

General Terms and Conditions of Delivery and Payment for Moulds/Machines and Parts

1. **General provisions, area of applicability**
 - 1.1 These conditions set out the terms under which rose plastic – hereafter referred to as ‘the supplier’ will provide services, goods and materials to the Customer (as such terms are defined below). These Conditions will be supplemented from time to time by order confirmation forms setting out specific details relating to goods requested by the Customer and, as so supplemented, will apply to the exclusion of any other terms and conditions including any which the Customer may attempt to introduce.
To the extent that the Customer is deemed to be a consumer (as defined by the Unfair Contract Terms Act 1977) then these Conditions will not affect the rights of the Customer as a consumer, and will apply to the extent that applicable law allows.
 - 1.2 These terms of delivery apply exclusively.
General terms and conditions of business of the customer which are contrary to or deviate from these terms of delivery shall not be recognised unless the supplier has agreed in writing to the general terms and conditions of business in individual cases. These terms of delivery shall also apply in the event that the supplier takes on or fulfils orders when it is aware of general terms and conditions of business of the customer which are contrary to or deviate from these terms of delivery.
 - 1.3. These terms of delivery shall also apply to all future purchase orders until new terms of delivery become valid.
 - 1.4. Definitions
In these Conditions, the following expressions will have the following meanings, unless inconsistent with the context :
 - “Agreement” – the agreement between the Supplier and the Customer for the supply of Goods formed by these Conditions and Quotation(s)
 - “Business Day” – a day which is not a Saturday or Sunday or Public or Bank holiday in England.
 - “Business Hours” – currently means 08.30 until 17.00 on any Business Day from Monday to Thursday, and 08.30 until 14.00 on Friday each week, but are subject to change entirely at the discretion of rose plastic.
 - “Customer ” – means any person, body of persons, company or firm from whom the Supplier has received an order which the Supplier has accepted.
 - “Conditions” – the conditions to be read in conjunction with the Quotation(s)
 - “Delivery Date” – means the date specified by the Supplier when the goods are to be delivered, or ready for collection, depending upon the terms and conditions agreed between the Supplier and the Customer.
 - “Goods” – means the services, goods, and materials which the Customer agrees to buy from the Supplier
 - “Order Confirmation” – means the acknowledgement of the Quotation provided by the Supplier to the Customer whether written or oral.
 - “Quotation” – the written or oral quotation or order confirmation form(s) submitted by the Supplier to the Customer for the supply of Goods in response to the Customer’s order or request.
 - “rose plastic” – rose plastic UK Ltd, registered in England (Company No. 2682865) whose registered office is at the Hart Shaw Building, Europa Link, Sheffield Business Park, Sheffield, South Yorkshire S9 1XU.
 - “Price” – means the price for the Goods excluding carriage, packing, insurance and VAT (at rate ruling at date of invoice)
 - “Person” – means any individual, firm, body, corporate or unincorporated association, partnership, government, state or agency of a state or joint venture.
 - “Us-Our-We” – these words in the Agreement, Conditions and any Quotation mean the Supplier, rose plastic.
 - “You – Your” – these words in the Agreement, Conditions and any Quotation mean you, the Customer.
 - “Mould” (or “Mold”) – the production tooling necessary
2. **Conclusion of the contract**
 - 2.1. Supply contracts, purchase orders and supply requests as well as amendments and supplements thereto must always be made in writing; supply requests can also be issued by remote data transmission if there is an appropriate written agreement.
 - 2.2. Purchase orders become binding only after the supplier has confirmed the purchase order by written acknowledgement
3. **Subject of the contract**
 - 3.1. The supplier shall supply the customer with the contractually agreed products during the term of the contract.
 - 3.2. In the case of parts, the supplier shall be the exclusive contractual partner of the customer for the purpose of manufacturing and supplying the contractual products.
 - 3.3. The supplier shall undertake to manufacture and supply the contractual products at its own production sites in Germany and abroad and/or at the premises of qualified sub-contractors/third parties.
