

General Terms and Conditions of Sale and Delivery (2018 Edition)

Von Roll Automotive GmbH
Theodor-Sachs-Str. 1
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1. Scope of application, offer, conclusion of contract

- 1.1 These General Terms and Conditions of Sale and Delivery ("**Terms**") apply to all business relationships between Von Roll Automotive GmbH ("**Supplier**") and its business partners and customers ("**Customer**") if they have been declared applicable in the offer or order confirmation.
- 1.2 These Terms apply exclusively. Deviating, contradictory or supplementary General Terms and Conditions of the Customer only form part of the agreement if and to the extent that the Supplier has expressly consented to their application in writing. The requirement for consent applies in any event, in particular even if the Supplier carry out delivery to the Customer without reservation while being aware of its general terms and conditions.
- 1.3 Unless agreed otherwise, the Terms apply in the version valid at the time of Customer's order is placed or in any case the version most recently communicated to the Customer in text form as a master agreement for similar future contracts as well, without the Supplier having to refer to these in each individual case.
- 1.4 All agreements, legally relevant declarations and notifications that are to be provided to the Supplier by the Customer after conclusion of the contract (e.g. deadlines, notifications of defects, declaration of withdrawal or price reduction) are only valid if made in writing.
- 1.5 Individual agreements (including collateral agreements, additions and amendments) entered into in the individual case with the Customer shall apply prior-ranking over these Terms. As for the content of such agreements, a written contract or the Supplier's written confirmation is authoritative, subject to evidence to the contrary.
- 1.6 References to the application of statutory regulations are for clarification purposes only. Statutory regulations therefore also apply without such clarification, unless they are directly amended or expressly excluded in these Terms.
- 1.7 These Terms only apply if the Customer is an entrepreneur (Sec. 14 German Civil Code, *Bürgerliches Gesetzbuch* - BGB), a legal entity under public law or a special fund under public law.
- 1.8 The Supplier's offers are subject to alteration and non-binding, unless the Supplier has expressly declared them to be binding in text form. Declarations of acceptance and orders by the Customer are deemed a binding offer of a contract (Sec. 145 BGB). The Supplier is entitled to accept such offer of a contract within four working days of receiving such. Such acceptance can be declared either by order confirmation in text form or by delivery or service to the Customer. In the latter case, the invoice replaces the order confirmation.

2. Scope of delivery and service

The Supplier's deliveries and services are exhaustively listed in the order confirmation or the Supplier's binding offer, including attachments (e.g. product specifications). Any supplements, amendments and collateral agreements are only binding by the Supplier's confirmation in text form.

3. Technical documentation

- 3.1 Information in descriptions valid at the time of conclusion of contract, such as measurements, weights, fuel economy, etc., are only approximate and may differ, unless the Supplier expressly lists it as a binding part of the contract. Design or specifications changes are reserved if they are reasonable for the Customer, taking its interests into account.
- 3.2 The Supplier reserves all rights (including ownership, copyrights, the right to register intellectual property rights and other rights) to the documentation that is a part of the offer as well as the drawings, information and aids provided to the Customer. All documentation and information made available by the Supplier is to be kept confidential from third parties. Such documentation is only made available to third parties with the Supplier's prior written consent. At the Supplier's request, the documentation is to be returned or destroyed if it is no longer needed in the ordinary course of business.

4. Prices

All prices are net prices in Euro, ex works or ex warehouse of the Supplier (pursuant to INCOTERMS® 2010). The Customer bears all ancillary costs, such as for shipping, postage, packaging and insurance, as well as for export, transit, import and other permits. The Customer must bear – or reimburse the Supplier for – all taxes, fees and duties in connection with services provided outside of Germany.

5. Payment conditions

- 5.1 Payments are to be made by the Customer according to the agreed terms of payment at the Supplier's registered office without deduction for early cash payment, expenses, taxes, duties, fees, customs charges, or the like. Unless otherwise stated in the order confirmation, the invoice amount is due and payable within thirty days of receipt of the invoice.
- 5.2 Upon expiry of the agreed payment deadlines, the Customer shall be in default of payment without further notification. Decisive for the timeliness of the payment is the receipt in the Supplier's account. The invoice amount shall be subject to interest during the default at the applicable statutory default interest rate. The Supplier reserves the right to compensation for further damages. With respect to merchants, the Supplier's right to claim "mercantile interest", i.e. interest claimed from merchants starting on the due date (Sec. 353 German Commercial Code, *Handelsgesetzbuch* - HGB) remains unaffected.
- 5.3 The Supplier is entitled to render outstanding services only in return for prepayment or provision of security, if the Customer is in default of payment or if circumstances become known which could reduce the Customer's creditworthiness, thus placing the payment of the Customer's payables arising from the contract at risk.
- 5.4 The Customer has set-off or retention rights only if and to the extent that its claim has been finally established by a court or is undisputed. In the case of defects in the delivery, the Customer's opposing rights, in particular in accordance with Sec 9 of these Terms, remain unaffected.

