

# General Business Conditions

## *Of the ROXCEL Trading GmbH*

### **1. Scope**

1.1 These General Business Conditions (GCS) shall apply to the entire business relationship of Roxcel Trading GmbH (the Seiler) with the Customer. It is explicitly agreed that Customer's general conditions, if any, shall not be applicable to the extent that they are contrary to the present GCS.

1.2 These GCS shall be valid and applicable also to any and all future contracts, even if the present form is not used and if the GCS are not explicitly mentioned in the respective correspondence. The Seiler reserves the right to amend these GBC at any time.

### **2. Offers, Written Agreements**

2.1 All offers and quotations made by the Seiler are non-binding. A contract is legally binding upon Roxcel having issued a written order confirmation.

2.2 Any offers, Orders, side agreements, amendments of contracts and declarations of any kind made or agreed by the Seiler shall be valid only if confirmed by the Seiler in writing. This also applies to any waiver of this formal requirement.

### **3. Prices**

3.1 The prices quoted in each order confirmation shall be valid for the respective order. All prices are exclusive VAT and in EURO unless another currency is agreed with the buyer. However, The Seiler shall be entitled to modify the price in case of our suppliers price adjustments resulting of change in raw material prices, wages, other operating expenses and currency exchange rates for those shipments which have not been delivered at the date when the price adjustment becomes effective. The Seiler has to inform the customer minimum 30 days prior.

### **4. Dates of Delivery**

4.1 Dates of delivery quoted by the Seiler shall be non-binding estimates. All delivery periods will commence upon signature of the final and complete written agreement on all the details of the order, at the earliest, from the postal date of the Seiler order confirmation.

4.2 Delays caused by governmental measures, or other events of force majeure relating to the Seiler or its suppliers or enterprises used by the Seiler for its Performance or in the event of other extraordinary circumstances which are not caused by the Seiler negligence and which have a substantial negative impact upon the Seiler's Performance, or which render the production or shipment of the goods impossible or unreasonable, delivery dates shall be extended for a reasonable period which shall not be shorter than the duration of such extraordinary circumstances. If such a delay should last longer than two months, each party shall be entitled to rescind the contract in writing. In such cases, the Customer shall grant the Seiler a respite of 14 days.

If goods which are already produced cannot be shipped to the Customer, the Seiler shall be entitled to store such goods at the cost and risk of the Customer; such goods shall be invoiced to the Customer as if they had been delivered.

4.3 All Claims against the Seiler resulting from delayed or non-performance are waived except in cases of malicious intent or gross negligence.

### **5. Notice of Defects, Limited Warranty, Damages, Product Liability**

5.1 The Customer shall inspect the products immediately upon their arrival at the place of delivery. Any Claims resulting from defects shall be deemed waived unless the Customer notifies the Seiler thereof in writing immediately after the Customer becomes aware of them, or no later than eight days after receipt of the products. All Claims resulting from hidden defects shall be rejected unless they are notified to Roxcel in writing immediately after the customer becomes aware of them, and in any event within

three month from the date of receipt of the products, to the destination agreed upon with the Seiler.

5.2 The period of warranty shall be three months. If material defects are notified to Roxcel within this period, and these are accepted and acknowledged as such by Roxcel, Roxcel shall, at its discretion, upon return of the defective product, exchange it, give credit for the product, or offer an appropriate reduction in the purchase price. A price reduction or termination (revocation of contract) may only be demanded by the client if the defect cannot be cured despite repair or replacement efforts by Roxcel or if Roxcel refuses repair or replacement due to prohibitive cost, would cause unreasonable delay, or if a repair would not be reasonable in the circumstances

5.3 No liability will be accepted for any type of damages arising from negligence. This is particularly so with respect to damages that the client may suffer as a result of late delivery or delivery that is not conform with the contract, or as a result of absent or incorrect advice concerning the goods. In no case shall satisfaction of Claims raised by the client exceed the invoice price of the defective or incorrectly delivered goods.

5.4 The exemption from liability shall not apply to Claims based on the law of product liability or for personal injury, to the extent that such liability cannot be excluded or limited by law.

5.5 The burden of proof for Claims involving gross negligence or premeditated intent rests with the client.

5.6 The limits on warranty and liability contained in these General Conditions of Contract are to be made binding in their entirety on all later purchasers, with the Obligation that they in turn shall so bind further purchasers.

## **6. Terms of Payment**

6.1 Special terms of payment shall apply only if the Seiler confirmed so in writing. If no such terms are agreed, the general payment term "30 days net from invoice date" is applicable.