 - 3.4. The prerequisite for the manufacturing of moulds shall be that the series production of the parts is additionally awarded to the supplier; exceptions must be agreed in individual agreements.
4. **Delivery and duty to accept completed work**
 - 4.1. Delivery schedules commence with the receipt of all documentation necessary to perform the order, downpayment and the timely provision of materials, if such were agreed. The delivery deadline is considered fulfilled on notification that the order is ready for shipment or finished even if the delivery is delayed or has become impossible at no fault of the supplier.
 - 4.2. If an agreed delivery deadline is not kept due to the fault of the supplier but not due to gross negligence or intent on the part of the supplier, the customer is entitled to rescind the contract after an appropriate extension agreed by the customer and the supplier, excluding further claims by the customer. The contract cannot be rescinded if the delay is due to acceptance delays by the customer.
 - 4.3. Adequate part delivery as well as reasonable variations in purchase order quantities up to plus/minus 10% shall be deemed acceptable.
 - 4.4. If the customer does not fulfil its duty to accept work, the supplier is not bound by any regulation regarding re-sale and may freely dispose of any items of delivery after prior notification of the customer, regardless of any other rights or regulations governing disposal sales.
5. **Quantity contract and forecasts of requirements for recurring deliveries (series deliveries)**
 - 5.1. The contractual partners shall agree, on an annual basis, a quantity contract providing a binding minimum acceptance quantity for the coming 12 months for the supply of the contractual products. The customer shall undertake, within two months of the end of the respective year of the contract at the latest, to accept and pay for at least the quantities specified therein.
 - 5.2. The customer shall plan its requirements by producing a revolving forecast of requirements which covers a period of 12 months in each case. The forecast of requirements shall be updated monthly and contain the following:
 - a) the anticipated annual quantity required
 - b) the anticipated quantity required for the coming six months
 - c) the legally binding quantity required for the following three months.
Specification of the quantity requirement for the following six months shall be considered a release for respective material planning.
 - 5.3. The supplier shall keep production capacities available only in accordance with the forecast of requirements that is submitted. In the event that required quantities are not submitted, are not submitted in the correct form or are not submitted within the period stipulated, the supplier shall not be responsible for any damages arising from this. This provision shall apply in particular to any damages arising due to a lack of production capacity.
6. **Prices, delivery and payment**
 - 6.1. All quotes are subject to change, provided they are not explicitly marked as binding.
 - 6.2. All prices are listed exclusive of value-added tax at the rate ruling at date of invoice and unless otherwise agreed exclude transport charges, customs, import duties and packaging.
 - 6.3. The supplier reserves the right to modify its prices accordingly if, after this contract is signed, costs increase or decrease, in particular due to collective agreements and/or changes to the following factors, which determine the calculated sales price: material price, component weight, energy costs and/or machine cycle times. The supplier shall provide proof of these changes to the customer on request.
 - 6.4. The supplier is not bound to previous prices in subsequent purchase orders (follow-up purchase orders).
 - 6.5. Payment for parts supplied shall be made in the currency specified on the invoice within 30 days net. Any discount applied presupposes the due settlement of all undisputed outstanding previous accounts.
 - 6.6. Payment for moulds shall be due as follows:
 - 50% after confirmation of an order
 - 40% with initial parts
 - 10% after approval (official acceptance), at the latest four weeks after initial parts
The above partial amounts shall be due within 14 days of the invoice date without deductions. If the customer makes changes after the initial parts, full payment shall become due immediately.
 - 6.7. Interest of 8 percentage points above the applicable base interest rate of the ECB shall be charged on payments made on accounts in arrears provided the supplier does not prove higher damages. The customer reserves the right to prove lower damages.
 - 6.8. The supplier reserves the right to refuse payment by cheque or bill of exchange. If cheques or rediscountable bills of exchange are accepted on account of performance, the customer must cover all associated bank charges.
