

Roxell's General Conditions for Purchase and Delivery



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Roxell's General Conditions for Purchase and Delivery

1. Definitions

The terms set out hereunder will have the following meanings for the purpose of these General Conditions:

- / **“Delivery Date”** shall mean the date(s) of delivery of the Goods and/or execution of the Services, as specified in the purchase order of the Supplier.
- / **“Force Majeure Event”** shall mean an event or circumstance that is beyond the reasonable control of a Party, without such Party's fault or negligence, and which by its nature could not have been foreseen by such Party. Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, terrorist acts, riots, strike, or embargoes. The Supplier's economic hardship or changes in market conditions are not considered Force Majeure Events.
- / **“General Conditions”** shall mean the present General Conditions for Purchase and Delivery.
- / **“Goods” and/or “Services”** shall mean any components, equipment, materials, or other items or services to be delivered by the Supplier to Roxell. The Goods and/or Services expressly include all services, supplies and works to be provided by the Supplier in relation to the abovementioned delivery and either specified in the concerned purchase order or necessary for the performance of such purchase order (such as for example studies, engineering works, delivery and sale of goods, assembly and erecting of equipment, performance of all required tests, etc.).
- / **“Intellectual Property Rights”** shall mean any and all patents, utility models, design rights, author's rights or copyright (including any rights in computer software and program), database rights or topography rights (whether or not any of these are registered and including applications for registrations of any such thing) and any rights or forms of protection of a similar nature or having equivalent or similar effect to any of those which may subsist anywhere in the world.
- / **“Party” or “Parties”** shall mean, as the case may be, either Roxell or Supplier when referred to individually, or Roxell and the Supplier when referred to collectively.
- / **“Roxell”** shall mean, as the case may be, Roxell BV, a Belgian limited liability company with its registered office at Industrielaan 13, 9990 Maldegem (Belgium) and registered with the Crossroads Database for Enterprises under number VAT BE 0401.007.106 (RLE Ghent, section Ghent); or CTB Malaysia Sdn. Bhd., CTB Malaysia Sdn. Bhd., a Malaysian limited liability company with its registered business address at No. 49, Jalan Permata 2/KS9, Taman Perindustrian Air Hitam, 41200 Klang (Malaysia) and registered Company Number 868715-X.
- / **“Supplier”** shall mean any company which supplies Goods and/or Services in favour of Roxell.

2. Application

- 2.1. Any Supplier shall accept the application of these General Conditions, irrespective of any deviating provisions in quotations, order-confirmation, etc. submitted by the Supplier.
- 2.2. The supply or execution proves the acceptance of these General Conditions without any reservation. Any deviation from this rule must be confirmed in writing by Roxell.
- 2.3. In case of contradictions or inconsistent terms the following shall prevail successively: (i) the purchase order, (ii) specific conditions of purchase agreed upon with the Supplier, (iii) the General Conditions, (iv) the request for a quotation and (v) the quotation.
- 2.4. Roxell reserves the right to unilaterally change at any time these General Conditions.

3. Quotation

- 3.1. The quotation shall be binding for the Supplier only. It must be definite, detailed and complete and must contain everything which is required for the full supply, in working order, of the Goods and/or Services.
- 3.2. The quotation must be in conformity with all statutory and administrative provisions applicable at that moment in the country of delivery.
- 3.3. The quotation is free of charge for Roxell.
- 3.4. If the Supplier has any questions about or objections to the request for a quotation from Roxell, for example about the technology, the safety and the environment, the practicability, the cost price or the system of payment, then the Supplier shall so notify Roxell, at the latest on the agreed date, together with an alternative tender.
- 3.5. Unless explicitly specified otherwise on the request for quotation, the prices in the quotation are considered to be inclusive of all federal, state, and local taxes, including, but not limited to, value added tax, goods and services tax, sales, use or consumption tax.
- 3.6. Quotations shall be binding on the Supplier for ninety (90) calendar days from the date of quotation.
- 3.7. Quotations are accepted by Roxell at the moment the latter has confirmed its acceptance of the quotation in writing in the form of a purchase order. If the purchase value of the purchase order and/or the invoice exceeds the purchase value from the quotation made, the quotation made, shall prevail at any time.

