

1. Application of the Terms and Conditions

(1) These General Terms and Conditions of Sale, Delivery and Payment of Resonac Products (hereinafter “**Terms and Conditions**”) apply exclusively, even without separate reference, to all – including future – offers, order confirmations and contracts for deliveries and services between Resonac Graphite Germany GmbH, Resonac Graphite Austria GmbH, Resonac Graphite Spain S.A.U., Resonac Graphite Italy S.r.l. or Resonac Graphite Malaysia Sdn. Bhd. (hereinafter each individually referred to as “**Resonac**”) and any buyer of Resonac Products or business partner that qualifies as entrepreneur pursuant to § 14 (1) German Civil Code (BGB) including its affiliated companies, special public-law funds or any legal person under public law (hereinafter each individually referred to as the “**Buyer**”). “**Resonac Products**” are all goods which are distributed by Resonac or its commercial agents or affiliated companies, in particular under the brand name Resonac™.

(2) Resonac does not acknowledge, does not agree with and hereby explicitly rejects any terms and conditions of the Buyer or any third party that conflict with or deviate from these Terms and Conditions. Terms and conditions of the Buyer or third parties shall not apply, even if Resonac does not explicitly object to their application separately after receipt, refers to a document, that contains or refers to the terms and conditions of the Buyer or a third party or performs the contract without expressing any reservations.

(3) Trade terms shall be interpreted in accordance with the INCOTERMS 2020. Unless expressly agreed otherwise in writing, delivery shall be made EXW at the respective plant of Resonac or the place of delivery of the Resonac sales representative.

2. Pre-contractual Services

(1) Initial cost estimates, including drawings and any diagrammatic views required to elaborate such cost estimates, shall be delivered free of charge. If other documents are prepared in addition thereto upon your request (drafts, plans, drawings, calculations of strength and stability, etc.) which exceed the initial offer, and if Resonac is not awarded the contract, Resonac shall be entitled to charge reasonable compensation in accordance with the requested special expenditure of work.

(2) It is agreed between Resonac and the Buyer that all of the information, drawings, data, etc. mutually provided within the scope of our collaboration has been entrusted within the meaning of Sec. 2 Law on the Protection of Trade Secrets (*Geschäftsgeheimnisgesetz*) to the respective other party and may be used exclusively within the scope of such collaboration. Any other use, including, but not limited to, a disclosure to third parties, is strictly prohibited.

3. Offers, Conclusion and Scope of Contracts

(1) All offers and quotations of Resonac are subject to modification, are non-binding unless they are expressly marked as binding in text form or contain a specific acceptance period and are to be understood as an invitation to the Buyer to submit an offer or purchase order for the conclusion of a contract with Resonac.

(2) The scope of Resonac’s contractual and delivery obligations shall be determined exclusively by the content of the contract concluded by the Buyer’s purchase order and Resonac’s respective order confirmation, which both require text form (“**Contract**”). Resonac shall have the right to decide on its sole discretion which of its group production plants or affiliates will produce the Resonac Products and purchase the raw material. The assembly, installation, operation of the Resonac Products and the supervision of the production facilities of the Buyer are not included in the scope of the agreed contractual services of Resonac. Instruction of the responsible employees of the Buyer with regard to the use of the equipment and the Resonac Products, regular maintenance and servicing as well as regular inspection of the functionality of the equipment and testing of the functionality of the Resonac Products and the conformity of the Technical Specifications

before their use are exclusively the responsibility of the Buyer.

(3) Unless otherwise agreed, the quality of the Resonac Products shall be exclusively determined by Resonac’s technical specifications contained in or attached to Resonac’s order confirmation (“**Technical Specifications**”). Relevant “identified uses” for the Resonac Products according to the Regulation concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (“REACH Regulation”) shall neither constitute an agreement on a corresponding contractual quality of the Resonac Products nor a presumed or intended use according to the contract. Likewise, technical specifications and other details contained in quotations and offers, brochures, websites and other sources of information have no binding effect. Technical Specifications are based on technical findings from experimental test and various applications in practice, and thus are in no event to be considered warranted characteristics for the specific case of application.

(4) Any written or verbal orders submitted by the Buyer and any other verbal agreements as well as verbal side agreements, commitments and/or warranties become effective and binding only by confirmation by Resonac in text form (incl. e-mail, fax). For Resonac, the power of representation of Resonac’s representatives and employees is expressly limited in this respect.

(5) Conditions of patterns and samples are only binding if they have been explicitly agreed as conditions of the Resonac Products.

