

## Terms and Conditions of Purchase of ZwickRoell Testing Systems GmbH (“ZRF”)

ZRF EXPRESSLY REJECTS ANY ADDITIONAL OR CONTRADICTORY TERMS AND CONDITIONS OR CONDITIONS IN QUOTES, ORDER ACCEPTANCES OR CONFIRMATIONS OF THE SUPPLIER.

### I. Applicability, contradictory terms and conditions, and quote

1. Only these Terms and Conditions (T&Cs) apply. Different terms and conditions of the supplier or other deviating agreements only apply if they have been expressly recognized in writing by ZRF.
2. Purchase orders are only valid when they have a written signature, with the exception of those that are sent by data transmission or EDP printouts. Purchase orders from ZRF are valid for a period of 10 working days.
3. Notwithstanding this, a purchase order from ZRF and these T&Cs are deemed accepted in their entirety without changes by the supplier when the supplier accepts a purchase order in writing or by means of electronic data transmission or starts providing the goods/services that are the object of the purchase order. Any accepted purchase order or any otherwise agreed contract on the delivery of contractual items will be referred to as a “supply contract” within the meaning of these T&Cs.

### II. Scope of delivery, materials provided, and industrial property rights

1. The scope of delivery for the supplier shall be based in particular on the agreed specifications and the descriptions of features, the ZRF purchase order, and these T&Cs.
2. ZRF retains ownership of and copyrights to all diagrams, drawings, calculations and other documents or materials (materials provided). The supplier shall regard all commercial and technical details made known to him as a result of his business relationship with ZRF as trade secrets, unless they are already public knowledge. These trade secrets, documents and materials may not be made accessible to third parties without the written agreement of ZRF. They must only be used for the performance of the underlying purchase order. Once the order has been processed, the documents and materials are to be returned to ZRF upon request. The supplier does not have any rights of retention or rights of lien with regard to the materials provided.  
This confidentiality obligation regarding knowledge acquired and information obtained from the materials provided shall continue to apply once the contract has been completed. It ceases to exist following written notification from ZRF or when and to the extent that the production knowledge contained in the documents has become generally known.
3. The materials provided are processed for ZRF and the parts provided are assembled for ZRF. ZRF shall receive part ownership of the items manufactured using these materials and parts in the ratio of the value of the materials provided to the value of the complete product. The supplier shall in this respect keep the complete product for ZRF.
4. The supplier shall check all information and any materials given to him for the execution of a supply contract for their suitability with regard to the purpose aimed for by ZRF and its end customer. If it is found that changes or corrections to the provided items or to the contractual items need to be made or are advisable, the supplier shall inform ZRF of this without delay.
5. The supplier shall ensure that he is aware in good time of all significant data and circumstances for the fulfillment of his contractual obligations as well as of the intended use of his deliveries by ZRF. The supplier shall be responsible for ensuring that his deliveries include all services that are necessary for smooth, compliant, reliable and cost-effective use, particularly in conjunction with the machines and systems manufactured/to be manufactured by ZRF, that they are suitable for the intended purpose, and that they correspond to the state of the art in science and technology. In providing the services, he shall observe all relevant standards, laws and legal regulations under the applicable law and shall adhere to generally recognized safety rules.
6. ZRF can demand that the supplier make changes to the contractual items at any time. These must then be implemented without delay on the basis of these T&Cs. If the agreed costs of the contractual

items or the agreed deadlines cannot thus be adhered to, the supplier must inform ZRF of this without delay.

7. Before starting the agreed manufacture of the contractual items, the supplier must provide ZRF with all manufacturing documents for approval. Approval of the documents does not release the supplier from his contractual obligations or from liability toward ZRF or third parties.

8. The supplier shall guarantee to supply ZRF with the same contractual items or parts of these as spare parts at reasonable prices over a period of 10 years after fulfillment of the contract, unless an equally compatible or suitable part can be supplied based on technical progress.

9. The supplier guarantees that the delivery items are free from the rights of third parties. The supplier shall indemnify ZRF from all third-party claims in respect of infringements of industrial property rights. The supplier shall compensate ZRF for damages resulting from further processing or delivery being prohibited for ZRF or its customers due to an infringement of industrial property rights. Alternatively, the supplier must, at ZRF's option, purchase a license from the owner of the industrial property rights.

