

# Reich GmbH

## General Terms and Conditions of Purchase Nov. 2011



Precision to move

Applicable to business Transactions with companies, legal entities under public law and special funds under public law.

### 1. General

- 1.1 These Terms and Conditions shall become an integral part of this purchasing contract as well as future purchase agreements with the supplier. Opposing supplier's Terms and Conditions or constraints are not recognized unless the Reich GmbH has given its explicit and written consent to their being valid in individual cases.
- 1.2 Other understandings, amendments or ancillary agreements shall not be effective unless Reich GmbH has given its written consent thereto.
- 1.3 The Acceptance of goods or services from the supplier (hereinafter: Contractual Object) or payment for them shall not constitute any agreement.
- 1.4 The delivery and collection of goods may be performed during the regular business hours of Reich GmbH (Monday – Friday, 7:00am – 3:30pm). A deviation in time has to be agreed separately.

### 2. Offer

- 2.1 In his quotation, the supplier has to closely adhere to the inquiry and in case of deviations and expressly identify any deviations therefrom in writing.
- 2.2 The quotation has to be provided free of charge and does not establish any obligations for Reich GmbH. Cost estimate shall only be remunerated upon specific agreement.

### 3. Order

- 3.1 Orders and alterations to orders shall be made in writing. In case of doubt, verbal agreements or arrangements discussed over the phone shall only be binding if confirmed in writing.
- 3.2 The supplier shall promptly check the order for any noticeable errors, ambiguities or incompleteness, or the unsuitability of Reich GmbH-chosen specifications for intended use, and promptly inform us about any necessary changes to or more detailed specification of the order.
- 3.3 Each order or alteration to an order shall be confirmed in writing by the supplier within three days.
- 3.4 The following details shall be stated in all correspondence; the complete order number or contract number and call number, date of order and the dispatcher of Reich GmbH.
- 3.5 The regulations concerning quality (guidelines, standards, and regulations part name and article name), safety at work, protection of the environment and social responsibility for the supplier (quality assurance agreement), as well as delivery and packaging instructions of Reich GmbH are integral part of the contract.

### 4. Delivery

- 4.1 Variations from Reich GmbH's concluded contracts and orders are permitted only after Reich GmbH's prior consent in writing.
- 4.2 Agreed dates and time limits are binding. The receipt of the goods at Reich GmbH defines the compliance with the delivery deadline or delivery period. If the delivery is not agreed as 'free at factory gate' (DAP or DDP in accordance with Incoterms 2010), the supplier must make the goods available in due time, taking into account the time to be agreed with the carrier for loading and dispatch.
- 4.3 The supplier has to insure the necessary capacities, in order to be able to carry out the quantities including the forecast quantities from orders and delivery schedules by Reich GmbH. The commitment from delivery schedules of Reich GmbH is based on twelve (12) weeks for production approval and twelve (12) weeks for material approval, limited to the last delivery schedule. Quantities, which exceed these release periods, are to be considered as forecast quantities. Hereto diverging agreements are possible and require written form. Delivery schedules are binding for the supplier, unless the supplier explicitly indicates disagreement of such a delivery schedule because of unreasonable quantities or dates. The supplier shall name the earliest possible delivery dates in written form within the next two (2) days, if the delivery shall take place within the next fifteen (15) days, otherwise within three days after receiving the delivery dates in question.
- 4.4 If the supplier has agreed to carry out the installation or assembly, or in the absence of any agreement stating otherwise, the supplier shall bear all necessary expenses, such as travel expenses or tooling charges and daily expenses.
- 4.5 If the supplier foresees any difficulties with regard to the production, supply of required materials, compliance with the delivery deadline or other similar circumstances which might interfere with the supplier's ability to deliver in a timely fashion or to deliver the agreed level of quality, the supplier is required to inform Reich GmbH.
- 4.6 In the case of delivery delays, Reich GmbH is entitled to unrestricted legal claims, including the right to step back from the contract and the right to replacement of damages instead of the supply/service after exceeding an appropriately set deadline. The supplier is obliged to compensate Reich GmbH for all damages due to delay. In the event of delay, Reich GmbH shall be authorized to claim for each entire week of delay lump sum default compensation in the amount of 0.5% of the delivery value, however no more than an overall amount of 5% of the delivery value. Further legal claims shall remain unaffected. The supplier as well as Reich GmbH is entitled to provide evidence that the actual loss or damage caused by the delay was nonexistent, lower or higher than claimed. In the latter case Reich GmbH is entitled to claim the higher amount of damage.
- 4.7 The unconditional acceptance of the delayed delivery or service does not include a renunciation of the claims to compensation to which Reich GmbH is entitled on account

of the delayed delivery of service; this applies until the completion of payment owed by us for the delivery and service concerned.

