



## Terms & Conditions (GTC) of RM Components GmbH O'Brien-Straße 5, D-91126 Schwabach

– Status: January 2020 –

### § 1 Scope

1. Any and all deliveries, services and quotations of RM Components GmbH, O'Brien-Strasse 5, 91126 Schwabach / Germany (hereinafter referred to as "Seller") shall exclusively be based on the present General Terms & Conditions. These GTC are integral part of all contracts concluded by and between Seller and its contractual partners (hereinafter referred to as "Client" or "Buyer") in relation to deliveries made and/or services rendered by Seller. The GTC shall also apply to any and all future deliveries, services and quotations in relation to Client, even if not specifically agreed separately again.
2. Terms & conditions of Client or any third party shall not apply even if Seller does not explicitly object to them in each case. Even Seller's reference to letters sent by Client or any third party which contain or refer to suchlike terms & conditions shall not constitute its consent to suchlike terms & conditions.

### § 2 Quotations and Contract Conclusion

1. Unless they are explicitly defined as binding or contain a term of acceptance, Seller's quotations shall generally be subject to change and non-binding. Seller shall be entitled to accept orders within 14 days as from receipt. However, Seller shall not be legally obliged to perform unless by way of an agreement signed by either Party or a written order confirmation issued by Seller or by (informally) starting to fulfil the order upon its receipt. Both Parties hereto shall be entitled to request a written confirmation of the other Party's verbal acceptance of the contract and/or its provisions.
2. Seller's verbal confirmations shall not be legally binding, and the Parties' verbal agreements shall be replaced by written ones unless being explicitly defined to be of binding nature even in verbal form in each case.
3. Any and all amendments of and/or modifications to agreements made (the present GTC included) shall be in writing (e.g. by fax or e-mail) in order to take legal force and effect. With the exception of business executives and authorized officers, Seller's staff shall not be entitled to make verbal

agreements that deviate from the written ones.

4. Any and all information provided by Seller on the deliverables (e.g. with respect to their weight, dimensions, functions, capacity, tolerances, or specifications) as well as our descriptions thereof (such as drawings or figures) shall only be of approximate nature unless strict conformity therewith is required to utilize them as intended. Suchlike information shall not be guaranteed characteristic but descriptions or designations of the respective delivery or service. Deviations that are customary in the trade, result from legal provisions or are technical improvements as well as the replacement of components by equivalent parts shall be permissible as long as they do not impair the designated use.
5. Seller retains the ownership or copyright in all offers and quotations made by Seller and in all drawings, figures, calculations, brochures, catalogues, samples, tools and other documents and means handed over to Client. Client shall not be entitled to use or reproduce or allow third parties to use or reproduce the abovementioned items or their substance or disclose them to any third party. Upon Seller's request, Client shall return the abovementioned items in full to Seller and destroy any and all copies possibly made thereof once they are no longer needed within the ordinary course of business or if our negotiations do not result in a contract being concluded. The storage of electronic data for the purpose of customary data retention shall be excluded from the aforementioned provision.

### § 3 Prices & Payment

1. The prices shall be valid for the service and delivery scope specified in the respective order confirmation. Any extra or special services shall be charged separately. Unless agreed otherwise (like e.g. with respect to other currencies or the application of INCOTERMS), our prices are in EUR and exclusive of packaging, the applicable VAT, and – for export deliveries – customs duty and charges as well as other public charges.
2. Unless agreed otherwise in writing, invoices shall be paid strictly net within 14 days. Due payment shall be determi-



ned by Seller's receipt of said payment. Payment by check shall be excluded, unless explicitly agreed for individual cases. If Client is in default with payment, outstanding amounts shall be subject to 5 % default interest p.a. Our right to claim higher interest rates or further damages in case of default shall remain unaffected.

3. Client shall only be entitled to offset its counterclaims or withhold payments if its own claims are undisputed or legally established or arise from the same order the respective delivery relates to.
4. Seller shall be entitled to subject the performance of outstanding deliveries or services to Client's advance payments or the provision of securities if, after entering into the agreement, Seller comes to know of circumstances that might significantly affect Client's creditworthiness or ability to pay Seller's outstanding claims arising from the contractual relationship (other individual orders under the same master agreement included).

