

Terms and Conditions of Purchase of ZwickRoell GmbH & Co. KG Ulm ('ZwickRoell')

ZWICKROELL EXPRESSLY REJECTS ANY ADDITIONAL OR CONFLICTING TERMS OR CONDITIONS IN OFFERS, ORDER ACCEPTANCES, ACKNOWLEDGEMENTS OR CONFIRMATIONS BY THE SUPPLIER.

I. Applicability, conflicting terms and conditions and offer/quotation

1. These Terms and Conditions of Purchase (hereinafter referred to as 'TCP') shall apply exclusively. Any of the supplier's terms and conditions which differ from or conflict with the TCP, or any other agreements which differ from or conflict with the TCP shall only apply if they have been explicitly accepted by ZwickRoell in writing on conclusion of the contract. The requirement for the written form does not apply to post-contractual changes and amendments.
2. Orders are only valid if they bear a handwritten signature, except for orders placed by means of data transmission or telecommunication or electronic print-outs Orders placed by ZwickRoell are valid for 10 working days.
3. Notwithstanding the above, an order placed by ZwickRoell together with these TCP shall be deemed to have been accepted by the supplier in its/their entirety and without any change if the supplier accepts an order in writing or by means of electronic data transmission or commences the provision of goods or services which are the subject of the order. Each order accepted or each contract otherwise concluded for the supply of the subjects of the contract shall be designated as a 'supply contract' within the meaning of these terms and conditions.
4. These Terms and Conditions shall only apply with respect to a person who on entering into the contract is exercising his/her commercial or independent professional activity (a so-called 'Unternehmer' (= entrepreneur) under German law).

II. Scope of supply and services, materials and services provided by the buyer and special obligations of the supplier

1. The supplier's scope of supply and services is determined in particular by the agreed specifications/descriptions of services, the order by ZwickRoell and the current TCP.
2. ZwickRoell shall retain title, copyright and all other intellectual property and usage rights to illustrations, drawings, calculations and other documents or materials (materials and services provided by the buyer) made available to the supplier by ZwickRoell.
3. The processing of materials provided by ZwickRoell and the assembly of parts provided by ZwickRoell is carried out for ZwickRoell. ZwickRoell shall gain joint title to the products manufactured using these materials and parts in proportion to the value of the goods provided by ZwickRoell against the value of the product as a whole. The product as a whole shall in this regard be kept in safe custody for ZwickRoell by the supplier. The product held in joint title with ZwickRoell may not be pledged to a third

party or assigned as security. The supplier is required to advise ZwickRoell immediately in writing or in text form in the event of seizure or other third-party intervention involving the goods held in joint title with ZwickRoell.

4. The supplier shall examine all information made available to him/her for the execution of a supply contract, together with any materials made available for execution of the supply contract, with regard to their suitability or fitness for the purpose intended by ZwickRoell and ZwickRoell's ultimate customer. If it is established that changes or amendments to the objects provided or to the items covered by the contract are necessary or advisable, the supplier must advise ZwickRoell of this without delay.

5. The supplier shall ensure that he/she is familiar in good time with all significant data and facts with regard to the fulfilment of his/her contractual obligations and is familiar with the use intended by ZwickRoell for the items covered by contract which are to be manufactured.

III. Requested changes and obligation of approval in the case of 'contracts to produce a work' ('Werkvertrag' under German law) and of contract manufacture

1. In the case of 'contracts to produce a work' and contract manufacture ZwickRoell can at any time require the supplier to make changes to the items covered by contract which are to be manufactured. These changes must then be implemented without delay on the basis of the existing terms of the contract. In the event that the agreed cost of the items covered by contract cannot be adhered to in this respect, the supplier must advise ZwickRoell of this without delay and take steps to adjust the agreed terms and conditions with due regard to mutual interests.

2. Before commencement of the agreed production of the items covered by the contract the supplier must submit all production documents to ZwickRoell for approval. Approval of the documents does not release the supplier from his/her contractual obligations or from liability to ZwickRoell or third parties.