(6) Statements as to the quality of our products do not constitute a guarantee unless Resonac has explicitly designated them as a guarantee. Identified usages for Resonac Products in accordance with REACH-Directive do neither constitute an agreement regarding a respective condition of the Resonac Products nor an agreement regarding a specific usage of the Resonac Products.

(7) Contractual partner of the Buyer is exclusively the Resonac entity, which is named in the order confirmation. The individual Resonac entities are not liable as joint debtors (*Gesamtschuldner*).

4. Prices and Terms of Payment

(1) Unless otherwise agreed, purchase prices are payable immediately on receipt of the Resonac Products, however, no later than 14 days from the date the invoice has been received, by bank transfer. Payments in cash are not accepted. Payments are deemed to have been duly completed with effect from the date on which the amount is at Resonac’s free disposal. The deduction of cash discount requires a special written agreement. The Buyer must pay any taxes or customs duties, etc. levied on the transaction in the country of receipt.

(2) Default in payment of the agreed purchase price when due constitutes a material breach of the contractual obligations. In the event of reasonable doubt concerning the solvency of the buyer, in particular in the event of default in payment, Resonac may, without prejudice to further claims, withdraw previously agreed payment terms and make further deliveries conditional upon the provision of other securities or advance payments.

(3) Other forms of payment require a separate written agreement. The Buyer pays the costs incurred by both parties for such forms of payment.

(4) If there is a change in the costs incurred by Resonac for delivery between Resonac’s quotation or confirming the order until delivery, e.g. as a result of the subsequent introduction of - or an increase in - duties, taxes or other charges imposed on Resonac Products, including but not limited to EU duties and anti-dumping duties or countervailing duties or similar or in the event of a change in currency parities, Resonac is entitled to adapt the price offered or agreed accordingly.

(5) Resonac’s price quotations are net prices and do not include value-added tax. Unless agreed otherwise, Resonac’s prices are calculated excluding freight and insurance costs. If value-added tax must be charged it will be shown separately on the invoice at the statutory rate in application on the date of issue of the invoice.

(6) The Buyer may exercise a right of withholding or set-off only with

regard to receivables or claims of the Buyer that are undisputed or have final and legally binding effect.

(7) If Buyer is in default, Resonac is entitled to default interest in the amount of 9% above the base interest rate which was applicable at the date the default has occurred.

(8) Resonac is entitled to assign due receivables to third parties. At Resonac's request the Buyer is obliged to consent to the assignment of receivables, if no legitimate interests to refuse his consent exist or if the legitimate interests of Resonac in the assignment of the claim prevail.

5. Delivery

(1) Resonac's delivery dates or delivery periods are non-binding, unless a specific delivery date or delivery period has been expressly agreed or designated as binding. If Resonac's order confirmation indicates "No confirmed delivery date determined yet" then the Resonac Products must first be manufactured or shipped to Resonac. In this case the non-binding delivery period will be 2 months from the date of Resonac's order confirmation.

(2) Six weeks after expiry of a non-binding delivery date or delivery period, the Buyer may set Resonac a reasonable subsequent date for delivery in writing.

(3) If the Buyer can reasonably be expected to accept partial deliveries, these may be made and invoiced.

(4) If it becomes apparent after conclusion of the Contract that the Buyer is unable to provide an adequate guarantee of its solvency and our claim to payment is in danger, Resonac is entitled to refuse delivery until the Buyer has effected payment or furnished security for the same. If no payment is made or security furnished within 12 working days of a request to this effect, Resonac is entitled to rescind the Contract.

(5) If the Buyer is in default with a release order, acceptance or collection or the Buyer is responsible for a delay in shipment or delivery, Resonac is entitled, without prejudice to other claims, to require a flat rate amount equal to local storage costs, regardless of whether the Resonac Products are being stored with Resonac or a third party. The Buyer has the right to prove that either no damages or lower damages were suffered.

(6) If Resonac fails to receive delivery items, raw materials, required substances, energy or gas from Resonac's own suppliers, although Resonac placed respective orders with reliable suppliers under surveyance of the standard of care of a prudent business person, Resonac is released from our obligation to deliver and can rescind the Contract if Resonac is not responsible for the non-deliverance. Resonac will inform the Buyer about the non-disposability of the deliveries without undue delay and if Resonac decides to withdraw from the Contract Resonac will do so immediately. If Resonac informs the Buyer about the non-disposability of the deliveries the Buyer also has the right to withdraw from the Contract. In case the Contract is rescinded Resonac will reimburse the purchase price as far as it has already been paid.

