

**General Conditions of Supply**  
**of**  
**Rückle GmbH Werkzeugfabrik,**  
**Maschinenfabrik Eimeldingen GmbH,**  
**HEADTec GmbH**  
**and of**  
**Vario Ferigungstechnik GmbH**  
**for international business transactions**

**Status: July 2007**

**I. Scope**

1. Our Conditions of Supply apply exclusively. The Conditions also apply to all future transactions as well as in all cases in which contact is taken up with a customer for business purposes; for example, the Conditions apply to the entry into contractual negotiations and in the preliminary stage before conclusion of a contract even if the Conditions are not expressly agreed again and even if no express reference is made to them again.
2. If, in an individual case, obligational relationships are also established towards persons or businesses who or which are not themselves intended to become a party to the contract, then the conditions regarding liability which are contained in these Conditions of Supply also apply as against such persons or businesses, to the extent that these Conditions were incorporated as against the third parties when the obligational relationships came into existence. This is the case, above all, if, when the relevant obligational relationship came into existence, the third parties obtained, or already had, knowledge of these Conditions of Supply.

3. Conditions of the customer which diverge from, or which contradict, our Conditions of Supply are not recognized by us. Agreements reached beforehand and previous versions of our Conditions of Supply are superseded by these Conditions of Supply.
4. The receipt of services and supplies is deemed to constitute acknowledgement of the application of these Conditions of Supply.

## **II. Conclusion of a contract**

1. Unless otherwise agreed, our offers are binding for a period of four weeks from the date our offer is made.
2. An order first becomes binding upon us, if it has been confirmed by us in writing or if we start to carry it out. This applies, above all, if the order from the customer is not based on a definite binding offer from our side.
3. If we so request, the customer is obliged, on its part, to give us written confirmation of receipt of our written acceptance of the customer's order. If, following the customer's receipt of our request to that effect, the customer does not provide the relevant declaration of confirmation to us within five working days, then we are no longer bound to the order.
4. If our offer or our confirmation of order is based on technical information from the customer (pictures, drawings, details of weights and measurements etc.), then our offer is only binding, if the order can be executed in accordance with the technical instructions of the customer. If, after conclusion of the contract, it transpires that the order cannot be carried out in accordance with the technical information

provided by the customer, then we are entitled to withdraw from the contract, if and so far as the customer is not prepared to accept the alternative technical solution suggested by us and, as the case may be, to assume the additional costs actually incurred.

5. We reserve to ourselves all rights to sketches, drafts, samples or similar preliminary work.

### **III. Extent of Supplies**

1. The extent of the supplies to be made is determined by our written offer or, as appropriate, by our confirmation of order. Collateral arrangements and alterations require our written confirmation.

2. We are entitled to undertake acts of part-performance in respect of all orders to such an extent as is fair and reasonable. Further, we are entitled to engage sub-contractors for the purpose of the performance of our contractual obligations.

3. Time-periods and dates for supplies always represent best possible particulars, but are not generally legally binding. The start of the period for supply (despatch of the confirmation of order) and compliance with supply dates are subject to the following prerequisites: that the customer punctually and properly performs the acts of cooperation which are incumbent on the customer; that the customer makes available all necessary documentation and that the customer makes all prepayments which may have been agreed. If the goods ordered are handed over by us to a transportation agent or if we notify the customer of our readiness to despatch the goods, then the date of delivery to the agent or, as appropriate, the date of the notice of readiness for despatch shall be deemed to be the date of supply.

4. Unless it is expressly stipulated as being binding, the information which is enclosed with our offers, such as, for example, drawings, details of weights and measurements, is only approximately authoritative.

5. If it is agreed that a supply or, as appropriate, a service is to be made on call, then the customer is obliged to accept the whole supply or service ordered within a reasonable time-period; however, such acceptance by the customer is to take place at the latest within three months after the on-call order has been made. When this time-period ends, we are entitled to submit our account for the whole (on-call) order at the same time as the entire supply which was ordered is made available.

6. If the supply or, as appropriate, the service is delayed due to instances of force majeure, such as, for example, labour disputes, strikes or lock-outs, or because of other events in Germany or abroad for which we are not responsible, then the period for performance shall be extended appropriately by the duration of the period of the impediment and the period of its subsequent effects. This also applies, if these circumstances arise on the part of our sub-suppliers. To the extent that the event of force majeure results in performance becoming permanently impossible, we are entitled to withdraw from the contract. We also bear no responsibility for instances of force majeure, if they arise without blame on our part while a case of delay already exists. In important cases, we will immediately notify the start and end of such hindrances to our customers.