IV. Prices / terms of payment

1. The prices agreed are fixed flat-rate prices plus the statutory rate of value-added tax applicable at the time, unless invoicing in units based on negotiated hourly rates has been explicitly agreed in writing.

2. Unless alternative terms of payment have been agreed, payment of the purchase price shall be effected within 14 days of performance in accordance with the contract including documentation and receipt of a verifiable invoice in proper form, with 3% cash discount or 30 days nett.

3. Invoices submitted must include date of invoice, supplier number, purchase order number, part number, quantity and unit price. The invoice must additionally contain all information entitling deduction of input tax, in particular tax number or VAT (turnover tax ID) number, invoice number and any other information which is mandatory in a supplier's invoice in accordance with the relevant statutory provisions. If the invoice does not include the aforementioned information ZwickRoell shall not be obliged to pay the stated VAT/turnover tax. If ZwickRoell is unable to obtain an input tax deduction due to an

invoice not being in proper form the supplier must reimburse ZwickRoell for the VAT/turnover tax paid by ZwickRoell.

4. Payments do not constitute recognition that the delivery is in accordance with the contract.

V. Terms of delivery and passing of risk

1. The delivery time stated in the order is binding. Punctual delivery shall be determined by the time of receipt of the delivery consignment at the location specified by ZwickRoell.

2. The supplier shall notify ZwickRoell of each shipment by means of a delivery note forwarded in text form on the day of dispatch.

3. ZwickRoell is not obliged to accept goods covered by contract which are delivered before the agreed delivery date. The supplier shall bear the risk of loss and deterioration of those goods covered by contract which are delivered before the delivery date. ZwickRoell is entitled to return any excess deliveries at the supplier's expense. The supplier shall bear the risk of loss and deterioration of excess deliveries unless ZwickRoell or ZwickRoell's legal representative or vicarious agent has wilfully or through gross negligence caused the loss and deterioration.

4. Unless specified otherwise by ZwickRoell, the supplier must include a delivery note with each delivery. The delivery note must contain order number, item number and supplier number. Each delivery must also be accompanied by documents specified in detail by ZwickRoell in writing, e.g. technical documentation.

5. Delivery is to be effected DDP Ulm as per INCOTERMS 2010, free domicile (passing of risk), including transport insurance, packing and all additional costs.

6. ZwickRoell reserves the right to nominate a carrier or freight forwarder to perform the transport. This carrier or freight forwarder is not a vicarious agent of ZwickRoell; ZwickRoell is merely responsible for a fault in selection.

VI. Retention of title by supplier

ZwickRoell will not accept extended or expanded retention of title by the supplier with regard to acquisition of ownership by ZwickRoell

VII. Deployment of employees and sub-contractors

1. As a basic principle the supplier shall perform all deliveries and services using his/her own employees, who shall be deployed and instructed in accordance with the statutory provisions applicable to the rendering of the performance owed. The supplier shall ensure that all taxes and social insurance/social security contributions incurred hereby are remitted promptly and in full to the appropriate agencies.

2. If the supplier makes use of sub-contractors to render the performance owed, the sub-contractors in question must be able to render the performance owed and must be reliable. In this case the supplier must contractually oblige the sub-contractors in accordance with the agreements with ZwickRoell.

3. In the event of a default by the supplier and a claim against ZwickRoell by a third party the supplier shall on demand indemnify ZwickRoell against such claims.

VIII. Delay and damages/compensation

1. The supplier is obliged to notify ZwickRoell immediately in writing in the event that circumstances arise or become apparent to the supplier which preclude adherence to the agreed delivery time, quantity or quality.

2. Such a notification in no way relieves the supplier of responsibility for the delay in performance. In this respect ZwickRoell shall despite adjustment of the delivery dates continue to be entitled to all rights contained in the supply contract which result from the supplier's delay or are related to this.