#### **§ 4 Delivery & Delivery Terms**

1. Deliveries shall be made ex warehouse.
2. Deadlines as well as delivery and service provision dates held out by Seller shall generally be approximate only unless being explicitly confirmed or agreed to be binding. If shipping has been agreed, delivery dates and terms shall be the time of handover to the carrier, haulage contractor or any other party assigned with the transportation.
3. Irrespective of its rights in relation to Customer's default, Seller shall be entitled to demand Client postpones delivery and/or performance terms or dates until Client meets its contractual obligations towards Seller.
4. Seller shall not be liable for impossibility of delivery or delayed deliveries if and to the extent that these are caused by events of force majeure or any other event unforeseeable at the time of concluding the contract (e.g. operational disruptions of all kind, shortages in supply with materials or energy, transport delays, strike, legal lockout, shortage in manpower, energy or commodities, difficulties with obtaining the official permits required, regulatory action, or failure of its suppliers to overdue, incorrect or late deliveries made by its own suppliers) beyond Seller's reasonable control. If the above events make it unreasonably difficult or impossible for Seller to provide the agreed deliverables and if said obstructions are not of temporary nature only, Seller shall be entitled to rescind from the contract. If said obstructions are of temporary nature, the delivery and/or performance terms affected thereby shall be suspended for the time of the obstruction plus an adequate restarting period. If Client cannot reasonably be expected to still accept late deliveries or performances, Client shall be entitled to withdraw from the contract provided that Client immediately informs Seller thereon in writing.
5. Seller shall be entitled to partial deliveries if
  - partial deliveries can be used by Client for the intended purpose specified in the contract;
  - delivery of the rest of the ordered goods is ensured; and

- Client does not incur any extra costs or significant extra efforts and expenses as a result thereof (unless Seller agrees to assume the respective costs).

6. If Seller is in arrears with a delivery or service provision or if delivery or service provision becomes impossible for whatever reason, Seller's liability for damages shall be limited in accordance with § 8 of the present GTC.

#### **§ 5 Place of Fulfillment, Shipping, Packaging, Transfer of Risk & Acceptance**

1. Unless specified otherwise, place of fulfillment for all obligations arising hereunder shall be 91126 Schwabach in Germany.
2. The shipping mode and packaging shall be within Seller's reasonable discretion.
3. The risk shall, at the latest, pass to Client with the deliverable's handover to the carrier, the haulage contractor or any other third party assigned with the transportation (whereas the beginning of the loading process shall be decisive). The aforementioned provision shall also apply to partial deliveries and/or if Seller has also been assigned with providing other services (e.g. dispatch). If dispatch or handover are delayed for reasons within Client's responsibility, the risk shall pass to Client at the date of the deliverable's readiness for shipment as communicated by Seller to Client.
4. Storage costs arising after the transfer of risk shall be borne by Client. If Seller has to store the deliverables, the respective storage fees amount to 0.25% of the amount invoiced for the deliverables per each complete week. We reserve the right to proof and claim additional or less storage fees.
5. Seller shall only insure the consignment upon Client's explicit request and at Client's expense against theft, breakage, damage caused by transport, fire or water or other insurable risks.
7. If acceptance is required, the purchased item is considered accepted if and when
  - Seller has communicated this to Client with reference to the deemed acceptance pursuant to this § 5 (6) and has requested the acceptance;
  - twelve business days have passed since the delivery or Client has started to use the purchased item (e.g. has put the delivered system in operation) and in this case, six business days have passed since delivery;
  - Client has failed to accept the deliverable within this period for a reason other than a defect notified to Seller that makes it impossible to use the purchased item or significantly impedes its use.

#### **§ 6 Warranty & Material Defects**

1. The warranty period is one year from delivery or - if acceptance is required - from acceptance. This period shall not apply to Client's claims for damages resulting from injury to life, limb and health or from willful or grossly negligent



breach of duty on the side of Seller or its vicarious agents, which shall respectively expire in accordance with the legal provisions.