6.2 If the Customer fails to pay in full, one or several invoices or if the Seiler gets knowledge of weakening of Customer's financial Situation after conclusion of the contract, all invoices shall become due for payment immediately. In such events, the Seiler shall be entitled to cancel some or all contracts for outstanding shipments and to Claim damages or alternatively withhold outstanding shipments until the Customer has paid all outstanding invoices and makes advanced payments of any remaining shipments.

6.3 In the event of late payment, and without prejudice to any additional related Claims that might be raised, interest payments in the amount of the base rate of the Austrian National Bank plus 8 % per annum shall be paid. In addition, collection and late fees as well as any additional court costs associated with collection efforts shall be paid.

6.4 The Seiler accepts only payments into accounts indicated in the invoice. Amounts transferred by bank transfer shall be deemed complete only after they are irrevocably credited to the Seiler account. Payments by bills of exchange, checks or Orders given to third parties, asking them to pay to the Seiler may be made only upon specific agreement. Payments shall be considered made only after the Seiler irrevocably having received respective amounts.

6.5 No rights or obligations under this contract may be assigned by the client without the written permission of Roxcel.

6.6 The client may not offset Claims against Roxcel with counterclaims, nor may it withhold payments based on Claims of defective Performance

## **7. Retention of Title**

7.1 The Seiler retains title to all products until the Customer has fully met its payment obligations resulting from the entire business relationship with the Seiler. If payment is made by bill of exchange or by check, the Seiler shall retain this title until the Customer has honored its obligations. The retention of title shall, therefore, secure the Seiler indemnification Claims under such bills of exchange and checks.

7.2 The Customer shall be entitled to resell the products which are subject to retention of title, or to

use them for manufacturing purposes, provided that this is in the ordinary course of business and that the Customer is not in default with its payment obligations to the Seiler. If the Seiler has granted a term for payment, the Customer may resell the Products only with retention of title. The Customer hereby assigns to the Seiler for security purposes any and all Claims (including also all Claims for the balances from current accounts and Claims for the return of the products) which the Customer may have against its own customers resulting from the resale of such products or from a possible rescission of such resale contracts, or other related Claims (including also Claims under insurance contracts, Claims for unjust enrichment, Claims under tort law, etc.). The Customer shall record any such assignment in its business records.

7.3 The Customer's right to resell or to use the products shall be revoked if the Customer fails to pay any outstanding Claim by the Seiler or third parties, or if an insolvency or similar proceeding is applied for, if third parties initiate enforcement proceedings relating to the Claims assigned pursuant to section 7.1 hereof or relating to the products which are subject to the retention of title, or relating to any other assets of the Customer or any person who is personally Nable for the Customer's obligations; in such an event, the Customer shall no longer be authorized to resell or use the products which are subject to the Seiler's retention of title.

7.4 The Customer shall notify the assigned Claims and the respective debtor to the Seiler. Such notice shall include all data which the Seiler may require to demand payment of such Claims. The Customer shall provide all required or useful Information and all relating documents to the Seiler and shall notify the debtors of such assignment. If third parties should apply enforcement measures relating to any products which are subject to the Seiler's retention of title or with respect to any Claims assigned to the Seiler, the Customer shall notify the Seiler thereof, and shall inform the claimant third party and the enforcement officials of this retention of title and assignment.

7.5 If any products which are subject to the Seiler's retention of title should be mixed or manufactured with other property, The Seiler shall acquire title to the new product (or mixture) in Proportion with the value of products to which The Seiler had retained title, as compared to the value of the new product (or mixture). Any such manufacturing or mixing of products which are subject to the Seiler's retention of title shall be deemed made by the Customer on behalf of the Seiler. The Customer shall store such new products for the Seiler. The provisions of this Section 7 shall apply accordingly for the Seiler's title in such products.

7.6 Upon violation of any contractual duties by the Customer, the Seiler shall be entitled to take possession of any and all products in which the Seiler has retained title, and to demand assignment of the Customer's repossession Claims against third parties, if any, unless such assignment has already taken place pursuant to these GCS.

## **8. Place of Performance, Choice of Law, Jurisdiction over Claims**

8.1 The place of Performance is Vienna; Claims of Roxcel are payable and subject to challenge in the jurisdiction of Vienna.

8.2 This contract shall be governed by the laws of the Republic of Austria.

8.3 Claims raised by client against Roxcel may only be brought before a court of proper jurisdiction in the city of Vienna. That court shall also be responsible for actions by Roxcel against its Clients, whereby Roxcel is nevertheless permitted to pursue its Claims against Clients in any other court of proper jurisdiction, regardless of location.

Valid: From January 2007