

**General Terms and Conditions of Purchase**  
**No 1/2003**  
**of Otto Roth GmbH & Co KG**

**1. General**

- 1.1. These general terms and conditions no 1/2003 alone shall apply for the entire business relationship between ourselves and the Seller / Supplier, for all current and future orders as well. We hereby reject all other terms and conditions of sale or other general terms and conditions of business of a Supplier; they shall not be applied.

We shall be entitled to amend our terms and conditions of purchase to hand with effect for the entire future business relationship with our Supplier / Seller by sending him notification to that effect.

- 1.2. In so far as a master agreement exists between the Supplier / Seller and us, these terms and conditions of purchase shall apply as a supplement not only to the master agreement, but also to the individual order.
- 1.3. Only orders placed by us in writing, but also those sent by fax or e-mail, shall be binding on us. Verbal / telephone agreements must be confirmed in writing by us.

**2. Prices and Terms and Conditions of Payment**

- 2.1. The prices agreed with us shall, as a matter of principle, be delivered free to the point of delivery named by us inclusive freight, packing as well as all other additional costs and plus the statutory rate of value added tax. If, notwithstanding this, unfree delivery is agreed, we shall only pay for the cheapest freight costs.
- 2.2. Provided that nothing has been agreed to the contrary, our payments shall be paid on the 5th and 20th of a month subtracting a 3% discount for prompt payment. Invoices received by the 25th of a month will be settled by the 5th of the following month, and those invoices received by the 10th of a month shall be settled by the 20th of the month.
- 2.3. Periods of time allowed for payment and for qualifying for prompt payment discounts shall run from the date of invoice, but not however, before the goods have been received by us or services have been accepted by us and in so far as the scope of performance includes documentation or other documents, not before these have been handed over to us in accordance with the contract.
- 2.4. We shall be allowed to assert offsetting rights and rights of retention to the extent allowed by law.

**3. Delivery periods, Scope of delivery, Passing of risk**

- 3.1. The delivery dates and periods agreed with us shall be binding. We are to be notified of impending delays in delivery immediately in writing together with the reasons. After a reasonable subsequent period set by us in the event of a delay in delivery has expired unsuccessfully, we may withdraw from the contract and demand compensation for damages instead of delivery / performance.
- 3.2. Part deliveries, over or under deliveries shall only be allowed with our express consent or our express agreement.
- 3.3. The Supplier / Seller shall bear the risk of accidental loss and accidental deterioration until the goods have been handed over at the destination stipulated by us. This shall also apply if, in an individual case a delivery has been agreed ex Works, or if we have to arrange delivery of the goods at our own account, or we, and we shall be entitled to do this, conduct an acceptance test at the Supplier's / Seller's premises.

- 3.4. Consignments to be delivered are to be insured against damage in transit at the Seller's / Supplier's expense.

The goods shall also travel at the Seller's / Supplier's risk if they are possibly returned to us.

#### **4. Force majeure**

Force majeure, labour disputes, operational disturbances for which we are not to blame, public disorder, shall entitle us - irrespective of our other rights- to withdraw completely or partially from the contract, provided that they are of considerable duration and will result in a considerable reduction of our demand as a result.

#### **5. Retention of title**

We recognise the Supplier's / Seller's retention of title for the delivered goods until the respective purchase price has been paid for in full. However, we shall not accept a retention of title extended in terms of scope or time and this shall be precluded.

#### **6. Means of production, Primary products**

- 6.1. All means of production, (tools, materials etc. as well as drawings, documents and other paperwork and similar) which we provide to enable our order to be produced, shall remain our property. They are to be expressly marked as our property immediately after they have been handed over to the Supplier / Seller and they are to be kept separately from the same type of materials or similar materials. Once they have been used for our order they are to be returned to us immediately and in full, together with any remaining material. This shall apply mutatis mutandis for all primary products handed over to the Supplier by us.
- 6.2. Our regulations, drawings or other documents shall be authoritative for the goods to be supplied / manufactured. The dimensions in the drawings are to be verified by the Supplier / Seller before he starts work. Discrepancies from the dimensions stated by us are only allowed with our written consent. The Seller / Supplier shall be obliged to ensure compliance with dimensions prescribed by stated standards (E.g. DIN, ISO and similar standards, including factory standards) and / or drawings as well as other quantifiable characteristics by means of taking suitable supervisory measures in his company. He shall also ensure that the characteristics of the goods are not impaired in any way as a result of the packing, and that in particular damage in transport is avoided.

