

# Terms and Conditions of Sale and Delivery of R+M de Wit GmbH, Bertha-Benz-Allee 7-11, 42579 Heiligenhaus

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**and  
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## Preliminary Note

The following Terms and Conditions shall apply uniformly to R+M de Wit GmbH and Suttner GmbH (hereinafter referred to as „R+M Group“ or individually as „Supplier“). However, only that company of the R+ M Group concluding the respective contract shall be deemed Supplier and contractual partner of the customer. The customers of the respective Supplier are hereinafter referred to as „Buyer“ irrespective of whether a contract for service, a purchase agreement, a contract for work and services, or a contract for work and materials is concluded with them.

## Section 1 Scope of Application

- (1) All deliveries, services, and quotations are made solely on the basis of the present Terms and Conditions. They form a material part of all contracts concluded by the Supplier with its contractual partners (hereinafter also referred to as „Customer“) relating to the deliveries and services offered by the Supplier. They also apply to all future deliveries, services, or quotations to the Customer even if they are not agreed separately again.
- (2) Terms and conditions of the Customer or third parties shall not be applicable even if the Supplier does not separately oppose their validity in an individual case. Even if the Supplier refers to a letter, which includes or refers to terms and conditions of the Customer or a third party, this does not present a consent to the validity of such terms and conditions.

## Section 2 Quotation and Conclusion of Contract

- (1) All quotations of the Supplier are without engagement and not binding unless they are expressly marked as binding or they include a certain acceptance period.
- (2) Solely, the contract concluded in writing including the present Terms and Conditions shall be decisive for the legal relationship between Supplier and Customer. This contract completely reflects all agreements made between the contractual parties regarding the subject of the agreement. Oral commitments of the Supplier prior to the conclusion of the contract are not binding and oral agreements between the parties are replaced by the written contract unless it expressly results from these agreements that they continue to be applicable.
- (3) Supplements to and modifications of the agreements made including these Terms and Conditions require the written form for being effective. Except for managing directors or „Prokurists“ (holder of a special statutory authority), the employees of the Supplier are not authorised to make oral agreements deviating from these Terms and Conditions. In order to comply with the written form requirement, transmission by telecommunication means, in particular fax or e-mail, is sufficient if the copy of the signed declaration is transmitted.
- (4) Information given by the Supplier as to the subject of delivery or service (e.g. weight, dimensions, service values, rating, tolerances, and technical data) as well as illustrations of the latter (e.g. drawings and figures) are roughly authoritative, only, unless usability for the intended use requires exact conformity. They are not guaranteed features but descriptions or identifications of the delivery or service. Customary deviations and deviations due to legal provisions or deviations presenting technical improvements as well as the replacement of components by parts of equal quality are admissible provided that they do not affect usability according to the contractually agreed intended use.
- (5) The Supplier reserves the property and copyright to all quotations and estimates submitted by the Supplier as well as to drawings, figures, calculations, brochures, catalogues, models, tools, and other documents and means provided to the Customer. Without the Supplier's express consent, the Customer must neither grant access to these items nor to their contents to third parties, must not disclose them, use them itself, have them used by third parties, or reproduce them. At the Supplier's request, these items are to be returned completely and any photocopies are to be destroyed if they are no longer necessary in the ordinary course of business or if negotiations do not result in conclusion of an agreement. Storage of data provided electronically for the purpose of usual data backup shall be excluded therefrom.

### Section 3 Prices and Payment

- (1) The prices are applicable to the scope of service and supply indicated in the order confirmations. Additional or special services are invoiced separately. The prices are in EURO, ex works plus packaging, applicable VAT, customs duty in case of export deliveries, as well as fees and other public charges.
- (2) Insofar as the agreed prices are based on the Supplier's list prices and delivery is to be effected only more than four months after conclusion of the contract, the Supplier's list prices applicable at the time of delivery shall apply (less a contractually agreed percentage or fixed discount each).
- (3) Invoiced amounts are to be paid immediately, cashless, by bank transfer, and without any discount unless otherwise agreed in writing. Regarding receipt of payment by the Supplier, the date of payment shall be decisive. Payment by cheque is excluded unless agreed separately in an individual case. Representatives and / or travelling salesmen are entitled to undertake collection only upon presentation of an original, written authorisation. If the Customer fails to pay until the due date, interest at the legally applicable rate is to be paid on the outstanding amounts as from the due date; the right to assert higher interest and further damage in case of delay is reserved.
- (4) Set-off against counterclaims of the Customer or retention of payments due to such claims is only admissible if these claims have not been contested or have been recognised by declaratory judgment.
- (5) The Supplier is authorised to execute outstanding deliveries or render outstanding services only against advance payment or provision of security if after conclusion of the contract the Supplier becomes aware of circumstances which may significantly reduce the creditworthiness of the Customer and due to which the settlement of outstanding receivables of the Supplier by the Customer resulting from the respective contractual relationship (including from other individual orders to which the same framework agreement applies) is endangered.

