

# Standard Purchasing Terms and Conditions

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DocOwner OP-SPD



The following supplemental terms comprise part of the Rosendahl Nextrom GmbH Standard Purchasing Terms and Conditions:

- Document IN General Delivery Instructions for the Construction of Control Boxes 10.00.001 shall apply on a supplemental basis to supplies of control boxes.
- Document IN General Delivery Instructions for Production Parts 10.04.001 shall apply on a supplemental to supplies of production parts.

## **PREAMBLE:**

Rosendahl Nextrom GmbH (hereinafter referred to as the “Buyer”) buys goods and orders external services within the scope of its business activities exclusively from or with entrepreneurs within the meaning of the Austrian Business Enterprise Code (Unternehmensgesetzbuch – “UGB”) (hereinafter referred to as a “Supplier”) on the basis of the terms and conditions described below. These rules shall not apply to contracts with consumers.

These Standard Purchasing Terms and Conditions shall be valid even if they deviate from the Supplier’s standard delivery terms and conditions. They retain their validity even in the event that any specific clause should prove to be invalid regardless of grounds.

In case of doubt, the current German version of these Standard Purchasing Terms and Conditions and the German version of its supplemental provisions shall apply exclusively.

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

- 1.1. The Buyer’s RFQ’s are non-binding and free of charge and do not oblige the Buyer to reimburse any expenses. The Buyer’s RFQ’s only are an invitation to potential suppliers to submit a binding offer to the Buyer. RFQ documentation may not be disclosed to third parties without the Buyer’s written consent.
- 1.2. By submitting an offer, the Supplier declares that all requirements necessary for fulfilling the scope of the RFQ are met. The Supplier cannot assert that RFQ documentation is unclear or incorrect or that a reference to standard industry customs is missing. If the Supplier thinks RFQ documentation sent to the Supplier is faulty or unclear, the Supplier shall immediately warn the Buyer and submit appropriate suggestions for a solution. Such a written warning shall only be deemed immediate if it is received by the Buyer within three days after RFQ documentation has been sent. If such a written warning relating to deficiencies or doubts about RFQ documentation is not provided, the Supplier shall, by making the offer, be deemed to have acknowledged that the Supplier is fully able to satisfy the scope of the RFQ. The deliveries and / or services offered by the Supplier 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 Supplier’s offers that do not include any explicit deadlines for acceptance can be accepted up to twelve weeks upon coming within the Buyer’s sphere of control. The Buyer is also entitled 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 once the Buyer has sent the order concerned to the Supplier. For such purposes, orders that are transmitted electronically (e.g. by email or fax) are also valid.
- 2.2. The conclusion of any contract and/or declaration must be in writing to become legally effective. This also applies to any waiver of this written form requirement. Verbal side agreements won't be accepted.
- 2.3. To the extent not otherwise agreed, all the orders made by the Buyer shall be accepted immediately and acknowledged within three working days by means of a written binding acknowledgement of order.
- 2.4. If declarations are received by the Buyer outside of normal business hours, they shall be deemed to have been received upon the commencement of the next business day. Business hours are Monday to Thursday 07.00 to 15.00 and Friday from 07.00 to 11.30.
- 2.5. To the extent not otherwise agreed in writing, the Supplier shall provide an advance payment bond that conforms to the Buyer's guidelines in cases where an advance payment in excess of € 15,000.00 is agreed upon conclusion of a contract.

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

- 3.1. The Supplier shall personally fulfil the contractual obligations. Assignment to sub-contractors shall only be permitted with the Buyer's written consent. The foregoing does not apply to the purchase of essential input materials and/or standard or special parts.