7. We do not come into delay due to delays in the provision of services if there is only slight negligence on our part or on the part of our assistants in performance. We do not come into delay in cases of force majeure or in situations which arise without blame on our part or in extraordinary circumstances. In such cases, we are also entitled to withdraw from the contract, even if we were already in delay at the time. If, in such cases, on enquiry from the customer, we do not state within a reasonable period whether we will still perform the service which is owed, then the customer is entitled, on its part, to withdraw from the contract with regard to the part of the service which we owe as contractor and which has not yet been performed by us.

8. If the customer is in delay with acceptance or if despatch is delayed at the wish of the customer, then, as from the time the notice of readiness for despatch is issued, the customer will be charged with the costs which arise due to storage by us or by a third party. We are entitled to assess these costs on a lump-sum basis at 0,5% of the invoice

amount (incl. Value Added Tax) for every week, but at a maximum of 10% of the invoice amount (incl. Value Added Tax). The customer remains at liberty to show that a smaller loss was incurred. After a reasonable period has been set and such period has expired, we are entitled to dispose of the item which was to be supplied elsewhere and subsequently to make a new supply to the customer within an appropriately-extended period.

9. If, in accordance with the contract which has been concluded, we are under an obligation to undertake an act of performance in advance, then we can decline to carry out the act of performance which is incumbent on us, if, after conclusion of the contract, it becomes apparent that our claim to the act of counter-performance (from the customer) is endangered by the customer's inability to perform. In particular, this is the case if the counter-performance to which we are entitled is endangered due to the customer's bad commercial circumstances or if other impediments to performance threaten, such as, for example, export- or import bans, armed conflicts, insolvency of suppliers or non-availability of necessary members of staff due to illness.

10. We can refuse to discharge our obligations of performance or manufacture if, taking into consideration the content of the contract and the principle of trust and good faith, the expense of doing so would be grossly disproportionate to the interest of the customer in performance. This is the case, in particular, if the act of performance or manufacture which has not been undertaken or which is wrongful has no adverse effect on, or only has an insignificantly adverse effect on, the customer, as is the case, for example, if there are cosmetic faults.

#### **IV. Transition of Risk**

The risk of destruction or of deterioration of the goods passes to the customer when the goods are consigned for despatch; this is also the case, if part-deliveries are made. If despatch is delayed due to reasons based on personal factors relating to the customer, then risk already passes to the customer at the time of the notice of readiness for despatch.

## **V. Changes in the Extent of Supplies**

Until delivery, we reserve to ourselves the right to make minor changes which are usual in the trade, in particular improvements to the goods, if the interests of the customer are not thereby adversely affected to an unacceptable extent.

## **VI. Prices**

1. Our prices are net prices. With regard to supplies, the prices are to be understood as always being “ex works” (EXW, Incoterms 2000). When an invoice is issued, Value Added Tax will be added to the price at the statutory rate respectively applicable. Accordingly, the customer shall bear the following: costs of despatch, freight, trucking charges, customs duties and other expenses associated with the supply, including the costs for the issue of officially-prescribed certificates of safety or conformity. If the customer desires a freight insurance, then we will conclude such an insurance on the customer’s behalf and at the customer’s cost if we are instructed to do so by the customer in writing.

2. If prices in respect of the relevant product or in respect of materials which are required for the purposes of production beforehand are increased by our suppliers during the period between conclusion of the contract and the time of supply or if, because of changes in tariff agreements, there are objective increases in costs, then, in the event that there is a period of more than four months between the time of conclusion of the contract and the date agreed for our supply or service, we are also entitled to increase prices in our relationship to the customer correspondingly.

## **VII. Terms of Payment**

1. Our contractual claim becomes due for payment on receipt of the supply, also of partial deliveries. If the customer comes into delay with payment, then the customer

must compensate us for the loss which arises due to the delay; in particular, interest shall be payable by the customer at a rate of 8% above the base interest rate. If the customer comes into in delay with payment of an amount or partial amount for longer than 14 days, then the whole rest of all outstanding claims shall become due for payment immediately.

2. The customer is not entitled to make any deductions without an express agreement to that effect.

3. Insofar as the contractual agreement with the customer does not provide for a supply to be made in exchange for payment in advance, we are entitled, even in the absence of a special agreement, to make it a precondition for our act of contractual performance that a documentary credit be provided from a bank or from the branch of a bank in the European Union in accordance with the Uniform Guidelines and Practices for Documentary Credits (ERA 500)/Uniform Guidelines and Practices for Documentary Credits of the International Chamber of Commerce (ICC), such documentary credit to be in the amount of the gross price of the relevant act of performance.

4. Payment by bill of exchange or acceptance is only permitted if expressly agreed and, even then, is only deemed to be on account of payment. Discounting charges and expenses are to be borne by the customer; they are due for payment immediately.