3. In the event of delay on the part of the supplier with regard to performance of a contractual obligation (including for example technical documentation), ZwickRoell shall be entitled to demand liquidated damages. This shall amount to 0.2% of the value of the delayed performance for each working day commenced during the delay but not exceeding in total 5% of the value of the delayed performance, unless the supplier provides evidence of lesser damage or loss or ZwickRoell provides evidence of greater damage or loss. Other claims and rights to which ZwickRoell is entitled under the applicable law shall not be affected by the agreement and enforcement of liquidated damages. Any liquidated damages paid by the supplier must be credited accordingly to the supplier in the event of a further claim by ZwickRoell against the supplier for damages relating to delay.

4. The unconditional acceptance by ZwickRoell of a delayed delivery or service shall not constitute a waiver of ZwickRoell's claims for damages.

IX. Quality management / goods inwards checks / obligation to notify defects

1. The supplier undertakes to monitor product/service performance quality continuously. For this the supplier shall employ a quality assurance system, which is to be demonstrated to ZwickRoell on request and optimised if necessary.

2. ZwickRoell also possesses a quality assurance system and aims to adapt its own goods inwards monitoring in accordance with the target quality standard to avoid complete duplication of checks.

3. ZwickRoell will check identity and quantity of the items covered by contract immediately after receipt of delivery, perform random quality assurance tests on the items covered by contract and check the consignment for obvious transport damage. ZwickRoell will notify visible defects to the supplier immediately. ZwickRoell will notify the supplier without delay of any defects which were not discovered or not obvious at this time immediately these are discovered during the ordinary course of business.

X. Warranty

1. The supplier warrants that all items covered by contract which are supplied by him/her
 - shall correspond to the specifications, patterns, drawings and other explicitly stated requirements for them
 - are free of defects, particularly with regard to design, manufacture and material
 - are of standard commercial and industrial quality
 - will cause no third-party rights to be infringed through their supply, use or other employment
 - are suitable for the specific purposes for which they were ordered.
2. The supplier warrants that items supplied by him/her shall include all features and services necessary for proper correct, reliable and economical use, particularly when operating with machines and systems which are to be manufactured/have been manufactured by ZwickRoell, that they are suitable for the intended use and are in accordance with current scientific and technological standards. In rendering this performance the supplier shall observe all standards, laws and statutory provisions which are relevant according to applicable law and shall observe the generally recognised safety rules and the corresponding ZwickRoell standards.
3. If the aforementioned warranties are not met and the items covered by contract are therefore defective, ZwickRoell can at its discretion require the supplier to repair the items covered by contract at the supplier's own cost and risk or to replace them with items which are free of defects. If the supplier does not fulfil this obligation despite the setting of a reasonable extended deadline by ZwickRoell, or if immediate action is required to avoid further damage, ZwickRoell can at the supplier's expense repair or replace the items covered by contract or employ third parties to do so.
4. The supplier shall reimburse ZwickRoell for all costs incurred or still to be incurred in connection with the repair or replacement of defective items covered by contract.
5. The warranty period is 24 months from the passing of risk to ZwickRoell. If ZwickRoell and the supplier have agreed a final acceptance for the items covered by contract or if such an acceptance is required under applicable law, the warranty period shall be 24 months from completion of acceptance. Claims by ZwickRoell arising within this warranty period expire no earlier than 6 months after the claim arises, but not before the expiry of the agreed limitation period.
6. Further or additional legal or contractual claims by ZwickRoell shall remain unaffected.
7. The place of performance for warranty claims is the place at which the items covered by contract are located at the time the defect is discovered.

XI. Third-party property rights

1. The supplier warrants that the items covered by contract supplied are free of third-party industrial and intellectual property rights.

