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# TERMS AND CONDITIONS OF PURCHASE FOR PLANT, MACHINERY AND APPLIANCES

REHAU GESELLSCHAFT M.B.H. & REHAU POLYMER INDUSTRIE GMBH

## 1. Placing of orders /Application of the Terms and Conditions of Purchase

Orders are only valid if given in writing by REHAU.

Supplier terms and conditions of sale to the contrary become invalid on acceptance of the order. Supplier terms and conditions in offers or order confirmations that differ in part or as a whole do not apply unless REHAU expressly confirms these. The supplier must sign and return the order duplicate.

## 2. Delivery

The place of performance for delivery is the address of the recipient given in the order. The place of performance for payment is Guntramsdorf. A copy of the delivery note countersigned by the consignee must be included with the invoice. The delivery note must have the order number on it. Invoices must be issued and sent quoting the REHAU order number.

With the acceptance of the order, the supplier undertakes to allow customs authorities to check documentary evidence of origin and supplier's declarations and also to provide the necessary information for this, as well as to furnish official confirmations (information sheets) that may be necessary. For EU suppliers: delivery of goods of EU origin – the proof for that is provided by sending a supplier's declaration as per EU Regulation 1207/2001 dated 11.06.2001. For suppliers from preferential countries: delivery of goods qualifying for preferential tariff treatment with EUR.1 movement of goods certificate or declaration of origin on the delivery note. In addition the supplier undertakes to compensate REHAU for the loss arising when the declared origin is not recognised by the relevant authority.

The deadlines agreed in the order are an integral element of the agreement and are always understood without period of grace. In the event of the delivery date or commissioning date or final inspection date being overrun, a contract penalty of 0.5 %, with a maximum of 10 % of the net value of the order is charged to the supplier for each week or part week and deducted from the invoice amount or from the credit balance of the supplier. The contract penalty can be demanded together with performance of the contract, and the supplier must in any case compensate for a loss that exceeds the contract penalty, unless he proves that the delay arose through no fault of his. If delay is looming in the performance then the supplier must inform REHAU immediately of the delay and the measures taken.

The acceptance of the delayed performance does not constitute a waiver of the assertion of compensation claims or of the contract penalty.

Regardless of any INCOTERM that may have been agreed, the risk passes to the recipient on delivery or, in as far as agreed, on acceptance in accordance with Clause 3. Goods delivered by lorry are only accepted at the recipient's premises Monday to Thursday between 7.00 am and 3.00 pm, Friday until 11.00 am. Deliveries are not deemed as made until the REHAU delivery note has been duly undersigned.

In the case of deliveries abroad, the supplier must supply the documents required for export in good time, including any export permits that may be required.

## 3. Acceptance

A preliminary acceptance of the delivery item is only made if expressly agreed on in the order. This takes place in the manufacturer's works and is deemed to be passed if REHAU issues the written shipment approval. The shipment approval is not deemed to be acceptance and performance of the contract and does not in any way signify that REHAU waives the assertion of rights in particular under Clauses 2 and 4 of these terms and conditions.

In as far as the order provides for commissioning, this takes place at the place of performance and is completed with the subject of the contract being deemed in full operational readiness and issued with a certificate of conformity (normally the CE Certificate of Conformity). In all cases, one part of the commissioning consists of training and instruction that must enable the operating personnel to operate the delivery item in compliance with the relevant rules. At this point in time, the complete documentation as per Clause 8 must be available. If agreed on in the order, the operational readiness shall be documented by a certificate to be prepared by the supplier. The certificate must be sent to REHAU Gesellschaft m.b.H. Purchases. The commissioning is only deemed due acceptance, if no final inspection was agreed on under series production conditions.

In as far as the order provides for a final inspection under series production conditions, this takes place at the place of performance at the latest within ten weeks after the start of the series. The successful final inspection is deemed to be the date of performance. The final inspection conforms to the criteria defined in the contract and is documented by a hand-over/acceptance certificate.

Commissioning and hand-over/acceptance certificates are only valid if signed by the supplier and the works manager or the sales office manager or the REHAU divisional manager. The supplier must immediately remedy, free of charge, any defects that have been found. However, this does not affect REHAU's warranty claims. REHAU has the right to report any visible defects that may have been overseen within 2 months from the date of delivery (Clause 2.) or acceptance.