6. Reservation of title

- 6.1 Until full payment, the Supplier reserves ownership of all deliveries. This reservation of title applies to secure all current and future claims arising from the contract between the Supplier and the Customer regarding deliveries

and/or services, including outstanding balance claims, and arising from any on-going business relationship ("**secured claims**").

- 6.2 Any deliveries subject to reservation of title may not until full payment of the secured claims be pledged or transferred by way of security to any third parties. The Customer must inform the Supplier in writing without undue delay if an application for the opening of insolvency proceedings has been filed or to the extent that a third party lays claim to the goods belonging to the Supplier (e.g. by attachment). If the third party is unable to reimburse the Supplier for any juridical or extrajudicial costs incurred in this connection, the Customer shall be liable to the Supplier for such costs.
- 6.3 The reservation of title also covers any products at their full value which are created as a result of the processing, mixing or combining the Supplier's goods. The processing, mixing or combining of the goods owned by the Supplier is always carried out on the Supplier's behalf, without resulting in any liability on the Supplier's part. If in the event of processing, mixing or combining with third-party goods, their ownership rights remain in place the Supplier acquires co-ownership in the ratio of the invoice values in the processed, mixed or combined goods. In the event no such acquisition of ownership by the Supplier should occur, the Customer hereby assigns in advance its future ownership or co-ownership of the newly created item to the Supplier as security.
- 6.4 Upon conclusion of the contract, the Customer as security assigns to the Supplier all claims, including outstanding balance claims from current account agreements, arising from resale, processing, mixing or combination of the goods delivered by the Supplier. This also applies to other claims against third parties to which the Customer becomes entitled in connection with the deliveries, such as insurance claims. The Supplier accepts this assignment. The Supplier hereby revocably authorises the Customer to collect the claims assigned to it in its own name. The Supplier is only entitled to revoke in case of recovery. In the event of default in payment, upon the Supplier's request, the Customer is obligated to disclose the assignment. In this case, the Customer must provide the Supplier with the necessary information and documentation. The Supplier is also entitled to disclose the assignment to the Customer's debtor and to demand payment from such debtor to the Supplier.
- 6.5 If the Customer is in breach of contract, in particular fails to pay the due purchase price, the Supplier is entitled to assert its claim to retention of title and, after a reasonable grace period has been set and has expired without effect, to demand return of the goods it has delivered. Asserting a claim to reservation of title does not constitute withdrawal from the contract.
- 6.6 If the value of the security provided by the Customer exceeds the amount of the Supplier's claim by a total of more than 50%, the Supplier releases security of its choice.

7. Delivery/service time

- 7.1 Any delivery periods are in principle non-binding and approximate. In case of doubt, a delivery period begins with the dispatch of the Supplier's order confirmation.
- 7.2 The delivery period does not commence prior to receipt of all documentation, necessary permits and clearances to be procured by the Customer, compliance with the agreed payment conditions and the Customer's other obligations. This does not apply if the Supplier is responsible for the delay.
- 7.3. Delivery times are subject to unforeseen hindrances, such as force majeure, war, terrorist attacks, restrictions on imports and exports, strikes and interferences in the business operations of the Supplier and its suppliers that are outside the Supplier's sphere of influence and other interferences for which the Supplier is not responsible. In the event of such interferences that are of a temporary nature, a cited delivery time is extended by the duration of the interference. If the interference is not of a temporary nature, the Customer is entitled – after an appropriate grace period set by it has expired without effect – to withdraw from the part of the contract that has not been performed. This also applies to the extent that the Customer cannot reasonably be expected to accept the delivery or service due to the delay.
- 7.5 Due to a delay in delivery, the Customer is only entitled to withdraw from the contract after expiry of a grace period set by it without effect. If the Customer does not declare its withdrawal immediately after the grace period has expired, it must declare, at the Supplier's request, within an appropriate time period whether it withdraws from the contract due to the delay or insists on the delivery. If the Supplier has made a partial delivery, the Customer can only withdraw from the entire contract, if it is not interested in the partial delivery (partial service).
- 7.6 The Supplier reserves the right to partial deliveries as well as the delivery of excess or minimum quantities of weight and/or quantity up to 10% more or less than agreed.

