

General Terms of Purchasing of Roth Hydraulics GmbH

Section 1 General – Area of Validity

1. Our terms of purchasing shall apply exclusively; we shall not accept contradictory terms of purchasing or terms deviating from our terms of purchasing of the supplier unless we have explicitly agreed to their validity in writing. Our terms and conditions of purchasing shall apply even in the event that we unreservedly accept the delivery from the supplier in the knowledge of contradictory terms or terms deviating from our terms of purchasing.
2. Our terms of purchasing shall apply only versus businessmen according to Section 310 Paragraph 1 BGB (German Civil Code).

Section 2 Offer – Offer Documents

1. The supplier shall be obliged to accept our order within a period of 2 weeks.
2. We shall reserve the right of property and copyright to illustrations, drawings, calculations and other documents; they shall not be made accessible to third parties without our explicit written consent. They shall only serve for the purpose of production on the basis of our order; upon completion of the order they shall be returned without further request. They shall be kept secret against third parties; insofar the provision of Section 9 Paragraph (4) shall apply.

Section 3 Prices – Terms of Payment

1. The price stated in the order shall be binding. Unless agreed otherwise in writing the price shall include delivery CPT our domicile, including packaging. Return of the packaging material shall require special agreement.
2. The legally valid VAT shall be included in the price.
3. Invoices can only be processed if they bear – according to the provisions in our order – the order number stated therein; the supplier shall be liable for any consequences resulting from not observing this obligation, unless he proves that he is not responsible.
4. We shall pay, unless otherwise agreed, the purchase price within 30 days, as of delivery and receipt of the invoice, at a discount of 3% or net within 60 days upon delivery and receipt of the invoice.
5. We shall be entitled to rights to balance and rights of retention in the legal scope.

Section 4 Delivery Time

1. The delivery time stated in the order shall be binding.
2. The supplier shall be obliged to inform us immediately if circumstances occur or become known to him as a consequence of whom the agreed delivery time cannot be observed.
3. In the event of a delayed delivery we shall be entitled to the legal claims. Especially, we shall be entitled, upon unsuccessful expiration of a reasonable period, to demand compensation instead of the service and withdrawal. If we request compensation, the supplier shall be entitled to prove to us that he is not responsible for the breach of duty.

Section 5 Transfer of the Risk – Documents

1. Unless otherwise agreed in writing, delivery shall be made free domicile.
2. The supplier shall be obliged to state our exact order number on all delivery documents and delivery notes; if he fails to do so, we shall not be responsible for processing delays.

Section 6 Examination for Defects – Liability for Defects

1. We shall be obliged to examine the goods within a reasonable period for possible deficiencies of quality or quantity; complaints shall be considered timely if they are received by the supplier within a period of 5 working days, as of receipt of the goods, or, in the event of covert defects, as of the time of discovery.
2. We shall be entitled to the unabridged legal warranty claims; we shall, in any case, at our own choice be entitled to request repair of the defects or delivery of new goods by the supplier. The right to compensation, especially to compensation instead of the service shall be explicitly reserved.
3. We shall be entitled, at the supplier's cost, to repair the defects ourselves in the event of imminent danger if there is special need for urgency.
4. The limitation period shall be 36 months according to Section 438 Paragraph 1 No. 3 BGB, as of transfer of the risk. Section 438 Paragraph 1 No. 2 BGB shall remain unaffected.
5. If the delivered goods are used in an end product that is sold to a consumer, we shall be entitled to a claim of recourse against the supplier in the event that the consumer makes a claim on the basis of Sections 478, 479 BGB, on the basis of the aforementioned provisions. Concerning scope, content and limitation period Sections 478, 479 BGB shall apply respectively.

Section 7 Product Liability – Exemption – Liability Insurance Coverage

1. If the supplier is responsible for a defect of the product he shall be obliged to exempt us from damage claims of third parties upon first request insofar the cause is determined to be his scope of responsibility and organization and he is liable in the legal relationship with third parties.
2. In the scope of his liability for damage in the sense of Paragraph (1) the supplier shall also be obliged to compensate for possible expenditure according to Sections 683, 670 BGB or according to Sections 830, 840, 426 BGB that result from or occur in connection with a product recall made by us. We shall inform the supplier – insofar as possible and practicable – about content and scope of the measures taken for the product recall and shall give him opportunity to comment. Any other legal claims shall remain unaffected.
3. The supplier shall agree to maintain a product liability insurance with a limit of indemnity of € 5 mil per personal damage/material damage – flat rate; if we are entitled to further damage claims these shall be unaffected.

Section 8 Industrial Property Rights

1. The supplier shall be responsible that in connection with his delivery no rights of third persons are violated.
2. If we are made liable by a third party on this account the supplier shall be obliged to exempt us from these claims upon first request; we shall not be entitled – without the supplier's consent – to make any agreements with said third party, especially not to conclude a settlement.
3. The obligation of exemption of the supplier shall apply to any expenses that are a consequence for us due to or in connection with the liability claim.
4. The period of limitation shall be ten years, as of conclusion of the contract.

Section 9 Right of Retention – Provision of Material – Tools – Secrecy

1. Insofar as we provide the supplier with material we shall retain title thereof. Processing or re-shaping shall be carried out for us by the supplier. If the conditional goods are mixed with other objects that are not our property we shall acquire shared ownership of the new object at the proportion of the value of our object (purchase price plus VAT) in relation to the other processed objects at the time of processing.
2. If the goods provided by us are mixed inseparably with other objects that are not our property we shall acquire shared ownership of the new object at the proportion of the value of our object (purchase price plus VAT) in relation to the other processed objects at the time of processing. If the mixing is carried out in a way that the supplier's object is considered the main object it shall be deemed agreed that the supplier shall transfer shared ownership to us proportionately; the supplier shall keep the sole ownership or shared ownership for us.
3. We shall retain the title to tools; the supplier shall be obliged to use said tools only for the production of the goods ordered by us. The supplier shall be obliged to insure the tools that are our property at new price value against damage by fire, water and theft at his cost. At the same time, the supplier shall as of now cede any compensation claims from the insurance; we shall accept said cession. The supplier shall be obliged to carry out possible necessary maintenance and inspection works of our tools and to carry out all such maintenance and inspection works timely at his cost. Possible faults shall be communicated to us immediately; if he culpably fails to do so damage claims shall remain unaffected.
4. The supplier shall be obliged to keep strictly secret any illustrations, drawings, calculations and other documents he received from us. They shall be made accessible to third parties only upon our explicit consent. The obligation to secrecy shall extend beyond the processing of this contract; it shall expire if and insofar the production knowledge contained in the provided illustrations, drawings, calculations and other documents has become generally known.
5. Insofar as our lien accrued according to Paragraph (1) and/or (2) exceed the purchase price of all our not yet paid conditional goods by more than 10% we shall, upon the supplier's request, be obliged to release the lien at our choice.

Section 10 Court of Jurisdiction – Place of Fulfilment – Applicable Law

1. Insofar as the supplier is a businessman, our domicile shall be the court of jurisdiction; however, we shall be entitled to bring action against the supplier at his domicile.
2. Unless stated otherwise, our domicile shall be place of fulfilment.
3. The applicable law shall be the national law of the Federal Republic of Germany (BGB, HGB – German Commercial Code – etc); application of the UN purchasing law shall be excluded.