If neither a commissioning nor a final inspection are provided for in the contract, then the contractually agreed delivery date is deemed to be the date of performance. However, the contract is not fulfilled until the CE Certificate of Conformity is produced. REHAU's incoming inspection is limited to an identity check and checking for transport damage.

In this case the time limit for claims is twelve weeks from the receipt of the goods or the discovery of hidden defects.

#### **4. Warranty/Liability**

The warranty period is 24 months from the date of performance, but no more than 36 months from the date of the consignment note. The warranty period for hidden defects is 5 years from the date of performance. The warranty period is extended by the duration of the interruption of business caused by repair work on or supply of replacement parts for the delivery item. The repairs and replacements come under the full warranty period again.

The supplier guarantees expressly the qualities and performances specified in the order and also the functionality of the subject matter of the contract. Further, the delivery item must comply with the accepted engineering standards. Spare parts must be available for delivery for at least 10 years. Finally, the supplier undertakes to design the structure of the delivery item for a life of at least 10 years from the date of performance. The supplier takes complete responsibility for the subcontractors and suppliers he may involve.

In the event of defective delivery, REHAU can at its discretion demand rectification of defects, replacement, reduction in price and cancellation of sale, whereby in each case, over and above that, the right to damages, also for all consequential damages, remains reserved. If, where there is a contract for work and services (and supply), defective quality or delayed completion can already be determined with certainty in the course of the preparation of the work, REHAU has the right to grant an appropriate period of time for rectifying the defects and in the case of non-compliance, at its discretion to withdraw from the contract, to demand a reduction in price, or to have the work completed by a third party at the contractor's cost, whereby, in each case, the assertion of damages, also for all consequential damages, remains reserved.

If claims are made against REHAU due to defective or wrong deliveries, REHAU is entitled to recourse, whereby the supplier must indemnify and hold REHAU harmless. REHAU is authorised to offset or to exercise retention rights for all due or not-due claims that REHAU has against the supplier.

The supplier indemnifies REHAU without limit of time against all claims that might arise from a law on defective products or from comparable extra-contractual claims. Each order is made on the assumption that the supplier is fully insured to cover a possible product liability risk. Proof of the corresponding insurance cover must be shown to REHAU on request. In this respect the supplier indemnifies REHAU and keeps it indemnified.

The supplier is liable for ensuring the delivery items delivered, in as far as they are not manufactured in accordance with REHAU drawings, do not infringe any patent rights at home or abroad.

#### **5. Work results, design documents**

In as far as the delivery item is built using REHAU's drawings, data, tender specifications, specifications and software, REHAU has the all rights to the know-how developed by the suppliers and other findings (work results), in particular the unrestricted, exclusive right of use, the copyright to computation documents, drawings, software etc. In as far as software is integrated into or otherwise supplied with the delivery item, the supplier is obliged to give out the source code so REHAU has unrestricted exclusive right use. In as far as work results or parts of this can be protected by property rights, then REHAU alone has the right to these new industrial property rights, whereby the transfer of these patents to REHAU is in any case covered by the contractually agreed purchase price or compensation for work.

In as far as design documents are drawn up by the supplier for the delivery item, then these are the property of REHAU. The supplier must issue these to REHAU on request. REHAU expressly retains the right to forward the documents to third parties as well. The supplier is not entitled to use the documents etc. without REHAU's written consent. However, consent to this must not be refused arbitrarily.

## **6. Secrecy**

The supplier is obliged to keep as a trade secret, all knowledge about the manufacture or other information gained in connection with carrying out the order or a visit, as well as all drawings, orders and business relationships and not to make these known to third parties in any way whatsoever. In his advertising, the supplier may only refer to his business relation with REHAU with REHAU's express written agreement.

Any parts manufactured according to the specifications or drawings of REHAU or parts protected in accordance with the statutory provisions of the protection of industrial property rights for REHAU must not be supplied or otherwise given to third parties. Drawings, data media, electronic data, standard sheets etc. remain the property of REHAU and must be returned on completion of the order.

Employees whom the supplier charged with carrying out the order, as well as possible suppliers and subcontractors will have corresponding obligations to maintain secrecy imposed on them and instructed with respect to the criminal law, competition and labour legislation provisions applicable to the employment.