8. Passing of risk, delayed acceptance, packaging

- 8.1 The delivery is made ex works (pursuant to INCOTERMS® 2010), which is also the place of performance for the delivery and any subsequent performance. At the Customer's request and expense, the delivery will be sent to a different location. Thus, the risk of accidental loss of and accidental damage to the goods delivered by the Supplier passes to the Customer at the latest upon handover or pickup by the transport entity, unless the Supplier has expressly taken responsibility in writing for the shipping or installation of the delivered goods. This also applies to partial deliveries. The handover is also deemed to have taken place if the Customer is in default of acceptance. The Supplier insures the delivery only at the Customer's express request and expense.
- 8.2 If the Customer is in default of acceptance or fails to meet its obligations to cooperate, or if the delivery is delayed for other reasons for which the Customer is responsible, the Supplier is entitled to demand compensation for the damage resulting therefrom including additional expenses (such as storage expenses). For this, the Supplier calculates a flat compensation amount of 0.5% of the purchase price per each calendar week, beginning with the delivery period or, if no delivery period has been agreed, with the notification that the item is ready for shipment. Further claims due to default of acceptance remains unaffected. The flat amount is credited against additional pecuniary claims. The Customer remains at liberty to evidence that the Supplier has not incurred any damage or substantially less damage than the abovementioned flat amount.