4. Acceptance / purchase order

- 4.1. The purchase order is an offer by Roxell for the purchase of Goods and/or Services from the Supplier to whom the purchase order is addressed.
- 4.2. The purchase order will be deemed accepted by the Supplier upon the first of the following to occur: (a) Supplier making, signing, or delivering to Roxell any letter, form, or other writing or instrument acknowledging acceptance; or (b) any performance by Supplier under the purchase order; or (c) the passage of ten (10) calendar days after the Supplier's receipt of the purchase order without written notice to Roxell that the Supplier does not accept the purchase order.
- 4.3. The purchase order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the order and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the purchase order, unless a separate overriding written contract

- has been entered into and signed by the Parties. The purchase order expressly confirms the Supplier's acceptance to the terms of the purchase order.
- 4.4. Roxell may, from time to time, initiate changes by issuing to the Supplier written notices that alter, add to, or deduct from the Goods and/or Services, but that are otherwise subject to the terms and conditions of the purchase order. The Supplier will promptly comply with the terms and conditions of any purchase order change.

5. Delivery

- 5.1. The Supplier shall deliver the Goods and/or perform the Services at the delivery point and on the Delivery Date. If no Delivery Date is specified, the Supplier shall deliver in full within a reasonable time of receipt of the purchase order.
- 5.2. The delivery will be DDP (Incoterms 2010) at the location indicated on the purchase order, unless otherwise agreed in writing. The transfer of risk takes place at the moment of delivery. DDP means that the Supplier shall be solely responsible for and pay all costs of delivering the Goods at the location indicated on the purchase order, including, without limitation, all shipping and freight costs and all duties, fees, tariffs or similar taxes on imports/exports of the Goods.
- 5.3. The purchase order number must appear on all documents pertaining to the purchase order, invoices, packing lists, correspondence, and all shipping documents. Roxell reserves the right to cover its administrative costs by deducting 125€ (or equivalent in the currency of the invoice) on the invoice at issue, or on any other invoices which the Supplier shall submit, if the purchase order number is missing on any of the above mentioned documents.
- 5.4. Supplier shall not substitute the Goods or ship more than the quantity ordered.
- 5.5. Timely delivery is of the essence. If Supplier fails to deliver the Goods and/or Services in full, on the delivery date, Roxell may terminate the order immediately (without any damages due) and Supplier shall indemnify Roxell against any losses, damages, and reasonable costs and expenses attributable to the Supplier's failure to (timely) deliver, with a minimum of two (2)% of the total order line value per week or fraction of a week delayed. Roxell will also be entitled to require special express freight to be executed at the Supplier's own costs and risk, in case of late, faulty or failing delivery.
- 5.6. However, article 5.5 does not apply if the Supplier proves that due to a Force Majeure Event it was absolutely impossible to observe the agreed terms, and if, immediately after Supplier had knowledge of the Force Majeure Event, Supplier has notified Roxell thereof in writing indicating the estimated impact on the agreed terms and its planned actions to reduce this estimated impact.
- The Supplier shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under the purchase order. If a Force Majeure Event prevents the Supplier from performance for a continuous period of more than fifteen (15) business days, Roxell may terminate the purchase order immediately by giving written notice to Supplier and without any damages being due.
- 5.7. Supplied Goods and paid advantages shall immediately be collected and paid back respectively by the Supplier.
- 5.8. Ownership is transferred at the time of delivery of the Goods. Any clause which postpones the transfer of ownership or entails any reservation regarding this transfer cannot be raised against Roxell. The unilateral inclusion of a reservation of title clause in general terms or any other document of the Supplier is not binding on Roxell, and may be binding on Roxell only after securing Roxell's prior written consent.