- 4.8 Partial deliveries are to be agreed with Reich GmbH in advance and are only permissible with the consent or claim of Reich GmbH.
- 4.9 Subject to other proof, the values ascertained by Reich GmbH in the process of incoming goods inspection are definitive for the number of items, weights and measures.
- 4.10 With regard to any software that is part of the product delivery, including its documentation, we shall have the right of utilization to the extent permitted by law (§§ 69a ff. UrhG – Copyright Act).
- 4.11 Reich GmbH also has the right of use of such software, included the related documentation, with the agreed performance features and to the extent necessary for making use of the product as agreed. Reich GmbH may create a backup copy without explicit agreement.

### 5. Force Majeure

- 5.1 War, civil war, export restrictions or trade restrictions due to a change in political conditions, as well as strikes, lockout, stoppages, cutting back of operations and other events, which make fulfillment of the contract impossible or unreasonable, are regarded as force majeure and release Reich GmbH for the duration of their existence from the obligation of taking delivery in good time. The contacting partners are obliged to give notification about this and to adapt their obligations to the changed conditions in good faith.
- 5.2 During such events and for a two week period thereafter we Reich GmbH is entitled – notwithstanding our other rights – to withdraw from the contract in whole or in part, provided that such events are not of inconsiderable duration and our requirements are considerably reduced as the goods have to be procured elsewhere as a result thereof. In this case Reich GmbH is entitled to withdraw from the agreement in regard to the yet unfulfilled portion.

### 6. Invoice and Payment

- 6.1 Invoices shall agree with the respective orders in their wording, order of items and prices. Additions or reductions of deliveries have to be listed separately in the invoice.
- 6.2 Periods for payment shall begin on the specified dates, but not before the dates on which the goods and invoices are received. Payment shall be regarded as effected, as soon as Reich GmbH instructs its bank to transfer the billing amount, when so ever the account coverage is sufficient.
- 6.3 Unless otherwise agreed, the invoice shall be paid either within 14 days subject to deduction of a 3% discount or within 30 days without any deduction.
- 6.4 Payment shall not be deemed to constitute acceptance of conditions and prices. The time of payment shall not affect the warranty granted by the supplier or Reich GmbH's right of complaint.

### 7. Pricing and transfer of Risk

Unless something else has been agreed in writing, prices are location specified (domestic: DAP, abroad: DDP according to Incoterms 2010) including packaging. The turnover tax is herein not included. The supplier bears the risk of accidental loss, destruction, or deterioration until acceptance of the goods by Reich GmbH or Reich GmbH's authorized representative at the place where the goods are to be delivered according to contract.

### 8. Quality Management System / Quality Standards

- 8.1 The supplier has to establish an appropriate quality management system (e.g. DIN EN ISO 9000 ff., VDA-Script 6.1 TS 16949 or similar) and provide evidence thereof. Reich GmbH shall reserve the right to verify the effectiveness of the quality management system on site, e.g. according to VDA-Script 6.1 "QM-System-Audit". Notwithstanding the above, the supplier shall continually monitor the quality of the delivery items. The parties shall mutually inform each other of any possibility of a quality improvement.
- 8.2 Concerning the automotive parts especially marked in technical documentation or designated by separate agreement, for instance with "D", the supplier is, moreover, required to keep special records as to when, in what manner and by whom the supplied goods have been tested with regard to the characteristics required to be recorded and which results were achieved by the quality tests so required. The test records of the initial sample testing and D-feature have to be kept for 25 years starting from serial delivery, all other test records 10 years starting from creation, and presented to Reich GmbH upon first request. The supplier must obligate presuppliers to the same extent. We refer to the latest version of the VDA-Script "Components Subject to Record Keeping by Automotive Manufacturers and their Subcontractors – Operation and Documentation".

### 9. Warranty, Notice of Defects and Liability

- 9.1 The supplier warrants that the delivery item has no defect affecting its value or suitability, that it has the agreed or warranted quality, is suited for the use provided for in the contract, that it is in keeping with generally accepted rules of engineering and the most recent rules and regulations of the authorities and complies with the Machine Safety Code, the latest safety requirements, the health and safety protection and accident prevention regulations. If the supplier has undertaken to guarantee the properties or durability of the goods supplied, Reich GmbH can in addition lodge a claim under the terms of guarantee. This does not apply for defects or damage to the delivery item, which were caused by:
  - a) Regular wear,
  - b) Incorrect handling on the part of Reich GmbH.

