

## GENERAL TERMS AND CONDITIONS OF PURCHASE

of

**ROB Cemtrex GmbH**  
**Am Wolfsbaum 1**  
**75245 Neulingen/Germany**

as of June 2019

**1. Scope of Applicability**

1.1. These present General Terms and Conditions of Purchase shall apply exclusively. Supplier's terms to the contrary or deviating from our General Terms and Conditions of Purchase shall not be valid unless expressly confirmed by us in writing. These present General Terms and Conditions of Purchase shall also apply if we are aware of Supplier's terms contrary to or deviating from either these present General Terms and Conditions of Purchase or statutory regulations to our detriment, even if we, however, accept any delivery from Supplier.

1.2. Any and all arrangements between us and Supplier with the purpose of concluding a contract or effecting a delivery within such contract, shall be made in writing.

1.3. These General Terms and Conditions of Purchase shall only apply with respect to entrepreneurs as defined by Art. 14 BGB (German Civil Code).

1.4. Our General Terms and Conditions of Purchase shall also apply for future business with the Supplier.

**2. Conclusion of Contract, Subject Matter of Contract**

2.1. Before receipt of Supplier's order acknowledgement, we are entitled to rescind from any orders without incurring any costs or liability.

2.2. If the order acknowledgement deviates in any way from our orders or requests, Supplier shall expressly notify us of such deviations.

2.3. Besides our General Terms and Conditions of Purchase, any of our order specifications, especially product specifications, which are referred to in the context of our order or which are enclosed with our order, especially our technical documentation, drawings, construction requirements, material requirements etc. shall be part of the Contract between us and Supplier.

2.4. Supplier shall not subcontract with any third parties without our prior written consent.

In case of any violation hereof, we are entitled to rescind from the Contract. This is without prejudice to any other of our statutory rights.

2.5. If, during contract conclusion, errors occur which are not due to our fault, e.g. due to errors in communication, misunderstandings etc., no claims of damage pursuant to Art. 122 BGB (German Civil Code) may be asserted against us.

**3. Contractual Documents and Manufacturing Material, Penalty**

3.1. Any contractual documents or manufacturing material which we provide to Supplier or which Supplier produces or procures at our cost, like e.g.

- illustrations, calculations, drawings, samples, production regulations etc;
- models, stencils, samples or prototypes;
- parts and material;
- tools

shall remain or become our property, as far as third parties' property rights are not existent. Any intellectual property rights therein including any and all rights to use our copyright remain reserved for us, as far as third parties' rights do not exist.

Any processing or transformation of the material or parts provided by us (privileged goods) shall be made by Supplier for and on behalf of our company. If privileged goods are processed with other goods owned by any other person, the product shall be deemed to be owned in common with the other person, whereby our share in the common property depends on the ratio of the total amount of the value of the privileged goods (buyer's price plus VAT) to the value of the processed/transformed goods at the time of processing or transformation.

If the privileged goods are inseparably mixed or combined with other goods which are the property of any other person, the product thereof shall be deemed to be owned in common by us with that other person, whereby our share in the common property depends on the ratio of the total amount of the value of the privileged goods (buyer's price plus VAT) to the value of the other goods which have been mixed or combined at the time of mixing or combining.

If the mixing or combining of the goods has been done in such a way that the product of the Supplier is to be considered to be the main product, it is agreed that the Supplier assigns to us ownership of such product on a pro rata basis.

Privileged goods are to be properly stored and marked as our property before any processing or transformation. Supplier shall keep our property and common property with an other person in cost-free adequate storage.

3.2. Any and all copyrights or intellectual property rights in any documents or manufacturing material as referred to in No. 3.1. above are reserved for us as far as third parties' rights do not exist.

3.3. Supplier shall at his own expense efficiently insure the privileged goods against theft, robbery, burglary, fire and water damage, at their value as new product. As early as today, Supplier shall assign to us all rights resulting from such insurance and relating to the privileged goods. We herewith accept the assignment.

3.4. Supplier shall maintain privileged goods, especially tools, properly and keep them in good repair. He shall perform any and all mending measures at his own expense. He shall give us notice of any malfunctioning immediately. If he fails to do so, he shall be liable for any and all damage resulting therefrom.

3.5. Any manufacturing documents and manufacturing material, which is our property or in which we have property rights, shall not – except for any contractual purposes or other purposes agreed upon between the Parties hereof – be used, copied, transferred, sold or pledged to third parties nor shall they be made available to third parties. Supplier especially shall not manufacture products for third parties by using these documents or material.