- 5.9. For Goods, designed and developed in function of and for the manufacturing of Roxell Goods (for example but not exclusive, Goods such as software, tools, dies and jigs) the ownership as referred to in Article 5.7 includes all Intellectual Property Rights related to the design and developments of these specific Goods and all full rights and licenses for fully future use of these specific Goods. The custody of these Goods by the Supplier does not entitle any ownership rights to the Supplier with regards to these Goods. Roxell can end at any time any custody of these Goods, on the condition that these Goods are no longer needed for the delivery of issued purchase orders to Roxell.
- 5.10. The Supplier shall preserve, package, handle and pack the Goods so as to protect the Goods from loss or damage in accordance with good commercial practice, Roxell's specifications, government regulations and any other applicable requirements. Regardless of when title and/or risk passes from the Supplier to Roxell, the Supplier shall be responsible for any loss or damage that is due to the Supplier's failure to properly preserve, package, handle or pack the Goods. Roxell shall not be required to assert any claims for such loss or damage against the carrier involved. Roxell shall have the right to return the (transport) packaging materials to the Supplier at the Supplier's expense at any time. Processing or destruction of (transport) packaging materials shall be a responsibility of the Supplier. If packaging materials are processed or destroyed by Roxell at the request of the Supplier, this shall be at the Supplier's costs and risk.

6. Inspection and right of complaint

- 6.1. Roxell reserve the right to inspect the Goods on or after the Delivery Date. Roxell, at its sole option, may reject all or any portion of the Goods if it determines the Goods are defective or non-conforming. If Roxell requires replacement of the Goods, the Supplier shall promptly replace the non-conforming Goods.
- 6.2. The Supplier shall bear any related additional costs of remedy, freight, customs clearance, overtime, weekend work, backorder handling, etc. due to the defect or non-conformity.
- 6.3. If the Supplier fails to timely deliver replacement Goods, Roxell may replace them with Goods from a third party and charge the Supplier the costs thereof and terminate the purchase order for cause pursuant to Article 8 of these General Conditions.
- 6.4. Any inspection or other action by Roxell under this Article shall not affect the Supplier's obligations under the purchase order, and Roxell shall have the right to further inspection after the Supplier takes remedial action.
- 6.5. The Supplier guarantees that the Goods are upon delivery accompanied by all required documents (for example but not exclusive, shipping documents, export declarations and certificates). Where necessary, the Supplier shall complete these documents, fulfill the related formalities and send them back to Roxell (or to the third party or parties involved) as quickly as possible. In case the Supplier either is late in fulfilling or fails to fulfill its obligations concerning (shipping) documents, Roxell reserves the right to cover its administrative costs by deducting 125€ (or equivalent in the currency of the invoice) on the invoice at issue, or on any other invoices which the Supplier shall submit, without prejudice to its right to claim compensation for all proven costs.

7. Price and payment

- 7.1. The price of the Goods and/or Services is the price stated in the purchase order. The invoice of the Supplier will provide the information in the same detail as defined in the purchase order with regard to Goods and/or Services description, quantities delivered and pricing. Upon request of Roxell, the customs tariff code and the country of origin of the Goods will be added on the invoice.
- 7.2. Unless specified otherwise on the purchase order, the prices are inclusive of, and the Supplier shall be solely responsible for and pay, all federal, state, and local taxes, including, but not limited to, value added tax, goods and services tax, sales, use or consumption tax. No sales or use tax shall be added when a valid tax exemption is indicated on the purchase order by Roxell.
- 7.3. The Supplier shall invoice Roxell for the purchase order within thirty (30) calendar days of delivery. The Supplier must implement an electronic invoice if Roxell demands so.
- 7.4. Unless otherwise stated in the purchase order, Roxell shall pay all properly invoiced amounts due to the Supplier within sixty (60) calendar days after receipt of such invoice, except for any amounts disputed by Roxell. The Parties shall seek to resolve all such disputes expeditiously and in good faith. The Supplier shall continue performing its obligations under the purchase order notwithstanding any such dispute. Without prejudice to any other right or remedy, Roxell reserves the right to set off any amount owing to it by the Supplier against any amount payable by Roxell to the Supplier. Payment of an invoice by Roxell is no evidence or admission that the Goods and/or Services meet the requirements of the purchase order.
For any invoice paid by Roxell within ten (10) calendar days after reception of the invoice a cash discount of three (3)% can be deducted by Roxell.

