

## **TERMS AND CONDITIONS OF SALE, REPAIR AND DELIVERY**

of Rosenbauer Österreich Ges.m.b.H., reg. at Linz Provincial Court as company n° 86625 s, and of  
ROSENBAUER INTERNATIONAL AG, reg. at Linz Provincial Court as company n° 78543 f.

### **1. DEFINITION OF TERMS USED**

For the purposes of these Terms and Conditions of Sale, Repair and Delivery, the terms given below shall have the following meanings

- 1.1 Customer shall only mean any "consumer" as defined by Directive 1999/44/EC on Certain Aspects of the Sale of Consumer Goods of 25.5.1999 and/or of the Austrian consumer protection legislation known as "KSchG" and to whom these particular Terms and Conditions shall apply.
- 1.2 Contract shall mean any manner of agreement between Rosenbauer Österreich GmbH (referred to hereinafter as RBÖ) or Rosenbauer International AG (referred to hereinafter as RBI) and the customer.
- 1.3 Order shall, in particular, mean any offer made to us by the customer inviting us to enter into a sale agreement.
- 1.4 Offer by RBÖ/RBI (i.e. by ourselves) shall mean any cost estimate, bid and/or any pertinent invitation to the customer to submit a purchase offer (i.e. an order) to us.
- 1.5 Goods shall mean the work to be performed by ourselves in accordance with the respective contract (i.e. the Object of the Agreement). In particular, it shall refer to any item to be supplied by ourselves (i.e. the Object of Delivery)
- 1.6 Contracts involving a foreign country shall refer to contracts in which the customer's principal place of business is located in a country other than Austria.
- 1.7 Forwarder shall mean the forwarding agent, freight haulier or other persons charged with carrying out the shipment.

### **2. OFFERS AND COST ESTIMATES**

- 2.1 All our offers - in all their constituent parts - are without obligation, unless and except to the extent that they are expressly indicated as being binding for a particular period of time. Even during any such engagement period, we shall still be entitled to amend our offers.
- 2.2 Illustrations, offer designations, descriptions, measurements and weights are only approximately authoritative with regard to details; in view of the possibility of modifications owing to new experience and improvements (any such modification to be one which the customer may reasonably be expected to accept), they shall not be binding.  
Our drawings, sketches, photographs, operating manuals, production know-how, software etc. remain the intellectual property of RBÖ/RBI and enjoy legal protection with regard to imitation, duplication, competition etc. Unless our consent has been obtained, they may not be imitated, reproduced or duplicated, nor may they be disclosed or handed over to any third party. Moreover, they may not be used for any purpose other than that for which they were originally supplied. This shall also apply in the event that an agreement is concluded with the customer.
- 2.3 Our prices are to be read as conditional, net ex-works prices only.
- 2.4 Where prices are quoted in foreign currency, the exchange rate used for the offer will be the Austrian National Bank's buying rate for the foreign currency in question on the date of the offer. The price is thus to be read as the price in euros on the said date.
- 2.5 Obvious errors, particularly in our offer or in documents forming part of the offer, entitle us either to cancel the agreement or to make reasonable changes to the agreed prices, at our discretion.
- 2.6 Cost estimates are without obligation, in every respect.

### **3. CONTRACTS**

- 3.1 Contracts shall only come into being by virtue of our written contract confirmation (Pt. 4), whether by post, telefax or e-mail, and shall only become effective for us from this time forth.
- 3.2 If the customer (the orderer of the goods) is not identical with the purchaser or ultimate buyer, then the customer shall, by placing

the order, assume all the commitments of the ultimate buyer or purchaser, entering into the latter's rights and obligations. The orderer is thus also obliged to pay for the goods in cases where - despite the fact that we are ready to deliver - delivery to the purchaser or ultimate buyer is not possible. The orderer undertakes to pay compensatory damages for all costs or diminished earnings resulting from the fact that we cannot now sell the goods, or can only do so elsewhere. This applies both to goods that have already been delivered and to those that have not yet been delivered or are still being manufactured.

- 3.3 Until such time as a decision has been taken as to whether we shall accept a contract (i.e. contract confirmation) or refuse to conclude it, the customer shall be bound by its order for a period of 14 days. During this 14-day period, the customer may only cancel its order with our consent and only after reimbursing us for all costs incurred by ourselves and - at our option - also for any loss of profit.
- 3.4 Even after we have issued a contract confirmation, the agreement shall only be binding upon us if no objections are raised to it by governmental or other public bodies (e.g. import or export prohibitions, production bans, standards, approvals regulations, etc.). In such cases, we are entitled to cancel the agreement without compensation of any kind.

