invoiced separately, the prerequisite for reimbursement shall be that the costs are submitted to the Buyer in advance individually and with a cost estimate for approval.

**5.2** Price increases or price escalation clauses shall not be accepted by the Buyer unless they have been expressly agreed in the contract.

**5.3** If the price is not expressly determined in the Buyer's order, the Seller shall notify the Buyer of the price before executing the order. If this is not done, the price paid by the Buyer for the last previous delivery shall apply, unless the Seller has reduced its prices. If the price is communicated by the Seller, it shall be deemed to be agreed if the Buyer agrees in text form within one week of receipt of the communication.

**5.4** For each delivery, a delivery note must be enclosed with the consignment, which must show the Buyer's order and customer number, a precise description of the type, quantity and - if customary in the trade - weight of the goods to be delivered.

**5.5** Delivery note and invoice must be typed or legible. The invoice must also comply with the provisions of value added tax law. The invoice shall be sent in one copy to the following address, stating the invoice number and other allocation features (order number and article number of the buyer):

RHODIUS Abrasives GmbH  
Brohltalstraße 2  
56659 Burgbrohl.

Upon request of the Buyer, the Seller shall also be obliged to submit its long-term supplier declaration to the Buyer in accordance with Regulation (EC) No. 1207/2001.

**5.6** Unless expressly agreed otherwise, payment of the invoice shall be made at the Buyer's option either within 14 days with a 3% discount or within 45 days without discount, calculated from delivery of the goods and receipt of the invoice. Payment shall be made subject to invoice verification.

**5.7** Partial deliveries shall - unless expressly agreed otherwise - only be instructed for payment after receipt of the complete order.

**5.8** The Buyer shall be entitled to the statutory rights of set-off and retention in full.

## **6. Force majeure**

Force majeure shall, for the duration of its existence, release the Buyer from the obligation to take timely delivery of the goods or services and shall preclude the Buyer's default in taking delivery and/or the Seller's right to increase the price. Force majeure shall be understood to mean the occurrence of an event or circumstance beyond the Buyer's control that prevents the Buyer - directly or indirectly - from fulfilling one or more of its contractual obligations.

Force majeure as defined above shall exist in particular if the Buyer's impediment to performance is due to any of the following events or circumstances:

- War (declared or undeclared), hostilities, attacks, acts of foreign enemies, extensive military mobilization;
- Civil war, riot, rebellion and revolution, military or other seizure of power, insurrection, acts of terrorism, sabotage or piracy;
- Monetary or trade restrictions, embargo, sanctions;
- Industrial action, general labor unrest such as boycotts, strikes and lockouts, slowdowns, occupations of factories and buildings, business disruptions of any kind through no fault of the insured, etc.
- Lawful or unlawful official acts, compliance with laws or government orders, expropriation, seizure of works, requisition, nationalization;
- Disease, epidemic (e.g., SARS, monkeypox), natural disaster or extreme natural event;
- Explosion, fire, destruction of facilities, energy emergency, prolonged loss of transportation, telecommunications, information systems or power;
- and other similar events/circumstances.

During such events and within two weeks after the end thereof, Buyer shall be entitled, without prejudice to its other rights, to withdraw from the contract in whole or in part, unless such events are of insignificant duration and result in a substantial reduction in Buyer's requirements. A buyer's right to adjust the contract in accordance with § 313 BGB remains unaffected.

## **7. Marketability of the goods and services**

The Seller guarantees (in the sense of a duty irrespective of fault) that the goods and services delivered by him comply with all applicable statutory and official regulations as well as other provisions (e.g. on packaging, declaration, advertising, manufacture, condition, labeling, in particular also the regulations of VDE, DIN, EN, GS, TÜV, CE, BS, ASTM, AZO dyestuff regulation) as amended from time to time.

## **8. Notice of defects**

The Buyer shall inspect the goods, as far as possible, for identity and quantity deviations and external damage within a reasonable period of time after delivery by the Seller. In the case of obvious defects, the notice of defect shall be deemed timely if it is given within a period of 2 weeks from receipt of the goods or, in the case of hidden defects, within a period of 2 weeks from discovery. The timely dispatch of the notice of defect shall be sufficient for compliance with the time limit.

