

**ROWE MINERALÖLWERK GMBH, Langgewann 101, 67547 Worms  
General terms of delivery and payment (August 2016)**

**Section 1 General**

(1) The general terms of delivery and payment (GTDP) hereinafter apply to all current and future deliveries, services and other legal transactions by ROWE MINERALÖLWERK GMBH (hereinafter "Offeror"), unless otherwise agreed in writing. (2) The GTDP apply in the version valid at the time of order placement or at least in the version most recently provided in text form, and constitute a master agreement for similar future contracts, without the need for the Offeror to refer to them in every individual case. The Offeror's GTDP apply exclusively. Terms and conditions of the Contracting Party (hereinafter "Contracting Party") which deviate, contradict or supplement these GTDP shall only form part of the contract to the extent that the Offeror has expressly consented to their application. This requirement for consent applies in all cases, for example even if the Offeror executes the delivery without reservation while being aware of the Terms and Conditions of the Contracting Party. (3) Legally relevant declarations or notifications to be submitted by the Contracting Party to the Offeror after conclusion of contract (such as deadlines, notice of defects, declaration of cancellation or reduction) require written form to be effective. (4) References to the application of statutory provisions are only for clarification purposes. Even without such clarification the statutory provisions therefore apply insofar as they are not directly amended or explicitly excluded in these GTDP.

**Section 2 Contract formation**

(1) The contract only comes into effect with the written confirmation of the Offeror. Field representatives are only entitled to conclude contracts and collect accounts with written authorisation. (2) Individual agreements made with the Contracting Party in a particular case (including additional agreements, amendments and supplements) with respect to orders placed, these terms and concluded contracts take precedence over these GTDP in all cases. Subject to proof to the contrary, a written contract or a written consent of the Offeror is decisive for the content of such agreements. (3) The submission of price lists, circular letters or general offers are not binding offers for the Offeror within the meaning of Section 145 BGB (German Civil Code). (4) The Offeror's offers are nonbinding and subject to change. (5) The Contracting Party's order of goods is deemed to be a binding offer of contract. Unless stated otherwise in the order, the Offeror is entitled to accept this offer of contract within 4 weeks after its receipt thereof. (6) Acceptance can be declared either in writing (e.g. confirmation of order) or by delivery of the goods to the Contracting Party.

**Section 3 Prices**

(1) Provided that prices for the goods have not been agreed, the Offeror's prices valid on the date of dispatch are charged. Unless otherwise agreed, the prices indicated are net of value added tax and ex works including standard packaging. All additional expenses such as costs for tax payments (e.g. mineral oil tax, among others), freight, insurance, export, transit, import and other permits as well as certifications shall be payable by the Contracting Party and are shown separately. (2) Unless otherwise agreed in writing, confirmed prices are valid for 30 days in each case if the Contracting Party is a merchant ("Kaufmann") and 120 days in each case if the Contracting Party is not a merchant. (3) Prices are subject to change without notice at any time, including prices in final or fixed-price agreements, if and as soon as tax payments (e.g. mineral oil tax, among others), freights subject to collective agreements, raw material prices and other costs change for the oil economy as a whole. (4) On expiry of the confirmed period (item 2) new price agreements will be made. Until the new price agreements have been made, the prices complying with the above stipulation (item 3) are valid. In individual cases the prices agreed are subject to a contract value of at least €150.00 including VAT. If the contract value falls short of this amount the Offeror reserves the right to charge a surcharge for small quantities of €10.00 plus VAT per invoice, with cash on delivery for minimum quantities. (5) In case of deliveries and services within the EU the Contracting Party must notify the Offeror (prior to the sale) of its respective VAT identification number used for taxation within the EU. In case of non-electronic export declarations regarding deliveries and services from the Federal Republic of Germany to non-EU countries which are not performed or arranged by the Offeror, the Contracting Party has to provide the Offeror with the export certificate required for tax purposes. Should this certificate not be submitted the value added tax charged on the service within Germany (calculated on the basis of the invoice amount) must be paid in addition by the Contracting Party.

**Section 4 Termination for cause**

Both parties are entitled to an extraordinary termination of the contract for cause. Good cause is in particular the repeated violation of significant contractual obligations despite previous warning, delay in payment, petition for the commencement of insolvency proceedings or the commencement of insolvency proceedings against the other party or seizure of entitlements under this contract. Each party undertakes to inform the other party about a filed insolvency petition without delay.