(7) In the event of the Buyer cancelling the Contract without cause, Resonac is entitled to require 20% of the gross order value as liquidated damages (damages in lieu of performance). The same applies if the Contract is not performed for reasons for which the Buyer is responsible. The Buyer has the right to prove that either no damages or lower damages were suffered.

(8) If the Buyer suffers damages as a result of default in delivery, the Buyer is entitled to claim 3% of the value of the delivery for each full week of default as liquidated default damages, however, a maximum of 10% of the value of the delivery. The Buyer can also set Resonac a reasonable subsequent date for delivery in writing after the six-week-period in clause 5.2 has been elapsed. If this subsequent deadline passes without issue, the Buyer is entitled to rescind the Contract or claim damages in lieu of performance.

(9) Clause 5 section (8) above does not apply if default is due to intent, gross negligence or breach of an essential duty. It also does not apply if a transaction for delivery by a fixed date was agreed.

6. Force Majeure

(1) If Resonac is unable to adhere to its contractual obligations as a result of unforeseeable circumstances beyond Resonac's control ("**Force Majeure Event**") affecting Resonac or our suppliers, Resonac is relieved from our contractual obligations for the period of existence and to the extent of the consequences of the Force Majeure Event. In this case the agreed delivery period is extended accordingly.

(2) In particular but without limitation the following events are considered as Force Majeure Events:

a) war (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilization; b) civil war, riot, rebellion and revolution, military or usurped power, insurrection, act of terrorism, sabotage or piracy; c) currency and trade restriction, embargo, sanction; d) act of authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalization; e) plague, epidemic, natural disaster or extreme natural event; f) explosion, fire, destruction of equipment, prolonged breakdown of transport, telecommunication, information system or energy supplies; g) general labor disturbance such as boycott, strike and lock-out, go-slow, occupation of factories and premises general unavailability of raw material, fuel or gas supplies, unavailability of carriers, the use of railways, shipping, aircraft, motor transport, or any other means of public or private transport.

(3) Resonac shall notify the Buyer without delay in such a case. If the impending circumstances last longer than two months after expiry of the agreed delivery period, either party may rescind the Contract. Further claims based on Resonac's failure to deliver within the delivery period for reasons for which Resonac is not responsible are excluded.

7. Statutory Warranty (*Gewährleistung*), Defects (*Sachmängel*)

(1) The Buyer shall adhere to the statutory duties of examination for defects in respect to the delivered Resonac Products and submission of any notices required under applicable law.

(2) The Buyer cannot derive any further rights from material defects that do not affect the value or suitability of the Resonac Products for the purpose reasonably recognizable to Resonac or do so merely to a negligible extent.

(3) If the Resonac Products show defects at the time of passing the risk (*Gefahrenübergang*), Resonac is entitled and obliged to subsequent performance (*Nacherfüllung*). At Resonac's sole discretion, subsequent performance can take place by subsequent improvement (*Nachbesserung*) or replacement delivery (*Ersatzlieferung*) provided that this is reasonable for the Buyer. The costs of subsequent performance, in particular, transport costs, travelling expenses, labor costs and material costs are at Resonac's expense. Resonac is entitled to refuse the subsequent performance until Buyer has paid the purchase price. However, Buyer is entitled to retain a part of the purchase price which is appropriate in relation to the respective defect.

(4) If subsequent performance is unsuccessful, is unreasonable for the Buyer, does not take place within a reasonable period of time set by the Buyer or is refused, the Buyer may, at its own discretion, rescind the Contract, require a reduction in the selling price that corresponds to the reduction in value resulting from the defects or – within the limits of the following section 6 (Liability) – claim damages in lieu of performance.

(5) Clauses No. 7 (2) to (4) have no effect on the rights granted in § 445a German Civil Code (BGB).

(6) If a defect is caused by intent or negligence (*Verschulden*) of Resonac, the Buyer may claim damages under the conditions specified in Clause 8.

8. Liability

(1) Unless otherwise stated in these Terms and Conditions including the provisions below, Resonac's contractual and non-contractual liability is based on the relevant statutory provisions.

