

RAUCH
Terms and Conditions for the Purchase of Goods and Services

§ 1 Scope of Application

- (1) These terms and conditions shall govern all orders and contracts in respect of which RAUCH is customer, buyer or party ordering a work. These Terms shall also apply to all future transactions.
- (2) We will not accept the contracting party's commercial terms and conditions, and these do not apply. RAUCH is not required to object to these terms.
- (3) The contracting party acknowledges in the context of any supply or service the exclusive application of these Terms and Conditions for the Purchase of Goods and Services.
- (4) Any written agreements made with the contracting party in a particular case shall prevail over these Terms and Conditions for the Purchase of Goods and Services.

§ 2 Purchase Order

- (1) RAUCH shall be bound by a purchase order only if the purchase order is placed in writing (by letter, email, fax).
- (2) Any materials enclosed to RAUCH's inquiries or orders, such as plans, drafts, data, samples, forms, models, printing plates, artwork, lithographs, setting jigs, patterns or specimens shall remain RAUCH's property, may be used only for RAUCH's purposes and may not be made available to third parties. Those materials shall be returned to RAUCH without solicitation along with the invoice at the latest or at any time upon RAUCH's request at the contracting party's cost and expense. The contracting party shall bear any risk of accidental loss of or damage to the auxiliary items until return thereof.

- (3) RAUCH will not pay any compensation for the preparation of quotes and offer documents (plans, technical specifications, etc.). When accepting our order, the contracting party states that it possesses all information, data, descriptions, plans and technical specifications required for the execution of our order as well as sufficient knowledge of the local circumstances.

§ 3 Supplies/Services

- (1) The delivery/service target date shall be the date indicated by RAUCH on which the ordered goods shall be delivered to the delivery location along with all transport, customs and accompanying documents or on which the service shall be provided at the location where the service is performed.
- (2) RAUCH may refuse to accept early or delayed supplies/services and return the goods for the supplier's account and at the supplier's risk or it may store the goods at RAUCH premises or with third parties.
- (3) If the contracting party becomes aware that it will not be able to provide all or part of supplies/services in due time, it shall immediately give notice thereof, indicating the date when it will provide the supplies/services (new delivery/service target date).

RAUCH may cancel the contract after having set an appropriate grace period or accept the new delivery/supply target date. In cases of urgency, RAUCH may cancel the contract also without granting a grace period.

- (4) RAUCH may refuse to accept partial, insufficient or additional supplies/services.
- (5) RAUCH may cancel the entire order even if services are divisible.

- (6) RAUCH may cancel parts of the agreed scope of supplies by unilateral declaration also after the conclusion of a contract. In this event, the compensation shall be reduced by the share attributable to the cancelled portion of the order.
- (7) A delivery/service shall be deemed complete only if the contracting party has provided RAUCH with all agreed or customarily expected documents (e.g. invoices, freight documents, certificates of origin, declarations of conformity, guarantee letters, technical documentation, instructions of use). The compensation is payable only if these documents were delivered.

The contracting party will hold harmless and indemnify RAUCH for and against any claims for which RAUCH may be held liable by third parties, including but not limited to RAUCH customers or authorities, on the grounds that the contracting party did not completely or timely deliver to RAUCH an agreed or customarily required document.

- (8) The contracting party shall promptly provide RAUCH on RAUCH's request with any information which RAUCH or a RAUCH customer may need to prove to any person whatsoever the compliance with laws or other regulations, including but not limited to those of Regulations (EC) 178/2002, (EC) 1935/2004 and (EC) 1907/2006 (REACH). That information includes especially any documentary evidence of tests, calculations and analyses and the related results.
- (9) The contracting party shall sign the confirmation for packaging material (supplier statement) on RAUCH's request. Should it fail to do so, RAUCH may cancel the contract after having set a reasonable grace period.
- (10) The supplies/services must be entirely traceable.
- (11) If the contracting party is in default, RAUCH may in any case demand an immediately payable penalty equal to 1% of the purchase order sum for each commenced week of delay;

that penalty shall not exceed 10%. Any additional loss shall be compensated.

(12) No retention of title may be asserted against RAUCH.

§ 4 Transport

- (1) The contracting party shall comply with the shipping policies of RAUCH and those of the forwarding agent or the carrier. The shipping papers shall state the PO number, the order item and the order date. In connection with the shipment, the contracting party shall deliver to RAUCH all necessary declarations of conformity, including but not limited to those prescribed by Regulation (EC) 1935/2004.
- (2) Goods will be shipped for the account and at the risk of the contracting party, who shall also bear all costs of insurance and packaging.