#### **4. CONTRACT CONFIRMATION**

- 4.1 Contracts only come into being by virtue of our written contract confirmation (by post, telefax or e-mail). This confirmation is only issued following clarification of all the technical and commercial questions involved.

#### **5. DELIVERY DATE**

- 5.1 The delivery period shall commence on the date of the contract confirmation. If a down-payment has been agreed, the delivery period shall not commence before the date on which we receive such down-payment. The performance period for fulfilment of the delivery to the customer is 30 days from the date on which the order was submitted by the customer, unless the customer's offer was not accepted by RBÖ/RBI. The delivery may of course also be effected before the end of the performance period.
- 5.2 Delivery dates are quoted "ex-works". We shall have fulfilled our obligation once we have handed over the goods to the forwarder in a timely manner, i.e. before the end of the delivery period.
- 5.3 Where several delivery dates are stated, i.e. agreed, the earlier dates are merely approximate guidelines (i.e. declarations of intent or target dates) which do not establish any legal obligation on our part. We shall use our best endeavours to meet these target dates.
- 5.4 If any change is requested by the customer, we shall be entitled to unilaterally declare a new delivery date.

#### **6. DELIVERY**

- 6.1 We are entitled to effect partial or prior deliveries.
- 6.2 If delivery of the ordered goods is not possible at all, or is not possible in a timely manner, for whatever reason, we shall be entitled - at our own discretion - to deliver either equivalent or similar goods in place of the goods originally ordered from us, at the agreed price. Any such alteration shall only be permissible if it is one which the customer may reasonably be expected to accept. Once the customer approves any such alteration to the goods, it may then no longer invoke any alleged "unreasonableness", and this reason shall not entitle it either to terminate the agreement or to cancel the sale, nor to claim any reduction in price or to otherwise curtail any of its obligations under the agreement.
- 6.3 In cases where operating manuals, spare-parts lists, drawings and other documents are enclosed with the goods, only one copy of each such document shall be supplied. Any additional copies will have to be invoiced separately.

#### **7. DISPATCH**

- 7.1 Unless expressly agreed to the contrary, the goods are shipped uninsured, at the customer's expense and risk. Risk shall not pass to the customer until the goods are placed into the hands of the freight forwarder. Up to a net weight of approx. 30 kg, the goods shall be dispatched by post or by DPD; from a net weight of approx. 30 kg upward, shipment shall be by rail express cargo. Packaging materials cannot be taken back by Rosenbauer.

#### **8. PAYMENT**

- 8.1 The place of performance for all payments shall be Linz, Austria, even in cases where the delivery of the goods or other services is effected - in accordance with the agreement - at some other place.
- 8.2 All payments are to be made in cash or into our account at either Oberbank AG, Bank Austria Creditanstalt AG or Raiffeisen Landesbank OÖ.
- 8.3 The payment must be made without deduction upon receipt of the invoice, unless otherwise agreed in the agreement and/or in the contract confirmation.
- 8.4 If a payment is not made by the agreed deadline, interest will be charged at a rate of 9% per annum, together with all expenses and costs incurred. In this case, we shall be entitled to make the delivery of the goods to the customer, and/or the completion of work in progress, conditional upon the receipt of prepayment of the agreed price, or of bank security for such payment, or to withdraw from the agreement altogether. If the customer should default on a payment, this shall render all agreed delivery dates null and void.
- 8.5 The offsetting of receivables of the customer's or of third parties' against the agreed price is not permitted, except in cases where these receivables are legally connected with the liability in question, or have been either established in a court of law or acknowledged by RBÖ/RBI, or have been declared due for immediate payment in the context of any insolvency on the part of the RBÖ/RBI.
- 8.6 The goods supplied shall remain our property until such time as the agreed purchase price, and any incidental charges (8.4), have been paid in full. Until the passage of title, the customer is not entitled to resell or pledge the goods, or otherwise to hand them

over to third parties, without our consent. If the Goods are trespassed upon by third parties (e.g. seizure), the purchaser is obliged to inform us immediately and to give us the opportunity of asserting our title to the goods. Such assertion of our ownership shall, at any event, be at the customer's expense. Our title shall also still stand in cases where the Object of Delivery has been mixed, combined, processed or otherwise transformed together with other items of the purchaser's or of third parties. If the legal system in whose jurisdictional territory the Object of the Agreement is located does not admit the retention of title, yet still allows us to retain other rights in the Object of the Agreement (especially the right to assign our claims against another purchaser), then we shall be entitled to exercise all rights of this nature. In all cases in which the goods which are subject to retention of title are disposed of, and especially if they should be re-sold, the purchaser is obliged to provide us with all necessary information, to allow us to inspect all necessary documents, and to assign to us (at its own expense) all claims against third parties to whom the Object of Delivery may have been passed on, and - at the same time as any such re-sale - to notify the subsequent purchaser of the assignment, or at least to make a record of the assignment in its books. All levies in connection with the delivery, such as taxes, fees, duties, charges etc., are to be borne by the purchaser.

