

# General Terms and Conditions

for Customers of

**ROXCEL Trading GmbH or RMG Raccolta Molnar & Greiner Gesellschaft m.b.H.**

Valid from 12 September 2022

## 1. Scope of Application

**1.1** Unless otherwise agreed, the following General Terms and Conditions of Business ("**GTC**"), as amended from time to time, shall apply to the entire business relationship of ROXCEL Trading GmbH or RMG Raccolta Molnar & Greiner Gesellschaft m.b.H. as seller (each a "**Seller**") with the customer ("**Business Partner**").

**1.2** These GTC apply to all business transactions, even if they are concluded without reference to these GTC. The Seller reserves the right to amend or supplement the GTC. The current version of the GTC is published on the homepage of the Seller [www.roxcel.com](http://www.roxcel.com) und [www.rmg.at](http://www.rmg.at) under the heading "Terms and Conditions".

## 2. Offers, Written Form

**2.1** All offers of the Seller are non-binding. A contract is only legally binding upon written order confirmation by the Seller.

**2.2** All offers, orders, ancillary agreements, subsequent changes and declarations by the Seller of any kind must be in writing in order to be effective. The same shall also apply to the waiver of this formal requirement.

## 3. Prices

**3.1** The prices per specified unit as stated in the order confirmation are binding for the respective order. All prices are exclusive of VAT in EUR, unless another currency has been agreed in writing with the Business Partner.

**3.2.** Unilateral price adjustments by the Seller are permissible in the amount of up to 10% of the net price if price increases are passed on to the Seller due to changes in raw material prices, operating expenses, prices for energy, transport costs and/or exchange rate fluctuations or otherwise due to cases of force majeure. Such price adjustments shall be made in proportion to the change in the Seller's purchase price and may be made as long as the goods have not yet been delivered to the Business Partner.

If the passing on of price increases would result in a price adjustment in the amount of more than 10% of the net price, an important reason exists which entitles the Seller to withdraw from a contract if an agreement on an adjusted, higher price is not reached between the Seller and the Business Partner within 30 days of notification of the intention to withdraw. The Business Partner cannot derive any claims against the Seller from such a withdrawal.

#### **4. Delivery and Transfer of Risk**

**4.1** Dates of delivery quoted by the Seller 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 mailing date of the Seller's order confirmation.

**4.2** Unless expressly agreed Incoterms provide otherwise, shipment shall be at the expense and risk of the Business Partner. In the event of a creditor default, which is in the sphere of the Business Partner, the price risk is already transferred to the Business Partner with the notification of readiness for delivery.

**4.3.** If delivery is delayed due to interventions by public authorities or other events of force majeure (including, but not limited to, environmental influences, plagues, pandemics and epidemics and associated legal/administrative/etc. orders, as well as a shortage in the energy supply), which affect the Seller, its suppliers or subcontractors, or if other extraordinary circumstances occur which are not the fault of the Seller, which cause a significant disruption of operations or make it impossible or unreasonable for the Seller to produce and/or ship the goods on time, the delivery time shall be extended by a reasonable period of time, but at least by the period of time during which the aforementioned events continue.

If such a delay lasts longer than six months, either party shall be entitled to dissolve the contract in writing, in which case the Business Partner shall grant the Seller a reasonable grace period of at least 14 days beforehand.

If goods cannot be shipped to the Business Partner (or goods purchased under FOB conditions cannot be shipped to the Business Partner), the Seller is entitled to store them at the risk and expense of the Business Partner and to invoice them to the Business Partner as delivered. The same applies if the Business Partner does not accept the goods. After the expiry of a period of 30 calendar days, the Seller shall be entitled to withdraw from the contract by means of a written notification to the Business Partner (email or fax shall be sufficient) without setting a grace period beforehand. The Business Partner shall be liable for all disadvantages incurred by the Seller as a result of the withdrawal from the contract.

**4.4** Claims against the Seller for compensation for damage caused by delay or claims for damages due to non-fulfillment are excluded, except in cases of intent or gross negligence.