2. The supplier must indemnify ZwickRoell in full against third-party claims on grounds of infringement of industrial and intellectual property rights. In particular the supplier must make good any damage or loss suffered by ZwickRoell arising from the prohibition of processing, delivery or use to ZwickRoell or ZwickRoell's customer due to infringement of industrial and intellectual property rights. Alternatively the supplier must at ZwickRoell's discretion obtain a licence from the owner of the property rights.

3. The aforementioned indemnity obligation shall not apply if the infringement of industrial and intellectual property rights relates solely to specific instructions (e.g. technical drawings and specifications) by ZwickRoell

XII. Liability, indemnity and insurance cover

1. The supplier is obliged to indemnify ZwickRoell on demand against all claims arising directly or indirectly (including claims arising from loss of life, personal injury, impairment of health, violation of property or from any other rights), damage, costs, expenditure and losses - including the costs of any legal dispute or necessary modification or recall - which have been caused by the supply of defective items covered by contract or by the breach of any other contractual obligation. This shall not apply if the supplier is not at fault in the case of fault-based liability as provided by law.

2. If work carried out on ZwickRoell's premises or on the premises of one of ZwickRoell's customers is also necessary for performance of contract by the supplier, the supplier shall take all necessary precautions for prevention of personal injuries or material damage during the course of such work. The supplier shall reimburse ZwickRoell for or indemnify ZwickRoell against all damage, costs and expenditure caused by the supplier's work on the premises, unless the supplier was not at fault in this instance.

3. The supplier shall be liable for employees or sub-contractors to the same extent as for the supplier's own fault.

4. The supplier undertakes to take out and ensure insurance cover which is appropriate and of industry standard with regard to both basis and level and to furnish ZwickRoell with the relevant evidence of insurance on request. The supplier hereby assigns in advance all his/her claims for payment against the insurer to ZwickRoell, insofar as these result from damage related to the item covered by contract. ZwickRoell accepts this assignment. The supplier's liability shall not be limited by the taking out of insurance cover and the assignment of insurance claims.

5. Further or additional legal or contractual claims on the part of ZwickRoell shall remain unaffected.

XIII. Assignment of claims

Assignment of claims is only permissible with written agreement by ZwickRoell.

XIV. Minimum wage

1. The supplier undertakes to comply at all times with all legal requirements relating to his/her employees or any temporary workers employed by him/her and concerning employment, social or national insurance, tax and other duties or obligations, particularly those obligations or duties contained in the minimum wage law. The obligations of the supplier under the minimum wage law include in particular but not exclusively the obligation to pay remuneration at least equal in amount to the legal minimum wage no later than the due dates stipulated in the minimum wage law, the obligation to record the commencement, end and duration of the daily working time together with the safe storage of these records.
2. The supplier undertakes to provide evidence at any time of his/her due and proper fulfilment of the aforementioned duties and obligations, particularly of payment of the minimum wage to his/her employees or to employees of subcontractors, by means of suitable documentation (e.g. separate bank transfer slips).
3. In the event of a breach of the obligations contained in the minimum wage law on the part of the supplier or one of the supplier's sub-contractors, as a result of which ZwickRoell is subject to a claim by a third party or parties, the supplier shall indemnify ZwickRoell against all such claims and shall undertake to make good any resulting additional loss or damage.

XV. Code of Conduct

The supplier undertakes to observe all applicable statutory regulations such as those relating to accident prevention and safety and environmental protection while fulfilling his/her contractual obligations to ZwickRoell. Similarly the supplier shall comply with the Code of the Conduct of the ZwickRoell/Roell Group, which can be accessed at www.ZwickRoell.de, while rendering the contractually agreed performance.

XVI. Applicable law and jurisdiction

1. The contract and the supplier-purchaser relationship resulting from it are subject to the substantive law of the Federal Republic of Germany. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.
2. The sole place of jurisdiction for all disputes arising from or in connection with the contract shall be ZwickRoell's place of business. ZwickRoell is entitled to bring an action against the supplier at the court having jurisdiction over the supplier's place of business.

Position at January 2016