

## **General Terms of Purchase for C. Rob. Hammerstein GmbH & Co. KG (hereinafter "CRH") Issue 12/08**

### **I. Key provisions**

CRH's terms and conditions of purchase are exclusive. Any suppliers' general terms & conditions which contradict or deviate from CRH's terms and conditions of purchase will not be entertained by CRH and are deemed not to apply even if they are not individually and explicitly opposed.

### **II. Order**

1. The Supplier undertakes to accept the order without delay. If the order is not accepted in a timely manner, CRH reserves the right to rescind the order. Delivery call-ups are binding.
2. CRH is entitled to require modifications in the design or construction of the product ordered within reasonable limits. In such cases, the consequences, in particular, additional or reduced costs and changed delivery dates are to be mutually agreed.

### **III. Prices, shipping, packaging, stock**

1. The agreed prices are deemed to be fixed prices. The costs of packaging, freight forwarding, insurance and transport to the shipping destination given by CRH or the delivery address are included in the prices. Where the prices have not been agreed before the order is placed, they are to be communicated in the order acknowledgement but, in this case, they will require confirmation by CRH before delivery. The method of pricing does not affect the agreement on the place of performance.
2. CRH Logistics terms in their latest edition (Logistics Guideline for Suppliers) apply. Supplier bears the risk for accidental perishing and loss. Passing of risk is CRH at works.
3. The purchase commitment is only valid with the reservation that the seller is competitive. Competitiveness in this contract covers all competitiveness relevant factors, in particular technology, quality, price and ability to supply. CRH has the right to perform a competition analysis regarding the aforementioned factors. This analysis has to be documented comprehensible. If CRH is able to prove that the seller is no more competitive with other competitors (under same general conditions) the seller has the right within a period of 3 months to re-establish the competitiveness. The 3 months are valid from the date of receipt of written notification by CRH. If the seller won't be competitive within this term CRH has the right to terminate the contact with a notice period of 6 months.
4. Shipment of goods takes place at the supplier's risk. The risk of all forms of damage, including accidental sinking, remains with the supplier until the goods are delivered to the agreed delivery address or place of application.
5. At all phase during the delivery the supplier holds at his warehouse a safety stock of 5 days consumption in finished goods.

### **IV. Payment**

1. Net payment will be made 60 days net after the goods and complete original invoice have been received in accordance with the contract. The due date for payment is calculated from the date of receipt of the invoice and/or the date of the delivery (if delivery is before the agreed date, the agreed delivery date will be used) and in accordance with our fixed payment dates.
2. If the delivery is non-conforming, CRH reserves the right to keep back payment of the supplier's invoice in whole or in part until the delivery has been completed as agreed in the contract.
3. The supplier is not entitled to assign any CRH receivables to any Third Party or to have these collected by Third Parties unless prior written approval has been obtained from CRH.

### **V. Reject reports/ CRH Quality Management Guidelines for Suppliers**

1. The supplier undertakes to perform suitable measures in his incoming goods inspection department and in intermediate final and pre-shipment tests to ensure that only products meeting the specific requirements are, in fact, delivered. CRH undertakes to perform only identity and quantity checks and to check the deliveries for transit damage to the packaging of the goods delivered. Where it is justifiable under normal business conditions, CRH will either test the subassemblies manufactured using the delivered products before the next production operation commences or will subject the final product manufactured with the delivered products to final testing (e.g. a product audit). CRH is not required to perform any other tests in accordance with §§ 377 et seq. German Commercial Code.
2. CRH undertakes to communicate to the Supplier a report on any defects in the delivery as soon as they have been discovered in the normal course of business. In this context, the Supplier hereby waives the right to the defence of tardy complaint provided there is no evident defect.
3. CRH's current Quality Management Guidelines for Suppliers as amended from time to time are considered to be an integral part of the contract.

### **VI. Confidentiality**

1. The Supplier undertakes to treat all documents, information and data etc. relating to CRH to which he becomes a party in connection with the contractual cooperation with the utmost confidentiality in accordance with normal business practice and in compliance with current data protection legislation provided the information is not already in the public domain.
2. The Supplier undertakes in particular not to pass on to or otherwise make available to unauthorised Third Parties any drawings, models, templates, samples and other such objects.
3. The Supplier undertakes to require a corresponding undertaking from his employees and subcontractors. At CRH's request, the Supplier will present the appropriate evidence of this undertaking.
4. The Supplier is only permitted to advertise the fact that these business relations exist or use CRH products, components or documentation for advertising or any other form of publication after prior written approval by CRH.

### **VII. Delivery dates and deadlines, default and force majeure**

1. All agreed dates and periods are considered binding. Delivery call-ups are fixed dates. The receipt of the goods by CRH is considered to be the effective date of delivery or period of delivery.