#### **5. Notice of Defects, Warranty, Compensation, Product Liability**

**5.1** The goods shall be inspected by the Business Partner immediately upon arrival at the place of destination. Any complaints must be made in writing to the Seller immediately after the defects have been discovered and such defects must be documented accordingly on the transport documentation, failing which the Business Partner shall lose its claim against Seller. At the request of the Seller, the Business Partner shall provide the Seller with all information and documents within such time that allows the Seller to have the defects as notified by the Business Partner remedied by the contractual partner of the Seller, failing which the Business Partner shall lose its claim against Seller. Hidden defects must be claimed in writing from the Seller immediately after their discovery, at the latest within three months after receipt of the goods at the place of destination agreed with the Seller, failing which the Business Partner shall lose its claim against Seller.

**5.2** The warranty period shall be three months. In the event of timely notification of defects acknowledged by the Seller, at the Seller's discretion either the goods shall be replaced against return of the defective goods or improvement shall be made. The Business Partner can only demand an appropriate price reduction or cancellation (rescission of the contract) if the existing defect could not be remedied by the Seller despite return of the defective goods or replacement delivery. The Business Partner can only demand an appropriate price reduction or cancellation (rescission of the contract) if the existing defect could not be remedied by the Seller despite improvement or replacement delivery or if the Seller refuses the improvement or replacement delivery due to disproportionate costs, unduly delays it or if the Business Partner cannot reasonably be expected to accept an improvement or if replacement is not possible. Conversion is excluded in the case of minor defects. Any returns can only be accepted by the Seller if its written consent has been obtained in advance.

**5.3** The Seller's liability for negligence shall be excluded for damages of any kind (including loss of profit) to the extent legally permissible. This applies in particular to damages incurred by the Business Partner as a result of delivery in breach of contract or late delivery, including consequential damages, or as a result of omitted or incorrect advice about the goods. In any case, claims of the Business Partner shall be limited to the invoice value of the defective goods or goods not delivered in accordance with the contract. Clause 13.2 of these GTC shall be observed.

**5.4** The exclusion of liability does not apply to claims arising from the Product Liability Act ("*Produkthaftungsgesetz*") and for personal injury, insofar as liability cannot be excluded or limited.

**5.5** The burden of proving the existence of fault giving rise to a claim shall be on the Business Partner.

**5.6** The warranty and liability limitations contained in these GTC shall be fully transferred to any other buyers of the goods in the relationship between the Business Partner and its buyer among themselves, with the obligation to further transfer to their buyers.

## **6. Terms of Payment**

**6.1** In the event of default in full payment of an invoice or in the event of a deterioration in the financial situation of the Business Partner of which the Seller becomes aware after conclusion of the contract, all invoices shall become due for payment with immediate effect. In such cases, the Seller shall be entitled to withdraw from contracts for orders not yet processed and to claim damages without setting a deadline or, alternatively, to make further order processing dependent on the Business Partner first paying all outstanding invoices in full and making advance payment of the full invoice amount for the goods not yet delivered.

**6.2** In case of default of payment, the statutory default interest in the amount of 8% p.a. above the EURIBOR shall be paid in any case, without prejudice to any additional related claims that might be raised. Furthermore, dunning and collection charges as well as the costs of legal debt collection are to be reimbursed.

**6.3** The Seller accepts only payments into accounts indicated in the invoice. In the case of bank transfers, payment shall only be deemed to have been made when it has been irrevocably credited to the Seller's account. Bills of exchange, checks and payments by money order shall only be accepted on account of payment and only after separate agreement.

**6.4** The assignment of claims of the Business Partner against the Seller shall only be permissible with the Seller's written consent.

**6.5** The Business Partner shall not be entitled to set off any counterclaims of the Seller or to withhold payments with reference to defects.

## **7. Retention of Title**

**7.1** Until the complete fulfillment of all liabilities of the Business Partner from the entire business relationship between him and the Seller, the delivered goods shall remain the property of the Seller. Should such an agreement be inadmissible, however, the delivered goods shall remain the property of the Seller in any case until the complete fulfillment of all liabilities of the Business Partner from the respective business transaction.

In the event of payment by bill of exchange or check, the retention of title shall expire only upon redemption of the bill of exchange or check by the Seller. The retention of title therefore also secures recourse claims of the Seller against the Business Partner under the law on bills of exchange or checks.

