

General Terms and Conditions for Sale and Delivery

1. Applicability of General Terms and Conditions for Sale and Delivery

The General Terms and Conditions for Sale and Delivery of Rotox GmbH B. Eisenbach (hereinafter "Company") shall have exclusive applicability (hereinafter the "General Terms and Conditions"). Any terms and conditions of Customer in conflict with or different from Company's General Terms and Conditions shall be inapplicable unless expressly agreed otherwise in writing by Company. These General Terms and Conditions shall apply even if Company, without any reservation of rights, delivers products to Customer knowing that Customer's terms and conditions are in conflict with or different from these General Terms and Conditions.

2. Offers

All offers made by Company are subject to change and may be revoked at any time prior to receipt of Customer's acceptance.

3. Order Confirmations, Changes in Scope of Delivery

The acceptance of orders shall require a written order confirmation. The scope of delivery as well as the terms and conditions of delivery shall be governed by Company's written order confirmation. Any discrepancies between the order confirmation and prior agreements of the parties shall be deemed to have been accepted by Customer unless Customer objects to such discrepancies in writing within two business days from receipt of the order confirmation.

Company reserves the right to change the agreed scope of delivery to the extent that such changes become necessary as a result of changes in mandatory laws or technical standards.

Any change requests made by Customer with respect to the scope of delivery after conclusion of the agreement (e.g., retrofitting or expansion work) shall be taken into consideration by Company only within the scope of Company's operational capacities and shall be compensated separately based upon a separate offer made by Company to Customer or based upon the prices applicable at the time the change requests are accepted.

4. Intellectual Property Rights

Company reserves all rights, title, and interests, including all copyrights, in and to any pictures, drawings, or other documents received by Customer prior to conclusion of the agreement. Customer shall not make such items accessible to third parties. Such items may not be disclosed to third parties except with the prior written consent of Company.

Unless expressly agreed otherwise, Company shall have no obligation to review the accuracy or correctness of any information or materials made available by Customer. Company assumes no liability for any violations of intellectual property rights of third parties arising from machinery manufactured in accordance with specifications, drawings, or sketches supplied by Customer. Customer agrees to hold harmless and indemnify Company from and against any and all such claims.

5. Prices

All prices of Company exclude applicable VAT. Unless otherwise agreed, all prices quoted by Company are subject to change and delivery ex works, and shall exclude packaging, transport, transport insurance, installation, and startup.

Company reserves the right to invoice Customer for the prices applicable on the date of delivery, if delivery is to be made more than four months after confirmation of the order. This shall apply, in particular, if since conclusion of the agreement the costs of raw materials, labor, or other costs have increased or if production or distribution costs have increased as a result of any other circumstances without any fault of Company.

6. Payment Terms

Unless otherwise agreed, payment shall be made in cash without deduction and shall be due as follows:

1/3 of the purchase price shall be due at the time the order is placed;

1/3 of the purchase price shall be due when Customer is notified that the products are ready for shipment; and

1/3 of the purchase price shall be due 30 days from the invoice date.

Payment in cash shall require actual cash payment or a money transfer.

In the event of Customer's payment default, Company shall have the right to charge default interest at the rate of 3% per annum above the default interest rate provided for by law. Company shall have the right to furnish proof of higher default damages, and Customer shall have the right to furnish proof of lower damages.

In the event of Customer's payment default, all claims of Company, including any deferred claims, shall be due immediately.

7. Set-off, Right of Retention

Customer shall have no right to set off any counterclaims or right of retention unless such counterclaims have been established by a final judgement, are undisputed or if Company has accepted liability for such counterclaims. Customer furthermore may invoke a right of retention only if such counterclaims arise from the same transaction.

8. Delivery Period, Partial Deliveries

The delivery period shall commence on the date the order confirmation is transmitted to Customer. Company shall be deemed in compliance with the agreed delivery period, if Company ships the products or notifies Customer that the products are ready for shipment prior to expiration of the agreed delivery period.

Unless otherwise agreed, any changes in the scope of delivery agreed upon with Customer shall invalidate all delivery dates and delivery periods previously agreed to by the parties.

Compliance with Company's delivery obligations shall be conditional upon due and timely performance of Customer's obligations (e.g., timely receipt of agreed down-payments, and timely delivery of documents, approvals, or technical specifications for products or product samples by Customer). The agreed delivery period shall be reasonably extended in the event of Customer's failure to render due and timely performance or in the event of any other unforeseen circumstances, whether such circumstances affect Company's factory or the factory of any of Company's sub-suppliers (e.g., disruptions of operations, strikes, delayed delivery of raw materials, etc.). Company shall not be responsible for such circumstances even if such circumstances arise when Company is already in default.

Partial deliveries shall be permitted provided that such deliveries involve separately identifiable units or independent, separate components.

