

# General Purchasing Conditions for Goods of Rhein Petroleum GmbH and its Affiliated Companies

September 2014

## 1 Definitions

“Agreement”: the agreement concluded or to be concluded between RP and Supplier.

“Delivery”: the delivery, provision or installation of the Goods.

“Goods”: goods, including but not limited to materials, equipment and products, Software, hardware and contracted works delivered or to be delivered, installed or to be installed pursuant to the Agreement.

“Order”: the order issued by RP with respect to the Delivery of the Goods.

“Purchase Conditions”: these general purchasing conditions of RP.

“Supplier”: the supplier of the Goods.

“RP”: Rhein Petroleum GmbH and its affiliated companies as defined in Art. 15 of the German Corporate Act (AktG).

## 2 General

2.1. The applicability of the general conditions used by Supplier is herewith explicitly rejected.

2.2. The RP Purchase Conditions apply to all legal relationships of RP acting as purchaser of Goods or contracted work.

2.3. The RP Purchasing Conditions shall be an integral component of the agreement between Supplier and RP unless and insofar as the Parties have not agreed upon otherwise for the individual order.

2.4. The terms and conditions of Supplier shall apply only if and to the extent that RP has agreed to them in writing making express reference to Supplier's terms and conditions. In particular, the mere reference to a letter from Supplier that contains the former's general terms and conditions or that makes reference to same shall not establish RP's consent to the applicability of said terms and conditions.

2.5. These RP Purchasing Conditions shall also apply in the event that RP, being aware of terms and conditions of Supplier that are in conflict with or deviate from these Purchasing Conditions accepts the Goods and/or services from Supplier without raising objections.

2.6. The RP Purchase Conditions may only be deviated from by written agreement.

2.7. Whenever “written” or “in writing” is used in the RP Purchase Conditions, it shall also mean by e-mail.

## 3 Agreement

3.1. Any offer made by Supplier may not be revoked and shall be valid for a period of 90 calendar days.

3.2. RP may terminate any negotiations with Supplier at any time without stating grounds and without any compensation being due.

3.3. Any Agreement or adjustment thereof shall only be created between RP and Supplier, if Supplier has accepted the Order placed by RP by returning the signed Order within 8 working days of the date of issue of the Order.

3.4. If the provisions of the Agreement between RP and Supplier deviate from the Purchase Conditions, the specific provisions of the Agreement shall prevail.

3.5. If, in the performance of an Agreement, use is made of drawings, specifications, instructions which were made available or approved by RP, these shall form part of the Agreement. If RP does not provide drawings, specifications, instructions and the like, Supplier is obliged to make inquiries and, in the absence thereof, is considered to have available all required information for the execution of the Agreement.

3.6. When submitting a quotation, Supplier shall be required to comply with the inquiry and to expressly point out any deviations from the former. In the event that Supplier should have a solution on hand that is superior in terms of technology or cost effectiveness, Supplier shall also include a quotation for RP for this particular option.

## 4 Time of delivery and delivery

4.1. Delivery shall be effected Delivery Duty Paid (DDP) (Incoterms 2010) at the address indicated by RP in the Agreement and/or the Order.

4.2. The agreed Delivery date is fixed. In the event of a failure to meet the Delivery date, Supplier shall be in default without any written notice of default being required.

4.3. Should a penalty have been set for failure to deliver on time, this penalty may not be set off against any damages.

4.4. Should Supplier be unable to perform his obligations on time, RP shall be informed immediately.

4.5. Any partial Delivery(ies) that have not been agreed to by RP may be returned to Supplier, at Supplier's expense and risk.

4.6. Delivery prior to the agreed time may only take place with RP's prior written agreement and shall not result in a change in the agreed payment date.

4.7. If the quantities or quality delivered are not those agreed, and the deviation is larger than is usual in the industry concerned, RP shall be entitled to refuse or to return the Delivery at Supplier's expense and risk.

4.8. If due to special circumstances RP is not able to take receipt of the Goods at the agreed date, Supplier shall, at RP' request, postpone the Delivery for a reasonable period to be determined by RP without additional charges for RP.

4.9. All Goods delivered by Supplier shall be accompanied by a proper packing slip and relevant customs declarations.

4.10. On Delivery, Supplier shall provide RP with a complete set of the original shipping documents (bill of lading, masters receipt or any other applicable documents), or, if this has been agreed, the equivalent Electronic Data Interchange message.