## 4. **PRICES:**

- 4.1. Prices agreed between the contracting parties expressly and in writing shall apply exclusively. These prices are fixed prices that remain valid until the complete conclusion of the transaction concerned. In case of doubt (in particular if a contract contains no specific terms regarding pricing), the prices stated in the Supplier's offer shall be applicable, including overtime and customary packaging, delivery to the destination, at the Supplier'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 Supplier.
- 4.2. Invoicing shall be done as agreed. In this context, the Supplier agrees to present an invoice corresponding to the respective Austrian Value Added Tax Act (Umsatzsteuergesetz – "UStG"). To the extent not otherwise agreed, invoices shall not be presented until the services have been provided completely and include a fourteen day period of payment starting on the date indicated on the Buyer's date stamp.
- 4.3. The SUPPLIER 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 CONTRACTUAL GOODS/SERVICES at market prices and customary delivery times for a minimum of 15 years after acceptance of the overall installation to the end customer.

## 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 Buyer) or, if the Supplier is in default, DAP (place of destination of the end customer). The Supplier shall ensure customary packaging. Shipping and packaging costs as well as the costs for a possible transport insurance shall be borne by the Supplier.



- 5.2. Adequate shipping documentation, in particular exact information on the contents, and the article numbers and the Buyer's order number, shall be enclosed with all the deliveries; otherwise the Buyer is entitled to refuse acceptance of supplies of goods/services without falling into default of acceptance. This applies in like manner to handling complaints. The exact item number with the clear and unequivocal name, article number and individual 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 a failure to comply with this obligation, the Supplier shall pay lump-sum damages to Buyer in the amount of € 70.00 for each incorrect delivery – without prejudice to the Buyer's ability to assert a claim for additional damages.

- 5.3. The Supplier warrants the Supplier'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 Supplier warrants that substances contained in the products delivered by the Supplier 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 Buyer.

To the extent the Supplier delivers products within the scope of Art. 3 REACH, the Supplier shall, above all, also guarantee to satisfy the Supplier's obligation to pass on certain information acc. to Art. 33 REACH.

- 5.4. Goods or services shall be supplied by the agreed date at the stated place of destination on workdays during the receiving times from Monday to Thursday from 06.00 – 12.00 and 12.30 - 15.00 and Friday from 06.00 - 11.30. In case of premature delivery, the Buyer shall be entitled to charge the resulting additional costs (storage costs, etc.) on the Supplier's account. All the deliveries made to the Buyer shall be free from reservation of ownership.

If the Supplier can foresee the item to be delivered cannot be delivered within the delivery period, the Supplier shall inform the Buyer immediately and in writing, give the reasons and name the probable delivery time as far as possible. If the Supplier fails to state the delivery time, the Buyer shall be entitled to claim reimbursement of all the other costs accruing to the Buyer because of the circumstance the Buyer did not receive appropriate notification.

## 6. DETERMINING QUANTITIES DELIVERED:

- 6.1. The Buyer's acceptance declaration is binding for purposes of determining the quantity delivered. In case of partial supplies of goods or services, the Buyer 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. In principle, the contractual relationship terminates upon proper performance by both Parties. The Supplier cannot terminate the contractual relationship before complete performance.
- 7.2. The contract may however be terminated for good cause. Without limitation, good cause entitling the Buyer to terminate the contractual relationship prematurely includes the following:
- Non-fulfilment of the agreed delivery or service date independent of any grace period;
  - The fact the Buyer knows the Supplier will fully or partly be incapable of delivering in time;
  - Instigation of bankruptcy proceedings or proceedings against the Buyer's assets according to the Austrian Company Re-Organization Act (Unternehmensreorganisationsgesetz);
  - Refusal of an application for instigating bankruptcy proceedings because of a lack of assets;
  - Violation of the confidentiality agreement;
  - Infringement of the Buyer's intangible property rights

