

## General Conditions of Sale and Delivery Röchling Hydroma GmbH, 66957 Rupertsweiler/Germany

(last updated: August 2006)

### I. General - Scope

These conditions apply to all our supplies and services. They also apply to the initiation, the conclusion as well as the execution of all business transactions with the customer including all future business transactions. We do not recognise any contradictory conditions of purchase or ordering conditions of the customer except and unless we have expressly consented to their validity in writing. These present conditions also apply if we unconditionally carry out deliveries to the customer or perform services for the customer in the knowledge of conflicting conditions of the customer or of conditions of the customer that deviate from our own conditions.

These conditions only apply in our dealings with businessmen and businesswomen, with legal persons under public law or with public special funds.

### II. The written form

If these conditions demand written declarations, normal means of transmitting the printed word such as telexes, fax messages, data processing printouts or electronic declarations shall be deemed adequate within the framework of due diligence.

### III. Formation of the contract

Our offers are always submitted without engagement. Contractual obligations arise only when our written order confirmation is received by the customer. Our employees in the field are only legitimated to initiate contracts but not to conclude same.

### IV. Delivery periods, part deliveries, delay in delivery, passage of risk

(1) Delivery periods are stated in the confirmation of order as the number of weeks required; these are only binding if we have given a corre-

sponding assurance in writing. A precondition for adherence to agreed times and periods for deliveries and services is the timely receipt of all documents, necessary approvals and releases that are to be provided by the customer as well as the observance of agreed terms of payment and other obligations by the customer. If these pre-conditions are not fulfilled in good time, the agreed deadlines shall be extended by a reasonable period.

(2) If the failure to meet deadlines is due to force majeure, to industrial strife or to other events over which we have no control, the delivery time shall be extended by a reasonable period.

(3) Our compliance with the agreed delivery period is subject to deliveries to us having also been made correctly and in good time.

(4) We are entitled to effect part deliveries. In the case of deliveries of a large number of fungible goods (generic goods, in particular small parts) we are entitled to deviate from the stipulated quantities by up to 10 per cent. If delivery on call has been agreed, we must be allowed fair and reasonable production times from the time of the call for delivery.

(5) We are only in default with the delivery or service if the delivery or service is due and a corresponding written reminder has been received. If we are in default with the delivery or service and if the customer thereby incurs loss or damage, he can demand compensation for each full week of the default in the amount of 0.5 % for each week however not exceeding a total of 5 % of the price for that part of the deliveries and services in respect of which the seller is in default.

(6) Claims for damages of the customer due to a delay in delivery or in performing the service as well as claims for damages instead of the delivery or service that exceed the

limits stated in the preceding paragraph (5) are excluded in all cases of delayed delivery or delayed performance of the service, also after expiry of any deadline that may have been set for delivery or for performance of the service. This does not apply insofar as liability is mandatory in cases of wilful default or of gross negligence or in cases involving injury to life, limb or health. The customer can only withdraw from the contract within the framework of the legal regulations insofar as we are answerable for the delay in delivery. No change in the onus of proof to the disadvantage of the customer is associated with the preceding regulations.

(7) The risk of accidental loss of or of accidental damage to the goods that are to be delivered or to goods entrusted to us for processing under a contract for work passes to the consignee when the goods leave our works in Haren and Troisdorf respectively. This also applies if the transport is carried out by us or by a freight forwarder commissioned by us.

### V. Prices, due date for payment, transport costs, methods of payment

(1) The purchase price or compensation for work performed is set forth in our order confirmation; in the case of transactions within Germany, the statutory value added tax must always be added - even if this was overlooked in the order confirmation. If any statutory charges or fees which are charged on merchandise movements or which make the performance of work more expensive (in particular value added tax, customs duties, compensatory amounts, currency, freight charges) or negotiated wage rates increase outside of a period of 4 months from the date of the contract but before completion of execution of the contract, we are entitled to raise the price to reflect the additional costs which we have

demonstrably incurred; the same applies in the case of materials bought in for contracts the execution or partial execution of which is not planned until 7 months after the date of the contract.

(2) Invoices are due and payable without any deductions 30 days after the invoice date; in the event of late payment we charge interest at a rate that is 8 percentage points above the current base rate in accordance with § 247 BGB [German Civil Code]. We reserve the right to assert further claims for loss or damage caused by the delayed fulfilment of contractual obligations. Commission processing and repair work are payable immediately after receipt of invoice (without any deduction of cash discounts).

(3) Unless free delivery to the customer is agreed, transport costs and transport insurance of the goods in transit are not included and are for the account of the customer. If no special instructions are given, we choose the means of transport. We only insure the goods in transit at the express wish of the customer and at his expense.

(4) Bills of exchange are accepted only by special agreement and cheques are accepted on account of performance subject to their being honoured. All expenses associated with bills of exchange and discounting are for the account of the customer. Save in the event of gross negligence, we bear no liability for any delays in presenting of bills of exchange or cheques.