2. The delivered items are to be carefully inspected upon delivery to the Client or a designated third party without undue delay. With respect to obvious defects or other defects which would have been apparent in an immediate and thorough inspection, the deliverables shall be deemed to have been approved by Client if Seller does not receive a written complaint within seven business days after delivery. With respect to other defects, the deliverables are deemed to have been approved by Client if the complaint is not received by Seller within seven days after the date of the defect's discovery; however, if said defect could have been recognized by Client earlier under normal use, the earlier date shall be decisive for the beginning of the complaint period. Upon Seller's request, rejected deliverables are to be returned to Seller and Client shall pay the carriage. In case of justified complaints Seller shall compensate Client for the costs of the least expensive delivery mode; this does not apply if the costs increase because the deliverable is at a location other than the place where it is intended to be used.
3. In case of material defects to the delivered items Seller shall – at its discretion within a suitable period – be obliged and entitled to remedy the defect or provide replacement delivery. In case the remedy or replacement delivery fail (e.g. due to inability, unreasonableness, refusal or unacceptable delay of the remedy or replacement delivery), Client shall be entitled to withdraw from the contract or to adequately reduce the purchase price.
4. If Seller is responsible for defects, Client may – subject to the conditions specified under § 8 below – claim damages.
5. In case of defects to components of third party manufacturers, which Seller cannot remedy due to the license law or for technical reasons, Seller shall, at its discretion, assert its guarantee claims against such manufacturers or suppliers on behalf of Client, or assign them to Client. Provided that the other requirements are met and in accordance with these General Terms and Conditions, guarantee claims against Seller shall only exist for the above-specified defects said claims against the manufacturer or supplier could not be legally enforced or suchlike enforcement is not expected to be successful, e.g. due to insolvency. During the duration of the legal dispute, the statute of limitations of Client's warranty claims against Seller shall be suspended.
6. The guarantee is null and void if Client modifies the deliverables without Seller's consent or orders third parties to do so and the respective defects' removal thus becomes impossible or unreasonably difficult. In any case, Client shall bear any extra remedy costs arising from the modification.

## § 7 Property Rights

1. Pursuant to this § 7, Seller warrants that the deliverables are free from any third party intellectual property rights

or copyrights. Each Party shall immediately notify the other in writing if it is being subjected to any claims of infringement of such rights.

2. Should the deliverables infringe a third party's intellectual property right or copyright, Seller shall, at his sole discretion and account, replace or modify the deliverables in such a manner that they no longer infringe the rights of third parties, but still meet the contractually agreed functions. Alternatively, Seller shall procure usage rights for Client by concluding a licensing agreement with respective third parties. If Seller fails to do so within a reasonable period, Client shall be entitled to rescind from the contract or reduce the purchase price by a reasonable amount. Any claims for damages brought forth by Client are subject to the limitations specified under § 8 hereof.
3. In case of infringements by other manufacturers' products delivered by Seller, Seller shall, at its sole discretion, either assert its claims against such manufacturers and sub-suppliers on behalf of Client or assign such claims to Client. In accordance with this § 7, guarantee claims against Seller shall in suchlike cases only exist if the above-specified claims against manufacturers or sub-suppliers could not be legally enforced or suchlike enforcement is not expected to be successful, e.g. due to insolvency

## § 8 Liability for damages due to fault

1. Seller's liability for damages, irrespective of the legal basis for such liability and in particular including any liability resulting from impossibility, delay, defective or incorrect delivery, breach of contract, violation of obligations during contract negotiations, or tort, shall – as far as they are subject to fault – be limited pursuant to this § 8.
2. Seller shall not liable in the case of simple negligence by its management, legal representatives, employees, or other vicarious agents, unless essential contractual obligations are being violated. Essential contractual obligations are the obligation to deliver and install the deliverables in time, free from defects of title and material defects that might considerably impair their functionality or their suitability for use, as well as duties of consulting, protection and care that enable Client to use the deliverables as intended hereunder or which serve to protect the life and limb of Client's personnel or its property against considerable damage.
3. If Seller is liable for damages on its merits according to § 8 (2), said liability shall be limited to damages which Seller has or – applying due care and attention – could have foreseen as possible consequence of a breach of contract upon its conclusion. Indirect damages and consequential damages which result from defects to deliverables shall furthermore only be eligible for compensation if they are typically to be expected under normal use of the deliverables.
4. The above exclusions and limitations shall likewise apply favor of Seller's management, legal representatives, employees and other vicarious agents.



5. If Seller provides technical information or advice and this information or advice is not part of the contractually agreed scope of owed services, this shall be done free of charge and without any liability.
6. The limitations of § 8 shall not apply to Seller's liability for willful conduct, guaranteed characteristics, for injury to life, limb or health or under the Product Liability Act.

