

**I. Validity of the Terms and Conditions**

1. The supplies, services and offers from RHODIUS are effected on the basis of these Terms and Conditions exclusively. The Terms and Conditions also apply to future business relationships, even if there is no further express agreement on the matter. These Terms and Conditions are deemed to have been accepted at the latest when the goods or services are received.
2. RHODIUS does not acknowledge any conditions of the Customer that contradict or deviate from these Terms and Conditions unless their validity has been expressly confirmed in text form by RHODIUS. The Terms and Conditions of RHODIUS and the rejection of conditions that deviate from or contradict them shall also apply if RHODIUS effects supplies or services without reservation when aware of contradictory or deviating conditions of the customer.

**II. Offer, conclusion of the Contract and technical quality**

1. Offers from RHODIUS are subject to confirmation unless they expressly contain information to the contrary. RHODIUS may accept quotations from the Customer within a period of two weeks of their being issued. Declarations of acceptance, orders and order confirmations must be in text form. If RHODIUS fulfils the order within the acceptance period then the delivery note or invoice also counts as the declaration of acceptance or order confirmation.
2. Drawings, illustrations, dimensions and weights are only binding if they have been expressly agreed in text form.
3. The technical properties of the delivery items are determined according to the product information issued by RHODIUS and, in addition, according to technical standards Normen DIN EN 12413:2011-05, DIN EN 13236:2011-02 und DIN EN 13743:2009-10. The version in force when the Contract is concluded shall always apply. RHODIUS shall make the product information available free of charge to the Customer on request. Any assurance or guarantee of the aforementioned features of the product must be in text form. Any features of the delivery items over and above the aforementioned features of the product are only deemed to have been agreed if this has been confirmed separately in text form.
4. In the case of special productions, RHODIUS is entitled to exceed or fall short by 10 % of the delivery quantities agreed in the Contract.

**III. Delivery, impediment to performance, part deliveries**

1. Both delivery deadlines and deadlines for execution are approximate and non-binding. Agreements on binding delivery dates must be in text form and must expressly designate the dates as binding.
2. In order for agreed delivery deadlines to be met, all documents to be supplied by the Customer (e.g. label and packaging designs, packing instructions), the requisite authorisations, information and approvals must be received in good time and the Customer must comply with the agreed payment terms. If these requirements are not met in good time the deadlines will be extended accordingly; this shall not apply if RHODIUS is responsible for the delay.
3. RHODIUS shall not be held responsible – even if there is a binding agreement on dates and deadlines – for delays to delivery and performance due to force majeure, or due to events that make delivery or performance significantly more difficult or impossible for RHODIUS through no fault of its own. This shall also apply to delays of this nature occurring for its suppliers, sub-suppliers or sub-contractors. Such events also include subsequent difficulties in obtaining materials, operational malfunctions, strikes, lockouts, staff shortages, shortage of means of transport, official directives, mobilisations, war, civil commotion, etc. In the event of such delays RHODIUS is entitled to postpone the delivery or performance by the same length of time as the duration of the hindrance plus an appropriate start-up time or to withdraw fully or partly from the Contract because of the part of the Contract that has not yet been fulfilled. This shall also apply if such events arise during a delay that has already occurred. RHODIUS must inform the Customer immediately of such obstacles. If the hindrance lasts longer than three months then the Customer is entitled to withdraw from the Contract with regard to the part of the Contract that has not yet been fulfilled after issuing an appropriate grace period notification in text form to the exclusion of all other rights.
4. Any reminder must be in text form for it to result in RHODIUS being behind schedule. Any deadline set for posterior fulfilment must be appropriate. In cases of doubt a period of at least two weeks is deemed appropriate. Deadlines must be set in text form.

5. Part deliveries charged separately are permissible and may not be refused by the Customer if the remainder of the order is still to be delivered or if the part delivery is not without interest for the Customer.

#### **IV. Scope of supply**

1. The scope of supply will be determined by the contractual acceptances submitted in text form.
2. We reserve the right to make technical modifications due to improvements in technology, or to legislative requirements during the period of supply, provided the delivery item is not significantly changed and the modifications appear reasonable to the Customer.

#### **V. Compensation**

Where the Customer must pay compensation for non-fulfilment RHODIUS is entitled to charge him a lump sum amounting to 30% of the agreed net payment.

The Customer is permitted to prove that no damage has been incurred or that it is significantly lower than the lump sum. RHODIUS is entitled to make a claim for higher damages if this can be shown to be the case.