8. Warranty

- 8.1. 8.1The Supplier warrants to Roxell that for a period of twenty four (24) months from the Delivery Date, all Goods and/or Services will: (a) be new and free from all visible or hidden defects in workmanship, material and design; (b) conform to applicable specifications; (c) conform with all statutory and administrative provisions; (d) be fit for their intended purpose and operate as intended; (e) be free and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's Intellectual Property Rights. Roxell shall not be obliged to conduct immediate examinations.
- 8.2. These warranties survive any delivery, inspection, acceptance or payment. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Roxell's discovery of the non-compliance.
- 8.3. If Roxell give the Supplier notice of non-compliance during the warranty period, the Supplier shall, at its own cost and expense, promptly replace, repair or reperform the non-conforming Goods and/or Services, except if Supplier proves that the defect of the Goods and/or Services is exclusively caused by Roxell (or its customer). The Supplier bears all related costs of assembly, disassembly and freight.
- 8.4. In urgent cases or in case of delay, Roxell may repair or procure the repair of those defects itself and can recover the costs from the Supplier, on condition that Roxell has notified the Supplier of this intention.

- 8.5. The warranty period will be suspended and extended by the suspended time, as long as the supplied Goods and/or Services are defective and are not replaced, repaired or reperformed.
- 8.6. In case of a serious defect Roxell may however also choose to demand a price-adjustment or may decide that the agreement will be dissolved automatically, without prior notice to Supplier being necessary and without any damages due by Roxell.
- 8.7. In addition, Roxell shall in all cases be entitled to compensation for all direct, indirect and consequential damages caused by the defect, and the Supplier shall hold harmless and indemnify Roxell from any claim for all damages lodged by third parties.
- 8.8. For parts and repairs which are replaced respectively carried out within the warranty period, a new warranty period of twenty-four (24) months shall apply.
- 8.9. Defective Goods or parts shall remain at the disposal of Roxell until they have been faultlessly replaced.
- 8.10. The Supplier is obliged to inquire about the use which Roxell will make of the Goods and guarantees that the Goods are suited for this use.

9. Discontinuation or change of manufacture

- 9.1. In case the Supplier plans the discontinuation of the supply of Goods (being subject of a delivery to Roxell in the past twelve (12) months), or a change of the dimensions, characteristics or specifications of those Goods, the Supplier shall at least twelve (12) months in advance inform Roxell about this in writing.
- 9.2. At the same time the Supplier shall inform and advise Roxell regarding new goods and possibilities for replacement of the Goods, not leading to any further obligations or commitment from Roxell with regard to these new goods or possibilities for replacement of the Goods.
- 9.3. Modifications in the composition of the sold Goods and/or in the production process of the Supplier, which might have or has an impact on the use which Roxell wishes to make of these Goods, may be implemented by the Supplier only after securing prior written approval from Roxell.

10. Liability, indemnification and insurance

- 10.1. The Supplier shall compensate for any damage caused by him or by persons appointed by him, or by his execution agents or by persons appointed by them, as a result or on the occasion of the execution of the purchase order.
- 10.2. The Supplier shall hold harmless and indemnify Roxell from claims of third parties, for example but not exclusive, for damage caused by the end product which was produced with the Goods but which is due to a defect in the Goods sold by the Supplier to Roxell.
- 10.3. Roxell shall not be liable for loss or damage of any of the Supplier's appliances, objects or materials.
- 10.4. Supplier shall defend, indemnify, and hold harmless Roxell and Roxell's parent company, its subsidiaries, affiliates, successors or assigns and its respective directors, officers, shareholders, and employees against any and all loss, injury, death, damage, liability, claim, action, judgment, interest, penalty, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder arising out of or occurring in connection with Supplier's performance of its obligations or Supplier's negligence, willful misconduct or breach of the terms of a