§ 5 Place of Delivery/Service, Transfer of Risk

- (1) The place of delivery/service shall be the business premises of RAUCH for which the supplies/services are intended.
- (2) Any risk shall transfer not until after unloading of the goods at the delivery destination and provision of any other service at the service destination.

§ 6 Prices, Invoice and Payment

- (1) Prices are fixed prices and include all expenses arising for the complete provision of the supplies/services, including ARA licensing fees for transport and repackaging.
- (2) Invoices shall become due and payable only if they quote RAUCH's purchase order number and order item.

- (3) If a delivery/service is inadequate, RAUCH may retain payment until complete performance.
- (4) Provided that supplies/services are defect-free and properly invoiced, payment will be made within 14 days after receipt of the invoice with 3 % cash discount or within 90 days without deduction, unless otherwise agreed.
- (5) Default interest is charged at a rate of 4% p.a.

§ 7 Warranty

- (1) The contracting party warrants that the supplies/services are consistent with the agreement and the customarily expected properties, including but not limited to the relevant laws (e.g. the Regulations (EC) 178/2002, (EC) 1935/2004 and (EC) 1907/2006) and regulations (e.g. AIJN/CoP) and the state of the art and are marketable pursuant to food law and GMO free. Any machinery and facilities shall particularly comply with the functional specifications and the product-specific safety and functional standards.
- (2) The contracting party shall verify the quality and quantity of its supplies/services. RAUCH is expressly not required to inspect supplies/services and to give notice of defects.
- (3) Notwithstanding RAUCH's other claims, the contracting party shall be required, at RAUCH's election, to rectify defects within a reasonable period of time or to grant RAUCH a price reduction.
- (4) In cases of urgency, RAUCH may rectify defects itself or procure the rectification of defects by third parties. All related costs will be borne by the contracting party.
- (5) The warranty period for hidden defects shall commence not until after those defects are identifiable.

§ 8 Property Rights

The contracting party warrants that its supplies/services will not infringe upon any rights of third parties, and it shall hold harmless and indemnify RAUCH for and against all claims that are asserted on the grounds of an infringement of such rights. It shall also reimburse RAUCH for any expenses arising in connection with an infringement of these rights.

§ 9 Confidentiality

The contracting party shall not disclose its business relationship with RAUCH and shall keep confidential any information received from RAUCH, including but not limited to that about RAUCH, its distributors or customers, also after the performance of the contract.

§ 10 Finished Products and Packing Material

- (1) Finished products and packing material provided by RAUCH may be used or processed only for RAUCH and for the prescribed intended purpose (eg machinery tests). That material shall either be returned to RAUCH or destroyed at the contracting party's cost and expense.
- (2) Should the production of the contractual items fail in whole or in part, the contracting party shall be required to pay for any finished products or packing materials provided by RAUCH which the contracting party used for the failed production.

§ 11 Damages

- (1) The contracting party shall be liable to RAUCH for any drawback arising from a violation of the contract, including, without limitation, disadvantages from delays or defects in supplies/services. This liability also covers any supply/service of subcontractors and up-stream suppliers. The contracting party shall also bear all costs that may arise in connection with any recall action. RAUCH shall be entitled to claims arising from product liability also if RAUCH mainly uses the delivery/service within its business.
- (2) The contracting party shall purchase, and maintain for at least five years after the provision of supplies/services, liability insurance that provides insurance cover of at least EUR 5 million. The contracting party shall evidence that insurance to RAUCH upon request.

§ 12 Change of (Basic) Materials etc

The contracting party shall timely give advance and non-solicited written notice of any change in (basic) materials, production processes, recipes, suppliers and supply parts. It may not change (basic) materials, production processes, recipes, suppliers and supply parts, except with RAUCH's prior written consent. In case of any change of (basic) materials or recipes, the contracting party shall provide RAUCH on a non-solicited basis with new declarations, certificates or confirmations for or on ingredients, including but not limited to declarations of conformity, kosher and halal certificates, GMO certificates or certificates confirming the non-presence of allergens.

§ 13 Special Software Clause (Customised Software, Programming and Standard Software)

- (1) Customised software means software which the contracting party programmes for RAUCH on RAUCH's request. Programming means services provided by the contracting party for the

implementation of customised or standard software into the RAUCH IT environment. Standards software means software which the contracting party programmes and sells individually or as a package regardless of RAUCH-

- (2) The contracting party grants RAUCH the exclusive, unlimited, unrestricted and transferrable right to use customized software and programmes. RAUCH may in particular use, change, revise, modify, adjust, develop, copy and publish the contracting party's services for its own or third party's purposes in any manner whatsoever.

