

Terms and Conditions of Sale

§ 1 Scope of Application

(1) The services and offers of ROTHENBERGER Werkzeuge AG (hereinafter referred to as the "Supplier") shall be based exclusively on these Terms and Conditions of Sale. These shall also apply for all future business transactions with the other party to the contract (hereinafter referred to as the "Purchaser") even if they are not expressly agreed to again. The Terms and Conditions of Sale shown below shall apply exclusively. The Supplier rejects any conflicting conditions of the Purchaser or any conditions of the Purchaser deviating from our terms and conditions of sale, unless the Supplier expressly agrees to their application in writing. All agreements entered into between the Supplier and the Purchaser for the purpose of implementing this Contract must be recorded in writing in this Contract. No additional verbal agreements have been concluded between the contracting parties. These Terms and Conditions of Sale shall be considered as accepted at the latest upon the acceptance of goods or services.

(2) Our Terms and Conditions of Sale shall apply only with respect to merchants as defined by § 310 German Civil Code (Bürgerliches Gesetzbuch, BGB).

§ 2 Offers and Formation of the Contract

(1) No order submitted by the Purchaser shall be deemed to be accepted by the Supplier unless and until it is confirmed in writing. The same shall apply for supplements, amendments and collateral agreements.

If no confirmation of the order is sent, the Contract shall nonetheless be concluded if the Supplier delivers on the basis of the order and the Purchaser takes delivery of the goods.

(2) Any drawings, illustrations, weights, measures or other performance figures shall only be binding if this is expressly agreed in writing.

(3) The Supplier reserves the right to carry out minor technical changes during the period of validity of a catalogue/ a (net) price list.

§ 3 Scope of Deliveries

(1) The written confirmation of an order shall be authoritative for the scope of deliveries. Delivery by instalments must be recorded on the delivery note. Incidental agreements and amendments must be documented in a written agreement.

(2) If special tools are ordered, the Supplier is entitled to exceed or fall short of the quantity ordered by 10%, or by at least two items. The quantity invoiced shall be the quantity supplied.

§ 4 Prices and Payment Conditions

(1) Unless otherwise provided in the order confirmation, the Supplier's prices, which in principle must be expressed in euro, shall be considered as "ex works/warehouse" (Incoterms 2000) plus VAT at the current statutory rate. The prices shall not include packaging, freight, postage, customs duty and additional charges for dangerous goods or safety surcharges. These shall be invoiced separately. As from a net invoiced value of 300.00 goods shall be delivered with all costs paid to the Purchaser's address. Unless otherwise indicated, the Supplier considers itself as bound to the prices contained in the offer for thirty days from its effective date.

(2) The Supplier presupposes goods with a minimum order value in the amount of 500.00 net from Germany or 1,000.00 from abroad. In the case of orders falling short of this minimum order value, the Supplier reserves the right to postpone the

delivery until this minimum order value is reached or to charge a processing fee of 10% of the minimum order value, however at least 55.00. If required in the case of orders from abroad, any costs for the attestation of documents shall not be included in the processing fee and shall be charged additionally. This shall also apply for the costs arising from documentary credit business.

(3) In the event of a substantial change in certain cost factors, especially in the event of an increase in material purchasing costs, surcharges for alloys, wage costs, ancillary wage costs and energy costs, the Supplier is entitled to unilaterally increase the price by the amount of the additional costs, if more than 30 days lie between the conclusion of Contract with the Purchaser and the contractually stipulated delivery of the goods.

(4) Prices stated as freight and carriage paid shall apply only on condition that transport by rail, road, ship or air is open and unimpeded on the railway lines, motorways, waterways and air routes concerned.

(5) Dead freights shall be charged to the Purchaser.

(6) The Supplier's invoices shall be payable net within 30 days of the invoice date. In the case of payments within 10 days, a 2% discount shall be granted unless the Purchaser is in default in the settlement of an account receivable. The date of the credit entry on the Supplier's account shall be authoritative. Upon the occurrence of the Purchaser's default, interest after the due date will be charged at the rate of 8% over the respective base rate of the Deutsche Bundesbank.

(7) The Supplier shall only accept bills of exchange offered by the Purchaser as conditional payment and by express agreement and subject to their eligibility for discount. Discount charges shall be charged from the maturity date of the invoiced amount. In the case of bills of exchange and cheques, the date of payment shall be considered as the relevant date of collection.