- purchase order or possession of the Goods infringes or misappropriates the Intellectual Property Right of any third party. Supplier shall not enter into any settlement without Roxell's or indemnitee's prior written consent.
- 10.5. Supplier shall, at its own expense, maintain, and carry insurance in full force and effect with financially sound and reputable insurers, which includes: (a) commercial general liability (including product liability); (b) workers' compensation insurance in compliance with the applicable laws of each jurisdiction affected by the purchase order; (c) if the Supplier will use or provide for use of motor vehicles in providing and/or performing the purchase order, automobile (motor vehicle) insurance covering all liabilities for personal injury and property damage arising from the use of such vehicles. Upon Roxell's request, Supplier shall provide Roxell with a certificate of insurance evidencing the coverage specified above.
 - 10.6. In case the Supplier cannot provide Roxell with a certificate of insurance evidencing the coverage specified above, Roxell has the right to terminate any agreement with the Supplier and to claim any damage linked to this termination to the Supplier.
 - 10.7. The Supplier's liability shall not be limited by its insurance obligation, nor by the cover provided by that insurance.
 - 10.8. Roxell's overall liability (if any) under or in connection with a purchase order, under whatever title, shall in the aggregate be limited to fifty (50)% of the contractual price. Roxell shall in no event be liable for loss of profit, loss of production, loss of use, interruption of operations, loss of contracts, loss of revenue, loss of information or data, contractual claims of third parties against Supplier and any indirect or consequential damages or losses under whatever title, legal or contractual basis or theory of law.

11. Confidential information

- 11.1. All non-public, confidential or proprietary information of Roxell, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, pricing, discounts or rebates, disclosed by Roxell to the Supplier, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the purchase order is confidential, solely for the use of performing the purchase order and may not be disclosed or copied unless authorized by Roxell in writing. Upon Roxell's request, the Supplier shall promptly return all documents and other materials received from Roxell. Roxell shall be entitled to injunctive relief for any violation of this Article. This Article shall not apply to information that is: (a) in the public domain; (b) rightfully and legally known to the Supplier at the time of disclosure; or (c) rightfully and legally obtained by the Supplier on a non-confidential basis from a third party.

12. Conflict minerals

- 12.1. Definitions “Conflict Minerals Regulations” means the Dodd-Frank Wall Street Reform and Consumer Protection Act (United States Pub. L No. 111.203) and its implementing regulations.
- 12.2. “Conflict Minerals” means tin, tantalum, tungsten, gold and any other mineral or its derivatives determined by the U.S. Secretary of State to be financing conflicts in the Democratic Republic of Congo or adjoining countries for the purposes of Section 1502 of the Conflict Minerals Regulations.
- 12.3. “Sub-Supplier” means any party that supplies raw materials or other products to the Supplier that are incorporated in the Goods supplied to Roxell under a purchase order.
- 12.4. 12.2 The Supplier shall not supply Goods, knowing to contain Conflict Minerals that originated in the covered countries, to Roxell, unless notified and agreed by Roxell.
- 12.5. 12.3 In case the Supplier does not know the origin of the Conflict Minerals in its Goods, Roxell can request the Supplier to ensure traceability of conflict minerals, working together with his sub-Suppliers, back to the smelter and mine.
- 12.6. 12.4 In case the Supplier becomes aware that any Good supplied under a purchase order to Roxell contains Conflict Minerals that originated in covered countries (as defined in the Conflict Minerals Regulations) and that have not previously been informed to Roxell, the Supplier shall notify Roxell within the shortest possible delay.