4.11. Supplier shall be required to comply with the agreed upon delivery date. Compliance with the delivery date shall be contingent upon the deficiency-free hand-over of the goods to RP during regular business hours along with the required shipping documents at the destination designated in the order (“designated destination”).

4.12. In the event that Supplier and RP should have agreed upon delivery including installation/services, the determining factor for on-time delivery shall be the hand-over of deficiency-free goods after the proper performance of the installation/services. In the event that an acceptance inspection should be required by law or contractual agreement, the time of completion of the acceptance shall be the determining factor. Early deliveries/provisions of services or partial deliveries/services shall be permitted only with the prior consent of RP.

4.13. As soon as Supplier realises that Supplier is unable to meet any contractual obligations in full or in part in a timely fashion, Supplier shall promptly notify RP in writing, citing the reasons for and the anticipated duration of the delay.

4.14. The acceptance of any late (partial) delivery/(portion of a) service without raising objections shall not constitute a waiver by RP of its rights resulting from the failure to deliver (part of the) goods/services on time.

4.15. Supplier shall be required to request the documentation to be provided by RP for the execution of the order in due time.

## 5 Prices

5.1. Except for VAT the prices set out in the Order or Supplier's offer are fixed, based on Delivery Duty Paid (DDP) (Incoterms 2010), inclusive of insurance and whatever RP reasonably requires from Supplier in order to use the Goods for the intended purpose, such as, e.g., specifications, drawings, user manuals and assembly and safety instructions, translations.

5.2. Additional costs that were not expressly accepted in writing in advance by RP shall not be reimbursed.

## 6 Payment

6.1. RP shall not accept any payment fees or any other supplementary charges on Supplier's invoices.

6.2. Payment by RP shall be made within 30 calendar days of receipt of approved invoices. Payment for disputed invoices will not occur until the dispute is resolved to RP's satisfaction.

6.3. Payment by RP shall not imply any acknowledgement that the Goods conform to the Agreement and shall not prejudice the right of RP to dispute the invoice.

6.4. RP reserves the right to suspend payment if Supplier fails to perform an Agreement timely or properly. Interest will not accrue if Supplier fails to perform.

6.5. If a payment is overdue by more than 30 calendar days, RP shall be given written notice of default. Should RP be required to pay interest on the overdue payment, interest shall be charged at Euribor plus 5%.

6.6. Supplier shall ultimately invoice within 6 months after Delivery. Invoices at a later point of time may be rejected by RP.

6.7. Payments made shall not constitute any acceptance of terms and prices and shall be without prejudice to any rights of RP with regard to improperly provided goods/services, the inspection rights of RP and the right to object to an invoice for any other reasons.

6.8. In the event that RP should be required to pay licensing fees to foreign Suppliers, Supplier shall be required to present an indemnification certificate pursuant to § 50 a German Income Tax Act.

#### 7 Packaging and Transport; Passing of Risks

7.1. Unless otherwise agreed upon, the delivery term shall be DDP (Incoterms 2010) to the designated destination. The shipment shall be accompanied by a delivery note in duplicate, packaging note, testing certificates pursuant to the agreed upon specifications and other required documents.

7.2. If known, all shipping documents and the exterior packaging shall bear complete information on the order number, gross and net weight, number of packages, type of packaging (single- or multi-use), production completion date and destination (unloading location) as well as the recipient name and if the shipment is for projects, the job number and the set-up building.

7.3. For deliveries from import countries (imports), the shipping documents shall include information clarifying whether the Goods have already been customs cleared or not. If they have not been customs cleared yet, Supplier shall submit the following customs clearance documents to RP: Transit accompanying document T 1, freight documents, customs invoice, preference certificates such as Form A, EUR.1, A.TR., certificate of origin. For customs cleared Goods, the customs entry certificate shall be recorded in the freight documentation (ATC number, tax assessment number).

7.4. Supplier shall be required to diligently protect RP's interests when shipping. The Goods shall be packaged in such a manner that transportation damages are prevented. The Supplier shall be liable for all damages resulting from improper packaging.

7.5. Upon RP's request, Supplier will pick up all master, transportation and retail packaging at the designated destination or have a third party handle said pick-ups.