(8) If payment conditions are not satisfied or if circumstances become known which give rise to reasonable doubts about the Purchaser's creditworthiness during the Supplier's free exercise of discretion after a due assessment of the circumstances, and namely also such facts that had already occurred at the time of concluding the Contract, which however the Supplier did not know or did not have to know, without prejudice to more extensive legal rights, the Supplier is entitled to cease further work on any current orders or delivery thereof and to demand payment in advance or the provision of corresponding securities for any deliveries still outstanding and, without prejudice to further legal rights and to withdraw from the Contract after the unsuccessful expiry of an appropriate period of grace for the provision of such securities. The Purchaser is obliged to compensate the Supplier for all damage resulting from the non-performance of the Contract.

(9) The Purchaser shall only be entitled to any off-setting rights if its counterclaims have been declared final and absolute, are undisputed or recognised by us. Moreover, it is entitled to exercise a right of retention to the extent that its counterclaim is based on the same contractual relationship.

§ 5 Period of Delivery and Performance

(1) Binding delivery times must be expressly agreed as such in writing. In the case of all other delivery dates, these shall be merely without obligation or approximate

delivery dates in which the Supplier makes an effort to comply with these.

(2) Delivery periods shall commence on the date of the confirmation of an order by the Supplier, however not before all details of carrying out the delivery have been clarified and all requirements to be fulfilled by the Purchaser have been satisfied. If the Purchaser demands changes after placing an order, a new period of delivery shall only commence at the time of the confirmation of the change by the Supplier.

(3) Deliveries carried out prior to the expiry of the delivery time are permissible. In the event of immediate delivery of the goods, the Supplier may dispense with the sending of the confirmation of an order. In this case, the confirmation may be replaced by a delivery note.

(4) The date of the notification of readiness for dispatch the goods shall be considered as the delivery date, failing which the date of sending the goods. Deliveries ordered on call must be accepted within six months of the confirmation of an order.

(5) The Supplier is entitled to deliver by instalments. Each delivery by instalments shall be considered as an independent transaction.

(6) If the Supplier defaults in delivery, the Purchaser must initially give the Purchaser an appropriate period of grace to render the performance. If this period is abortive, the Purchaser may assert the rights provided under the respective requirements of §§ 280, 281, 284, 286 and 323 BGB.

(7) If the Supplier does not receive deliveries or performances from its supplier, or does not receive these properly or in due time for reasons for which it is not responsible, or in the event of force majeure, the Supplier shall inform the Purchaser of this in writing in due time. In this case the period shall be extended by the duration of the disturbance. Force majeure shall be equated with labour disputes, official interventions, power cuts and material shortages, blameless transportation and deadlocks, blameless operational disturbances such as, for example, damage by fire, water and machinery and all other disturbances which, objectively, were not intentionally or negligently caused by the Supplier. If a date of delivery or a period of delivery is agreed with binding force and due to various occurrences or if the agreed date of delivery or period of delivery is exceeded by more than two months, the Purchaser is entitled to withdraw from the Contract owing to the still unfulfilled part thereof.

(8) In the case of off-the-shelf orders, the Supplier may demand a binding allocation two weeks after the order confirmation. If the Purchaser fails to comply with this request within these two weeks or if it defaults in taking delivery of the goods, we are entitled to set a two-week period of grace and after its expiry to withdraw from the Contract and claim damages.

(9) If the Supplier is not responsible for the non-compliance with promised binding deadlines, the buyer shall have a claim for the recovery of damages for the loss it has demonstrably sustained as a result of the Supplier's default in delivery, however only up to 0.5 % for each completed week of the default, in total however not exceeding 5 % of the invoice amount of the deliveries and performances affected by the default.

§ 6 Dispatch and the Passing of Risk

(1) Unless otherwise agreed in writing, goods shall be dispatched at the risk and at the expense of the Purchaser. The Supplier reserves the right to choose the route and

means of transport. The Supplier is entitled, but not obliged, to insure the deliveries on behalf of and for the account of the Purchaser. The risk of the accidental loss or deterioration of the goods shall pass to the Purchaser, the freight forwarder, the carrier or the enterprises otherwise designated to dispatch the goods as from the time of the transfer of the goods to be delivered, however no later than the time when the goods leave the works or the warehouse of the Supplier.