5. Set-off against our claims to remuneration is only possible with claims which are undisputed or which have been established with the force of law. The same applies with regard to the exercise of a right of retention. Moreover, the customer is only authorised to exercise a right of retention insofar as the right is based on the same contractual relationship.

6. The assignment of claims against us by the customer is not permitted.

## **VIII. Reservation of Title**

1. We reserve to ourselves the right of ownership to the goods supplied by us for as long as there are any claims in existence arising from the order. If, at the time of supply, other claims still exist against the customer, apart from the claim which is owed to us in respect of the relevant order, then we reserve to ourselves the property and all user rights under copyright law in the goods delivered by us until all claims as specified above are settled (extended reservation of title).
2. Insofar as the effectiveness of this reservation of title is dependent on its registration, for example in public registers in the country of the customer, then we are entitled, and are so authorised by the customer, to effect such registration at the cost of the customer. The customer is obliged, on its part, to provide all such cooperation as is necessary for the purpose of such registration free of charge.
3. If payments are made by the customer by cheque or bill of exchange, the claim which has arisen from the order and supply shall continue until such time as the cheque or bill of exchange is paid by the customer.
4. If the claims are incorporated in a current account, the extended reservation of title applies to the balance which is respectively outstanding.
5. If the goods supplied are treated or processed by the customer, then the treating or processing shall be undertaken on our behalf in such a way that we acquire co-ownership of the new thing (produced), our share therein to correspond to the proportion which the purchase price of the thing supplied bears to the total sale value of the new thing (produced) at the time of processing. If the goods supplied are processed by the customer with other goods which do not belong to us, then we are entitled to co-ownership of the new thing produced, our share therein to correspond to the proportion which the purchase value of the goods which were used for the production of the new thing and which were subject to our reservation of title bears to the sale value of the new thing (produced) at the time of processing.

6. If the goods which are supplied subject to reservation of title are inseparably connected, mixed or jumbled with other goods, then we acquire co-ownership of the whole quantity of goods in the amount of the proportionate value of our supply, §§ 947, 948 Civil Code (BGB). If the customer obtains sole ownership due to connection, mixture or jumbling, then the customer already now transfers co-ownership to us in such proportion as the value of the goods which are subject to reservation of title bears to the value of the newly-manufactured goods at the time of connection, mixture or jumbling. We accept this transfer. In this case, the customer shall store the merchandise owned by us without charge.

7. The reservation of title is extended to all claims of the customer which are acquired by the customer through re-sale of the goods supplied or through re-sale of the goods which are newly manufactured. The claims are assigned to us in the amount of the invoice amount which is outstanding. The customer assigns these prospective claims to us as security at the time the claims arise. We accept this assignment. The customer is only entitled to re-sell the goods which are subject to reservation of title or, as the case may be, to re-sell the newly-manufactured goods subject to the proviso that the customer's claim in respect of the goods re-sold or, as appropriate, in respect of work done passes to us in accordance with the foregoing terms. The customer is not entitled to undertake other dispositions.

8. The customer is not allowed to pledge the goods supplied nor to transfer ownership thereof as security. The customer must inform us without delay in the event that acts of distraint, seizures or other dispositions by third parties take place.

9. Our security rights do not prevent the customer from disposing of items which belong to us or of claims which have been assigned to us as security in the ordinary course of business. It no longer constitutes an ordinary course of business, if any of the following occur: if the customer falls into arrears with its payment obligations towards us for one month after the customer has come into delay; if protests regarding bills of exchange are made to the customer; if suspension of payments takes place or if an insolvency application is made. In such a case, the customer is obliged, at our request, to reveal the assignments to its own customers, to refrain from collection of

the claims and to permit collection by us. If we so request, the customer is also obliged, on our first demand, to disclose to us the addresses of its own customers.

10. If an ordinary course of business no longer exists, we are entitled to take back the goods which are subject to reservation of title at the cost of the customer. If we take back goods in this way, if we assert the reservation of title or if we distraint upon the items supplied, then this does not constitute a rescission of the contract, insofar as this is permitted by law.

11. On the request of the customer, we are obliged to release those securities to which we are entitled in accordance with the foregoing provisions and as we may select to such an extent as the realisable value of such securities exceeds the claims to be secured.

## **IX. Liability**

1. The customer must examine the goods without delay after receipt – above all, with regard to visible damage, defects, weight and measurements. Obvious defects must be complained of by the customer without delay after receipt of the consignment. In respect of defects which are not obvious, any complaints must also be made to us without delay after the defects are discovered. If the customer fails to send off the notice of complaint within a deadline-period of 7 days, then the goods delivered are deemed to be approved, even if they are defective.