### Section 4 Delivery and Delivery Time

- (1) Deliveries are made ex works.
- (2) Times and dates for deliveries and services announced by the Supplier are only approximate unless a fixed term or date is expressly guaranteed or agreed. If shipment has been agreed, the delivery times and delivery dates refer to the time of handover to the carrier, forwarder, or any other third party entrusted with the transport.
- (3) Irrespective of the Supplier's rights resulting from the Customer's delay, the Supplier is authorised to claim from the Customer an extension of delivery and performance periods or a postponement of delivery and performance dates by that period during which the Customer failed to comply with its contractual obligations towards the Supplier.
- (4) The Supplier is not liable for the impossibility of delivery or delays in delivery provided that the latter were caused by force majeure or other circumstances, which could not be foreseen at the time of conclusion of the contract (e.g. interruption of operations of any kind, difficulties in the procurement of material or energy, transport delays, strikes, legal lock-out, lack of labour, energy, or raw materials, difficulties in the procurement of required official authorisations, official measures, or outstanding, incorrect, or defaulting delivery by sub-suppliers) and for which the Supplier is not responsible. Insofar as such circumstances significantly impede delivery or performance or render delivery or performance impossible and insofar as such impediments are not temporary, the Supplier is authorised to withdraw from the agreement. In case of temporary impediments, the dates of delivery or performance are extended or postponed by the period of the impediment plus a reasonable starting period. If the Customer cannot be expected to take delivery or accept the provision of service as a consequence of the default, it can withdraw from the agreement by immediate written declaration towards the Supplier.
- (5) The Supplier is entitled to make partial deliveries only if
  - the partial delivery can be used by the Customer in the scope of the agreed intended use,
  - delivery of the remaining ordered goods is ensured, and
  - the Customer does not incur any considerable additional work or additional costs (unless the Supplier accepts to take over these costs).
- (6) If the Supplier is in default with delivery or service or if it is impossible for the Supplier to deliver or perform for any reason, the Supplier's liability is limited to the damages according to Section 8 hereunder.

### Section 5 Place of Performance, Shipment, Packaging, Transfer of Risk, Acceptance

- (1) Place of performance for all obligations resulting from the contractual relationship shall be the registered office of the Supplier unless otherwise agreed. If the Supplier is also responsible for installation, place of performance shall be the place where the installation is to be performed.
- (2) Mode of shipment and packaging are at the Supplier's discretion after due assessment of the circumstances.
- (3) Risk is transferred to the Customer at the latest upon handover of the item to be supplied (while the beginning of the loading operation is decisive) to the forwarder, carrier, or third parties otherwise assigned with the shipment. This also applies if partial deliveries are effected or if the Supplier also accepted to take over other services (e.g. shipment or installation). If shipment or handover is delayed due to a circumstance for which the Customer is responsible, the risk is transferred to the Customer when the goods are ready for dispatch and the Customer is notified thereof by the Supplier.
- (4) Storage costs after transfer of risk are borne by the Customer. If the goods are stored by the Supplier, the storage costs amount to 0.25 % of the invoiced amount of the items to be stored per completed week. Assertion and evidence of higher or lower storage costs are reserved.
- (5) The Supplier takes out insurance policies for the consignment against theft, breakage, transport, fire, water damage, or other insurable risks only at the express request of the Customer and at its expense.

- (6) If the goods are subject to acceptance, the respective item is deemed accepted if
- delivery and installation – if the Supplier is also responsible for the installation – are completed,
  - the Supplier notified the Customer thereof referring to the implied acceptance according to this Section 5 (6) and requested the Customer to accept the items,
  - twelve business days have passed since delivery or installation or the Customer started using the goods, and
  - the Customer fails to accept the goods within this period for another reason than due to a defect notified to the Supplier, which renders use of the goods impossible or impairs use considerably.