(2) If the consignment of goods is delayed due to the Supplier availing itself of its right of retention as a consequence of a complete or partial default in payment by the Purchaser, or for another reason for which the Purchaser is responsible, the risk shall pass to the Purchaser at the latest as from the date of the notification of the readiness to dispatch the goods.

(3) If acceptance is envisaged or agreed, this shall take place in accordance with more detailed agreements at the Supplier's works immediately after the notification of the readiness to dispatch the goods. The Purchaser shall bear the relevant acceptance costs. If the goods are not accepted despite setting an appropriate time limit or if the Purchaser dispenses with acceptance, the Supplier is entitled to dispatch the material without acceptance or keep this in safe custody at the cost and risk of the Purchaser. In this case, the obligation to deliver the goods free from defects shall be considered as fulfilled, unless the defect would also have been recognisable in the event of acceptance.

(4) Goods notified as being ready for dispatch must be collected immediately. Failing this, we are entitled at our option to either dispatch these or store them at the cost and risk of the Purchaser.

§ 7 Warranty

(1) The Purchaser is obliged to examine the delivered goods for obvious defects that stand out ipso jure. The absence of handbooks as well as substantial, easily visible defects in the goods shall also be considered as obvious defects in the goods. Furthermore, this obligation must also comprise cases in which another thing or a lesser quantity of the thing is delivered. The Supplier is to be notified of such obvious defects without undue delay, but by no later than within two weeks after delivery in writing. In addition, the transport company must be notified of any recognisable defects at the time of delivery and must arrange for the defects to be documented.

(2) Defects that only become obvious later must be reported to the Supplier without undue delay, but by no later than two weeks after the discovery thereof by the user. In the event that Purchaser breaches the duty to inspect goods and make a complaint in respect of a defect immediately upon receipt thereof, the goods shall be considered as approved with due regard for the defect concerned.

(3) The Supplier shall remedy any defects to the delivered goods including the complete absence of the handbooks and defects in the content thereof and any other descriptive documents within one year of the delivery after adequate notification. This shall be done at the option of the Purchaser either by a cost-free subsequent improvement or a replacement delivery. In the case of a replacement delivery, the Purchaser is obliged to return the defective goods.

(4) If the defect cannot be remedied within an appropriate period or if the subsequent improvement or replacement delivery must be considered as having failed for other reasons, the Purchaser may, at its

option, either demand a reduction in the purchase price (reduction) or withdraw from the Contract. A failure of the subsequent improvement must be assumed if the Supplier was granted sufficient opportunity to carry out a subsequent improvement or replacement delivery without the desired success being achieved, if the subsequent improvement or replacement delivery is rejected or unreasonably delayed by the Supplier, if reasonable doubts exist with regard to the prospects of success, or if unreasonableness exists for any other reason. Unreasonableness shall exist if the costs of the subsequent improvement are disproportionate or if the result to be achieved by the subsequent improvement is disproportionate to the expenditure required, which is no longer justified by the Purchaser's interests.

(5) The liability of the Supplier for a slightly negligent breach of duty is expressly excluded, unless this concerns an essential condition of the Contract, damage caused by the impairment of life, body or health or the infringement of guarantees or claims under the Product Liability Act are affected. The same shall apply for breaches of duty by the Supplier's vicarious agents.

(6) Liability claims and other contractual claims shall become statute-barred one year after the delivery of the thing.

(7) Returns outwards that are not based on the defectiveness of the object of sale do not justify a withdrawal from the Contract and are permitted only after the express consent of the management board or under a separate agreement. If returns outward are permitted under these, a credit entry shall only be made subject to the deduction of at least 25 % of the purchase price. All costs of the return delivery shall be charged to the Purchaser.

§ 8 Packaging, Packaging Norm and Indemnities against the Liability of the Supplier

(1) If the goods of the Supplier are delivered on Euro-pallets and/or in reusable packaging and if an immediate exchange does not take place at the time of delivery, the Supplier reserves the right to invoice the delivered Euro-pallets and/or reusable packaging at the market price.