7.6. Supplier shall package, mark and ship all dangerous Goods in compliance with the applicable domestic and international provisions. A safety data sheet in the language of the recipient country shall be issued to RP pursuant to Art. 31 EC Regulation 1907/2006/EC of the European Parliament and Council on the Registration, Evaluation and Authorisation (hereinafter referred to as the "REACH Regulation") for dangerous Goods as well as unrated dangerous Goods that contain dangerous ingredients in a concentration exceeding 1 %.

7.7. Supplier shall assume the risk of accidental loss and accidental decline of quality until the Goods in conformity with the Agreement along with the documents specified above are actually handed over at the place of fulfilment. If delivery along with installation/set-up/services has been agreed upon, the risk shall transfer upon proper completion of the installation/set-up/services and the hand-over.

7.8. If an acceptance inspection is required by law or contractually agreed upon, the date for the acceptance inspection shall be jointly agreed upon on a written request submitted by Supplier. The result of the acceptance inspection shall be documented in an acceptance report. The risk shall not pass until the successful completion of the acceptance inspection has been confirmed by RP in the acceptance report. The acceptance inspection may not be conducted in any other manner, in particular not through tests, expert opinions, certificates or labour records. The payment of invoiced amounts shall not constitute an acceptance.

#### 8 Warranty and Indemnification

8.1. Supplier can never assert that it was unaware of the purpose for which the Goods are intended or of the circumstances under which Delivery is to take place.

8.2. If RP refers in the Agreement and/or the Order or the accompanying annexes to technical, safety, quality or other rules or requirements which are not attached to the Agreement and/or Order, Supplier is deemed to be aware of and familiar with the content of such rules and requirements, unless Supplier immediately informs RP in writing to the contrary. RP shall then provide Supplier with further details of these rules and requirements.

8.3. Supplier warrants that:

- a) the Goods delivered
  1. conform to the Agreement,
  2. will be of good quality,
  3. will be free from design and production errors,
  4. will conform to the state of the art at the time of Delivery,
  5. will be complete and suitable for the intended purpose,
  6. will comply with legal requirements, standards and other government regulations of the country of destination and will be accompanied by the necessary clear instructions, safety regulations and warnings,
  7. will be new and free from defects;
- b) all materials or raw materials used will, to the extent applicable, also meet the requirements set out in a) above and
- c) its employees and any third parties engaged by it will be sufficiently competent.

#### 9 Deficiencies claims, rights in the event of deficiencies

9.1. Supplier owes the delivery of Goods and services that are free of deficiencies and that do have the guaranteed properties.

9.2. Specifically, it shall be Supplier's responsibility to ensure that the goods and services are in compliance with the state-of-the-art and the generally accredited state of security/safety technology, occupational medicine, hygiene and the RP Purchase Conditions and its Affiliates that the services are rendered by qualified personnel and that they in particular comply with the relevant legal and administrative provisions, tax and social security legislation, provisions of occupational health and safety and environmental protection. Should the Goods include machines, devices or equipment, these shall be in compliance with the standards in effect at the time of implementation of the Agreement, in particular the special safety provisions for machines, devices and equipment and bear the CE certification label.

9.3. Supplier warrants that all of the materials contained in the Goods have been effectively pre-registered, registered and approved in compliance with the applicable stipulations of the REACH Regulation. Moreover, Supplier shall ensure that all obligations Supplier (as defined in Article 3 No. 32 REACH Regulation) is required to meet pursuant to REACH with regard to the delivery of the Goods are properly met.

9.4. RP shall notify Supplier of obvious deficiencies within eight (8) days upon receipt of the Goods at the designated destination. Deficiencies that do not become identifiable until a later point in time shall be reported by RP within fourteen (14) days after discovery. The determining factor for compliance with the respective deadlines shall be the date the notice is sent to Supplier. To that end, Supplier waives the defence of late notification of defect.

9.5. In the event of deficiencies, RP shall have the right to demand rectification in compliance with the statutory provisions. The type of rectification shall be chosen at RP's discretion.