3.6. Manufacturing documents and, at our special option, also specific manufacturing material which is our property or in which we have copyrights, shall be kept confidential. They shall be disclosed to third parties only with our explicit consent. The obligation to keep confidence also applies after the termination of this Contract. The obligation becomes void if the documents and/or its manufacturing material have become publicly known.

3.7. If the Contract is not definitely concluded or if the Contract is fulfilled, Supplier shall - upon our request - immediately give back to us any and all copies, pieces etc. of manufacturing documents and manufacturing material in good condition or

- destroy or otherwise alternate the manufacturing material and documents so that they are of no use anymore for the manufacture;
- destruction or alteration shall be proved to us upon our request.

The same applies to remainders of manufacturing documents or any half-finished parts manufactured on the basis of manufacturing documents or material at the end of the Contract. They shall in no event be made available to third parties, even if they are defective or were refused to be taken back by us. Supplier shall not be entitled to plead a right of retention against our rights as laid down in this paragraph.

3.8. If the value of the securities of all privileged goods exceed the total of buyer's price of the privileged goods, which are not yet paid by Supplier, by more than 20 %, we undertake, upon written request of Supplier, to release such securities. We shall have the right to select the securities to be released.

3.9. In case of violation of Nos. 3.5., 3.6. and 3.7. above, which Supplier is responsible for, Supplier undertakes to pay to us a contractual penalty amounting to 5 % of the gross order volume of the order affected by the violation. We reserve the right to assert additional damages.

**4. Prices, Terms of Payment**

4.1. Prices contained in our orders are binding.

Supplier's reservation upon conclusion of this Contract, to increase prices after such conclusion shall be valid only with our prior written consent. Unless otherwise agreed upon, prices are free point of destination, including packaging, freight and any other costs.

4.2. Invoices can only be handled if – according to the instructions contained in our order – the order number is indicated. For any consequences resulting from the failure to observe this duty to insert the order number, Supplier shall be liable unless he proves that he is not responsible for such failure.

VAT shall be mentioned separately in the invoices.

For any product manufactured elsewhere than in the Federal Republic of Germany, Supplier shall submit a certificate of origin or an adequate declaration together with the invoice at the latest.

4.3. Unless otherwise agreed upon, payment shall be made within 30 days after receipt of invoice, strictly net, or within 14 days after receipt of invoice with a discount of 3 %. In case of preliminary delivery of contractual products, invoice shall become due for payment only at the delivery date originally agreed upon at the earliest. Any discounts shall be deducted from the invoice amount, including VAT.

If we receive invoices during our company holidays and therefore are not able to observe the 14 days' payment term, we are entitled to deduct the discount of 3 % in case of immediate payment after the end of our company holidays.

At our option, payment shall be made via bank transfer or by crossed cheque. For the due observation of the payment term, the mailing stamp shall be decisive.

We do not accept COD charges or any other costs of such kind.

4.4. We have the right to set off or the right of retention within the statutory rules.

**5. Delivery, Term of Delivery, Packaging**

5.1. Dates and terms of delivery, installation or inspection as indicated in the order are binding for Supplier.

5.2. Deliveries and services ordered have to be performed on the date and at the location agreed upon. Deliveries of manufactured products shall be available for inspection and acceptance at such date and at such place. Prohibitions by law, ROHS terms, Reach, Conflict minerals, DMF-prohibitions (Dimethylfumarat („DMF“)-CAS 624-49-7, have to be observed. If threshold will be exceeded, you are contained to inform in writing.

5.3. Delivery dates or delivery terms which from time to time are agreed upon as non-binding or only approximate shall become binding two weeks after the date of delivery agreed upon at the latest.

5.4. If the Supplier becomes aware of any circumstance which might impede the in-time fulfilment of the Contract in the quality agreed upon, he shall give notice hereof to us in writing immediately and describe the reasons for such circumstances. Any damages due to failure of delay in giving such notice shall be borne by Supplier.

5.5. In case of default or delay in delivery or performance, the statutory provisions shall apply. This includes our right in case of delay or default in delivery or performance, to rescind from the Contract or to claim damages instead of performance after previously having set a reasonable term for fulfilment of the Contract and the non-observance of this term by Supplier. If we claim damages, Supplier is entitled to prove that he is not responsible for the delay or default in delivery.

5.6. We are entitled to rescind partly or totally from the Contract even if the default or delay in delivery is not within the responsibility of Supplier.

5.7. Packaging must comply with the applicable environmental and waste disposal regulations. We reserve the right to hand back any packaging items. We are obliged to hand back packaging items only upon specific agreement insofar.