Without delay Reich GmbH will inform the supplier about defects in the delivery item, as soon as they are ascertained under the circumstances prevailing in the due course of business. The notice period shall be according to the circumstances of each case, nevertheless, for recognizable defects it shall be at least five (5) business days (Monday – Friday) starting from the time of delivery, for latent defects at least five (5) days after finding.

The aforementioned conditions shall apply in general to services such as assembly, maintenance, etc.

9.2 Unless expressly agreed otherwise, the statutory warranty periods shall apply.

9.3 The supplier's warranty shall also cover parts manufactured by subcontractors.

9.4 With notice of defects, the period of limitation shall be extended by the time between notification and rectification of defects. If the delivery item is completely renewed, the limitation period shall recommence. If the delivery item is partially renewed, the limitation period recommences only in respect of the renewed parts.

9.5 The parts, disputed on the basis of the supplier's warranty, shall remain available to Reich GmbH until they are substituted; upon substitution they become the property of the supplier.

9.6 In urgent cases, when the rework by the supplier cannot be waited for, as well as when the supplier fails to rework in spite of a request to do so and the following definite failure of the fulfillment of warranty, Reich GmbH is authorized to remove the defect at the supplier's expense or to invoke on the other warranty rights, according to paragraph 8.1.

9.7 The supplier's warranty obligations are not affected by Reich GmbH's acceptance of deliveries and services.

9.8 Apart from that, the supplier shall be liable in accordance with statutory regulations.

9.9 Should we incur expenses as a result of the defective delivery, in particular transport, carriage, labor cost, costs of fitting and removal, cost of material or costs of incoming goods control exceeding the normal scope of control, such costs shall be borne by the supplier.

#### **10. Product Liability**

10.1 In the event that claims are asserted against Reich GmbH on the basis of product liability, the supplier agrees to indemnify and hold us harmless against claims of this type if and to the extent that the damage was caused by a flaw in the subject matter of contract delivered by the supplier. In cases of culpability-based liability, however, this applies only if the supplier is at fault. If the cause of damage falls within the supplier's sphere of responsibility, then to this extent the burden of proof shall be incumbent on the supplier.

10.2 In such cases (paragraph 9.1), the supplier shall take responsibility for all costs and expenditures, including the cost of any legal prosecution.

10.3 For the rest, the statutory provisions shall apply.

10.4 Before any recall campaign which is wholly or partly the consequence of a defect of the subject of contract delivered by the supplier is started, Reich GmbH will inform the supplier, give him an opportunity to cooperate and discuss with him the ways of efficient handling of the campaign unless such information or involvement of the supplier is not possible for reasons of urgency. If the recall campaign is the consequence of a defect of the subject of contract delivered by the supplier, all costs of the recall campaign shall be borne by the supplier.

10.5 The supplier must put into place an insurance cover appropriate for the contractual risks. As manufacturer of products and sub products pursuant to the provision of a non-contractual product liability claim it has to put into place a product liability insurance to cover the costs of possible recall actions. Upon request, the supplier shall give proof of the insurance policy and the regular payment of the insurance premium.

#### **11. Statutory Rights of Withdrawal and Termination**

11.1 Further to the statutory withdrawal rights, Reich GmbH is authorized to withdraw from or terminate the contract with immediate effect, if the supplier has stopped supplying its customers, if the supplier's financial circumstances deteriorate materially or threaten to deteriorate and the compliance of delivery obligation is endangered, if the supplier is unable to pay or enters the state of excessive indebtedness or if the supplier stops its payments.

11.2 Moreover, Reich GmbH has the right to withdraw from or terminate the contract, if the supplier applies for insolvency proceedings or similar proceedings to settle of debts.

11.3 Provided that Reich GmbH withdraws from or terminates a contract due to the aforementioned Statutory Rights of Withdrawal and Termination, the supplier shall compensate hereby caused damages, losses, or costs, unless he is not to be held responsible for the arising rights of withdrawal and termination.

11.4 Statutory rights and claims are not affected by these regulations (paragraph 11).

#### **12. Execution of Work**

All persons performing work under the contract on the premises shall observe the provision of the applicable work rules. Any Liability for accidents suffered by any such person while on the premises is excluded unless in cases of premeditated or gross negligence of duties of our legal representatives or servants.

#### **13. Rights of Protection**

13.1 The supplier shall ensure that, in connection with his delivery, no rights of third parties shall be breached. If, concerning such a matter, claims by a third party are made against us, the supplier shall be obliged to release us from any such claims.

13.2 This provision shall not be applicable if the supplier has manufactured the supplied products in compliance with drawings, designs or other equivalent descriptions or specifications supplied by Reich GmbH and does not know or is not required to know that intellectual property rights are contravened in conjunction with the products developed by the supplier.