9.6. To perform the rectification, the Goods will be made available to Supplier at RP's discretion either at the designated destination or at the venue where the Goods are located upon discovery of the deficiency. Supplier shall bear the costs incurred for the rectification. As far as the handling of the rectification process is concerned, Supplier shall be required to consider the operational needs of RP. In the event of failure to perform the rectification within a reasonable period of time, in the event of its failure or if the setting of a deadline was not required, RP shall have the option to exercise the other statutory rights it is entitled to in the event of deficiencies.

9.7. In the event that Supplier should fail to meet the rectification obligations properly – without justifiably refusing its performance – or if Supplier should earnestly and finally refuse to perform the rectification, or if the rectification has failed or if concerns about a loss of use exist or if the elimination of the deficiency does not allow for any further delays for any other reasons, RP shall have the right to eliminate the deficiency directly or to have same remedied by a third party at the expense and risk of Supplier and shall have the right to demand reimbursement of the essential expenditures incurred as a result. Incidentally, the statutory provisions shall apply. This shall be without prejudice to any further rights arising from the liability for deficiencies or warranties that RP is entitled to.

9.8. Deficiency claims shall be subject to a statute of limitations of twenty four (24) months after the passing of risk, unless a longer statutory period should apply. Any waiver of deficiency claims by RP shall be effective only if stated expressly and in writing.

9.9. In the event of repair or replacement during the warranty period, the warranty period for the repaired or replaced Goods shall start to run anew.

#### 10 Purchase Test

10.1. If a purchase test has been agreed between RP and Supplier, Supplier shall present the Goods for this test on the date agreed. Prior to this, RP and Supplier shall determine, in mutual consultation, the procedure for performing the purchase test. Supplier shall not present the Goods for the purchase test if it knows or could reasonably suspect that the Goods will not pass the test.

10.2. RP shall perform the purchase test in cooperation with Supplier within 30 days of Supplier having presented the Goods for this purpose.

10.3. The purchase test shall be deemed to have been completed successfully if:

a) Supplier has received notification in writing from RP to that effect, where applicable stating any minor defects which do not preclude the Goods being used and which Supplier shall remedy free of charge within 3 working days of receiving the aforementioned notification; or

b) RP has not notified Supplier in accordance with the provisions under a) within 90 days of the purchase test being concluded.

10.4. The purchase test shall be deemed not to have been completed successfully if RP informs Supplier in writing of this within 30 days of the conclusion of the inspection/test, stating the defects which prevent the Goods from being used. In that case, Supplier shall adjust the Goods free of charge within 3 working days of receiving the abovementioned notification in such a way that they will pass the next purchase test. After this, the Goods shall be subjected to a further purchase test pursuant to the above provisions.

10.5. Any alterations of the Goods shall be subjected to a purchase test, unless RP has indicated in writing that this is not necessary.

10.6. If Supplier fails to meet his obligations to remedy the defects in the Goods in good time, RP shall, without prejudice to any of its other rights, be entitled, after prior written notification, to remedy or to have a third party remedy these defects at Supplier's expense. Supplier shall be bound to cooperate with this and to provide the required information at RP's first request.

#### 11 Re-Commissioning of orders; Assignments, Change of Company Name, Setting off and Withholding

11.1. Supplier shall be permitted to transfer rights and obligations arising from the Agreement with RP to third parties only subject to the prior written consent of RP.

11.2. Supplier shall be required to immediately notify RP in writing of any transfer of the Agreement and any changes to Supplier's company name mandated by law.

11.3. Supplier shall be authorised to set off payables only against such receivables that are undisputed or that have been declared final by a court of law. Supplier shall be entitled to withholding rights only if the receivable based on which the right to withhold is exercised originates from one and the same contractual arrangement.

#### 12 Insurance and Liability

12.1. Supplier shall adequately insure any liability that it may have pursuant to its legal relationship with RP or pursuant to law. At its first request, RP shall be entitled to inspect the insurance policies taken out for this purpose.

12.2. Supplier shall be liable for any loss or damage sustained by RP, its subordinates or independent contractors as a result of or in connection with the Goods or the performance of an Agreement with the Supplier irrespective of whether it was caused by Supplier, its direct managers, subordinates or independent contractors, except if this damage and/or loss was the result of wilful intent or gross negligence on the part of RP's direct managers.