 - 6.9. The customer can only produce a counterclaim to or assert a right of retention in respect of any of the claims for payment of the supplier to the extent that the counterclaim is uncontested or has become res judicata.
 - 6.10. Sustained non-compliance with payment terms or circumstances which raise serious doubts as to the creditworthiness of the customer shall result in claims for all payments becoming due immediately. In this case, the supplier is also entitled to demand prepayment for all outstanding deliveries and to cancel the contract if an appropriate deadline extension has not been met.
7. **Packing, despatch, risk transfer and acceptance delays**
 - 7.1. Unless otherwise agreed, the supplier chooses the packaging, mode of transport and transport route.

- 7.2. The transport risk transfers to the customer upon goods leaving the works, even if delivery is free domicile. If the customer delays a delivery, the risk transfers to the customer as soon as notification that the order is ready for shipment is given.
- 7.3. When requested in writing by the customer, goods shall be insured at the customer's expense for the risk coverage requested.
- 8. Transfer of title and retention of title**
- 8.1. The supplier shall retain title to all of the moulds, machines, equipment and parts it supplies until payment has been received in full; in this respect, all delivery consignments shall be considered to be one joint delivery transaction. If a debt is still outstanding, the retained title shall be considered a security against the balance of the debt.
- 8.2. If the customer fails to pay by the due date, the supplier is entitled to request handover of the products delivered under reservation of title without this constituting rescission from the contract.
- 8.3. If the goods are combined to form an integrative object and if the other object is to be regarded as the principal object, the customer shall transfer joint title proportionately to the supplier, provided the principal object belongs to the customer.
- 8.4. If the customer re-sells the goods supplied in accordance with provisions, it shall then assign by so doing the claims arising from the sale against its purchasers including all ancillary rights to the supplier until all of its claims have been redeemed in full.
- 8.5. If mould and/or input costs are prorated, these costs do not cover the supplier's costs for mould design work, construction, running in, regular maintenance, support and so on. For this reason, these prorated mould and/or inputs shall remain property of the supplier unless otherwise agreed; handover is not required of the supplier.
- 9. Acceptance, use and custody (only in the case of moulds/machines)**
- 9.1. The customer must accept moulds/machines as soon as it has been demonstrated that they match the agreed specification of service provided by the supplier.
- 9.2. Immaterial discrepancies do not entitle the customer to refuse acceptance.
- 9.3. In the event that a delay in acceptance can be attributed to reasons for which the supplier is not responsible, acceptance shall be considered to have been provided at the latest 4 weeks after the initial parts have been shipped.
- 9.4. The price for moulds also comprises the costs of first sampling; however, any costs of testing or processing equipment, modifications requested by the customer or any validation costs beyond this are not included. These expenses, in as far as reasonable for the supplier, shall be quoted separately and must be ordered and paid by the customer. Costs for further samplings which were caused by the supplier must be covered by the supplier.
- 9.5. Moulds and machines manufactured and/or delivered by the supplier, shall be manufactured in compliance with section 3.4 assuming that series production of the parts takes place at the supplier's premises. The following provisions also apply for these moulds/machines handed over to the supplier for production for the customer:
- 9.6. Any validation measures and/or quality assurance measures requested by the customer that affect the subsequent series process and that are not planned are not included in the quoted mould and/or parts costs. These expenses, in as far as reasonable for the supplier, shall be quoted separately and must be ordered and paid by the customer.
- 9.7. Provided that there is no individual agreement to the contrary, the supplier shall undertake, at the customer's cost, to keep the moulds/machines in workable condition, in particular to handle them in a proper and appropriate manner and to ensure that they are maintained and looked after and to carry out the necessary maintenance and repair work without delay in a proper and appropriate manner. The agreed warranty for defects shall remain unaffected.
- 9.8. The customer shall bear the costs for replacing moulds/machines and/or for overhauling them in the event that they have been rendered unusable through normal wear and tear as a whole entity.