**6. Transport, Transfer of Risk, Documents**

6.1. Delivery shall be made free point of destination.

If, from time to time, we have agreed upon to bear any transport costs ourselves, Supplier shall be obliged, upon our request, to contract with our usual forwarder, or if we do not give any specific request, to contract the least costly transportation. We shall bear any higher costs only in case where these are incurred due to specific packaging or transportation regulations.

6.2. The risk of loss shall pass to us only upon arrival of the product at the place of performance or, if in the frame of a manufacture agreement an inspection is agreed upon, at the time of performance of such inspection at the place of destination.

Supplier shall be liable for any loss or damage that might happen during transportation including the unloading procedure until receipt of the product by us at the place of destination.

6.3. Documentary evidence of origin that may be required by us from Supplier shall contain any and all information which is contained in orders and order confirmations.

Any delivery shall be made together with a document of delivery containing our order number and the date of order. The delivery document shall in addition contain information about the gross and net weight. In case of partial delivery, the balance to be delivered shall be mentioned. In case of failure of the Supplier to include the required information, we shall not be liable for any delay in processing the delivery.

**7. Inspection**

7.1. If we are prevented from performing the inspection of the delivery or the services or to perform any of our obligations in the context hereof due to circumstances of force majeure as well as any other unforeseeable circumstances which we are not responsible for and which only occur after conclusion of the contract or which have been unknown to us at the time of entering into the Contract for no fault attributable to us, furthermore in

case of subsequent strikes and legal lock-outs, we shall be entitled to postpone performance of such obligations for as long as the disturbance may last. We shall give notice of such disturbance as well as its reasons to Supplier without undue delay.

7.2.

We are entitled to refuse receipt of delivery if made before the delivery date agreed upon. Any products delivered before the delivery date may be sent back to Supplier at his cost and risk or may be stored at third parties.

7.3.

In case of delivery of products within a manufacture contract, a manufacturing inspection and acceptance has to take place. The date for such inspection shall be indicated by Supplier at the latest 14 days before the actual inspection.

At our request, an inspection protocol together with the required amount of respective material certificates shall be prepared by Supplier, according to which the inspection can be performed and where any defects apparent upon inspection shall be taken down. After mutual signature by either party, this protocol shall constitute the inspection protocol.

If the Supplier is obligated to perform installation according to the Contract, the inspection shall take place only after installation of the product at the point of destination.

7.4.

The products to be delivered shall be packed in an adequate way. If Supplier does not observe any packaging or forwarding instructions given by us, we are entitled to refuse receipt of the products without incurring a default in receipt.

## 8. Warranty

8.1.

Any and all delivery shall comply with the statutory or administrative regulations applicable at the respective time of delivery, especially labour protection and other security regulations, like e.g. DIN rules, UVV rules, VDE rules, ROHS-3, Reach, DMF (Dimethylfumarat), conflict minerals or other rules on the prevention of fire and environmental regulations, as well as renowned standards of knowledge. In case of the conclusion of a quality management agreement, Supplier shall comply with its provisions. Changes of the products need our explicit consent. Additional are valid:  
VDA-list of banned substances and the list of substances with liability to submit documents.  
For first sampling are valid VDA-document chapter 2, latest version.

Supplier shall check any delivery before sending and, at our request, issue a verification certificate.

Supplier shall, without any request from us, also deliver specific protection equipment for the handling of Products in accordance with applicable security regulations.

8.2.

Unless otherwise agreed upon in these present General Terms and Conditions of Purchase the statutory warranty rules apply.

8.3.

We are entitled to claim apparent defects or non-conformance with product specifications (hereinafter collectively referred to as "defects") within one week after receipt of delivery, hidden defects may be claimed within one week after their discovery.

If we are entitled to inspect the products in accordance with applicable statistical or random methods and if upon such inspections the admissible random marks are not met, we are entitled, without prejudice to any other of our rights, to refuse receipt of delivery in total or, after prior understanding with Supplier, to perform a 100 % checking on Supplier's cost and risk and request substitution of the defective parts.

8.4.

The warranty period is 36 months, starting with the moment of passing of risk.

8.5.

In case of defects, we are entitled, without prejudice to any other of our statutory rights, to send back the defective delivery at Supplier's cost and risk and, at our choice, request substitution or repair. In such a case Supplier shall bear any and all costs in connection with such repair or substitution.

In case of repair or substitution, the warranty period shall be interrupted during the period between claiming the defect and the inspection.