### III. Prices / Payment terms

1. Unless billing by units on the basis of negotiated hourly rates has been expressly agreed in writing, the agreed prices are flat-rate fixed prices plus the applicable statutory VAT. Unless other payment terms have been agreed in writing, the purchase price shall be paid within 14 days, counting from provision of the contractual goods/service including documentation and receipt of a proper and verifiable invoice, with 3% cash discount or within 30 days net. The invoice date, supplier number, purchase order number, part number, quantity and unit price must be specified on the invoices submitted. The invoice must also contain all authorized details for an input tax deduction, particularly the tax number or VAT ID, invoice number and other mandatory details of a supplier invoice pursuant to the relevant statutory regulations. If the invoice does not contain the above-mentioned data, ZRF is not obliged to pay the VAT shown. If ZRF is refused the input tax deduction due to an invoice that is not proper, the supplier must pay back the VAT paid by ZRF.

2. Payments do not constitute recognition of the delivery as contractual.

3. If the supplier requires a down payment by ZRF for the contractual items, he must, at his own expense and before payment of this down payment, issue ZRF with an absolute guaranty from a major bank for the same amount as the down payment.

### IV. Delivery terms and transfer of risk

1. The delivery time specified in the purchase order is binding. On-time delivery also means that the delivery must have been received at the receipt point specified by ZRF.

2. The supplier shall immediately notify ZRF of each shipment by means of a delivery note on the shipping date.

3. ZRF is not obliged to accept contractual items delivered before the agreed delivery date. The supplier shall bear the risk of loss and risk of deterioration for contractual items delivered before the delivery date. ZRF is entitled to send back any overdeliveries at the expense of the supplier. The supplier shall bear the risk of loss and the risk of deterioration for overdeliveries.

4. Unless provided for otherwise by ZRF, the supplier is to include a delivery note with each delivery. The purchase order number, item number, and supplier number must be specified on the delivery note. All documents, such as technical documentation, requested by ZRF according to more detailed written specifications are also to be included with the delivery.

5. The delivery shall take place according to INCOTERMS 2010 DDP Fürstenfeld, carriage paid (transfer of risk) including transportation insurance, packaging and all additional costs.

6. ZRF accepts neither a prolonged nor an extended reservation of title by the supplier with respect to the acquisition of ownership by ZRF.

7. ZRF reserves the right to appoint a carrier to carry out the transportation. This carrier is not a vicarious agent of ZRF; ZRF is simply responsible for a possible fault in the selection of an agent.

## V. Deployment of personnel

1. In principle, the supplier shall render his deliveries and services through the use of his own personnel, who are deployed and instructed in compliance with the legal regulations applicable to the deliveries and services that have been contractually agreed upon. The supplier shall ensure that he will pay any and all taxes and social security contributions arising from this in full and on time to the responsible collection agencies.
2. If the supplier deploys subcontractors to render the deliveries and services contractually agreed upon, these subcontractors must be suitable for and reliable in rendering these contractual deliveries and services. In such cases, the supplier shall oblige in writing the subcontractors to comply with ZRF regulations as stipulated by the agreement.
3. In the event that the supplier fails to render deliveries and services and a claim is made against ZRF by a third party, the supplier shall indemnify ZRF from such claim on the latter's first request.

## VI. Delay and compensation

1. The supplier is obliged to notify ZRF immediately in writing if circumstances occur or become apparent to the supplier such that the agreed delivery time, quantity or quality cannot be adhered to.
2. Such a notification does not under any circumstances release the supplier from the delay with his performance. Despite the pushing out of the delivery dates, ZRF continues to be entitled to all rights from the supply contract that result from the supplier's delay or are related to this.
3. In the event of a delay by the supplier in the performance of his contractual duties (including technical documentation, for example), ZRF shall be entitled to demand flat-rate compensation from the supplier. For each workday or part thereof of the delay, the compensation shall be 0.2% of the total order value, but shall not altogether exceed 5% of the total order value. Other claims and rights to which ZRF is entitled under the applicable law shall not be affected by the agreement and the enforcement of the flat-rate compensation. Any flat-rate compensation paid by the supplier is to be deduced accordingly from any further delay-based compensation claim by ZRF against the supplier.
4. The unconditional acceptance of a delayed delivery or service by ZRF shall not entail any waiver of claims for compensation.

## VII. Quality management / Incoming goods inspection

1. The supplier undertakes to continually monitor the quality of his output. To this end, the supplier shall use a quality assurance system, which is to be demonstrated to ZRF upon request and optimized if necessary.
2. ZRF also has a quality assurance system and aims, in accordance with the quality standard to be met, to adapt its own incoming goods inspection so as to avoid complete duplicate checks. Following receipt of the delivery, ZRF will promptly carry out an identity and quantity check of the contractual items and will also check the delivery for obvious transport damage. ZRF will promptly inform the supplier of any visual defects found. If there are defects not found during this check but subsequently in the ordinary course of business, ZRF will notify the supplier of them within a reasonable period as soon as they have been identified.

The supplier shall not in this respect object to the delayed notice of defects.