- 9.9. The supplier shall bear the costs for replacing a mould/machine which is lost or has been rendered unusable due to circumstances for which the supplier is responsible. The supplier shall undertake to insure the moulds/machines at their replacement value against the risks posed by fire, lightning strike, explosions, storms, mains water and aircraft crashes in line with the provisions which are customary in the country in which the moulds/machines are set up and to maintain the insurance coverage during the entire loan period.
- 9.10. Fully paid moulds shall be used exclusively for orders placed by the customer. If the customer does not pay for supplies or services as agreed, the supplier can use the moulds for other purposes in exchange for appropriate compensation, the compensation to be credited to the customer.
- 9.11. The supplier shall store moulds and/or machines ceded by the customer for a period of 2 years following the last delivery. Provided the customer does not request handover of the moulds and machines within this period, the retention period shall expire and the supplier shall assume that the moulds and/or machines can be destroyed following expiry of this period. Alternatively, the supplier can send the moulds and/or machines at the customer's expense to the customer's last known address.
- 10. Quality and liability for defects**
- 10.1. The supplier warrants that delivered goods comply with the agreed specifications.
- 10.2. Goods which are supplied must be examined by the customer in accordance with proper business procedure. If this examination reveals a defect, this is to be indicated immediately in writing. If the customer does not make such an indication, the delivery shall be deemed to have been approved, unless the defect is a defect which was not apparent during the examination procedure. If a defect becomes apparent at a later date, this must be indicated as soon as this discovery is made. In other respects, the goods shall be deemed to have been approved even in view of this defect. The customer must take responsibility if third-party purchasers fail to provide an indication of defects in good time.
- 10.3. In the event that goods have defects, the supplier shall initially provide a subsequent service, specifically at its discretion, by offering subsequent improvement or subsequent delivery/remanufacture.
- 10.4. In the event that the supplier seriously and conclusively refuses to provide any subsequent service, that it refuses subsequent service owing to disproportionately high costs, the subsequent service provided fails or is not acceptable to the customer, the customer can, at its discretion, reduce the level of compensation or rescind the contract. The customer's right to demand compensation in accordance with legal regulations and these terms and conditions (see section 11) shall remain unaffected.
- 10.5. Details given in documentation, brochures, drawings, specifications of services, etc. and references to technical standards are not warranted characteristics or promises of guarantee. Warranted characteristics or the acceptance of a guarantee require express confirmation from the supplier with the use of the words "warranty"/"to warrant" or "guarantee"/"to guarantee".
- 10.6. Claims based on defects shall not exist if there is only an insignificant deviation from the agreed level of quality or if there is only an insignificant impairment to the usability of the goods or if the defect can be attributed to operating instructions, maintenance regulations or installation regulations not having been adhered to, unsuitable or inappropriate use of the goods, incorrect or negligent handling or natural wear and tear or interference with the delivered item by the customer or third parties.
- 10.7. If parts or products are used outside the confines of the application approved by the supplier or in circumstances or conditions of use or installation other than those envisaged in the specification, the supplier shall not be liable for defects.
- 10.8. The customer shall undertake to inform the supplier immediately of any harmful product characteristics that are detected at a later date and other consequences arising from the use of its product that lead to a dangerous situation, to the extent that the supplier's product is affected by this.
- 10.9. If the supplier has advised the customer beyond its contractual obligation, the supplier only warrants the functionality and suitability of the supplied goods if the supplier provides prior express warranty.
- 10.10. Unauthorised re-working and improper handling by the customer shall result in the loss of any right to claim compensation due to defective parts.
- 10.11. Warranty claims cannot be asserted for normal wear and tear caused by contractual usage.
- 10.12. The supplier shall be liable for defects in respect of the moulds supplied for a minimum production quantity to be agreed which is to be manufactured by the supplier, at the most for 24 months after acceptance.
- 10.13. The period of warranty for defects of parts shall be 24 months. It shall commence once they are delivered.