9. Delivery Including Installation

If the parties have agreed that the products are to be installed by Company at a location designated by Customer, the following shall apply:

All construction work (including power supply) must be completed prior to installation such that the products can be installed immediately upon delivery and without interruption. Customer shall make available a dry, lighted and lockable room for the storage of machine components, materials, tools, etc. All supporting personnel, equipment, and other materials necessary for installation and startup shall be made available by Customer at Customer's own expense. Customer shall pay to Company the daily labor rates in effect at the time of installation and, in addition, reimburse Company for all travel and hotel expenses incurred by Company's employees in connection with the installation of products. In the event that installation is delayed, the provisions of section 8 (2) hereof shall apply mutatis mutandis.

10. Delivery Default

In the event that Company's default is due to ordinary negligence, Company's liability shall be limited to typical, reasonably foreseeable damages or expenses incurred by Customer. Moreover, any claims of Customer based upon Company's delivery default shall be limited to 25% of the net purchase price.

In the event that Company fails to make delivery when due, Customer may set a reasonable grace period for delivery and, if Company fails to make delivery within such grace period, rescind the agreement. As long as Customer has not provided Company with notice of rescission, Company shall have the right to render performance even after the grace period set by Customer has expired.

Customer shall take prompt action to mitigate damages. Any agreed contractual penalty shall be forfeited if Customer is in default with any obligation under the agreement.

11. Storage Costs, Risk of Loss

If Customer is in default with acceptance or production is delayed due to Customer's failure to render performance as agreed, or if shipment is delayed at the request of Customer, Customer shall for each week of delay pay storage costs in the amount of one half percent of the invoice amount. Customer shall have the right to submit proof of lower storage costs. The risk of accidental loss or damage shall pass to Customer as soon as Customer is in default with acceptance.

All products shall be shipped from Company's factory at Customer's own expense and risk, whether or not products are delivered by Company vehicles. Company shall invoice Customer for packaging at cost. At the request of Customer, Company shall insure shipments against the risks of loss or damage during transport, fire, and water damage at Customer's expense.

12. Reservation of Title

Company reserves title to all products delivered to Customer until all claims, including any future claims arising from the business relationship of the parties, have been paid in full. If the total value of secured goods exceeds Company's secured claims by 20%, Company shall release secured goods of Company's choice at the request of Customer.

Until Company has received payment in full, secured goods may not be pledged or assigned as security to any third parties except with Company's consent. Secured goods may be sold only subject to a reservation of title. Any processing or modification of secured goods shall be made for the benefit of Company as the manufacturer of the goods, without however giving rise to any obligation of Company. The parties hereby agree that if Company's co-ownership rights are extinguished as a result of the combination of secured goods with any other goods, Customer's (co-)ownership rights to the resulting product shall pass to Company based upon the value of the secured goods relative to the total value of the combined product.

The parties hereby agree that in the event of the sale of any secured goods, all claims of Customer against the purchaser, including, without limitation, all claims for payment of the purchase price, shall be assigned to Company.

Customer shall promptly notify Company if any secured goods are subject to third party claims, including, without limitation, any attachment proceedings. Customer shall pay any and all costs incurred by Company in connection with the defense of such claims, including, without limitation, any costs incurred in connection with intervention proceedings, unless and to the extent that such costs are not collectible from the opposing party.

Upon demand Customer shall furnish to Company a list itemizing all remaining secured goods, disclosing the whereabouts of such secured goods, and designating all claims against third party debtors. Copies of the relevant invoices shall be enclosed with the list.

Enforcement of the reservation of title or attachment of secured goods by Company shall not result in rescission of the agreement.

13. Liability for Product Defects and Defects in Title

1. Company shall be liable for product defects and defects in title of new goods subject to the following terms and conditions:

- a) Unless otherwise provided below, Company shall be liable for any product defects or defects in title for a period of 12 months from the date the risk of loss passes to Customer. Notwithstanding sentence 1, the statutory warranty period shall apply if a defect in title arises from a right in rem of a third party based upon which such third party may demand that Customer turn over the goods. The statutory warranty period shall also apply in the event of wilful or grossly negligent misconduct, provided that Company has fraudulently failed to disclose a defect or has guaranteed the durability or quality of the goods.
- b) Customer shall notify Company of any obvious defects without undue delay, however no later than two weeks from delivery. Customer shall notify Company of any other defects promptly upon discovery. Notice of defect shall be made in writing and shall enclose a detailed description of the defect. Failure to provide timely notice of defect shall result in the loss of Customer's warranty claims.
- c) In the event of any defects, Company may, at its sole option, correct the defect or deliver replacement products that are free of defects. Company reserves the right to make any alterations to products that may be necessary as a result of defects, provided that such alterations do not substantially change the agreed scope of performance.

Defective components shall be returned to the Company upon demand. The costs of correcting defects or delivering replacement products shall be borne by Company, provided that Customer's complaint is justified. Any additional costs incurred by Company because -- if Customer is a consumer -- the goods have been moved to a location other than the agreed delivery address or have been used for purposes not contemplated by the agreement, or -- if Customer is a dealer -- because the goods have been moved to a location outside the EU or have been used for purposes not contemplated by the agreement shall be paid by Customer.