#### **VI. Post and packing**

The place of performance for obligations on the part of RHODIUS is, unless there has been an agreement to the contrary, the company offices of RHODIUS.

Where RHODIUS delivers or dispatches goods then delivery is at the risk and expense of the Customer.

RHODIUS is authorised, but not, however, obliged, to insure deliveries in the interest of and at the expense of the Customer.

#### **VII. Notification of defects and warranty**

1. For notification of defects by the Contractor the legal provisions, in particular §§ 377, 378 HGB (German Commercial Code), shall apply. For the rest, immediate notification should be given of obvious defects.
2. Guarantees concerning features of the product or service must be in text form. Information in advertising brochures is non-binding and does not form the basis of any guarantees.
3. Deviations in quality do not constitute defects in the product provided there is no significant impairment of the purpose as required under the terms of the Contract when the product is properly used or processed. RHODIUS does not guarantee that deliveries will turn out to be totally uniform in colour and shape, or that they will correspond exactly to prototypes or samples.
4. Provided a properly filed notice of defects is justified, RHODIUS is entitled at its own option to provide a replacement of its own choice in the case of contractors. RHODIUS does not have the right to subsequent delivery when making a purchase if and to the extent to which the Customer claims right of recourse under the terms of § 479 Para. 1 or Para. 2 BGB (German Civil Code). If providing a replacement fails then the Customer may at his own option withdraw from the Contract or request an appropriate reduction of the agreed price or, if the statutory requirements have been met, to demand compensation.
5. If the Customer is a contractor then for the purchase of new items the warranty is for one year from delivery, unless the law stipulates a longer period under the terms of §§ 438 Para. 1 No. 2 BGB (Buildings and Items for Buildings) or 479 Para. 1 or Para. 2 BGB (Right of Recourse). There shall be no warranty when used items are purchased if the Customer is a Contractor.
6. Should a notification of defects turn out to be unjustified then the Customer must reimburse RHODIUS for all expenditure that could be considered necessary for the purpose of processing and investigating the notification of defects.
7. Claims from the Customer for expenditure necessary for posterior fulfilment, in particular transport, travel, labour and material costs, will not be accepted if they are incurred or if they increase because the delivery item has been transported to a location other than the place of delivery providing such delivery corresponds to practice as set out in the Contract.
8. The Customer does not have any rights of recourse against RHODIUS if based on the fact that the Customer has made agreements with his purchaser over and above the statutory warranty regulations.

**VIII. Retention of title**

1. The delivery items (reserved goods) shall remain the property of RHODIUS until the purchase price has been paid in full and all claims due from the business relationship with the Customer have been settled.
2. The handling and processing of the reserved goods shall be carried out for RHODIUS without placing the company under any obligation.
3. The Customer is only entitled and authorised to resell, combine or mix the reserved goods in the course of normal, routine business and with the proviso that the claims described below are indeed transferred to RHODIUS and the title does not pass to the Customer until he has met his payment obligations in full.  
The Customer is not entitled to dispose of the reserved goods in any other way, in particular by pledging or making transfers by way of security.
4. The Customer already at this point surrenders to RHODIUS all claims (including all open item account balance claims) arising out of the resale of the reserved goods or the combining or mixing of the reserved goods with other items amounting to the value of the reserved goods with all ancillary rights and with the rank above all other claims.  
RHODIUS shall accept this transfer. The amount invoiced by RHODIUS plus a security surcharge of 10 % shall be agreed as the value of the reserved goods. However, this surcharge shall be left out of the calculations if third party rights are involved.
5. RHODIUS gives the Customer the authority, which may be withdrawn, to call in the surrendered claims for accounting by RHODIUS in his own name, provided he fulfils his obligations towards RHODIUS, does not fall behind with his payments and provided no application for insolvency or composition proceedings has been lodged.  
When required to do so by RHODIUS, the Customer must name the debtors in the claims surrendered to RHODIUS, notify them of the transfer, prepare all the details about the surrendered accounts and distribute the documents required for their collection. RHODIUS also has the authority to notify the debtors of the transfer.
6. If the Customer is in arrears with his payments then RHODIUS is entitled to ask for the product to be returned if payment still has not been made after an appropriate deadline has been set.  
The reclaiming or the pledging of reserved goods by RHODIUS is not deemed to be a withdrawal from the Contract.  
After the goods have been reclaimed RHODIUS is entitled to make the best possible sale.  
The proceeds of the sale should be credited against the amount payable by the Customer, less appropriate disposal costs.  
Any claim for performance from the Customer is cancelled in this case.
7. If and to the extent to which the existing securities for the benefit of RHODIUS exceed the claims to be secured by more than 20 %, RHODIUS will at the request of the Customer release a corresponding proportion of the liens.
8. If the reserved goods are seized by a third party or if there are other liens then the Customer must draw attention to the rights of RHODIUS and inform RHODIUS immediately of the seizure of the goods.