- 11. Liability**
- 11.1. In the event that the supplier has caused damage to the customer by whatever means (eg. Quality, late delivery, acceptance of guarantees, breach of substantial contractual obligations) it shall only be liable insofar as it, its employees or subcontractors can be shown to have acted with gross negligence.
- 11.2. The supplier shall not be liable for secondary damages or consequential damages such as lost profits due to interruptions of operations. These limitations of liability shall not apply to injuries to life, body or health or if the damages were inflicted intentionally or owing to gross negligence.
- 12. Force majeure**
- 12.1. The supplier's delivery date shall be extended accordingly due to the occurrence of force majeure, in particular including but not limited to natural disasters, terror, riots, acts of war, earthquake, flood, tempest, strike and other obstacles not caused by the supplier as well as accidents, explosions or delay on the part of one of its suppliers if such obstacles can be proven to affect the delivery date. The supplier shall inform the customer immediately of the existence of an obstruction and of its end. If the disturbance results in a permanent obstacle to performance that cannot be overcome by appropriate measures, the supplier is entitled to rescind the contract.
- 12.2. This shall also apply if these events occur at time at which the contractual partner that is affected is in default or if these events occur on a subcontractor's premises.
- 13. Intellectual Property Rights and defects of title**
- 13.1. For all deliveries by the supplier based on drawings, models, samples or parts supplied by the customer, the customer shall ensure that the Intellectual Property rights of third parties in the country for which the goods are being manufactured are not injured. The supplier shall advise the customer of any rights known to it. The customer must release the supplier from any third-party claims and pay compensation for any resulting damage. If an injunction covering the supply or production of the goods to protect the Intellectual Property rights of the third party is issued, the supplier is entitled to stop all work – without any examination of the legal position – until the legal position has been clarified. If the continuation of the contract should become untenable to the supplier due to the delay, the supplier is entitled to rescind the contract.
- 13.2. Any drawings or samples that had been made available to the supplier but did not eventuate in a contract shall be returned on request; otherwise the supplier is entitled to destroy the same three months after the issue of the quote. The same obligation shall apply to the customer analogously. The party entitled to disposal by destruction must inform the other party of the intention prior to doing so and in good time.

- 13.3. The supplier shall retain all copyrights and any rights to Intellectual Property protection, in particular the rights of utilisation and exploitation of models, moulds, equipment, designs and drawings made by it or for it under contract by a third party.
- 13.4. For all other defects of title, section 10 applies analogously.

14. Termination, notice

- 14.1. Notice must be given in writing in accordance with the Insolvency Act 1986.
- 14.2. The contractual partners cannot terminate the contract with good cause without notice. Notice of termination must be given in writing and this shall only be possible within two weeks after the other party has been made aware of the existence of the good cause. Notice can only be declared effective if it is also simultaneously substantiated in writing.
- 14.3. A good cause shall be deemed to exist in particular if insolvency proceedings have been requested or initiated in respect of the assets of the contractual partner.
- 14.4. In the event that the contract relating to parts deliveries is terminated – for any legal reason whatsoever – the customer shall undertake to accept all the products produced up until this point and to accept the material made available in accordance with the final sentence of section 5.2 under the agreed terms. Ulterior claims shall remain unaffected.

15. Final provisions

- 15.1. The validity of these terms shall not be affected by the ineffectiveness of individual provisions. Ineffective provisions shall be replaced by regulations which are the closest approximation to them in terms of the commercial outcome.
- 15.2. For all legal relationships between the parties, the law of the Federal Republic of Germany shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.
- 15.3. If the contractual partner is a businessperson, public law entity or separate estate under public law, the exclusive place of jurisdiction of the supplier's headquarters shall be agreed for all claims arising from or due to this contract. The same shall apply for persons with no general place of jurisdiction in Germany or persons who move their domicile or habitual residence outside of Germany after signing the contract or whose domicile or habitual residence is unknown at the time the suit is brought.