#### **VI. Quality description, consulting, testing of materials**

(1) Special properties of our deliveries or service are only warranted by us at the express wish of the customer and are only guaranteed by us if we have expressly stated this in our order confirmation. References to technical descriptions of products, characteristic values of materials, DIN regulations, sales leaflets and similar are no guarantee of the properties stated in these.

(2) The customer bears the sole responsibility for checking the suitability of the items to be delivered or processed as to their suitability for the intended use or for further processing in his own business as well as for selecting the required quality. We accept no liability whatever in respect of any advice or recommendations provided by us; to this extent we also do not assume any contractual consulting obligations.

(3) If the conditions of the contract demand submission of the results of a chemical analysis or of the technical and physical data from testing of the material, we are only responsible for the reliability of such data within the examination capabilities of our company laboratory.

#### **VII. Obligations regarding complaints, material defects, recourse claims, withdrawal from the contract, damages**

(1) After the arrival of delivered good or of goods that have been processed by us, the customer must check these to the customary extent in accordance with normal trading standards and shall file any complaints regarding material or processing defects in writing without delay - not later than within 8 working days. In the case of hidden defects, the relevant complaints must be filed within 8 working days after the defects are discovered. At our request, the customer shall permit goods that are the subject of a complaint to be examined and shall not make any changes in such goods by way of further processing, installation or other use until a decision upholding or rejecting the complaint is reached. If the customer wilfully fails to honour these obligations, any and all claims arising from the defects are void.

(2) We bear liability for material defects that already existed at the time of the passage of risk as follows:

a) We must first be given the opportunity for belated fulfilment of our obligations at our option within a reasonable period of time. If this attempt at belated fulfilment of our

obligations is unsuccessful the customer can withdraw from the contract or can reduce the remuneration without prejudice to any claims for damages.

b) No claims on account of defects exist if the deviation from the agreed quality is immaterial, if the impairment of the suitability for use is immaterial, in the case of fair wear and tear or in the case of damage that arises after the passage of risk as a result of improper or negligent treatment, undue stresses, unsuitable operating resources, defective construction work or unsuitable subsoil or if the defects arise due to special external influences that are not envisaged in the contract. If any improper changes or faulty corrective maintenance work are carried out by the customer or by third parties, no claims on account of defects exist in respect of these or of their consequences.

c) Claims of the customer on account of expense incurred because of belated fulfilment, in particular transport and travel costs as well as costs for work and materials are excluded insofar as such expense is increased because the goods in question were subsequently moved to another place than the branch office of the customer.

d) Recourse claims of the customer against us in accordance with § 478 BGB (recourse of the businessman), insofar as such claims exist at all, exist only insofar as the customer did not reach any agreement with his customer that exceeds the claims for defects provided for by law.

e) Claims in respect of material defects become statute barred after 12 months.

3. If the customer withdraws from the contract, he is obliged to pay compensation also in the case of any deterioration of the delivered item through use in accordance with the contract.

4. Apart from this, claims for damages are governed by Article IX. (Other claims for damages). Further

claims of the customer against us and our agents on account of material defects or other claims than those regulated in this Article VII. are excluded.

#### **VIII. Industrial property rights and copyright; deficiencies in title**

(1) Insofar as nothing to the contrary is agreed, we are only obliged to perform the delivery or service in the country of the place of delivery free of industrial property rights and copyright of third parties (hereinafter: industrial property rights). Insofar as a third party asserts legitimate claims against the customer on account of an infringement of industrial property rights by a delivery or service provided by us and used in accordance with the contract, we bear liability vis-à-vis the customer within the period stipulated in Article VI. No. 2 as follows:

a) We will at our option and at our expense either obtain a right of use for the corresponding deliveries and services, will change them in such a way that the industrial property right is not infringed or will exchange them. If we are unable to do this on reasonable conditions, the customer is entitled to exercise the statutory rights to rescind the contract or to reduce the price.

b) Our obligation to pay damages is governed by Article IX.

c) Our obligations as stated above exist only insofar as the customer notifies us immediately in writing of any claims asserted by the third party and does not acknowledge an infringement and insofar as all defence measures and negotiations for a settlement remain open to us. If the customer ceases utilisation of the delivery or service in order to reduce loss or damage or for any other important reasons, he is obliged to draw the attention of the third party to the fact that his ceasing such utilisation is in no way connected with any recognition or acknowledgement of an infringement of industrial property rights.

(2) Claims of the customer are excluded, insofar as he is answerable for the infringement of industrial property rights.

(3) Claims of the customer are also excluded insofar as the infringement of industrial property rights was caused by special fixed parameters of the customer, by an application that could not be foreseen by us or by the fact that the delivery or service was changed by the customer and used together with products that were not supplied by us.