Company makes no separate warranties for any machines or machine components exchanged, repaired, or replaced under warranty. The warranty period for all exchanges, repairs, or replacements shall expire with expiration of the warranty period for the original products.

- d) If the final attempt to correct a defect has failed, Customer may demand a price reduction or cancel the relevant order in accordance with applicable law. Cancellation of the order is excluded if the value or merchantability of the goods is impaired only to a minor degree, or if Customer is in default with acceptance or bears primary responsibility for the defect. The parties agree that due to the complex nature of the goods, more than two attempts to correct a defect may be necessary.
- e) As long as Customer has not provided Company with notice of rescission, Company shall have the right to render performance even after expiration of the grace period set by Customer.
- f) Any claims for damages or reimbursement by Customer shall be limited to damages or expenses that are reasonably foreseeable, except in cases of wilful or grossly negligent misconduct.
- g) If warranty claim turns out to be unjustified, Customer shall compensate Company for all services rendered based upon the prices generally applicable at the time services are rendered.
- h) Company assumes no liability for ordinary wear and tear, or for damages resulting from improper handling or excessive use by Customer. Company furthermore assumes no liability for defective products that have been modified or repaired by Customer or any third parties without Company's prior written consent, unless Customer demonstrates that the defect was not caused by such modification or repair.
- i) Customer shall, without consideration, provide Company during regular business hours with the opportunity to make any modifications or repairs deemed necessary by Company as well as to deliver replacement parts, and, upon Company's demand, shall make available a reasonable number of employees to support Company's modification, repair, or replacement efforts. Otherwise Company shall be released from all warranty obligations, and Customer shall be required to settle all outstanding claims in full. Customer shall, to the extent reasonable, make repairs itself as instructed by Company.
- j) In the event of Customer's payment default, Company shall be released from any warranty obligations for the duration of Customer's default.

2. Company shall be liable for product defects and defects in title of used goods subject to the following terms and conditions:

- a) Unless otherwise agreed, Company shall be liable for product defects and defects in title of used goods only if Company's conduct was wilful or grossly negligent, or if Company has guaranteed the durability or quality of the goods.
- b) If used goods have been overhauled, Company shall be liable for any defects of overhauled components for a period of 12 months, even without wilful or grossly negligent misconduct. Components overhauled by Company are listed in the product specifications. Notwithstanding sentence 1, the statutory warranty period shall apply if a defect in title arises from a right in rem of a third party based upon which such third party may demand that Customer turn over the overhauled component.
- c) Company's liability for any product defects shall, without exception, be limited to the repair or replacement of defective parts.

14. Right of Rescission

Company reserves the right to rescind the agreement in whole or in part in the event of any unforeseen circumstances or in the event that the delivery of products ordered by Customer subsequently proves impossible.

If Company discovers after conclusion of the agreement that Customer's financial condition is unfavourable, Company may demand security for the performance of Customer's obligations under the agreement or may

rescind the agreement and demand that Customer reimburse Company for all expenses incurred by Company in connection with its performance of the agreement.

15. Liability

Unless expressly provided otherwise herein, Company's liability for breach of contract shall be limited as follows:

- a) Company shall be subject to unlimited liability for wilful or grossly negligent misconduct of Company or its legal representatives or agents, as well as for wrongful death, bodily harm, or adverse health effects resulting from any breach of contract by Company or its legal representatives or agents.
- b) Company shall be liable on the merits for any other culpable breaches of material obligations arising from the agreement, whatever the legal grounds. Notwithstanding Customer's statutory right to rescind the contract, Company's liability shall be limited to damages or expenses that are reasonably foreseeable.
- c) Except as provided herein, Company shall have no liability to Customer.
- d) To the extent that Company is liable under subsection b, Company's liability shall not exceed the liability limits of Company's business liability insurance policy.
- e) The above-referenced limitations of liability shall also apply to and benefit Company's employees.
- f) The provisions of the German Product Liability Act (Produkthaftungsgesetz) shall remain unaffected by the foregoing provisions.

16. Writing Requirement

The parties have entered into no oral collateral agreements. Any modifications or amendments to the agreement shall be invalid unless confirmed in writing.

17. Severability

If any provision of the agreement is invalid, the validity of the remaining provisions shall remain unaffected thereby. Any invalid provision shall be replaced or supplemented by such valid provision as most closely reflects the economic intent and purpose of the original provision.

18. Jurisdiction

Any disputes arising from or in connection with this agreement shall be determined by a court of competent jurisdiction in Limburg, Germany. Notwithstanding the foregoing provision, Company may also file legal action against Customer in any court of competent jurisdiction at Customer's registered office.

19. Governing Law

The agreement shall be governed by and construed in accordance with the laws of the Federal Republic of Germany, the applicability of the UN Convention on Contracts for the International Sale of Goods being excluded.