(2) For damages caused by intent (*Vorsatz*) or gross negligence (*grobe Fahrlässigkeit*) Resonac shall be liable irrespective of the legal basis. In case of simple negligence (*einfache Fahrlässigkeit*), Resonac is only

liable

- a) for damages resulting from death or personal injury;
- b) for damages resulting from the breach of an essential contractual duty, which is an obligation of the fulfilment of which is a prerequisite for the proper execution of the contract and on the fulfilment of which the contracting party regularly relies and is entitled to rely on (“**Cardinal Duty**”); in this case, Resonac’s liability is limited to foreseeable damages that are typically associated with the contract at the time of its conclusion. Resonac is not liable for a breach of non-essential contractual duties through simple negligence.
- (3) Indirect and consequential damages resulting from defects of Resonac Products are only recoverable as far as such damages are typically to be expected at the time of conclusion of the contract with the Buyer. Resonac has typically no information of the extent of loss mitigation measures and the extent of the Buyer’s production planning and capacity or any actual or expected turnover or profits, order volume, or the nature, number and extent of the Buyer’s customer relationships and purpose of the Buyer’s products. Therefore, loss of income, loss of actual or anticipated profits or loss of production is not comprised by the foreseeable, typically to be expected damage if information in this respect has not become the basis of the contract due to lack of due notice to Resonac before conclusion of the contract. This provision shall not apply in the event of intentional or grossly negligent conduct by members of the Resonac’s corporate bodies or executive employees.
- (4) The limitations of liability as to Clause No. 8 (2) and (3) do not apply if Resonac should fraudulently have concealed a defect or given a guarantee as to the workmanship of the product. The same applies to claims of the Buyer in accordance with the German product liability act (*Produkthaftungsgesetz*), if applicable.
- (5) Resonac shall not be liable in case of impossibility or delay in the performance of delivery obligations, if such impossibility or delay is caused by Buyer’s proper compliance with public law obligations in connection with the European Chemicals Regulation (REACH Regulation).
- (6) If Resonac’s liability is excluded or limited, the personal liability of Resonac’s executive bodies, employees, representatives and agents is limited or excluded to the same extent.
- (7) To the extent that Resonac provides technical information or acts in an advisory capacity and this information or advice is not part of the contractually agreed scope of performance owed by the Seller, this shall be provided free of charge and with the exclusion of any liability.

9. Limitation Period

- (1) Subject to § 438 No. 2, § 634a (1) No. 2, § 455b German Civil Code (BGB), the Buyer’s right to subsequent performance becomes time-barred one year after delivery of the Resonac Products; no warranty claims are available for used items. Accordingly, the right of rescission and to a price reduction under the statutory regulations is excluded.
- (2) The limitation period for claims to damages is one year subject to § 438 No. 2, § 634a (1) No. 2, § 455b German Civil Code (BGB).
- (3) The statutory limitation period applies to claims under the German Product Liability Act (*Produkthaftungsgesetz*), to cases of intent and gross negligence and for damages resulting from death or personal injury.

10. Retention of Title

- (1) Title to the Resonac Products is reserved until settlement of all of Resonac’s receivables due from the Buyer from the business relations, including future receivables from contracts concluded at the same time or at a later date and will be credited on our account. The same applies if receivables are entered in a current account and the balance has been drawn and acknowledged.
- (2) The Buyer is entitled to sell or process the Resonac Products in the normal course of business. The Buyer undertakes any processing on Resonac’s behalf without this giving rise to any obligations on Resonac’s

part. In the event of the retained-title Resonac Products being processed, combined or mixed with other Resonac Products, Resonac always acquire a share of title in the newly produced item; in the event of processing, this share of title represents the proportion of the value (= gross invoice value including ancillary costs and taxes) of the retained-title Resonac Products in relation to the value of the new item; in the event of combining or mixing, this share of title represents the proportion of the value of the retained-title Resonac Products in relation to the value of the other Resonac Products.

- (3) However, the Buyer already now assigns all receivables accruing to the Buyer against a purchaser or third party out of the resale. The Buyer remains entitled to collect the receivable even after the assignment. This does not affect Resonac’s authority to collect the receivables, however, Resonac shall not exercise this right as long as the Buyer continues to meet its payment and other obligations. If required, the Buyer must notify Resonac of the receivables assigned and their debtors, provide all details required for their collection, hand over the relevant documents and notify the debtors of the assignment.
- (4) In the event of conduct in breach of contract by the Buyer including, but not limited to, default in payment, Resonac is entitled to rescind the contract and recover the product delivered. For the purpose of recovering the Resonac Products, the Buyer hereby irrevocably grants Resonac the right to enter its business premises and warehouse premises unhindered and to take away the Resonac Products.
- (5) As long as title is retained, the Buyer may not assign Resonac Products or items made from the Resonac Products or pledge them without Resonac’s consent. Resonac’s prior written consent is required for the conclusion of financing contracts (for example, leasing agreements) that involve the transfer of Resonac’s rights of retention unless the contract obliges the bank to pay Resonac its share of the selling price directly.
- (6) In the event of attachments or other intervention by third parties, the Buyer must notify Resonac without delay in writing. The Buyer is prohibited from making any agreements with its purchasers that could impair Resonac’s rights.
- (7) the Buyer is obliged to insure the retained-title Resonac Products against theft, mechanical damage, fire and water damage.
- (8) Resonac undertakes to release securities accruing to itself to the extent to which such securities exceed the realizable value of the receivables to be secured by more than 10% or the nominal value of the securities by more than 50%.