(4) In the case of infringements of industrial property rights, the provisions of Article VII. No. (2) b) and d) apply by analogy for the claims of the customer regulated in No. (1) a).

(5) If any other deficiencies in title exist, the provisions of Article VII. shall apply by analogy.

(6) Further claims of the customer against us and our agents on account of a deficiency in title or any other claims of this kind apart from those regulated in this Article VIII. are excluded.

#### **IX. Other claims for damages**

(1) Claims for damages and for the reimbursement of expense incurred by the customer (hereinafter: claims for damages) for any legal reason whatever, in particular due to a violation of duties arising out of the obligation relationship and from unlawful actions, are excluded.

(2) This does not apply insofar as liability is mandatory e. g. in accordance with the Product Liability Law in cases of wilful default or of gross negligence or in cases involving injury to life, limb or health as a result of the violation of major contractual duties. The claim for damages arising out of the violation of major contractual duties is however limited to typical, foreseeable damage in connection with the contract, insofar as no wilful default or gross negligence exist or liability must be borne due to injury to life, limb or health. No change in the onus of proof to the disadvantage of the

customer is associated with the preceding regulations.

(3) Insofar as the customer is entitled to claims for damages in accordance with this Article IX, these become statute barred on expiry of the statute of limitations deadline for material defects in accordance with Article VII. No. (2) a). In the case of claims for damages in accordance with the Product Liability Law, the statutory limitations shall apply.

#### **X. Reservation of ownership**

(1) All delivery items remain our property until full payment of our claims against the customer with regard to the purchase price or compensation for work (including such claims deriving from earlier or later transactions) as well as any incidental claims (e. g. interest on arrears, dunning charges) has been received. The retention of title also applies to claims that are not yet due and payable or to deferred claims as well as to claims that we possess or acquire vis-à-vis the customer for any other legal reason as a contract of sale, a work performance contract or contract for work, in particular when said claims and receivables are substituted by abstract claims in the form of bills of exchange or cheques. The customer is entitled to dispose of the goods to which title is retained only in the ordinary course of business, in particular he is entitled to sell the goods further or to process them further until such entitlement is revoked by us.

(2) Any treatment or processing of the goods to which title is retained on the part of the customer is carried out on our behalf. However, the customer does not then have any claims to compensation for work against us. If a new corporeal thing or aggregate of things comes into being through joining the goods to which title is retained with parts that are not our property, we acquire a joint ownership share in such new thing or aggregate in the same ratio as that between our invoice amount for the objects to which title is retained and the manufacturing or acquisition

value of the parts that are not our property.

(3)The customer pre-assigns to us the claims deriving from the further sale of goods to which title is retained vis-à-vis the second customer (extended retention of title). In the case of goods under joint ownership, this shall be done on a pro-rata basis in the value ratio as described in Section (2) Sentence 2. If the value of the goods to which title is retained has been increased while in the possession of the customer by means of treatment or any other processing measures, the above-named pre-assignment shall be limited to the amount of our invoice plus 10 per cent. The customer shall not assert the unassigned parts of the claim to our disadvantage. The customer remains authorised in the ordinary course of business to collect the claims pre-assigned to us. This authorisation to collect can be revoked by us at any time without any obligation to state reasons and we can also notify the second customer of the assignment at any time. If the customer already assigned the claims deriving from the re-sale of goods to which title is retained or of goods under joint ownership in favour of third parties (in particular to banks

that have granted loans) at an earlier time than to us, this is not deemed to be a sale in the ordinary course of business.

(4)The customer shall notify us without delay of any attachment by third parties or of any other impairment of the goods to which we have retained title or of the claims (part claims) pre-assigned to us and arising from the further sale of said goods. The customer shall on demand grant access to his business premises for the purpose of ascertaining, marking, segregated storage or removal of the goods to which title is retained. The customer undertakes to give us the information required to assert pre-assigned claims against second customers and to furnish us with copies of the necessary instruments of evidence from his business records.

(5)Insofar as the value of our rights deriving from the regular or extended retention of title in connection with any other real security granted to us by the customer exceeds the value of our claims from the business relationship by more than 10 per cent, we will on demand of the customer release items offered as security at our own option.

#### **XI. Rights of setoff and retention**

The setting off of any counterclaims against our claims for payment is excluded unless it is a question of counterclaims of the customer that have been recognised by us or that have been legally established. The customer cannot exercise any right of retention on the grounds of counterclaims deriving from a different contractual relationship to the concrete contractual relationship in each case.

#### **XII. Applicable law, place of jurisdiction**

(1)The contractual relationships with the customer are governed by the law of the Federal Republic of Germany to the exclusion of the Agreement of the United Nations concerning Contracts for the International Sale of Goods (CISG).

(2)If the purchaser is a businessman, the sole place of jurisdiction for any and all disputes arising directly or indirectly from the contractual relationship is Pirmasens. We are however also entitled to institute legal action at the place of the registered office and principal place of business of the customer.