The contracting party grants RAUCH the exclusive, unlimited and unrestricted right to use standard software.

- (3) That right is covered by the compensation which the contracting party receives for its services.
- (4) In case of a premature termination of the contract, the right of use referred to in paragraph 2 above shall cover the services provided by the contracting party until that termination date.
- (5) The contracting party shall supply its services on data carriers in object code format. The contracting party shall deliver to RAUCH along with customised software and the programmes the complete source code (along with commentary) of the software/the programmes and the development documentation on CD ROM or a similar storage medium. The source code and the development documentation is covered by the compensation which the contracting party receives for its services.
- (6) As far as software is concerned, the contracting party warrants in addition to Section 7 that its services are free of any "malware" and that he holds the (in case of customised software and programmes exclusive) rights to use its services. Contracting party also warrants that it may freely dispose of these rights of use and that it is not aware of any circumstances which might oppose an actual use of these rights.

§ 14 Special Creative Services Clause (Advertising Agencies, Graphic Designers etc)

- (1) The contracting party grants RAUCH the worldwide, exclusive, unlimited, unrestricted and transferrable right to use its services (e.g. photos, texts, films, logos, designs, graphics). RAUCH may in particular use, change, revise, modify, adjust, copy and publish the contracting party's services for its own or third party's purposes in any manner whatsoever.
- (2) That right is covered by the compensation which the contracting party receives for its services.
- (3) In the event of a premature termination of the contract, the right of use pursuant to paragraph 1 above shall cover the services provided by the contracting party until that termination date.
- (4) In addition to Section 7, the contracting party warrants that it holds exclusive rights to use its services. The contracting party further warrants that it may freely dispose of these rights of use and that it is not aware of any circumstances which might oppose an actual use of these rights.
- (5) If and to the extent, in a particular case, the contracting party does not hold or cannot obtain the exclusive rights to use its services, for example, because also third parties (e.g. photo models, actors, composers) provide services therefor, the contracting party shall notify RAUCH prior to the conclusion of the contract in writing, detailing the actually existing rights of use.
- (6) The contracting party shall hold harmless and indemnify RAUCH for and against all claims for which RAUCH may be held liable by third parties for violating rights to its services.

- (7) RAUCH may assert title to drafts, copies of the work, films, photos and electronic or other documents. In this context, no separate compensation will be charged.
- (8) Following print approval to be issued by RAUCH, the contracting party will submit its services to RAUCH as well as to the addressee indicated by RAUCH (e.g. print shop, publisher) in a digital and processable form (open files). This submission in the form of open files is a precondition for the maturity of the compensation which the contracting party receives for its services.

§ 15 Final Provisions

- (1) RAUCH may set off claims not yet payable with the contracting party's claims, whether or not these are already payable. RAUCH may also set off claims, whether or not payable, which the other members of the RAUCH Group, including but not limited to Rauch Hungaria k.f.t and Rauch Serbia d.o.o, may have against the contracting party, against claims of the contracting party, whether or not these are already payable.
- (2) All legal relationships between RAUCH and the contracting partner shall be governed by and construed in accordance with Austrian substantive law, without giving effect to the UN Sales Convention.
- (3) Within the geographical scope of application of the Lugano Convention or the Brussels I Convention, all disputes shall exclusively be referred to the courts in Feldkirch.

Disputes not falling within that scope of application shall be referred to the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna. The place of arbitration is Feldkirch. The language to be used in the arbitral proceedings is German. If the contract is executed in a language other than German, the language to be used in the arbitral proceedings shall be English. Not-

withstanding the jurisdiction of the arbitral tribunal, a party may seek preliminary or injunctive measures from a state court and a court may order those measures prior to or during the arbitral proceedings.

However, RAUCH may bring claims against the contracting party before any other court having jurisdiction for contracting party.

- (4) If the contract is drawn up in English, the English text shall be authoritative for the interpretation of that contract and its terms and conditions.
- (5) Should any term of the contract or of these Terms and Conditions be or become invalid or unenforceable, this shall not affect the remaining terms of the contract and these Terms and Conditions. Any invalid or unenforceable term shall be deemed replaced by a term reasonable parties would have agreed on to achieve the economic purpose of the invalid term.
- (6) The contracting party may rely upon RAUCH and/or its supplies/services for advertising purposes or as a reference only with RAUCH's prior written consent.
- (7) RAUCH is entitled but not obliged to state the contracting party's name when using its services or to otherwise refer to the contracting party.
- (8) The contracting party agrees that RAUCH collects and processes its data on an (automated) computer-assisted basis.