2. If the Supplier realises that an agreed date or deadline will not be adhered to for whatever reason, he undertakes to inform CRH without delay quoting reasons and the duration of the delay in writing / by fax.
3. If delivery is made before the agreed time, CRH reserves the right to return the delivery at the Supplier's expense. If a premature delivery is not returned, the goods will be stored until the agreed delivery date at CRH but at the expense and risk of the Supplier.
4. Partial deliveries will only be accepted by CRH as exceptions after explicit agreement. Where partial delivery has been agreed, the residual quantity must be listed.
5. The Supplier undertakes to reimburse the Buyer for any damages caused by the delay and being attributable to Supplier.
6. In case of delay following liquidated damages will become due: 1% of the delivery value per day of late delivery with a limit at 10%. Supplier may evidence that CRH had no damages or damages falling below 1% per day. Sellers Payment of liquidated damages will not waive any incorporated reimbursement rights of the buyer as of § VII 5.
7. Force majeure, labour disputes, social unrest and other unforeseen, unavoidable, severe incidents will have the effect of releasing the contractual parties from their obligations under this contract for the duration and the extent of the disruption. The contractual parties are obliged to provide the necessary information within the context of what is reasonable and without delay and to adapt their obligations bona fide to the changed situation.

#### **VIII. Warranty**

1. Where the Supplier delivers non-conforming products, the Supplier will initially be afforded the opportunity to make good the deficiency (rework, redelivery) unless this should be unacceptable to CRH. Where CRH demands that the Supplier make good a deficiency but the Supplier cannot comply with the request within the time allotted by CRH, CRH reserves the right to carry out the remedial work itself or to have the work carried out by a Third Party at the expense of the Supplier. In urgent cases where it would be unacceptable to wait, CRH reserves the right to carry out the remedial work itself or to have the work carried out by a Third Party at the expense of the Supplier without setting a grace period. This would apply, for example if unusually high expenses can only be avoided through taking immediate action.
2. The warranty ceases at the end of 36-month period after first registration of the vehicle or fitting of the spare part, however at the latest 48 months after delivery to CRH. Claims for compensation by CRH against the Supplier due to claims resulting from defects in accordance with §§ 478, 479 German Civil Code remain unaffected. CRH reserve the right to make such claims even though the final customer is a business and not a consumer.
3. The warranty is subject to the provisions of current legislation unless some other arrangement has been agreed in writing.

#### **IX. Liability**

1. The Supplier is obliged to reimburse CRH for any damage of a direct or consequential nature as a result of a non-conforming delivery or for any other reasons for which the Supplier is responsible.
2. Where the Supplier is responsible for a product defect is and bears responsibility towards Third Parties, he is obliged to indemnify CRH against any claims by Third Parties.
3. Within the context of his liability for damages, the Supplier is also responsible for reimbursing any expenditure which may occur in connection with measures required to ward off action for damages (e.g. recall operations). CRH undertakes to inform the Supplier of the content and scope of a
4. CRH undertakes to inform the Supplier of the content and scope of any such measures - provided this is reasonable and possible - to give him the opportunity to comment.
5. The Supplier undertakes to take out and maintain product liability insurance at a level commensurate with the obligations referred to herein.

#### **X. Proprietary rights**

1. The Supplier is liable for any claims resulting from contractual application of the goods delivered to us where this application is an infringement of proprietary rights and applications for proprietary rights ("proprietary rights"), where at least one of the rights infringed upon is published in the country of the Supplier, the European Patent Office or in one of the following countries: Federal Republic of Germany, Great Britain, Austria, France or USA.
2. The Supplier undertakes to indemnify CRH and the customer from any claims resulting from the use of any such proprietary rights.
3. The contractual parties undertake to inform each other without delay if any risk of infringement or alleged infringement takes place in order to give each other time to prepare defences against the claims.

#### **XI. Written form**

Any modifications or addenda to these terms & conditions must be in writing. The same applies to any conclusion, amendments and addenda to the individual contracts, in particular contracts for delivery, delivery call-ups. Delivery call-ups and any amendments and addenda to them can also be notified by modern transfer or machine-readable media.

#### **XII. Conclusions**

1. If insolvency procedures have been initiated with regard to seller's assets, the buyer is entitled to withdraw from the contract with regard to that part of it not yet fulfilled.
2. This contract is exclusively subject to the laws of the Federal Republic of Germany. The UN Convention on the International Sale of Goods and the German conflict of law rules are explicitly excluded.
3. The place of performance for deliveries and payment is Solingen unless alternative arrangements are made in the details of the order.
4. The Courts at Solingen shall have jurisdiction.
5. If any provision or part of these Terms and Conditions of Sale or an Agreement is rendered void or unenforceable, for whatever reason, then it shall be void and unenforceable to that extent only and no further. Any such void or unenforceable part of the Agreement or the Terms and Conditions of Sale shall be (deemed to be) replaced by provisions that are neither void nor unenforceable and that differ as little as possible, in view of the aims of the Agreement and the Terms and Conditions of Sale and the relevant provisions, from the void and/or unenforceable provisions.