## **9. CANCELLATION OF THE AGREEMENT**

- 9.1 The customer has the right to cancel this agreement, or the contractual declaration issued by itself, within the period of time stated below, and without stating any reasons. It shall be sufficient if the notice of cancellation is dispatched before the end of the said period. The notice of cancellation is to be addressed to the return address given in the shipping documents, by letter, telefax or e-mail.
- 9.2 The cancellation period shall be of 7 working days, with Saturday not counting as a working day, and shall commence on the date on which the goods were received at the customer's. In the case of contracts involving a foreign country or countries, the customer shall be granted a 14-day cancellation period.
- 9.3 If the customer cancels the agreement, it shall, in turn, be obliged to return the received goods - in their original packaging and without any traces of use - to the return address given in the shipping documents. The costs of such return shipment are to be borne by the customer. RBÖ/RBI, in turn, shall refund the purchase price. If the returned goods exhibit any traces of use or damage, we expressly retain the right to assert any claims for diminution.

## **10. WARRANTY**

- 10.1 Unless the agreement provides for any rights going beyond the below, RBÖ/RBI gives a warranty to the customer (provided that this latter's payment obligations have been fulfilled) to the extent required by the statutory warranty regulations.
- 10.2 The warranty period shall be for 24 months, commencing on the date on which the goods arrived at the customer's. After this period has elapsed, our warranty obligations shall cease.
- 10.3 The customer is obliged to notify us of the defect immediately, and must then send the goods to us without delay. Initially, the customer may only demand that the goods be rectified or exchanged by RBÖ/RBI. If rectification or exchange is impossible or would entail RBÖ/RBI's going to disproportionate lengths, the customer may require reduction in price, or termination. There shall, moreover, be no question of termination in cases of defects regarded by the law as being merely minor in nature.
- 10.4 The warranty coverage shall lapse if any alterations, repairs or other interventions have been carried out on the Object of Delivery without our prior written consent.
- 10.5 Our warranty obligation shall only apply to defects which occur despite the stipulated operating, maintenance and installation instructions having been complied with. In particular, it does not cover defects that result from unsuitable or improper use, overloading, faulty or negligent treatment, non-authorized utilisation and/or modification of any software supplied (pursuant to Pt. 12.2 hereof), the use of untrained or unsuitably trained staff, or natural wear-and-tear, or to defects that occur in cases where the operating, maintenance and other instructions of our suppliers have not been observed.
- 10.6 If the customer arranges for repair to be carried out by a third party, then - even if the customer may have been entitled to make such an arrangement - we may only be invoiced for such costs as we would have incurred ourselves if we had had the repair carried out by our own trained staff.

## **11. DAMAGES**

- 11.1 For injury to persons, the first customer is entitled to damages even in cases of only slight negligence on our part.
- 11.2 It is expressly agreed that we are to indemnify the first customer for any injury to persons, or for any damage to goods that are not the Object of the Agreement, or for other instances of damage and for loss of profit, interruption of business, production outages and all consequential damages, only to the extent that it is proven from the circumstances of the individual case that we have acted with deliberate intent or the grossest negligence.
- 11.3 The Object of the Agreement only offers the safety that is to be expected by reason of statutory provisions, official regulations, operating manuals, instructions from suppliers on how to treat the Object of the Agreement (manuals, service instructions etc.) - especially with regard to prescribed testing and inspection - and other directions given. The customer is obliged to observe all rules regarding the Object of the Agreement, including those issued by the manufacturer, and to use the Goods - including all components and any included software - only for their proper and intended purpose.
- 11.4 We shall only assume non-blame-dependent liability to the extent that the customer would otherwise be directly liable itself. In this case, the liability for the damages is to be apportioned between the customer and ourselves, in good faith and having reasonable and favourable regard to our business circumstances, the nature, scope and duration of the business relationship, and - where applicable - also to the value of components supplied to us.

- 11.5 The customer is obliged to take all reasonable and possible steps to avoid any event of loss, and to minimise any damage which may have occurred. Should the customer fail to take such steps, we shall be entitled to require a fair and reasonable reduction in the size of the damages claim.
- 11.6 If the limitations to our liability agreed here should prove to be entirely or partially without legal force, then the maximum possible limitations to the substance and scope of our liability permitted under the applicable legal system shall apply.