#### **7. Confidentiality**

The Seller / Supplier shall only use all knowledge and means of production which he receives from us in connection with our order for the purpose for which they are intended and he shall keep them secret from third parties with the same care as he would apply for his own knowledge and means of production, if we mark them as being confidential or we have a manifest interest in such information being kept secret. This obligation shall continue to apply after the order has been completed and the business relationship has ended.

#### **8. Warranty, Compensation for damages, Time limit of 5 years**

- 8.1. Goods supplied must free of physical and legal defects and must comply with the recognised guiding principles of technology, characteristics agreed in the contract, standards as well as security, safety at work, accident prevention and environmental as well as all other regulations. If there is a defect, we shall be entitled to lodge statutory rights and claims. The time limit within which we shall be able to make a claim is 5 years, except for goods which are designed to have a shorter useful service life in accordance with their normal method of use or in accordance with the content of our order.

- 8.2. The acceptance of a consignment of goods shall be made subject to an investigation to verify that they are free of defects, in particular that the goods are correct, complete and fit for the purpose for which they were intended. We shall be entitled to investigate a consignment of goods provided that, and as far as this is expedient in accordance with our ordinary course of business. Discovered defects shall be notified by us upon discovery. Given this, the Seller / Supplier waives the objection that a defect has been notified too late.
- 8.3. If the Seller / Supplier is guilty of making an incorrect statement, because one of the warranted qualities is lacking, or on the country of origin of the goods, he shall be obliged to pay compensation for losses or damages arising because the stated origin is not accepted, e.g. on account of an incorrect certificate or inability to verify it.
- 8.4. The Seller / Supplier is obliged to exempt us with regard to the goods to be supplied by him from legal claims asserted by third parties in Germany and in other countries against us on the basis of German patents or patents from other countries, utility patents, copyrights or proprietary rights, which can arise, or to make good the damages or losses incurred if such a claim is asserted against us. This shall also include all the costs of taking legal action as well as other costs incurred by us, such as e.g. modification costs and additional design costs.

## **9. Product liability and recall**

In the event that a claim is lodged against us on the basis of product liability, the Supplier shall be obliged to exempt us from such claims, provided that, and in so far as the damage has been caused by a defect in the subject-matter of the contract supplied by a Supplier. In cases in which liability is dependent upon who is to blame, this shall however only apply in those cases in which the Supplier is to blame. Provided that the cause of the damage is within the Supplier's sphere of responsibility, the burden of proof shall, given this, be upon the Supplier.

In these cases the Supplier shall take over all costs and expenses including the costs of any legal action which may possibly be taken or recall campaign. Moreover, the provisions of the law of Germany shall apply.

## **10. Place of fulfilment, Place of jurisdiction, Applicable law**

- 10.1. The place of fulfilment is the place at which the goods have to be delivered in accordance with the order.
- 10.2. As far as it is legal, the place of jurisdiction shall be Stuttgart, or as we choose, also the courts having jurisdiction where our branch office which placed the order is located or at the court having jurisdiction by law. In addition to this, we shall also be entitled to take legal action against the Supplier at the court having jurisdiction where his company is based or where his branch office is located or where our branch office is located, or at the court having jurisdiction at the place of fulfilment.
- 10.3. The law of the Federal Republic of Germany alone is to be applied to the entire business relationship. The application of international private law, standard international law and the UN law on sales is to be ruled out.

## **11. Legal validity, Data protection**

- 11.1. Any amendments or supplements there may be to the contract by the Seller / Supplier must be confirmed in writing by us to be legally valid. This shall also apply to any deviation from the requirement for written form.

Legally operative declarations of will by the Seller / Supplier e.g. notice of termination, withdrawal from the contract etc., shall only be valid if they are made in writing.

- 11.2. We shall be entitled to process, and save, all data about the Supplier / Seller received in connection with the business relationship, even if it comes from a third party, within the meaning of the Federal Data Protection Act. If necessary, we may call in third parties to assist us with such tasks.

- 11.3. Should individual parts of these terms and conditions be or become legally invalid, this shall not affect the legal validity of the remainder of the contract as a result. In such a case the invalid provision is to be replaced by a valid provision which comes as close as possible to the invalid provision in economic terms. Under no circumstances will the provision affected be replaced by the terms and conditions of business of the Supplier / Seller.

Otto Roth GmbH & Co KG