In case of emergency or special time pressure, we are entitled to repair any defects by ourselves, or have third parties repair these defects, at Supplier's cost without any prior warning.

8.6.

We reserve the right to claim additional and statutory rights, including the right of rescission from the contract in case of breach of obligations by Supplier or to claim damage instead of performance.

8.7.

Supplier shall give us notice of all potential defects or perils with regard to his delivery or his services which may have appeared at its customers or their customers.

## 9. Product Liability, Obligation to hold harmless, Product Liability Insurance

9.1.

If we are being held liable under statutory product liability in accordance with national or foreign law, Supplier shall hold us free and harmless on first demand from any and all claims for damages, costs and expenses, as far as such claims are justified for reasons within Supplier's responsibility and as far as Supplier would be liable himself.

9.2.

In case of liability in accordance with 9.1. above, Supplier shall also be obligated to compensate any and all costs incurred by us in accordance with Art. 683, 670 (German Civil Code) as well as Art. 830, 840, 426 BGB (German Civil Code), which may result out of or in connection with any product recall measures performed by us. We shall inform Supplier about the contents of such product recall measures as fast as possible and as far as it can be reasonably expected from us and shall give him the opportunity to comment on this. Further statutory claims remain unaffected.

9.3.

Supplier shall, during the term of the respective contract with us, including the period until the prescription of any warranty claims, maintain an adequate product liability insurance with a coverage sum adequate for the product and the branch. If we have further claims for damages on the law, such remain unaffected.

## 10. Third parties' rights

10.1.

Supplier guarantees that contractual products or any activities in connection with the delivery of such, do not infringe any third parties' intellectual property rights within the Federal Republic of Germany or any other country of export, which is known to Supplier at the time of conclusion of the contract.

10.2.

If we are held liable by a third party insofar, Supplier shall be obligated to hold us free and harmless on first demand. We shall be entitled to conclude any agreements with third parties even without consent of Supplier, especially any kinds of settlements.

10.3.

The above obligation to hold free and harmless covers any and all costs and expenses, which we may have out of or in connection with any third parties' claims.

If need be, Supplier shall provide us with support and legal advice in connection with judicial disputes or shall take part in judicial disputes at his own cost on our demand.

10.4.

The term of prescription for the claim to be held free and harmless is ten years, beginning with the closing of the contract.

## 11. Liability

11.1.

We are liable for intentional breach or gross negligence. In case of ordinary negligence, we shall only be liable in case of breach of an essential contractual duty whereby our liability is limited to the foreseeable damage specific for the type of contract.

11.2.

As far as our liability is limited or excluded in accordance with 11.1. above, this shall also apply accordingly in respect of the personal liability of our employees, workers, staff members, agents and any and all persons employed in performing our obligation.

## 12. Right to set off, Right of Retention, Assignment

12.1.

Supplier shall be entitled to set off claims of us against Supplier only in case of an unappealable or expressly acknowledged claim against us. The same applies for any rights of retention of Supplier.

12.2.

Any assignment of claims shall only be made with our prior written consent.

## 13. Property of contractual products

13.1.

We shall become the owner in title of any contractual products upon their production if such production is made on the basis of our manufacture documents or with the help of our manufacture material.

No. 3.1. applies accordingly.

13.2.

With regard to other deliveries or performances, an extended reservation of proprietary rights shall be excluded.

## 14. Confidentiality

If not otherwise agreed upon in writing, any information transferred to us in connection with the order shall not be deemed confidential.

## 15. Place of Performance

Place of performance of any deliveries is the point of destination indicated by us, without special indication, our principal place of business.

Place of performance for our payments is our principal place of business.

## 16. Place of Jurisdiction, Applicable Law, Miscellaneous

16.1.

If Supplier is a merchant within the meaning of the HGB (German Commercial Code), judicial person on the public law and public utility fund, place of jurisdiction for all disputes arising out of or in connection with the contractual relationship – herein included liabilities from cheques and bills of exchange – shall either be our principal place of business or at our sole discretion the location of Supplier. This Agreement as to the place of jurisdiction shall also apply for Suppliers having their location in a foreign country.

16.2.

To all rights and obligations and all disputes arising out of or in connection with the contractual relationship between Supplier and us, German law, excluding the United Nations Sales Convention (CISG Conventions and Contracts for the International Sale of Goods of April 11, 1980) shall apply exclusively, without regard of German collision rules.

16.3.

Should individual provisions of these General Terms and Conditions of Purchase or individual provisions of other agreements concluded between the parties be or become invalid, this shall not affect the validity of the other provisions or agreements.