## **12. UTILISATION OF SOFTWARE**

- 12.1 Where the scope of supply also includes software, the customer is granted a non-exclusive right to utilise the software supplied, including its documentation. The software is only made available for use on the Object of Delivery that is supplied for this purpose. Utilisation of the software on more than one system is prohibited.
- 12.2 The customer is only allowed to duplicate, process and adapt the supplied software to the extent allowed by law, and then only insofar as is necessary in order for the person(s) authorised to use the software to do so in accordance with the intended purpose. Any editing, processing or adaptation going beyond the above shall require our express written consent in any case. Any unauthorised processing, alteration or adaptation of the software supplied shall result in the immediate and final forfeiture of the customer's relevant warranty and indemnity rights.
- 12.3 Failure to comply with any installation conditions or installation instructions shall lead to the immediate and final forfeiture of the customer's relevant warranty and indemnity rights.
- 12.4 If the utilisation of the supplied software has been made subject to a time limit by RBÖ/RBI, then the customer shall not be allowed to utilise or otherwise make use of the software after the expiry of this time limit.
- 12.5 Save as may be provided to the contrary in other statutory provisions, decompilation of the supplied software is expressly prohibited and may only be performed with our express written consent.
- 12.6 The customer undertakes not to remove manufacturers' references, especially copyright notices, and to refrain from altering any of these without first obtaining express written consent from RBÖ/RBI.
- 12.7 All other rights pertaining to the software, the source code and the documentation, including all copies thereof, shall remain vested in RBÖ/RBI and/or the software supplier. Sublicensing is not permitted.

## **13. DATA PRIVACY**

- 13.1 Pursuant to the provisions of data-protection legislation, attention is expressly drawn to the fact that in the course of fulfilling each order, customers' names, addresses, telephone and fax numbers, e-mail addresses and modes of payment will be stored on a data medium for the purposes of automation-assisted data processing. Where necessary for fulfilment of the order, RBÖ/RBI is entitled to communicate the customer's data to third parties charged by RBÖ/RBI with carrying out the order. Apart from in this one case, customer data will be treated confidentially and not passed on to third parties.

## **14. JURISDICTION**

- 14.1 The place of performance for all our deliveries and services is Linz, Austria. The place of jurisdiction for all disputes which may arise between ourselves from the agreement or from its formation, implementation or termination, shall be the competent court in Linz, Austria, having jurisdiction in rem.
- 14.2 Submission of any such dispute to a national or international arbitration tribunal shall only be possible with our prior written consent.
- 14.3 In the event of a dispute - of whatever kind - arising in connection with a contract, the present Terms and Conditions of Sale, Repair and Delivery, other written agreements, offers, cost estimates, contract confirmations, invoices, documents, papers, notices, operating manuals, spare-parts lists, price lists (catalogues) etc., the original German text shall always prevail.

## **15. GENERAL REMARKS**

- 15.1 These Terms and Conditions of Sale, Repair and Delivery shall govern the initiation, conclusion, execution and termination of all of our legal transactions, except as may otherwise be agreed in the respective contract confirmation or in other written agreements reached at a later date. They shall also apply analogously to other services performed by ourselves, and in particular to repairs.
- 15.2 All agreements, and any alterations thereto, and all statements that have to be made by reason of the agreements that have been concluded, shall only be effective if made in writing. For this purpose, statements made by telefax or e-mail shall satisfy the requirement for the written form.
- 15.3 General conditions of business of the customer's shall only be effective for us if we have expressly confirmed, in writing, that these shall be effective. Any exclusion of our Terms and Conditions, and any alterations or amendments to them by the purchaser, shall only be effective if we have given our express written consent thereto.
- 15.4 Pursuant to § 35 Sect. 1 of IPRG (the Austrian Private International Law Act) and to Art. 3 Sect. 1 of the European Convention on the Law Applicable to Contractual Obligations, all contracts and contractual relationships (including the initiation, conclusion, execution, termination and formation of the same), and the validity of these Terms and Conditions shall be governed exclusively by Austrian law, to the exclusion of UN commercial law (UN Convention on Contracts for the International Sale of Goods). This also applies especially to questions bearing upon the validity, applicability and interpretation of these Terms and Conditions of Sale, Repair and Delivery.
- 15.5 If any provision - or any part of any provision - of these Terms and Conditions of Sale, Repair and Delivery should be, or become, invalid or void, this shall have no effect upon the validity of the remaining provisions.