**Section 5 Payment / delay in payment / set-off**

(1) Purchase prices are due immediately. They are payable net cash without deduction. The periods for payment granted or practiced by the Offeror may be revoked by the Offeror at any time with a reasonable notice period. (2) In case of non-compliance with the applicable modes of payment agreed between the parties, in case of delay in payment or in case of a deterioration of the financial situation of the Contracting Party, the Offeror is entitled to provide further (partial) services or deliveries only against prompt payment or, at the Offeror's discretion, against the provision of appropriate collateral. (3) In case of delay in payment by the Contracting Party, the Offeror is entitled to make all other debts payable and charge default interest in the amount of 8 percentage points above the base rate announced by the German Central Bank at the time of the delay in the case of euro invoices, and, in the case of invoices in a different currency, in the amount of 8 percentage points above the then valid discount rate of the central bank of the country whose currency was invoiced. (4) The Offeror is entitled to assign its claims to third parties. (5) The Contracting Party is only entitled to set-off rights and rights of retention if and to the extent that its claims are established in law or undisputed. In the event of defects in the delivery the Contracting Party's rights, particularly pursuant to Section 8 of these GTDP, remain unaffected. (6) Only designees with collecting power are entitled to collect invoice amounts on behalf of the Offeror. (7) The Contracting Party shall bear all default costs, such as fees and expenses, that arise in connection with any legal action that is successful against it outside Germany. (8) The place of fulfillment is Worms.

**Section 6 Retention of title**

(1) The goods delivered by the Offeror remain the Offeror's property up to the complete payment of all claims against the Contracting Party for whatever legal reason, including claims arising from bills of exchange. This also applies if the purchase price for certain deliveries or services specified by the Contracting Party is paid. With open accounts the reserved property serves as security for the Offeror's balance claims. (2) The goods that are subject to retention of title must be neither pledged to third parties nor assigned by way of collateral until secured claims have been paid in full. The Contracting Party must notify the Offeror in writing immediately if a petition to open insolvency proceedings is filed or if third parties access the goods that belong to the Offeror (e.g. seizures). (3) Treatment/processing of the goods subject to retention of title is effected for the Offeror as manufacturer within the meaning of Section 950 German Civil Code, without the Offeror being under any obligation in this respect. Should the goods delivered by the Offeror be mixed, combined or connected with other objects, the Contracting Party here and now transfers its property rights and/or co-ownership rights to the new object or the mixed or combined stock to the Offeror. (4) The Contracting Party undertakes to store the goods subject to retention of title for the Offeror free of charge and with professional care and to label them accordingly. (5) The Contracting Party is entitled to resell the goods subject to retention of title and the goods resulting from their processing in the customary course of business under reservation of title, as long as it is not in arrears. It here and now assigns the claim resulting from the disposal or from any other legal basis – including any current account balance claim – as well as any and all ancillary rights to the Offeror or as security for the Offeror's claim. Should the goods subject to retention of title be resold within the scope of work deliveries, the assignment in advance is only valid in the amount of double the value of the processed goods subject to retention of title. If the realisable value of the securities exceeds the Offeror's claims by more than 10%, it will, upon request by the Contracting Party, release securities at its own discretion. (6) The Contracting Party is authorised to collect assigned claims as long as its payment obligations towards the Offeror are met according to the contract. Should the Contracting Party fail to meet these obligations, the amounts collected are due to the Offeror and have to be kept separately.

**Section 7 Deliveries and quantity determination**

(1) Delivery dates are only binding if explicit confirmation is given. The availability of delivery remains reserved, in particular in case of force majeure and in case of impediments for which the Offeror is not responsible. (2) Should agreed delivery dates not be met for reasons for which the Offeror is responsible, the Contracting Party may rescind the contract or demand compensation after the fruitless expiry of a grace period set by it in writing which must be at least 15 working days. Withdrawal from the contract must be effected in writing. The Offeror shall only be in default after the expiry of the reasonable grace period set of at least 15 working days. (3) In case of force majeure and in case of other unavoidable events the Offeror may restrict or stop the delivery for the duration of the effects or withdraw from the contract. Such events and force majeure are in particular industrial disputes, imperative repair work at the manufacturer's plant, operational problems, any measures taken by authorities, inadequate production or delayed or restricted supply of raw and auxiliary materials, breakdown of electrical power, water and, if applicable, gas supply, shortage of transport, traffic complications, war, riots and the like, as well as any other unavoidable events. (4) The Offeror only owes goods originating from its own production. The Offeror can also choose to deliver goods that it has purchased. (5) Should the Offeror's own production not be sufficient to supply all customers, the Offeror can choose to completely, or in individual cases proportionally, split the deliveries in lieu of the rights resulting from the impossibility in con-