12.3. Supplier shall hold harmless and indemnify RP against any claims brought against it by any third party (including subordinates) and independent contractors of Supplier and/or of RP for loss or damage (including personal injury, death and property damage) arising out of or relating to acts or omissions of, or a failure to perform obligations (including the warranty obligations set out under article 9.3) by Supplier and/or the subordinates and/or sub-contractors engaged by Supplier in the implementation of the Agreement.

12.4. Supplier warrants that the Goods will not infringe third party rights, including intellectual property rights and know-how, and shall fully indemnify RP against any third party claims and related cost in this respect.

#### 13 Industrial/Intellectual Property Rights

13.1. Without RP's prior written permission, Supplier shall not disclose any Order, or any know-how or information of which he acquired knowledge in connection with the performance of the Order, to third parties, shall not use the Order, know-how or information for the benefit of third parties, and shall treat the Order, know-how and information with the strictest confidence. If no Agreement is created or if an Agreement is terminated or terminates (for example, after Delivery of the Goods), Supplier shall, at RP' request, return all information received from RP.

13.2. All intellectual, industrial and any other property rights in respect of drawings, specifications, designs, manuals, samples, software, etc., that were made available by RP to Supplier, or which were created by Supplier as part of the Agreement, shall rest with or belong to RP; Supplier shall cooperate in drawing up and executing the required deeds of transfer, inter alia with respect to the intellectual, industrial and any other property rights. Without RP's prior written permission, Supplier shall not make copies of the documents, materials, etc. referred to.

13.3. Supplier shall obtain licences from third parties with respect to the use of intellectual property rights, including but not limited to patents, designs, software, copyrights, trademarks, the application or use of which is required by implementation of the Agreement.

#### 14 Suspension and Termination

14.1. The Agreement may be terminated with immediate effect for important grounds. Important grounds shall in particular have occurred if:

- Supplier commits a significant breach of duty and fails to remedy the situation within a reasonable period of time set by RP after receipt of the written complaint or
- If insolvency proceedings are initiated against the assets of the respective other contracting party or
- in the event of the insolvency, imminent insolvency or excessive debt of the respective other contracting party pursuant to §§ 17 through 19 German Insolvency Code or
- if the other contracting party fails to meet its obligations to pay taxes or social security contributions or
- if the purchase, use of Goods or services is or becomes partially or wholly illegal due to statutory or government agency imposed provisions

14.2. In the event that RP should terminate an agreement for important grounds and if the upholding of other agreements that exist with Supplier becomes unacceptable for RP for the same important ground, RP shall have the option to also terminate other existing agreements and those that have not yet been fulfilled at the time of termination against pro-rata remuneration. In the aforementioned case Supplier shall not be entitled to any other compensation for damages, cost reimbursement or remuneration.

14.3. In the event of termination, Supplier shall immediately submit to RP all documents, records, plans and drawings received in conjunction with the Agreement and/or for the purpose of performance or as result of the Agreement.

In the event of a rescission of the Agreement, these provisions shall apply accordingly.

#### 15 Force Majeure

15.1. In the event of force majeure affecting Supplier, Supplier may suspend the performance of its obligations under an Agreement with RP for the period necessary, but in any event not for a period exceeding 4 weeks, provided that it informs RP immediately after the circumstances giving rise to the force majeure situation, describing these circumstances. If Supplier is unable to fulfil its obligations after this 4-week period has ended, RP shall be entitled to terminate the Agreement with immediate effect, without any obligation to pay damages.

15.2. Supplier shall in any event bear the risk of, without limitation, strikes, lock-outs, shortages of raw materials, transport problems, failures on the part of Supplier's suppliers/subcontractors to perform their obligations and disruptions in Supplier's production process.

#### 16 Documents, Confidentiality, Rights of Utilisation

16.1. Supplier shall be required to submit to RP the owed plans, computations or any other documents in the number agreed upon in such a timely manner that the contractual execution deadlines can be met. The review of the documents by RP shall not have any impact on the responsibilities of Supplier.

16.2. Models, samples, drawings, data, materials and other documentation that RP makes available to Supplier (hereinafter referred to as "RP Records") shall remain the property of RP and shall be returned to RP at any time upon request. Supplier shall not have any right to withhold RP Records. Supplier shall observe RP's copyrights inherent in the RP Records.