**7.2** The Business Partner shall be entitled to resell or process the reserved goods in the ordinary course of business as long as it is not in default of payment. The resale may only take place under retention of title; at the same time, the Business Partner assigns to the Seller all claims against its customers arising from the resale, the agreed retention of title or from the reversal of such resales, as well as other related claims (e.g. insurance benefits, claims for enrichment, claims in tort) with regard to the goods subject to retention of title (including all balance claims from current account and claims for surrender of the Business Partner against third parties) already now by way of security in full. This assignment shall be made visible in the Business Partner's books of account. The resale of the goods subject to retention of title is only permitted under the condition of the assignment of the claim and immediate setting of such a book note. In case of computerized accounting, the book note shall be included not only in the customer accounts, but also in the list of open debtor items.

**7.3** In the event of the Business Partner's default in payment, in the event of the occurrence of material insolvency as well as in the event of the filing of an application for the opening of insolvency proceedings or comparable proceedings against the Business Partner's assets or if third parties execute against the claims assigned pursuant to Section 7.2 or against the retained goods or otherwise against the Business Partner or a personally liable partner of the Business Partner, the Business Partner's authorization to resell or process Retained Goods shall expire with immediate effect. In the event of default of payment by the Business Partner, the Seller shall also be entitled to reclaim the retained goods immediately.

**7.4** If the goods subject to retention of title are mixed or processed with other items, the Seller shall acquire co-ownership of the new item in the ratio of the value of the goods delivered by the Seller to the value of the entire new item.

The processing or mixing of the reserved goods by the Business Partner shall always be deemed to have been carried out for the Seller. The Business Partner shall hold the item thus created in safe custody for the Seller at its own expense and risk.

In all other respects, the provisions of this Item 7. shall apply mutatis mutandis to the co-ownership of the Seller.

**7.5** In the event of a breach of contract by the Business Partner, in particular in the event of default in payment, the Seller shall be entitled to take back the reserved goods at any time and, if necessary, to demand the assignment of the Business Partner's claims for return against third parties, insofar as these have not already been assigned in accordance with these GTC.

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

**8.1** The place of performance shall be Vienna; claims of the Seller shall be payable and enforceable in Vienna.

**8.2** All legal relations between the Business Partner and the Seller shall be governed by Austrian law to the exclusion of the UN Convention on Contracts for the International Sale of Goods as well as any conflict of laws and conflict of laws provisions.

Only in the event that the application of Austrian law cannot be effectively agreed upon for whatever reason, the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall apply.

**8.3** Actions of a Business Partner against the Seller may only be brought before the competent court in Vienna. This court shall also be competent for actions of the Seller against Business Partners; however, the Seller shall be entitled to assert its rights against the Business Partner also at any other locally and factually competent court.

## **9. Import Taxes and Import Duties**

**9.1** The Business Partner and its affiliated companies undertake to prepare all import tax and import customs declarations, if any, for the goods imported by the Seller completely and correctly and to declare them to the respective competent local authorities in a timely manner. This must be done in accordance with the locally applicable regulations and laws.

**9.2** The Business Partner and its affiliates undertake to make payments for taxes, customs duties and levies on time, with any interest and surcharges to the respective competent tax or customs authorities.

**9.3** The Business Partner and its Affiliates shall indemnify and hold harmless the Seller for compliance with the obligations under Clauses 9.1 and 9.2.

## **10. Economic Sanctions**

**10.1** The Business Partner confirms that neither it nor its affiliates (i) are controlled or beneficially owned by any sanctioned person or (ii) are otherwise subject to any sanctions applicable to the Seller and/or any other requirements restricting and/or excluding the business relationship with the Business Partner. The Business Partner further confirms (also with regard to companies affiliated with it) that no member of the supervisory bodies, management bodies and other persons authorized to represent the Business Partner externally, employees, agents or affiliated companies of the Business Partner are on a sanction list as such.

Sanctioned persons or entities are, in particular, those who are on an EU/US/UN/UK sanctions list or those who are beneficially owned or controlled by a sanctioned person or entity.

**10.2** The Business Partner, its affiliates and the respective members of supervisory and management bodies and other persons authorized to represent it externally, employees and agents (those acting on behalf of the Business Partner), shall act in accordance with the respective applicable EU/US/UN/UK Sanctions and comply with all related regulations on economic sanctions, export restrictions, embargoes and the prevention of money laundering and terrorist financing administered or enacted by EU/US/UN/UK authorities ("**Sanctions**"). In particular, the Business Partner and its affiliates shall not use the goods delivered by the Seller in a manner that constitutes a violation of any applicable Sanctions. None of the designated persons is engaged in any activity that could constitute or lead to the imposition of a Sanction, nor is any of them knowingly engaged in any such activity.