## § 9 Reservation of Title

1. The retention of title as agreed below serves to secure any currently existing and future claims of Seller against Client arising from the Parties' supply relationship (including balance receivables from a current account relationship limited to this supply relationship).
2. The goods delivered by Seller to Client remain Seller's property until any and all secured claims have been paid in full. The goods, as well as the goods which are subject to the retention of title in accordance with the following provisions, are hereinafter referred to as "Reserved Goods".
3. Client shall keep the Reserved Goods free of charge for Seller.
4. Client shall be entitled to process and sell the Reserved Goods in the normal course of business until the enforcement of retained ownership (sub-paragraph 9). Pledging of the goods or transferring ownership by way of security is not permitted.
5. If Client processes the Reserved Goods, it is understood that the processing takes place on behalf and account of Seller as manufacturer and Seller immediately becomes owner of all or - should substances of various owners be processed or should the value of the processed goods exceed the value of the Reserved Goods - co-owner (fractional ownership) of the newly created goods pro rata to the value of the Reserved Goods. In the event Seller does not acquire suchlike ownership, Client transfers its future ownership or co-ownership (pro rata, as specified above) in the newly created goods to Seller as security. If the Reserved Goods are combined with other items to form a single object or are inseparably mixed and if one of the other items is to be considered the main object, Seller transfers to the extent of its ownership in the main object, the co-owned property pro rata as specified in clause 1 to Client.
6. In case the Reserved Goods are resold, Client already now assigns to Seller the resulting claims against the respective purchaser (in case of co-ownership, respectively pro rata) to secure Seller's interests therein. The same applies to any other claims which replace the Reserved Goods or otherwise arise with in connection with the Reserved Goods, like e.g. insurance claims or claims arising from tortious acts in the event of loss or destruction. Seller hereby irrevocably authorizes Client to collect the claims assigned to Seller in his own name. Seller may only revoke this collection authorization in case of an enforcement event.
7. If any third party takes hold of the Reserved Goods (especially by way of seizure), Client shall immediately advise

such third party of Seller's ownership therein and notify Seller in order to facilitate the enforcement of its ownership rights. If the third party is not able to reimburse Seller for the judicial or extrajudicial costs arising in this connection, Client shall be liable to Seller.

8. Seller shall release the Reserved Goods as well as the goods or claims taking their place if their value exceeds the amount of the secured claims by more than 50%. The decision which such goods are to be released shall be at Seller's discretion.
9. If Seller rescinds from the contract because of Client's breach thereof – especially default in payment – (enforcement event), Seller shall be entitled to demand the return of the Reserved Goods.

## § 10 Final Provisions

1. If Client is a merchant, a legal entity under public law, or a special fund under public law, or if it does not have a general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for any disputes arising out of the Parties' business relationship shall be - at Seller's discretion - Seller's registered office in 91126 Schwabach or Client's registered office. However, sole place of jurisdiction for legal actions brought forth against Seller shall in suchlike cases be Seller's registered office. Mandatory statutory provisions on exclusive jurisdictions shall remain unaffected by this provision.
2. The relationships between Seller and Client are exclusively subject to the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) does not apply.
3. If the contract or the present GTC contain loopholes, these shall be filled by suchlike legally valid provisions the Parties would have agreed on in accordance with the economic purpose of the contract and the purpose of the GTC, had they known of the loophole.

## Data Protection Information in accordance with Art. 13 General Data Protection Regulation (GDPR)

In order to meet our contractual and legal obligations and to safeguard our legitimate interest (in particular with respect to our EU-membership relations and direct advertising), we have to collect and store, process and use personal information in the sense of the General Data Protection Regulation (GDPR). The respective legal basis is Article 6 Subp. 1b) and 1f) GDPR. However, you are not obliged to give your possibly required consent and any consent given may be - individually or collectively - revoked with future effect.

Please send your revocation to RM Components GmbH, O'Brien-Strasse 5, 91126 Schwabach / Germany, e-mail: [info@rm-components.de](mailto:info@rm-components.de). We will then delete the data collected and stored on base of your consent. You are also entitled to demand being informed on your personal information processed by us, have such data rectified if they are incorrect, demand their deletion if stored illegally, and file a complaint with the competent supervisory authority at any time. Moreover, you may object the processing of your personal information at any time in accordance with Art. 21 GDPR.

We will generally delete your information as soon as it is no longer needed for the purpose it was processed for. However, this does explicitly not apply if and to the extent that we are subject to any legal retention obligations. In some cases we may use external service providers to process your data. These have been carefully selected and commissioned by us, are bound by our instructions and checked regularly. Suchlike third parties may e.g. be: tax consultants; accounting firms, data bases within the scope of our CRM system (customer administration system). We shall generally exclusively disclose your information in accordance with our legal obligations towards public bodies that need your data in order to fulfill their functions as per law, or to individuals or legal entities under civil law proofing their legitimate interest in using your personal information or be subject to your explicit consent or to safeguard legitimate interests in the sense of Art. 6 Subp. 1f) GDPR.

To contact the privacy officer of RM Components GmbH, Attorney Mr. Dominik Güneri, please send an e-mail to [gueneri@dg-kanzlei.de](mailto:gueneri@dg-kanzlei.de) or a letter to the law firm Descharmes & Güneri Rechtsanwälte, Gotenstr. 2, D-75177 Pforzheim, Germany.