16.3. Subject to applicable statutory, court or public authorities imposed disclosure obligations notwithstanding, Supplier shall undertake to keep confidential any technical, scientific, commercial and other information received directly or indirectly by Supplier in conjunction with the Agreement, in particular the RP Records (hereinafter referred to as "Confidential information") and not to:

- utilise such information for any commercial purposes,
- make it the subject matter of commercial intellectual property rights,
- share such with any third parties or make it accessible to third parties in any other fashion and
- use such information for any purposes other than the performance of the Agreement.

16.4. The aforementioned confidentiality obligation shall survive the termination of the Agreement.

16.5. Only information that was already legally in the possession of Supplier at the time of disclosure by RP or information that is legally obvious or was legally obtained from third parties shall be exempt from said confidentiality obligation.

16.6. Also excluded from this confidentiality obligation shall be information that is being disclosed to individuals who are subject to statutory confidentiality provisions, in which case Supplier shall undertake not to release such individuals from their confidentiality obligations. The burden of proof for the existence of such exemption shall be borne by Supplier.

16.7. By entering into suitable contractual agreements, Supplier shall ensure that any of Supplier's employees or agents affected by this confidentiality agreement are required to also subject themselves to the confidentiality obligations of these Purchasing Conditions.

16.8. Upon request, Supplier shall document compliance with these obligations to RP in writing.

16.9. Supplier shall undertake to implement all necessary and suitable precautions and measures to effectively protect confidential information received against loss or unauthorised access at all times.

16.10. Supplier grants RP and its Affiliates the freely transferable right to use and utilise without any geographic, content or time restrictions all plans, drawings, graphics, computations and other documents related to the Agreement and that have either been compiled directly by Supplier or commissioned by Supplier for compilation by third parties (hereinafter referred to as "Work Product") in all known formats of media, including electronic media, on the Internet and other online media, on all video, audio and data media. In particular, RP and its respective Affiliates shall have the right to utilise, duplicate, distribute, amend and further develop such Work Product in whole or in part and to have the aforementioned actions performed by third parties as well as to give third parties the same comprehensive usage and utilisation rights inherent in such Work Product, including any amendments and further developments made in the interim.

#### 17 Archiving and review of Records

17.1. For the duration of the statutory archiving period – however for no less than three (3) years, beginning upon the acceptance or delivery - RP shall have the right to review any records related to the provision of the Goods and services during normal business hours and to make copies or duplicates for RP's own use.

17.2. Supplier shall undertake to assist RP with such audits. RP's right to review shall be excluded if the documents contain confidential information of Supplier such as those referring to Supplier's in-house computations, agreements or confidential information about business partners and/or employees.

#### 18 Safety and Security

18.1. Supplier shall, and shall cause any of its personnel, its sub-suppliers and sub-contractors and their respective personnel to,

strictly adhere to any safety and security regulations and instructions, and more in particular the Life Saving Rules, declared by RP to be applicable to any of its operations, sites and the supply of the Goods and services.

18.2. RP has the right to have removed, at Supplier's cost, from any of its sites where the Goods are delivered and/or other activities are performed by Supplier, any person not observing any such security regulations and instructions.

#### 19 Miscellaneous

19.1. If any provision of these Purchase Conditions or part thereof, cannot be invoked, or is invalid or null and void, the other provisions, or part thereof, shall remain in full force. RP and Supplier agree to replace the invalid or null and void provision by a provision whose content and effect corresponds as closely as possible to the provision that is invalid or null and void.

19.2. All terms used in these Purchase Conditions are intended to describe German legal concepts only.

19.3. Notices shall be deemed to have been validly given if they are sent by normal post, fax or e-mail to the other Party.

19.4. These Purchase Conditions together with any written instructions issued by RP pursuant to the Order, contains the complete and final agreement between RP and Supplier and supersedes all other and further agreements, representations, warranties, covenants, promises, and other contractual obligations between the parties. These Purchase Conditions may be amended, modified or waived only by a written instrument which is signed by an authorized representative of RP.

#### 20 Applicable Law and dispute Settlement

20.1. The business relationship between the Parties shall be governed by German law subject to the exclusion of the Collision Law and the UN Convention on the International Sale of Goods (CISG).

20.2. The place of performance for the execution of all obligations which are to be fulfilled by both Parties shall be Heidelberg.

20.3. All disputes arising in connection with the business relationship between the Parties shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS) without recourse to the ordinary courts of law.