**IX. Liability of RHODIUS**

1. RHODIUS shall only be liable for damages if it or one of the company's vicarious agents has violated an essential contractual obligation (cardinal obligation) in a way that jeopardises the purpose of the Contract or if the damage is attributable to gross negligence or intent on the part of RHODIUS or one of its vicarious agents.
2. If the culpable violation of an essential contractual obligation (cardinal obligation) is not due to gross negligence or intent, then the liability of RHODIUS is limited to the damage that was reasonably foreseeable to the company when the Contract was concluded.
3. The above liability regulations shall apply to both contractual and non-contractual claims. Liability on the basis of essential statutory provisions, guaranteed properties, liability arising out of guarantees that have been transferred and for compensation claims resulting from injury to life, limb or health remain unaffected.

**X. Payment terms, offsetting**

1. Price information for consumers is inclusive of statutory VAT, and for customers who are not consumers plus statutory VAT at the current rate.  
If the parties to the Contract do not make an agreement on individual prices then the RHODIUS price lists applicable at the time of ordering shall apply.
2. Payments for services and other work are likewise based on the RHODIUS price lists applicable at the time when the Contract is awarded. These are sent to the Customer on request or can be examined by him at RHODIUS's business premises.

3. The purchase price and other fees are due immediately after the delivery item has been handed over.  
A discount is only permissible if this has been expressly agreed in text form.  
An agreed discount is not permissible on new invoices if older invoices that are due are still open for payment.
4. Any agreement to the contrary regarding payment dates and deductions must be in text form.
5. If the Customer is in arrears with his payments then RHODIUS is, irrespective of other rights, entitled to carry out deliveries to the Customer only against prepayment.
6. In the case of cheques and bills of exchange, payment is not deemed to have been made until these have been cashed.  
Bills of exchange will only be accepted with prior agreement in text form.  
When bills of exchange are taken in payment the cost of bank interest and charges will be borne by the Customer and will be billed for. They must be paid immediately in cash.
7. If direct debits, checks or bills of exchange are not honoured and the Customer is at fault then he is immediately deemed to be in arrears with his payments.  
RHODIUS is entitled – subject to the assertion of a claim for damages that goes beyond this – to charge the amount of € 20.00 each time payment is not honoured and the Customer is at fault.  
The Customer is permitted to prove that no damage has been occurred or that it is significantly lower than the lump sum.
8. The Customer may only offset his own claims against payment if these claims are undisputed or have been established in law. The same applies to the exertion of rights of retention, providing the right of retention is attributable to breach of contract with intent or gross negligence on the part of RHODIUS.  
In addition the Customer may only assert a right of retention in so far as his rights are based on the same contractual relationship as the claims asserted by RHODIUS against which the Customer is asserting these rights.

#### **XI. Data protection**

Please note that all data necessary within the scope of business transactions is processed and stored by means of EDP equipment.

Find more information on data protection at

<https://www.rhodium-abrasives.com/fileadmin/rhodium-schleifwerkzeuge.de/assets/pdf/2018/jul/Data-Protection-Information.pdf>

#### **XII. Place of performance, court of jurisdiction**

1. The place of performance for all obligations involving the parties to the Contract shall be Burgbrohl, unless there is an agreement to the contrary.
2. For all disputes arising out of the contractual relationship, when the Customer is a contractor, a legal entity under public law or a separate estate under public law, or if he does not have a general court of jurisdiction in this country, the court of jurisdiction shall be Andernach exclusively.  
RHODIUS is also entitled to bring an action against the Customer at the latter's general court of jurisdiction.
3. The law of the Federal Republic of Germany, with the exclusion of the provisions of the Uniform UN Convention on the International Sale of Goods (CISG), shall apply for these terms and conditions and the entire privity of contract between the parties to the Contract.

Version 26.07.2018