## **7. Conformity/Safety and Accident Prevention**

The delivery item must conform to the statutory rules in force in the recipient country for its implementation and operation, especially the regulations concerning safety and accident prevention in accordance with the state of the art. The supplier is completely responsible for obtaining and meeting said rules and regulations. The supplier must advise REHAU of existing or future prohibitions or limitations on use for parts and operating materials of the delivery item as well as for the delivery item itself when it is used in the recipient country.

Under no circumstances may the delivery item exceed an A-weighted sound pressure level emission at the workplace (workplace related emission value) or the measuring area sound pressure level of 75dB(A) measured at a distance of 1 m (1-m measuring areas sound pressure level). Stricter statutory standards will be retained.

The CE mark (incl. CE Certificate of Conformity) is sufficient proof of adherence to safety regulations, in as far as the delivery item does not pose a risk of injury and the regulations on accident prevention and safety in force at the installation location are complied with.

If the presence of employees is necessary at the place of performance in order to fulfil the order, the supplier has complete responsibility for the behaviour of said employees and ensures that the special safety regulations applicable in this case are adhered to. REHAU is authorised to give instructions to the personnel in matters of safety.

The contractor takes into account the requirements of a modern environmental management system in terms of ISO 14001 in his company.

## **8. Documentation/ Operating Material /Coating**

The minimum provision of documentation to accompany the delivery is as follows: operating instructions, list of spare parts and parts subject to wear, along with prices and type specifications of the bought-in parts, risk analysis according to EC Machinery Directive 98/37/EC dated 22.06.1998, maintenance instructions, circuit diagrams, sectional drawings and oils/lubricant to be used with reference to commercial products. One set of these documents are to be sent with the delivery item to the recipient in the language of the recipient's country and, unless otherwise specified in the order, one set in German in file form to REHAU AG&Co., PROD 2284, Postfach 1460, D-95104 Reha. In as far as conditions with regard to CE conformity go beyond what is said here, the supplier must also comply with these.

If required the supplier must submit a service and spare parts draft for the subject matter of the contract two months before the date of performance. The spare parts draft must contain the alternative consignment stock.

Standard for the rust protection provision is the state of the art for comparable objects of purchase.

The coloration must correspond to the REHAU Corporate Design, RAL 7038 (structural colour), whereby the paint used must meet the requirements of the delivery item in each case. The delivery item must not have any company names and manufacturer's mark, with the exception of nameplates and screen logos.

The performance scope of the supplier includes the provision of oils/lubricants for the first filling of the subject matter of the contract, whereby the cost for this is, in any case, included in the contractually agreed purchase price or compensation for work.

## **9. Withdrawal from the Contract**

Apart from the cases provided for in law or in the contract, REHAU is entitled in the case of events of unforeseen circumstances such as strike, lockout, fire, explosions, natural disasters, epidemics, war, uprising, mobilisation, government actions etc. and in the case of inability to pay or opening of insolvency proceedings against the supplier, to withdraw from the contract, whereby, all compensation claims in this connection against REHAU are excluded.

## **10. Miscellaneous**

The supplier is in no way entitled to assign his accounts receivable from REHAU, and not even for the purposes of the supplier's credit security.

In the performance of the order the supplier is obliged to use REHAU products in as far as this is technically possible and said products are competitively offered. The onus of proof is on the supplier.

REHAU does not recognise a retention to title of ownership for the deliveries.

## **11. Law to be applied/Place of Jurisdiction**

Austrian law shall be agreed on for the contractual relation between the Parties, whereby the rules of the agreement of the United Nations dated 11th April 1980, concerning contracts on the international sale of goods, are expressly excluded. Austrian law also applies for matters of consensus, defects of legal intent and representation, as well as for the agreement on the Place of Jurisdiction in Paragraph 2.

Place of Jurisdiction for all disputes arising from REHAU orders is the local court at the address Wiener Neustadt with jurisdiction in rem for REHAU Gesellschaft m.b.H. or St. Pölten with jurisdiction in rem for REHAU Polymer Industrie GmbH. However, REHAU also has the right to call the relevant court at the supplier's place of business.