13. Termination

- 13.1. Roxell may terminate the purchase order, in whole or in part, for any reason upon thirty (30) calendar days' prior written notice to the Supplier. In addition to any remedies provided herein, Roxell may terminate the purchase order with immediate effect, either before or after acceptance of Goods and/or Services, if the Supplier has breached any of the terms herein. If the Supplier becomes insolvent, commences or has commenced by it or against it bankruptcy proceedings, receivership, reorganization or assignment for the benefit of creditors, then Roxell may terminate the purchase order. If Roxell terminates the purchase order for any reason, the Supplier's sole and exclusive remedy is payment for the Goods and/or Services received and accepted by Roxell prior to the termination.

14. Relationship of the Parties

- 14.1. The Supplier is an independent contractor of Roxell. Nothing contained herein shall be construed as creating any agency, partnership, employment or fiduciary relationship. Neither Party shall have authority to bind the other Party in any manner whatsoever except as provided in these General Conditions or as mutually agreed by the Parties in writing.
- 14.2. Except with the prior written consent of Roxell, the Supplier may not use the name “Roxell”, either in its publicity and advertisement publications, nor in any other way.
- 14.3. The Supplier shall not assign, transfer, delegate or subcontract any of its rights or obligations under the purchase order without Roxell's prior written consent. Any purported assignment or delegation in violation of this Article shall be null and void. No assignment shall relieve the Supplier of any of its obligations hereunder. No waiver by any Party of any of the provisions of the purchase order shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No failure to exercise, or delay in

exercising, any rights, remedy, power or privilege arising from the purchase order by Roxell shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or privilege hereunder preclude any other exercise of any additional right, remedy, or privilege.

15. Severability

- 15.1. If any of the stipulations of the General Conditions appear to invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other stipulation of these General Conditions or invalidate or render unenforceable such stipulation in any other jurisdiction.

16. Compliance with laws

- 16.1. Supplier shall at all times comply with all local, state and federal laws applicable to its performance including, but not limited to, all labor and employment laws and all environmental laws. Supplier has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the purchase order. Supplier shall comply with all export and import laws of all countries involved in the sale of Goods under this purchase order. Supplier assumes all responsibility for shipments of Goods requiring any government import clearance. Roxell may terminate the purchase order if any government authority imposes antidumping duties, countervailing duties or any retaliatory duties on the Goods. Supplier will indemnify and defend Roxell against all claims, cost, loss or expense resulting from Supplier's breach of this Article.
- 16.2. Supplier, its officers, directors, and employees, and anyone for whose acts or defaults they may be vicariously liable or anyone acting on behalf of any of them, shall not make payments in violation of any applicable anti-bribery law in connection with or in any way relating to or affecting this purchase order. Supplier acknowledges that international anti-corruption laws, including the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act, prohibit any direct or indirect payment of money or anything of value to any government official, international organization, political party, party official or candidate for political office, or private individual for the purpose of obtaining, retaining or directing business or securing any improper advantage. Supplier represents and warrants that in the performance of its obligations under the purchase order or otherwise in connection with the purchase order it has not made and agrees that it shall not make any such prohibited payment.
- 16.3. Further, Supplier covenants and agrees to comply with Roxell's policies in existence from time to time regarding questionable payments and business practices, and to certify its compliance with the U.S. Foreign Corrupt Practices Act as may be requested by Roxell. Supplier shall keep full and accurate books and records of its transactions and activities pursuant to the purchase order, and shall make such books and records promptly available to Roxell upon request. In case the Supplier cannot provide Roxell its compliance with the U.S. Foreign Corrupt Practices ACT or make the books and records of its transactions and activities pursuant to this purchase order available to Roxell, Roxell has the right to terminate any agreement with the Supplier and to claim any damage linked to this termination from the Supplier.

17. Governing law and jurisdiction

- 17.1. All matters arising out of or relating to the purchase (order) shall be governed by and construed in accordance with the internal laws of the state, province or territory identified in the address of the Roxell entity concerned on the purchase order, excluding its choice or conflict of law rules. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the registered office of the Roxell entity concerned on the purchase order.