11. Export Control

- (1) The Buyer ensures to be compliant with any applicable export regulations. In particular the Buyer undertakes to accept and comply with European, German and Japanese export control provisions as well as the US (re-) export requirements to the extent that the transfer to other Member States of the European Union / exportation to third countries of the items is subject to US law. In addition, the Buyer must inform himself of the relevant provisions and bears the responsibility for complying with them. Aforementioned obligations are valid insofar as they do not infringe applicable conflicting provisions of the Regulation of the Council of the European Union (EU) No. 2271/96 as amended (“**EU Blocking Regulation**”) and/or provisions of Section 7 of the German Foreign Trade and Payments Ordinance as amended (*Außenwirtschaftsverordnung – “AWV”*). Therefore, subject to any applicable conflicting provisions of the EU Blocking Regulation and/or Section 7 AWV, neither Buyer nor Resonac shall be obligated to make any payments, repayments or any other performance that may expose the Buyer or Resonac to the risk of being the target of any sanction, prohibition or other restriction under any applicable United Nations resolution or under any law or regulation of Germany, the European Union, the United Kingdom or the United States of America relating to trade and economic sanctions.
- (2) The Buyer covenants to neither directly, nor indirectly sell, export, reexport, deliver, pass on or make accessible otherwise the Resonac Products to persons, organizations, institutions or to countries in case this violates European, German, Japanese or applicable US export control laws or embargo provisions.

(3) Upon request the Buyer is obligated to provide Resonac with adequate and complete information regarding the end use of the delivered Resonac Products, especially to issue and provide Resonac with an original of an end user certificate (EUC) in order to enable us to check the end use and the purpose of use of the delivered Resonac Products and to serve as prove towards the export control authorities.

12. Confidentiality and Data Protection

(1) Buyer agrees not to forward information that either was classified as confidential or due to its contents obviously is confidential to third parties. Buyer will take reasonable measures to prevent access to these confidential data by unauthorized persons.

(2) In cases where Resonac provides personal data of its employees to Buyer or where Buyer receives this personal data in any other way, Buyer is only allowed to process this data for the completion of the contract with Resonac. Buyer will not process this personal data in any other way except in cases where data processing is allowed by law. Buyer ensures that personal data is only made accessible, to the extent required, to those employees who are dealing with the completion of the contract (Need-to-Know-Principle).

13. General provisions

(1) Place of performance is Resonac's respective registered office of the selling entity within the Resonac Group.

(2) Any dispute, controversy or claim arising out of, relating to, or in connection with any agreement, Contract or transaction or concerning the breach, termination or validity thereof shall be finally and exclusively resolved by binding arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce entered into force on January 1st, 2021, without recourse to the ordinary courts of law. The seat of arbitration shall be Frankfurt am Main. The arbitral tribunal shall be composed of three (3) arbitrators if the amount in dispute is equal to or exceeds one hundred thousand Euros and of only one (1) sole arbitrator if the amount in dispute is less than one hundred thousand Euros, who shall be selected by application of the Rules of Arbitration by the aforementioned rules. The arbitration proceedings shall be conducted in English. The law applicable to this arbitration clause shall be the laws of the Federal Republic of Germany.

(3) The business relationship between Resonac and the Buyer, in particular all Contracts, shall generally be governed by all substantive laws of the Federal Republic of Germany, except for cross-border transactions or deliveries, for which the application of Sections 305 up to and including 310 of the German Civil Code (BGB) shall be excluded. The Convention of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 (CISG) shall not apply.

(4) All amendments, modifications or additions to any contract must be in text form (incl. e-mail, fax) in order to be effective. The termination of the contract by the Buyer or by Resonac requires the written form in accordance with § 126 German Civil Code (BGB).

(5) To the extent that the contract or these Terms and Conditions contain gaps in their provisions, legally effective provisions apply which the contracting parties would have agreed in accordance with the commercial purposes of the contract and the purpose of these General Terms and Conditions if they had been aware of the gap in the provisions.

(6) These Terms and Conditions replace all previous versions for the conclusion of all future contracts.

These general terms and conditions can also be accessed at

<https://www.graphite.resonac.com/terms.html>

Issue Date: January 01, 2023