(2) This invoicing shall not take place if the Euro-pallets and/or reusable packaging sent by the Supplier are returned freight and carriage paid and in a perfect condition within three weeks of being delivered. The Euro-pallets and reusable packaging shall remain the property of the Supplier until these have been paid for.

(3) The Supplier is liable for the damage and contamination to the Euro-pallets or reusable packaging until these are returned to the carrier. If the Purchaser does not return the Euro-pallets or parts thereof or if it returns these in a condition which does not permit a restoration of the original viability with appropriate means, the Purchaser must reimburse the Supplier for 75 % of the costs of replacing identical, new Euro-pallets or reusable packaging or parts thereof.

(4) Purchasers which use the Supplier's packaging for "dangerous goods" as defined by § 2 of the Act on the Carriage of Dangerous Goods (Gesetz zur Beförderung gefährlicher Güter) are obliged to inform the Supplier exhaustively and in detail of the dangers associated with the goods to be packaged before placing an order. If the Supplier is liable for damages under § 12 para. 5 item 2 of the above-mentioned Act because the Supplier has not sufficiently complied with its duty to inform, the Purchaser is obliged to indemnify the Supplier

against any claims resulting therefrom.

(5) If products of the Supplier are only deliverable in a commensurate packaging unit, the Supplier reserves the right to round up to the next higher amount of the packaging unit or charge a mark-up in the amount of 10 %.

(6) The EAN bar code printing shall be carried out in accordance with the state of technology prevailing at the time in question. Any more extensive undertakings, in particular statements on the reading results at the cash desks of the distribution trade, may not be given due to possible influences on the bar codes after leaving the works/warehouse of the Supplier and for lack of uniform measuring and reading techniques.

Printing errors in EAN code prints on the cardboard packaging or individual articles shall not oblige the Supplier to pay damages including for any consequential damage caused by a defect unless the Supplier was grossly negligent or acted with intent.

§ 9 Hired Containers and Hired Pallets of Gases

(1) The hired containers and hired pallets of the Supplier shall be let to the Purchaser for hire only for the transport, storage and own use of the gases obtained at the Supplier. Any other use is not permitted, in particular for safety reasons.

After emptying, the containers and pallets must be returned immediately to the respective works/warehouse, even if they were delivered to the Purchaser. The Purchaser is obliged to inform the agency immediately of any damage, inner contamination or losses of hired containers or hired pallets.

(2) The Purchaser is liable for damage and contamination of hired containers and hired pallets until their return to the factory/warehouse of the Supplier or until their return to the carrier. If the Purchaser does not return the hired containers or parts thereof or returns these in a condition that does not permit a restoration of the viability with appropriate means, the Purchaser must reimburse the Supplier 75 % of the costs for replacing identical containers or pallets or parts thereof.

(3) The Supplier may charge an amount equal to 75% of the respective replacement costs for identical new containers as security for hired containers let to the Purchaser that have not been confronted with any relevant purchases of gas in hire containers for more than three months. This amount is payable immediately after receiving the load.

The Supplier's ownership of the containers shall also continue after the payment of the security amount. The hire charge shall apply until the return of the containers to the Supplier or in the event of loss of the containers until the date of the notification of the loss. If the Purchaser returns a container for which it has paid a security amount, it shall obtain the security amount interest-free minus any expenditure for repairs and the hire charge accrued up to the date of the return. The deductions shall be limited to the level of the security amount. If the Purchaser fails to return the containers of the Supplier, the security amount shall be set-off against the damages to be paid by the Purchaser.

(4) The quantity specification "m3" in hire containers refers to a gaseous state of 15°C and 1 bar.

Any residual contents of returned containers shall not be reimbursed.

§ 10 Retention of Title

(1) The Supplier shall retain its title to the

delivered goods (hereinafter referred to as the "object of sale") until all claims of the Supplier based on the business relationship with the Purchaser have been settled.

If the event of the Purchaser acting in breach of the Contract, in particular in the case of default in payment, the Supplier is entitled to take back the object of sale. Taking back the object of sale from an entrepreneur shall not entail a withdrawal from the Contract, unless the parties had expressly declared this.

(2) The Purchaser must sufficiently insure the object of sale at its own expense against theft, breakage, damage from fire, water or any other damage up to the replacement value. The Purchaser must treat the retained article carefully in particular it must observe the advice on maintenance and use provided.