**10.3** The Business Partner and its affiliates shall not directly or indirectly provide goods or services that could be used by sanction-listed individuals or entities for their benefit and that could lead to the violation of applicable EU/US/UN/UK Sanctions.

**10.4** If the Business Partner or one of its affiliated companies is sanctioned or involved in activities that constitute a Sanction violation or could lead to sanctioning, it shall inform the Seller immediately and in writing about this circumstance. The same shall apply in the event of Sanctions being imposed on its supervisory bodies, management bodies and other persons authorized to represent it externally, employees and agents or those of affiliated companies.

In such cases, the Seller shall be entitled to terminate the business relationship with the Business Partner and/or its affiliates for good cause with immediate effect. The Business Partner and its affiliated companies (for which the Business Partner shall be liable in accordance with this sentence) shall furthermore indemnify and hold harmless the Seller for all damages (including loss of profit) and other pecuniary disadvantages incurred by the Seller as a result thereof.

## **11. Non-Solicitation**

**11.1.** The Business Partner undertakes to refrain from any solicitation and employment of employees of the Seller, irrespective of whether such solicitation and employment is carried out directly by the Business Partner itself or by persons who, for whatever reason (e.g. as a subsidiary or group company),

are in a close relationship or a relationship of dependence with the Business Partner, or otherwise via third parties.

**11.2.** "Employment" of an employee of the Seller shall be understood to mean any form of cooperation. This includes, in particular, an employment relationship, a freelance employment relationship or an employment relationship similar to a contract for work and services, a contract for work and services or cooperation in any other legal form, such as in the form of a company or a joint venture. "Employees" of the Seller shall not only be understood to mean employees, but also freelancers or employees under a contract for work and services of the Seller as well as of companies which hold an interest in the Seller (also indirectly) and irrespective of the extent thereof or in which the Seller holds an interest (also indirectly) and irrespective of the extent thereof ("**Affiliated Company**"), as well as other persons who are active for the Seller or an Affiliated Company in the course of business.

**11.3.** The obligation under clause 11.1 shall apply during the contractual relationship and beyond for a period of three years after termination of the contractual relationship.

**11.4.** For each violation of the non-solicitation clause pursuant to this provision, the Business Partner undertakes to pay the Seller a contractual penalty (irrespective of fault) in the amount of € 100,000.00, irrespective of the claim for injunctive relief. The Seller reserves the right to assert claims in excess thereof.

## **12. Secrecy, Compliance with Data Protection Regulations**

**12.1.** The parties undertake to treat all information concerning the respective other party, which becomes known to them in the course of the contractual relationship, as confidential and to use it exclusively for the fulfillment of the contractual relationship.

**12.2.** The parties undertake to maintain secrecy vis-à-vis third parties regarding the content of the agreements made between them. This shall also apply for the time after termination of the contractual relationship. However, the Seller shall be entitled until revoked by the Business Partner to refer to the cooperation with the Business Partner in reference lists.

**12.3.** The confidentiality obligations do not apply to information which was already known to the general public at the time it came to the knowledge of one of the parties or which later became generally known without any action or breach of contract on the part of this party. The obligations shall also not apply vis-à-vis authorities or courts, unless there is a statutory right to refuse to testify.

**12.4.** In the course of the cooperation, each party is responsible for ensuring that it and its employees comply with the relevant provisions of data protection law, in particular the relevant provisions of the GDPR and the DSG ("*Datenschutzgesetz*").

## **13. Severability Clause, Interpretation of Limitations of Liability**

**13.1** Should any provision of these GTC be or become invalid, this shall not affect the validity of the remaining provisions of these GTC. The invalid provision itself shall be replaced by the valid provision that comes closest to the economic sense of the invalid provision. In the event of gaps in the contract, the aforesaid shall apply mutatis mutandis.

**13.2** Provisions of these GTC according to which the liability of the Seller is limited shall, in the event of the otherwise threatened invalidity of the respective provision, be interpreted in such a way that they correspond to the respective maximum permissible exclusion of liability. If, for example, the exclusion of gross negligence would be inadmissible in a specific case, but an exclusion of liability for cases of blatant gross negligence would be legally effective, the exclusion of liability for blatant gross negligence shall be deemed agreed.