### Section 6 Warranty, Material Defects

- (1) The warranty period amounts to one year as from delivery or as from acceptance if an acceptance is required. This period shall not apply to the Customer's claims for damages resulting from injury of life, body, or health or other wilful or grossly negligent violation of duties by the Supplier or its vicarious agents, which become statute-barred according to the legal provisions.
- (2) The supplied items are to be checked thoroughly and immediately after delivery to the Customer or a third party designated by the Customer. They shall be deemed approved by the Buyer regarding obvious defects or other defects, which would have been detected in case of an immediate and thorough check if the Supplier does not receive a written notice of defect immediately after delivery. Regarding other defects, the delivered items shall be deemed approved by the Buyer if the Supplier does not receive the notice of defect within seven business days after detection of the defect; if in case of normal use the defect was detected by the Customer already earlier, this earlier point of time shall be decisive for the beginning of the period for filing complaints. At the Supplier's request, a delivered item complained about shall be returned to the Supplier (freight paid). In case of justified notice of defect, the Supplier reimburses the costs for the cheapest dispatch type; this does not apply if the costs are higher because the delivered item is at another place than the place of intended use.
- (3) In case of material defects of the delivered items, the Supplier is obliged and entitled to select remedy or replacement delivery within a reasonable period. In case of failure, i.e. impossibility, hardship, refusal, or unreasonable delay of remedy or replacement delivery, the Customer can rescind the contract or reduce the purchase price reasonably.
- (4) Should a defect be based on the Supplier's fault, the Customer may claim damages according to the conditions defined in Section 8, only.
- (5) In case of defects of components of other manufacturers, which the Supplier cannot eliminate for licensing or actual reasons, it is at the Supplier's discretion to assert warranty claims towards the manufacturer and supplier for the account of the Customer or to transfer the warranty claims to the Customer. Warranty claims towards the Supplier exist in case of such defects according to the other conditions and these Terms and Conditions, only, if the legal enforcement of the above mentioned claims towards the manufacturer and supplier was not successful or is unpromising, e.g. due to an insolvency. During the term of the legal dispute, the limitation of the respective warranty claims of the Customer towards the Supplier is suspended.
- (6) The warranty is not applicable if the Customer modifies the supplied item or has it modified by third parties without the Supplier's consent and the elimination of the defect is hence impossible or rendered unreasonably difficult. In any case, the Customer undertakes to bear the additional costs of the elimination of the defect arising due to the modification.
- (7) Delivery of used articles agreed with the Customer in an individual case is effected without granting any warranty for material defects.

### Section 7 Property Rights

- (1) According to Section 7, the Supplier guarantees that the delivered item is free from industrial property rights or copyrights of third parties. Each contractual party undertakes to inform the other party immediately in writing if claims regarding violation of such rights are asserted towards it.
- (2) If the delivered item violates any industrial property right or copyright of a third party, the Supplier will modify the delivered item or replace it at its discretion and expense in a way that third parties' rights are no longer violated but that the delivered item continues to satisfy the contractually agreed functions or the Supplier will provide the Customer with the right of use by concluding a license agreement. Should the Supplier fail to realise the above within a reasonable period, the Customer is authorised to rescind the contract or to reduce the purchase price reasonably. Any claims for damages of the Customer are subject to the limitations of Section 8 of these Terms and Conditions.
- (3) In case of violations of law by products from other manufacturers delivered by the Supplier, it is at the Supplier's discretion to assert claims towards the manufacturer and sub-suppliers for the account of the Customer or to transfer the claims to the Customer. Claims towards the Supplier exist in such cases according to Section 7, only, if the legal enforcement of the above mentioned claims towards the manufacturer and sub-supplier was not successful or is unpromising, e.g. due to an insolvency.

### Section 8 Liability for Damages due to Fault

- (1) The Supplier's liability for damages for any legal reason, in particular for impossibility, delay, faulty or incorrect delivery, violation of the contract, violation of duties in case of contractual negotiations and tortuous act is limited according to this Section 8 insofar as this is subject to a fault.
- (2) The Supplier is not liable in case of slight negligence of its executive bodies, legal representatives, employees, or other vicarious agents if it is not a violation of contractually relevant duties. Contractually relevant obligations are obligations for timely delivery and installation of the supplied item, its freedom from defects of title as well as such material defects, which considerably impair its functionality or fitness for use as well as obligations regarding consulting, protection, and proper care which are intended to allow the use of the delivered item to the Customer or to protect life and limb of the Customer's staff or property against considerable damage.
- (3) Insofar as the Supplier is liable for damages on the merits according to Section 8 (2), this liability is limited to damages, which the Supplier foresaw upon conclusion of the contract as possible consequence of the violation of the contract or would have

foreseen if ordinary care was exercised. Indirect and consequential damage caused by defects of the supplied item are only recoverable damages provided that such damage is to be expected if the supplied item is used as intended.