13.3 At the request of purchaser, the supplier shall notify REICH GMBH of the use of its own and licensed third party published and unpublished patents and patent applications for the supplied product.

#### **14. Buyer Supplies**

All tools, materials, parts, containers and special packaging supplied by Reich GmbH remain its property. They shall only be used for the intended purpose. Materials are processed and parts assembled for Reich GmbH. There is agreement that Reich GmbH becomes the co-owner of all products in the proportion of the value of its supplies to the value of the whole product which is made with Reich GmbH's materials or parts.

#### **15. Documents and Confidentiality**

15.1 The contracting parties shall be obliged to treat as business secrets all obvious business and technical details which are made available in the course of business relationship.

15.2 Documentation, drawings, data, DP-information, software, materials or objects (as samples, models, etc.), which Reich GmbH provides the suppliers for the purposes of fulfilling the agreement, shall remain in the property of Reich GmbH and shall not be made accessible or left to unauthorized third parties. The reproduction of such items is only permitted within the framework of operational requirements and the copyright provisions. After the order has been completed the supplier has to send back all documents, drawing, etc. without further request.

15.3 Products and spare parts for these products, which are manufactured with the assistance of Reich GmbH's property, according to its specifications or products in whose development Reich GmbH has been involved may only be supplied to third parties with Reich GmbH's written consent.

15.4 Knowledge acquired of the documents stated in paragraph 1 shall not be used further on or be transferred to third parties.

15.5 Subcontractors shall be bound accordingly.

15.6 The contract parties may only advertise with their business contacts with prior written consent.

#### **16. Export Control and Customs**

The supplier undertakes to inform Reich GmbH in its business documents of all required approvals for the export or re-export of its goods under the German, European, US export and customs regulations or the export and customs regulations of the country of origin of its goods. For this purpose, the supplier shall, at least in its proposals, order confirmations and invoices, provide the following information against the relevant items:

- the export list number according to annex AL of the German export administration regulations or equivalent list items of applicable export list,

- for US goods the ECCN (Export Control Classification Number) of the US Export Administration Regulations (EAR),

- the commercial origin of his goods and of the components of his goods, including technology and software,

- whether the goods were transported through the U.S.A., were manufactured or stored in the U.S.A. or made using US technology,

- the statistical goods number (HS code) of his goods, and

- a contact in his organization to answer Reich GmbH's questions.

On Reich GmbH's request, the supplier is obliged to provide Reich GmbH with any other foreign trade data of his goods and their components in writing and inform us of all changes of such data in writing without delay (and in any case before delivery of any goods affected by it).

The delivered goods must meet the source requirements under the preferential trade arrangements of the EWG, unless the order confirmation expressly stipulates otherwise.

#### **17. Compliance**

17.1 The supplier undertakes to observe all applicable statutory regulations for the conduct with its employees, the protection of the environment, safety and health and always to try and mitigate any negative effects on man or the environment connected with its work. For this, the supplier will set up and improve a management system based on ISO 14001 as far as possible for it. The supplier will also observe the principles of the UN Global Compact Initiative. These relate, in essence, to the protection of international human rights, the right to collective bargaining, the abolition of forced labor and child labor, the abolition of discrimination in recruitment and employment, responsibility for the environment and prevention of corruption. More information on the UN Global Compact Initiative is available at [www.unglobalcompact.org](http://www.unglobalcompact.org).

17.2 In the event that a supplier repeatedly and in spite of a note regarding this subject acts in an unlawful manner and does not prove that it has worked on curing the violation of law or made appropriate arrangements in order to prevent these infringements henceforth, Reich GmbH is authorized to withdraw from or terminate existing contracts without notice.

#### **18. Place of Performance**

The place of performance is the place where, in accordance with the order, the goods are to be delivered or the service is to be provided.

#### **19. General Provisions**

19.1 If any provision of these General Terms and Conditions of Purchase or any additional agreement entered into should be, or become, ineffective or unenforceable, the validity of the remaining provisions shall not be affected hereby. The contracting parties undertake to replace the ineffective provision with an effective provision of – as far as possible – the same economic effect.

19.2 All contractual relations are exclusively based on German laws to the exclusion of the international private law and the UN Convention on the International Sale of Goods (CISG).

19.3 Legal venue for all disputes directly or indirectly resulting from a contractual relationship which are based on these General Terms of Purchase is the court of Asheville. Reich GmbH can also sue the supplier at the court having jurisdiction at its place of business or the place of his branch or at the court having jurisdiction at the place of performance.