## 8. WARRANTY/DAMAGES:

- 8.1 The Supplier shall be liable for all the defects of the Supplier's deliveries/services for two years from proper acceptance by the Buyer. 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 Buyer provides notice of a defect within this period, all warranty claims and claims to compensation for damages may be asserted for an additional two years from the date of such notice irrespective of the limitations period.
- 8.2. The Supplier shall warrant that the delivery/service fulfils the required specifications and/or has the characteristics and properties promised in the contract. Above all, the Supplier shall be obliged to comply with all the regulatory requirements when delivering the Supplier'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 Supplier correctly and completely. If a product is not to the state of the art and/or the product presents a danger, the Supplier is required to provide appropriate notice/warning..
- 8.3. The Buyer shall not be obliged to immediately inspect the delivery/service upon delivery or provide immediate notification of defects (entrepreneurial notification of defects). It is sufficient to provide notice of defects within the warranty period.
- 8.4. In the event of a warranty claim, the Buyer shall be entitled to require free repair, replacement or subsequent delivery of the defective delivery/service at the Buyer's discretion, to have the defect repaired or have the delivery replaced by a third party or to immediately rescind the contract and require adequate rebate or refund of payments already made.
- 8.5. If the defect is remedied by the Supplier, the respective service period shall start again for the entire supply of goods or services affected by the defect upon acceptance of the repair/replacement by the Buyer.
- 8.6. In addition to the warranty claims described above, the Supplier shall be liable for all the damage accruing to the Buyer due to belated and/or defective delivery/service provided by the Supplier or the Supplier's agents.



- 8.7. In the event of a default of delivery, the Supplier shall, up to complete delivery/performance, be obliged to pay a penalty in the amount of 1% of the total value of goods per day of default or part thereof limited however to a maximum of 10% of the total value of the goods. This is without prejudice to the ability to assert a claim for additional damages. If delay exceeds two weeks, the contract can be rescinded by the Buyer without giving reasons. The penalty due up to that moment and possible other costs relating to damages shall be borne by the Supplier.

## **9. INTANGIBLE PROPERTY RIGHTS:**

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

## **10. CONFIDENTIALITY:**

- 10.1. The contracting parties pledge to maintain strict confidentiality with regard to all mutual trade and business secrets that are made known during the contractual relationship.

## **11. LEGAL SUCCESSION:**

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

## **12. BUSINESS LIABILITY INSURANCE:**

- 12.1. The Supplier shall be obliged to maintain business liability insurance appropriate in relation to the order volume and provision of the delivery or service. The existence of this insurance shall, upon the Buyer's request, be verified to the Buyer 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 taking reasonable precautions. If suppliers or transporting companies fail to keep deadlines, this is by no means a force majeure event. This applies in like manner to any potential labour disputes.

## **14. SEVERABILITY CLAUSE:**

- 14.1. If individual clauses of the Standard Purchasing Terms and Conditions as well as of the contractual relationship are ineffective or void, the validity of all remaining provisions shall not be affected thereby. 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 take the purpose and intent of the contract into account.

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## 15. EXCLUSION OF SETOFF:

- 15.1. The Supplier may not set off any claims against money, warranty, damage or other claims to which the Buyer is entitled.

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

- 16.1. For delivery and payment, the Buyer's registered office shall be regarded as being the place of performance even if a transfer is made at a different location by agreement.
- 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 Supplier does not maintain its 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.

## 17. PROCESSING OF PERSONAL DATA

- 17.1. The Seller and its personnel (including the personnel of the Seller's subcontractors, if any) shall process the Client's data in accordance with the applicable data protection legislation as well as in accordance with the Agreement between the parties and any possible written guidelines provided by the Client to the Seller. The Seller undertakes to implement appropriate technical and organizational security measures in order to protect the personal data from any unauthorized access, or accidental or unlawful deletion, alteration, disclosure, transfer or other unlawful processing of the data.

On request of the Client, the Seller shall without delay provide all information needed by the Client to fulfill any requests of data subjects, including access rights, or to comply with notifications or inquiries from data protection authorities as well as notify the Client without delay of all inquiries from data subjects, data protection authorities or other authorities.

Pischelsdorf, dated \_\_\_\_\_

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On behalf of the Buyer

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On behalf of the Supplier