## VIII. Warranty

1. The supplier warrants that all contractual items delivered by him
  - correspond to the specifications, templates, drawings and other requirements specifically made of him
  - are free from defects, particularly in design, manufacture and material
  - are of market and industry-standard quality
  - do not infringe the rights of third parties through the delivery, use or other usage of the contractual itemsand

- are suitable for the special purposes for which they were ordered.

2. If the aforementioned warranties are not met and the contractual items are therefore defective, ZRF can, at its own option, either demand that the supplier repair the contractual items at his own risk and expense or replace them with contractual items. If the supplier does not meet this obligation or there are other circumstances that demand immediate action, ZRF can, at the supplier's expense, repair or replace the contractual items itself or engage third parties to do so.

3. The supplier shall reimburse ZRF for all costs incurred or still to be incurred in connection with the repair or the replacement of the defective contractual items.

4. The warranty period is 24 months from transfer of risk to ZRF. If ZRF and the supplier have agreed an official acceptance of the contractual items or such an acceptance has to take place according to the applicable law, the warranty period is 24 months from the acceptance. Claims by ZRF that originated within this warranty period expire at the earliest 6 months after the origination of the claim but not before the end of the agreed limitation period.

5. This shall not affect further or additional legal or contractual claims by ZRF. The place of performance for warranty claims is the place in which the contractual items are located at the time the defect is detected.

## **IX. Liability, indemnity and insurance cover**

1. The supplier is obliged to indemnify ZRF on first request from all claims originating directly or indirectly (including claims pertaining to death, personal injury, health, ownership or arising from other rights) as well as from damages, costs, expenses and losses – including the costs of any legal dispute or any necessary modifications or recalls – that were caused by the delivery of defective contractual items or the infringement of another contractual obligation. This does not apply if the supplier is not at fault in the case of a liability based on fault that is provided for by law.

2. If in performing the contract it is necessary for the supplier to carry out work on ZRF's premises or on the premises of one of its customer, the supplier shall take all necessary precautions to avoid damage to persons or property during the course of this work. The supplier shall reimburse ZRF or indemnify ZRF from all damages, costs and expenses that were incurred through the supplier's work on a premises, unless the supplier was not at fault.

3. The supplier shall be liable for the fault of employees or subcontractors to the same extent as for his own fault.

4. The supplier undertakes to take out and secure appropriate, industry-standard insurance cover both in terms of reason and amount and to provide ZRF with corresponding proof of insurance upon request. The supplier hereby assigns in advance all his payment claims against the insurer to ZRF, insofar as they result from damages in connection with the subject matter of the contract. ZRF accepts this assignment. The supplier's liability is not limited by the taking out of insurance cover and the assignment of insurance claims.

5. This shall not affect further or additional legal or contractual claims by ZRF.

## **X. Assignment of claim**

Assignment of claim is only permitted with the written approval of ZRF.

## **XI. Minimum wage**

1. The supplier is obliged to pay his employees the current statutory minimum wage. Payments and any necessary proof thereof must be made in accordance with minimum wage law.

2. If the supplier does not fulfill minimum wage law obligations, and if as a result, claims are made against ZRF by a third party, the supplier shall indemnify ZRF from all such claims upon first request.

3. If the supplier deploys subcontractors, the supplier must observe the applicable minimum wage law to the same extent by requiring the subcontractor to do the same. If the subcontractor violates the regulations of the minimum wage law, the supplier shall likewise indemnify ZRF from all resulting claims

upon first request, as defined in clause XI, para. 2

## **XII. Code of Conduct**

The supplier is obliged to observe all pertinent legal rules and regulations, for example those related to accident prevention and to the protection of the employee and the environment, when rendering deliveries or services stipulated by the agreement with ZRF.

Likewise, he shall comply with the ZwickRoell Group Code of Conduct, which can be found at [www.zwickroell.com](http://www.zwickroell.com), when rendering contractually agreed upon deliveries and services.

## **XIII. Applicable law and place of jurisdiction**

The law of the Republic of Austria shall apply for the conclusion of the contract, its validity, termination, interpretation, implementation and for any disputes arising in this regard. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the conflicting regulations of international private law, according to which the application of another law would be necessary, are expressly excluded. The contracting parties agree that Fürstenfeld, Austria, is the sole place of jurisdiction. In the event of complaints by ZRF against the supplier, ZRF may also choose the location of the registered office of the supplier as the place of jurisdiction as it sees fit.

## **XIV. Severability clause**

If any provision of these T&Cs should be rendered invalid or unenforceable by law or other regulation, such provision shall be deemed amended or removed, as appropriate, in order to enable compliance with such laws or regulations, while still fulfilling the intention of the parties. The remaining provisions of these T&Cs shall not be affected by this.

As at: July, 2019