sideration of the particular circumstances. (6) Deliveries and services are ex works. The Offeror reserves the right to choose the supplier and/or the warehouse. (7) The Offeror is not liable for timely shipping if the shipping containers to be supplied by the Contracting Party on the basis of an agreement are not available or if loading options or the provision of vehicles are impeded without culpability on the part of the Offeror and these circumstances prevent timely shipping. (8) The risk of accidental loss or deterioration of the goods is transferred to the Contracting Party upon delivery at the latest. In the case of a sale involving the carriage of goods, the risk of accidental loss or deterioration of the goods, as well as the risk of delay, is transferred as soon as the goods are delivered to the carrier, the forwarding agent or any other person or establishment appointed to execute the shipment. If acceptance is agreed, this is decisive for the transfer of risk. In all other respects statutory provisions on contracts for work and services apply accordingly to the agreed acceptance. Default of acceptance is equivalent to delivery or acceptance. If the Contracting Party is in default of acceptance, omits to carry out an act of cooperation or causes the delivery to be delayed for other reasons for which the Contracting Party is liable, the Offeror is entitled to demand compensation for the resulting damage including additional expenditure (e.g. storage costs). For this it shall charge a flat amount of EUR 100 per calendar day, starting on the delivery date or, if there is no delivery date, upon communication of the goods' readiness for dispatch. (9) The Offeror determines the quantity of the goods in accordance with its usual practice. This quantity is binding for the Contracting Party and is taken as a basis for the price calculation. (10) The Contracting Party is liable towards the Offeror for observing the customs or mineral oil regulations to be met by the Contracting Party or its purchasers and for the procurement of and compliance with the necessary approvals under public law. Should approvals, in particular for deliveries subject to preferential customs and/or tax regulations, not be granted or withdrawn, the Offeror is entitled to adjust the purchase price accordingly. (11) Should the Offeror effect the delivery, the Offeror is entitled to choose the forwarding route and the mode of transport unless agreed otherwise.

**Section 8 Complaints and warranty**

(1) The rights of the Contracting Party in cases of material defects or defects of title (including incorrect and short deliveries) are in line with legal regulations, unless otherwise stipulated in the following. In all cases special statutory regulations concerning the final delivery of goods to a consumer remain unaffected ("Lieferantenregress", "supplier regress" according to Sections 478, 479 German Civil Code). (2) Claims for defects on the part of the Contracting Party require that it has met its statutory obligations to inspect the goods and give notice according to Sections 377, 381 HGB (German Commercial Code). If a defect is found during inspection or after, the Offeror must be notified of this in writing immediately. Notice is considered to be given "immediately" if it is given within 3 days, where timely sending is sufficient to meet the deadline. Furthermore, the goods are expected to be in their original packaging and not to have been sent on from the place of destination in the interim. Notwithstanding the aforementioned obligations, the Contracting Party has to give written notice of apparent defects (including incorrect and short deliveries) within two weeks after delivery, where timely sending is also sufficient to meet the deadline. If the Contracting Party fails to properly inspect the deliveries and/or give notice of defects, the Offeror's liability for the unreported defect(s) is excluded. (3) In case of justified complaints, the Offeror is at its discretion entitled to provide supplementary performance either by delivery of a faultless item (subsequent delivery) or by rectification of the item (subsequent improvement). The right to refuse supplementary performance according to legal requirements remains unaffected. If at least two attempts at supplementary performance have failed or an appropriate grace period set by the Contracting Party for supplementary performance has been exceeded or is not required according to legal regulations, the Contracting Party can either demand a reduction in price or can cancel the contract. If the defect is insignificant, there is no right to cancellation. If the Contracting Party is a merchant, further claims against the Offeror, including non-warranty claims, are excluded. If the Contracting Party is not a merchant and the Offeror makes use of its right of replacement delivery, the Contracting Party has the right to demand a reduction in the price or – at the Contracting Party's discretion – the cancellation of the contract in case of the failure of the replacement delivery. The Contracting Party's entitlement to damages or reimbursement of wasted expenses in case of defects only exists in accordance with Section 9 and is in all other respects excluded. (4) In the event of complaints regarding properties and conditions a sample of at least 1 kg must be submitted immediately, while the remaining stock, potentially also goods being used, must be safeguarded in the original container. The Offeror must be granted the opportunity to take all measures required to review the complaint on the premises. The expenses required for the purpose of the review and supplementary performance, particularly transport costs, travel costs, labour costs and cost of materials (not: pumping costs or costs of filling), are borne by the Offeror if a defect actually is present. Otherwise the Offeror is entitled to demand reimbursement by the Contracting Party of the costs originating from the unjustified demand for remedy of defects (particularly review costs and transport costs), unless the absence of defectiveness was not discernible to the Contracting Party. (5) In cases of urgency the Contracting Party may remedy the defect itself (cf. VI 2 VDMA terms of delivery). The Offeror must be immediately notified of such self-remedy of defects, if possible beforehand. The right of self-remedy does not exist if the Offeror has the right to refuse corresponding supplementary performance according to legal regulations. (6) The Contracting Party shall provide for the safeguarding of any rights of recourse against the carrier.