## **9. Liability for defects / Reimbursement of expenses / Statute of limitations**

**9.1** The Seller guarantees (in the sense of a duty irrespective of fault) that the goods meet all specified characteristics and quality requirements and are suitable for the use provided for in the contract.

**9.2** The statutory provisions on material defects and defects of title shall apply unless otherwise provided below.

- 9.3** The right to choose the type of supplementary performance shall in principle accrue to the Buyer. The Seller shall have the right to refuse the type of subsequent performance chosen by the Buyer if the prerequisites of Section 439 (4) of the German Civil Code (BGB) are met. The buyer's right to claim damages is expressly reserved.
- 9.4** If the Seller fulfills its obligation of subsequent performance by means of a replacement delivery, the limitation period shall begin anew for the goods delivered as replacement after their delivery, unless the Seller has expressly and appropriately reserved the right at the time of subsequent performance to make the replacement delivery only as a gesture of goodwill, to avoid disputes or in the interest of the continuation of the supply relationship.
- 9.5** In the event of defects of title, the Seller shall also indemnify the Buyer against any claims of third parties and against all expenses which the Buyer may have deemed necessary, unless the Seller is not responsible for the defect of title.
- 9.6** Warranty claims for defects - except in cases of fraudulent intent, in which case a limitation period of 60 months shall apply - shall generally become statute-barred after 36 months, unless the item has been used in accordance with its customary use for a building and has caused its defectiveness; in this case, the limitation period shall also be 60 months. The limitation period shall commence upon delivery of the subject matter of the contract (transfer of risk).
- 9.7** The Seller shall be liable for all damages and expenses incurred directly or indirectly by the Buyer as a result of defects in the goods. In this context, those expenses incurred for an incoming goods inspection exceeding the usual scope shall also be liable for compensation. If a defective delivery has already been processed, the Seller shall also be obliged to reimburse the costs associated with the removal and return of the defective parts.
- 9.8** The buyer reserves the right of recourse against the Seller if the buyer takes back manufactured and/or sold contractual items due to the defectiveness of the parts delivered by the Seller or if the purchase price has been reduced against the buyer for this reason or if the buyer has been claimed against in any other way. In this case, no separate deadline needs to be set for the assertion of defect rights of the Buyer.

## **10. Liability of the seller / Insurance coverage**

- 10.1** If the Seller is responsible for a product defect, it shall indemnify the Buyer against claims of third parties and costs incurred in defending against such claims to the extent that the cause of the defect lies within the Seller's sphere of control and organization.
- 10.2** If the Buyer has to carry out a recall action due to product damage, the Seller shall also reimburse the Buyer for all expenses arising from or in connection with the recall action carried out by the Seller. Buyer shall, to the extent possible and reasonable in terms of time, inform Seller of the content and scope of the recall action and give Buyer the opportunity to comment.

**10.3** If a claim is made against the Buyer by a third party because the delivery or service of the Seller infringes an industrial or other property right of the third party, the Seller undertakes to indemnify the Buyer against the claims of the third party upon first request, including all necessary expenses incurred by the Buyer in connection with the claim by the third party and its defense. The Buyer shall not be entitled to acknowledge the claims of the third party or to conclude agreements with the third party regarding such claims without the consent of the Seller in text form.

**10.4** The Seller shall be obliged to take out and maintain product liability insurance with a sum insured of at least EUR 5 million per personal injury/property damage which is appropriate for the goods and services.

**10.5** Further legal claims of the Buyer shall remain unaffected.

## **11. Performing work on the Purchaser's factory premises.**

Persons who carry out work on the Buyer's factory premises in performance of the contract shall observe the provisions of the plant regulations as well as the applicable occupational health and safety regulations. The Buyer shall not be liable for accidents and damage which could have been avoided if the plant regulations and the applicable work safety regulations had been observed.