(3) In the case of attachments or other interferences by third parties, the Purchaser must inform the Supplier immediately in writing, so that the Supplier can assert its title. If the third party is not in a position to reimburse the Supplier for the court fees or out-of-court costs incurred in this connection, the Purchaser shall be liable for these.

(4) The Purchaser is entitled to resell the object of sale in the ordinary course of business. It is not allowed to make any other dispositions, in particular the pledging or granting of ownership by way of security.

(5) If, in the event of resale, third-party purchasers do not pay the full amount for the object of sale immediately, the Purchaser is obliged to resell to the third party only subject to retention of title.

(6) The entitlement to resell the object of sale shall cease if the Purchaser discontinues its payment or defaults in its payment to the Supplier.

(7) The Purchaser hereby assigns to the Supplier in advance all claims including securities and ancillary rights in an amount equal to the total invoiced amount including VAT accruing to the Purchaser against its customers or third parties from the resale of the object of sale and namely independently of whether the object of sale has been resold without or after processing. This authorization ends, if the Purchaser ceases paying or is in arrears of payment vis-à-vis the Supplier. In this case, the Supplier shall be entitled to disclose the assignment and to collect the claim itself.

(8) Any processing or reorganisation of the object of sale shall always be carried out for the Supplier. If the object of sale is processed with other articles not belonging to the Supplier, the Supplier shall obtain the co-ownership of the new thing in the proportion of the invoiced value of the object of sale to the other processed articles at the time of the processing. In other respects, the same shall apply for the items resulting from the processing as for the object of sale delivered with reservations. If the object of sale is inseparably mixed with other articles not belonging to the Supplier, the Supplier shall obtain the co-ownership of the new thing in the proportion of the invoiced value to the other mixed articles at the time of the mixing. If the articles are mixed in such a way that the thing of the Purchaser must be seen as the main thing, the parties agree that the Purchaser shall transfer a proportionate share in the co-ownership to the Supplier. The Purchaser shall keep the resulting sole ownership in safe custody for the Supplier.

(9) The Purchaser shall also assign to the Supplier the claims to secure the claims of the Supplier against the Purchaser arising against a third party due to the association of the object of sale with a piece of land.

(10) The Supplier undertakes to release the securities due to it at the request of the Purchaser insofar as the realisable value of the security of the Supplier exceeds the claim to be secured by more than 20 %. The Supplier shall be responsible for the choice of the securities to be made available.

§ 11 Indemnity Clause

(1) In the event of an intended resale of the objects of sale which it has obtained from the Supplier, the Purchaser undertakes to observe the statutory export restrictions and any other provisions laid down, in particular the Military Weapons Control Act (Kriegswaffenkontrollgesetz) and the Export Act (Ausfuhrgesetz), as well as international trade restrictions, boycotts and UN sanctions.

(2) In the event of a resale of the object of sale obtained from the Supplier, the Purchaser shall indemnify the Supplier against all civil penalties and administrative fines as well as any other fines admissible under the Acts indicated by reason of the breach of the obligations incumbent on it under § 11 para. 1.

§ 12 Applicable Law, Place of Jurisdiction and Place of Performance

(1) For the terms and conditions of business and sale and the entire legal relationship between the Purchaser and the Supplier the law of the Federal Republic of Germany shall apply to the exclusion of UN Convention on Contracts for the International Sale of Goods.

(2) The place of performance shall be the registered headquarters of the Supplier (Kelkheim).

(3) In the course of doing business with merchants, legal entities under public law or special public funds, the place of jurisdiction in the event of litigation shall be the Supplier's registered office (Frankfurt am Main), i.e. the courts at Frankfurt am Main will have jurisdiction over any and all disputes arising out of or in connection with the Contract. This shall also apply in respect of summary bill or check payment enforcement proceedings. The Supplier's registered office (Frankfurt am Main) shall also then be deemed the place of jurisdiction agreed between the Supplier and the Purchaser, if the Purchaser does not have a general place of jurisdiction within the Federal Republic of Germany.

§ 13 Safeguarding Clause

If individual provisions of these terms and conditions of business are invalid, the rules of the Commercial Code and the Civil Code shall be deemed to replace these mutatis mutandis.

Kelkheim, 13.02.2007