**Section 9 Liability**

(1) The Offeror is liable - irrespective of any other claims of the Contracting Party resulting from the same matter – for damages only in case of deliberate or grossly negligent conduct on the part of its bodies and vicarious agents. Its bodies and vicarious agents are also only liable themselves for damages – irrespective of other claims of the Contracting Party resulting from the same matter – in case of intent and gross negligence. Sentence 1 and sentence 2 do not apply to damage resulting from the violation of duties that make the enforcement of the contract possible and on the fulfillment of which the Contracting Party therefore relies. (2) Compensation for indirect (e.g. loss of profit) and consequential damage is excluded in particular, unless it results from intentional or grossly negligent conduct on the part of bodies or vicarious agents. (3) If the Offeror is liable, the compensation for damages to be provided by the Offeror is limited to typical damages foreseeable when concluding the contract. (4) The Offeror's liability is also limited to the value of the delivery. (5) The Offeror maintains a business liability insurance policy. Even for gross negligence on the part of its bodies as well as intent and gross negligence on the part of its vicarious agents, liability is limited to the insured sum. (6) The liability limitations in accordance with the above paras 1-5 do not apply to injury to life, limb or health, or to claims in accordance with the German Product Liability Act, or to claims arising from guarantees assumed by the Offeror or in cases where the law prohibits such liability limitations.

**Section 10 Packaging**

(1) Returnable packaging materials that are provided free of charge for up to 90 days remain the property of the Offeror. They may not be used for other purposes and are to be returned freight paid to the Offeror's warehouse in a completely emptied and undamaged condition, including fittings and spigots. The Offeror reserves the right to charge a normal market rental fee for the packaging materials following the expiry of 90 days. Lost packaging materials can be charged at the replacement price. Any use for other purposes is prohibited. In case of damage the Contracting Party shall take the measures and carry out the investigations required for the safeguarding of possible rights of recourse against the carrier and the Offeror shall be informed without delay. The following additionally applies to road tank trucks: The Contracting Party is obliged to properly empty road tank trucks immediately after arrival. The Contracting Party is liable for costs and damages resulting from delayed emptying. (2) In case of transportation and/or storage of the goods in means of transport and/or containers provided by the Contracting Party, the same shall be made available at the delivery location in due time and in a clean condition ready to be filled, free of freight and expenses. (3) Before delivery the Contracting Party shall determine the capacity of the containers and specify the quantity to be filled. It is responsible for ensuring that the condition of the means of transport and/or packaging materials as well as their measuring instruments is technically perfect and in accordance with the law. The Offeror is not obliged to check the same for suitability, cleanliness and the like. Damage caused due to the poor condition of the containers and/or their measuring instruments because of inaccurate or incorrect information provided by the Contracting Party or due to contamination and/or mixing shall not be reimbursed. (4) Measures taken by the Offeror in such cases do not constitute acknowledgement of a replacement duty. The dispatch of the containers and/or means of transport takes place at the risk of the Contracting Party, unless it can prove that the damage is attributable to the Offeror's fault. Section 11 Patterns and quality specifications Analytical data and references to other quality characteristics are based on the Offeror's current state-of-the-art knowledge and development to the best of the Offeror's knowledge. Patterns and samples are in accordance with the current average product turn-out unless certain characteristics have been guaranteed for a certain period of time.

**Section 12 Applicable law, place of fulfilment and jurisdiction**

(1) Unless the GTDP lay down specific provisions the regulations of German law shall prevail. These regulations do not take precedence over commercial practice or different customs. (2) The latest version of Incoterms also applies to the Offeror's foreign business transactions provided they do not contradict the GTDP and any special agreements. (3) The place of fulfilment for deliveries within Germany is always the place from which the delivery is effected. (4) If the Contracting Party is a merchant in accordance with the German Commercial Code, the place of jurisdiction is Mannheim.

**Section 13 Contract language**

Should the Contracting Party receive the GTDP not only in the language used for the conclusion of the contract (contract language) but also in a different language, this is only to facilitate understanding. In case of differences in interpretation the text prepared in the contract language shall be binding.