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- 8.3 Unless otherwise agreed, the Supplier chooses the type of shipping and packaging. The Customer bears the expense of the packaging. The Customer is entitled to return the packaging to the Supplier at the location at which the goods were handed over if it makes the packaging available immediately after handover of the goods or to be picked up on the occasion of a subsequent delivery. Return transport of the packaging is billed separately. The Customer can return packaging at its own expense at the Supplier's registered office during the Supplier's business hours. Returned packaging must be clean, free of foreign matter and sorted by type of packaging. Otherwise, the Supplier is entitled to demand compensation for the additional disposal expense.
- 9. Defects**
- 9.1 Immediately upon receipt, the Customer must examine all deliveries for defects, completeness and conformity to the contract. Defects recognisable during this examination must be notified in writing immediately, i.e. within ten days of receipt of the delivery. If such a defect becomes apparent later, the notice must be made immediately, i.e. within ten days after discovery. A notice is deemed timely if sent off in a timely manner. If a defect notice is not made in a timely manner, the delivery is deemed approved unless the Supplier fraudulently concealed the defect or it was covered by a warranty from the Supplier. If a defect notice is unjustified, the Supplier is entitled to demand compensation for its resulting expenses from the Customer.
- 9.2 If a (material or legal) defect exists when the risk is transferred, the Customer can demand subsequent performance. The Customer can demand as subsequent performance at the Supplier's discretion either rectification of the defect (repair) or delivery of an item free of defects (replacement delivery). The Supplier's right to refuse subsequent performance subject to the applicable statutory requirements remains unaffected. The Supplier is entitled to make the subsequent performance dependent on payment of the due purchase price by the Customer. However, the Customer is entitled to retain an appropriate portion of the purchase price proportional to the defect.
- 9.3 The Customer has to give the Supplier the time and opportunity required for the subsequent performance owed, in particular to hand over the goods objected to for inspection purposes. In the event of replacement delivery, the Customer must return the defective item to the Supplier in accordance with the applicable statutory provisions. The subsequent performance includes neither the dismantling of the defective item nor its reinstallation, unless the Supplier was originally obliged to install the item.
- 9.4 The Supplier bears the necessary expenses required for the purposes of inspection and subsequent performance, in particular transport, infrastructure, work and material costs (not dismantling and reinstallation expenses) if there is indeed a defect. Otherwise, the Supplier can demand compensation from the Customer for the expenses incurred from the unjustified defect notice (in particular examination and transport expenses) unless the lack of a defect was not recognisable for the Customer.
- 9.5 The Customer is only entitled to rectify a defect itself only with the prior written consent of the Supplier or in urgent cases, e.g. in the event of a risk to operational safety or to prevent disproportionate damage. The Supplier is to be immediately informed of any such rectification.
- 9.6 If the subsequent performance fails or if a reasonable grace period to be set by the Customer for subsequent performance expires without effect or can be dispensed with in accordance with the applicable statutory provisions, the Customer can withdraw from the contract or reduce the purchase price. No rights of rescission exists, however, in the event of insignificant defects. If the Supplier has made a partial delivery, the Customer can only withdraw from the entire contract if it has no interest in the partial delivery (partial service).
- 9.7 No claims based on defects exist if the Customer modifies the delivered goods or has a third party modify them without the Supplier's written consent. This does not apply if the Customer proves that the defects were not completely or partially caused by the modification and that the modification does not unreasonably impede the subsequent performance. The Customer bears the extra expense involved in the subsequent performance due to the modification.
- 9.8 The Supplier assumes no liability for natural wear and tear, outside influences, force majeure or improper treatment (e.g. user errors). The same applies to public representations made by the manufacturer or any other third party (e.g. advertising claims).
- 9.9 The Supplier does not assume any cost for field measures (e.g. repairs on the premises of third parties outside the Customer's plant) unless these are carried out in compliance with mandatory statutory provisions or have been agreed on separately in writing.
- 9.10 In the event of defects in another manufacturer's parts that the Supplier cannot remedy for licencing or factual reasons, the Supplier will, at the Customer's option, assert the warranty claims against the other manufacturer and supplier for the Customer's account or assign such claims to the Customer. Warranty claims against the Supplier only exist in the event of such defects if assertion of such claims in court against the Supplier's manufacturer or supplier has failed or has no prospect of success, e.g. due to insolvency. During the legal dispute, the statute of limitations on these warranty claims of the Customer's against the Supplier is interrupted.
- 9.11 For delivery of used goods or spare parts, warranty claims are excluded, unless liability is mandated by law.
- 9.12 The Customer's claims to damages or reimbursement of futile expenses are governed solely by Sec 10 of these Terms below and are otherwise excluded.
- 10. Liability**
- 10.1. The Supplier's liability – regardless of its legal basis – to provide compensation for damages and/or futile expenses is limited to the stipulations of this Sec. 10.
- 10.2. In cases of simple negligence, the Supplier is liable – unless applicable statutory provisions provides for a lesser liability standard (e.g. for due care in one's own matters) – only for damage based on injury to life, limb or health and for damage based on a substantial breach of a material contractual obligation. Material contractual obligations are those without which proper implementation of the contract would not be possible in the first place and those regarding which each party normally relies and is permitted to rely on the other party's compliance (e.g. timely delivery and compliance with obligations to provide advice, protection, care, custody and control, the purpose of which is to enable the customer to use the object of the contract as stipulated in the contract or to protect the body, life and/or property of staff or customers from substantial damage). In such a case, the Supplier's liability is limited to compensation of foreseeable, typically occurring damage.
- 10.3 The above limitations also apply to the liability of the Supplier's executive management, legal representatives, holders of registered signing powers (*Prokuristen*), employees and other vicarious agents.
- 10.4 The abovementioned limitations of liability do not apply if and to the extent that the Supplier has acted with intent, maliciously do not disclose a defect, or issued a guarantee for the quality of the goods and for claims of the Customer in accordance with the German Product Liability Act (*Produkthaftungsgesetz*). A guarantee as understood in the sense of making liability more strict or assuming a particular liability obligation is only deemed issued if the term "guarantee" is specifically mentioned.
- 11. Statute of limitations**
- 11.1 The general statute of limitations for claims due to material defects or defects in title is one year commencing upon delivery. The contractually agreed term of warranty likewise applies to the delivery of remedied or exchanged goods in the context of subsequent performance; it begins when the subsequent performance has been completed, but only applies to the remedied or exchanged components of the delivery. In any case, all claims, including those related to deliveries of remedied or exchanged goods, become statute-barred two years after delivery.
- 11.2 Sec 11.1 of these Terms does not apply in cases of Sec. 438(1) no. 2 BGB or other special statutory provisions regarding statutes of limitations (particularly Sec. 438(1) no. 1, Sec. 438(3) and Sec. 444 and 479 BGB).
- 11.3 The abovementioned statutes of limitations under the law governing the sale of goods also apply to contractual and non-contractual claims of the Customer for damages, which are based on any defect in the goods, unless the application of the regular legal statute of limitations (Sec. 195 and 199 BGB) would in the particular case lead to a shorter statute of limitations.
- 11.4 The abovementioned statutes of limitations also apply to contractual and non-contractual claims by the Customer based on the breach of an obligation not consisting of a defect.
- 11.5 The abovementioned restrictions on the statute of limitations do not apply to any damage compensation claims by the Customer arising from damage resulting from injury to life, body or health, from intentional or grossly negligent breaches of obligations by the Supplier or its vicarious agents, or from the German Product Liability Act (*Produkthaftungsgesetz*), all of which become statute-barred in accordance with the statutory limitation periods.
- 11.6 Withdrawal or price reduction is invalid if the Customer's claim to performance or subsequent performance has become statute-barred.
- 12. Place of jurisdiction and applicable law**
- 12.1 The exclusive – including international – place of jurisdiction for all disputes arising directly or indirectly from the contract is the Supplier's place of business in Augsburg. The Supplier is also entitled to initiate a court action at the place of the Customer's registered office.
- 12.2 These Terms and the legal relationship between the Supplier and the Customer is governed by the law of the Federal Republic of Germany; all conflict of laws rules and the United Nations Convention on Contracts for the International Sale of Goods from 11 April 1980 (CISG) are excluded.
- 12.3 If individual conditions of these Terms or the contract are or become completely or partially invalid, this does not affect the remaining conditions.