## **12. Liability of the Buyer**

**12.1** The Buyer shall only be liable for damages if it or one of its vicarious agents has breached a material contractual obligation or if the damage is attributable to gross negligence or intent on the part of the Buyer or one of its vicarious agents. An essential contractual obligation is an obligation the fulfillment of which makes the proper execution of the contract possible in the first place and on the observance of which the contractual partner may regularly rely.

**12.2** If the culpable breach of an essential contractual obligation is not due to gross negligence or intent, the Purchaser's liability shall be limited to the damage that was reasonably foreseeable for the Purchaser at the time the contract was concluded, but in any case on the contract price

**12.3** The above liability provisions shall apply to contractual as well as non-contractual claims. Liability on the basis of mandatory statutory provisions, warranted characteristics, assumed guarantees and for damages arising from injury to life, limb or health shall remain unaffected.

## **13. Confidentiality**

**13.1** The Seller undertakes to treat as a trade secret all details of a commercial or technical nature which are not in the public domain and which become known to it as a result of the business relationship and to use them in the Seller's own operations solely for the purpose of fulfilling the contractual obligations and to make them available to persons necessarily concerned with them. Such information may not be reproduced or used commercially without the prior consent of Buyer in text form.

**13.2** All items and documents provided in physical form shall remain the exclusive property of the Buyer.

**13.3** The Buyer reserves all rights to such information (including copyrights and the right to register industrial property rights such as patents, utility models, etc.). Insofar as such information has been made available to the Purchaser by third parties, this reservation of rights shall also apply in favor of such third parties.

**13.4** At the Buyer's request, all information and documents originating from the Buyer (including copies or records made, if applicable) and items provided on loan shall be returned to the Buyer immediately and in full or, if surrender is not possible, destroyed.

**13.5** Products manufactured according to documents designed by the Buyer such as drawings, models and the like or according to confidential information of the Buyer or with the Buyer's tools or according to tools built by the Buyer may neither be used by the Seller himself nor offered to third parties. This shall also apply mutatis mutandis to print orders of the Buyer.

**13.6** The above obligations shall apply beyond the termination of the respective order and also of the business relationship. The Seller undertakes to impose the above obligations on all persons engaged by it.

#### **14. Retention of title**

Any (simple) retention of title of the seller for the delivered goods until full payment of the purchase price is recognized. An extended or prolonged retention of title, as well as any group retention of title is excluded.

#### **15. Social responsibility**

Social responsibility is crucial in all of the buyer's business activities. The Supplier Code of Conduct therefore defines the expectations and guiding principles for the business relationship with the buyer and its subsidiaries and affiliates. The content of this code reflects values of sustainability, integrity, inclusion and respect for the buyer and, as a binding guideline for legally compliant and ethically responsible conduct, also defines the benchmark for responsible cooperation within and outside the company. The Code is based on the conventions of the International Labor Organization (ILO), the Universal Declaration of Human Rights, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines, the UN Global Compact and internationally recognized labor protection standards and can be viewed under [.....](#)

Seller hereby agrees to comply with these principles, to implement appropriate policies and procedures to ensure compliance with them, and to ensure that it does not take any action that would cause Buyer to violate these principles.

#### **16. Data protection**

The buyer points out that the data necessary in the context of the business transaction are processed and stored by him by means of an EDP system in accordance with § 33 Bundesdatenschutzgesetz (Federal Data Protection Act). Personal data will be

collected, processed and used only to the extent necessary for the establishment and execution of the contract and for billing purposes. In electronic business transactions, the text of the contract shall not be stored.

#### **17. Place of performance**

Unless otherwise expressly agreed in text form, the place of performance for all contractual obligations shall be the Buyer's place of business in Burgbrohl.

#### **18. Place of jurisdiction**

The exclusive place of jurisdiction for both contractual and non-contractual claims between the contracting parties - insofar as legally permissible - shall be Burgbrohl. However, the Buyer shall also be entitled to sue the Seller at its place of jurisdiction.

#### **19. Applicable law**

All legal relations between the contracting parties shall be governed by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.