2. If the customer or a third party improperly makes alterations or carries out repairs improperly without our prior approval, we accept no liability for the consequences arising therefrom. No guarantee is assumed for any of the following, except insofar as they are caused by our own blameworthy conduct: unsuitable or improper use, in particular incorrect assembly or operation by the customer or by third parties, normal wear and tear, improper or negligent handling, unsuitable machinery etc.

3. The customer only has a claim to subsequent performance, reduction in the purchase price, withdrawal from the contract and damages in accordance with the following provisions:

- a. If the customer accepts a faulty thing even though the customer is aware of the defect, then the customer only has the rights to subsequent performance, withdrawal from the contract, reduction in the purchase price and damages in respect of the defect, if the customer reserves those rights to itself on acceptance.
- b. If the thing lacks its agreed quality or in the event that there is some other material defect in accordance with §§ 434(i), Sentence 2, 633(ii), Sentence 2 BGB, then, subject to complaint being made in proper time, we shall, at our option, either remove the defect or supply a thing free of defects (subsequent performance).
- c. If we decide upon removal of the defect, then we must bear the necessary expenditure for this purpose, in particular the costs of transport, jounies, work and materials. This does not apply to the extent that the expenses increase because, after delivery, the thing purchased has been brought to a place other than the residence or business location of the customer.
- d. If removal of the defect was attempted by us twice or if a different thing was subsequently supplied once and the existing defect could not thereby be removed, then, instead of removal of the defect or delivery of a thing free of defects, the customer can reduce the purchase price or, after setting a reasonable time-period, can demand that the contract concluded with us be rescinded.
- e. If the act of performance by us which is due for performance is not performed at all or is performed late or badly, then, for a period of 1 year from passage of risk, the customer can only demand damages:

aa. in respect of loss arising from injury to life, body or health, if such loss is based on an intentional or negligent breach of duty by us or if it is based on an intentional or negligent breach of duty by one of our statutory representatives or assistants in performance;

bb. in respect of other losses:

\* if such losses are based on an intentional or negligent breach of duty by us or on an intentional or negligent breach of duty by one of our statutory representatives, senior members of staff or assistants in performance; or

\* if such losses are based on the intentional or negligent breach of essential contractual duties (cardinal obligations) by us or on the intentional or negligent breach of essential contractual duties (cardinal obligations) by one of our statutory representatives, senior members of staff or assistants in performance;

\* in respect of losses which fall within the protective scope of a guarantee (assurance) given by us or within the protective scope of a guarantee of condition or durability.

Liability which goes beyond the above on the ground that the relevant conduct was fraudulent remains unaffected.

In the event that a breach of an essential contractual duty is caused by simple negligence, liability is limited in amount to the loss which is typically to be expected. Excepted herefrom are losses which arise from injury to life, body or health.

Except insofar as anything to the contrary is agreed in these Conditions of Supply, all claims of the customer to compensation for loss of any kind whatsoever, in particular loss which has not arisen on the thing supplied itself, and claims in tort are excluded. This also applies to claims with regard to, or against, our assistants in performance. The limitation of liability is not applicable, if we or our assistants in performance are charged with intentional or grossly negligent conduct or if injuries to life, body or health exist.

4. If instructions are given to third parties or if third parties are involved during the preliminary stage of the contractual relationship or for the purpose of its performance, then the the abovementioned limitations regarding guarantees and liability also apply for the benefit of those third parties.

## **X. Product liability**

If, in the countries in which our products are to be re-sold to other persons by the customer, provisions regarding product liability or, as appropriate, product-safety are in force which diverge from, or are stricter than, equivalent provisions of German law, then the customer must point this out to us when the order is placed. In this case, we are entitled to withdraw from the contract within one month. If the customer omits to give the necessary clarification to us as stated above, then, within one month after we become aware of the relevant legal position, we can withdraw from the contract. In the latter situation, the customer is obliged to indemnify us against claims made by third parties which extend beyond our liability in a comparable case of product liability in Germany. The same also applies, if we adhere to the contract.

## **XI. Final Provisions**

1. The place of performance and legal venue for all disputes between the parties arising out of the contractual relationship is Römerstein. Independently hereof, we are also entitled to proceed against the customer at the customer's general legal venue.
2. The customer is aware that data in connection with the transaction and also personal data (relating to the customer) will be electronically stored and that, consistently with business needs, such information must also be processed and transmitted to third parties. The customer agrees to this storage and processing of data.
3. If a provision of these General Conditions of Supply and Payment should be or become ineffective or if, within the framework of other agreements, a provision hereof should be or become ineffective, then the effectiveness of all other provisions or agreements shall not be affected thereby.
4. The contractual and other legal relations between ourselves and our customers are governed by German law, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) dated 11<sup>th</sup> April 1980.