- (4) In case of liability for simple negligence, the Supplier's liability for material damage and other pecuniary loss resulting therefrom shall be limited to an amount of EUR 5 millions per case of damage according to the current coverage of its product liability insurance or liability insurance even if it concerns a violation of contractually relevant obligations.
- (5) The above disclaimers and limitations of liability apply to bodies, legal representatives, employees, and other vicarious agents of the Supplier to the same extent.
- (6) Insofar as the Supplier provides technical information or acts as a consultant and this information or consulting is not included in the contractual scope of performance owed by the Supplier, this is effected free of charge and without any liability.
- (7) The limitations of this Section 8 do not apply to the Supplier's liability due to wilful behaviour, for guaranteed features, due to injury of life, body, or health, or according to the product liability act.

#### Section 9 Reservation of Title

- (1) The reservation of title agreed in the following serves the securing of all currently existing and future claims of the Supplier towards the Buyer from the supply relationship between the contractual parties regarding delivery of goods including balance claims from a current account limited to this supply relationship.
- (2) The goods delivered by the Supplier to the Buyer remain the Supplier's property until full payment of all secured receivables. The goods as well as the goods superseding the latter and covered by the reservation of title are hereinafter referred to as „reserved goods“.
- (3) The Buyer keeps in custody the reserved goods for the Supplier free of charge.
- (4) The Buyer is authorised to process or sell the reserved goods in the ordinary course of business until occurrence of the enforcement event according to Section 9. Pledging and transfer by way of security are inadmissible.
- (5) If the Buyer processes the reserved goods, it is agreed that processing is performed on behalf of and for the account of the Supplier as manufacturer and that the Supplier immediately acquires ownership or – if processing is performed using materials of several owners or if the value of the processed item is higher than the value of the reserved goods – the co-ownership and / or ownership in fractional shares in the newly created item on a pro rata basis of the value of the reserved goods to the value of the newly created item. Should no such acquisition of ownership by the Supplier occur, the Buyer transfers its future ownership or co-ownership in the newly created item – according to the above ratio – to the Supplier already today. Should the reserved goods be combined or inseparably mingled with other items to become a uniform item and if one of the other items is to be regarded as main item, the Supplier transfers its co-ownership in the uniform item to the Buyer on a pro rata basis according to the ratio mentioned in Clause 1 if the main item belongs to the Supplier.
- (6) If the reserved goods are sold, the Buyer assigns to the Supplier already today the claims towards its purchaser arising therefrom – in case of the Supplier's co-ownership of the reserved goods on a pro rata basis according to the share of co-ownership. This also applies to other claims which supersede the reserved goods or otherwise arise in connection with the reserved goods, such as insurance claims or claims from tortuous act, loss, or destruction. The Supplier entitles the Buyer in a revocable way to collect the claims assigned to the Supplier in its own name. The Supplier is entitled to revoke this authorisation of collection only in the enforcement event.
- (7) If third parties seize the reserved goods, in particular by pledging, the Buyer will immediately notify them of the Supplier's ownership and inform the Supplier thereof in order to enable the Supplier to enforce its property rights. If the third party is not able to reimburse the legal and extra-judicial costs incurred by the Supplier in this connection, the Buyer shall be liable towards the Supplier in this respect.
- (8) The Supplier will release the reserved goods as well as the items or claims superseding them insofar as their value exceeds the amount of the secured claims by more than 50 %. The selection of the items to be released accordingly is at the Supplier's discretion.
- (9) If the Supplier rescinds the contract in case of violating behaviour of the Buyer – in particular default in payment – (enforcement event), the Supplier is entitled to require return of the reserved goods.

#### Section 10 Final Provisions

- (1) If the Customer is a businessman, a legal person under public law, or a public special fund or if the Customer does not have a general place of jurisdiction in the Federal Republic of Germany, exclusive place of jurisdiction for any disputes arising from the business relationship between the Supplier and the Customer shall be the registered office of the Supplier. The registered office of the Supplier is hereby also agreed as exclusive place of jurisdiction for legal actions against the Supplier. Binding legal provisions on exclusive places of jurisdiction shall remain unaffected thereby.
- (2) The relations between the Supplier and the Customer shall exclusively be subject to German law. The Convention on the International Sale of Goods of the United Nations of 11 April 1980 (CISG) shall not be applicable.
- (3) Insofar as the contract or these Terms and Conditions contain(s) gaps, those legally effective provisions shall be deemed agreed for covering these gaps which the contractual parties would have agreed according to the economic objectives of the agreement and the purpose of these Terms and Conditions if they had known the gap.

#### Please note:

The Customer acknowledges that the Supplier stores data from the contractual relationship according to Section 28 German Federal Data Protection Act for the purpose of data processing and that the Supplier reserves the right to transfer the data to third parties (e.g. insurance companies) insofar as required for the performance of the contract.

As of: April 2018