

GENERAL TERMS OF SALE ROTORK CONTROLS (DEUTSCHLAND) GMBH

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Article 1 General

- (1) All deliveries shall be made on the basis of the following terms of sale which provide the foundation for all offers and agreements and which shall be considered as accepted upon placing order or acceptance of delivery for the duration of the entire business relationship. Deviating terms that have not been accepted explicitly and in writing shall not be binding to us, even if we did not reject them explicitly.
- (2) Verbal agreements have not been made.

Article 2 Offers and conclusion of the contract

- (1) Our offers shall be without obligation, i.e. our offers are just an invitation to the buyer to place an order. The contract becomes legally binding by our order confirmation. The content and the performance of the contract shall be specified in our order confirmation.
- (2) The scope of delivery shall be specified in the order confirmation. Variations in quantity and weight shall be permissible according to normal trade practice.
- (3) We shall reserve property rights and copyrights concerning technical data sheets, general arrangement drawings, employment instructions, safety data sheets and other documents. They must not be made available to third parties without our explicit consent.
- (4) Conclusion of contract is subject to our complete supply in due time. This shall only apply if non-delivery is not attributable to us, in particular in case of a covering purchase with our supplier. The buyer shall be informed of non-availability, and payments made shall be refunded without delay.
- (5) The Buyer undertakes the liability for drawings, sketches, specimen, models etc. supplied by him. He warrants that any detail drawings supplied by him do not infringe any third party copyrights. We are under no obligation to check for any such infringement in its offers or their execution based on drawings sent by the Buyer, or for any other reason. The Buyer shall indemnify and defend the Company against all actions, proceedings, costs, claims and expenses by a third party arising from any such infringement.
- (6) If the Buyer wishes to have inspection certificates for the goods based upon special procedures he shall inform us within good time. Additional costs shall be borne by the Buyer, unless otherwise agreed. If a special acceptance of the goods is agreed or prescribed, this shall take place at our works. If the Buyer does not carry out the acceptance at all, or at the right time, or if he waives the acceptance, we shall be entitled to dispatch the goods without being accepted or to store them at the Buyer's cost and risk. In such cases, the goods shall be considered as delivered in accordance with the contract, unless a defect exists that would not have been noticed if the goods had been properly accepted.

Article 3 Prices - terms of payment

- (1) Insofar as nothing to the contrary is specified in the order confirmation, the prices shall be ex factory exclusive transport packaging, which we shall invoice separately at cost price. The prices shall not include the statutory value-added tax (VAT), which shall be shown separately in the invoice at the rate applicable on the invoice date.
- (2) The calculation of our deliveries and performances is based on the prices valid as per date of the conclusion of the contract.
- (3) Insofar as payment shall be made in a currency other than euros, we reserve the right to reduce or increase the invoice amount in the relevant currency corresponding to the equivalent in euros at the exchange rate applicable on the date of conclusion of contract.
- (4) All payments are payable net and free of any deduction within 30 days after issuing an invoice. Any cash discount shall require a written agreement. Non-cash payments shall only be accepted subject to effective payment. We shall accept bills of exchange only upon prior agreement in writing.
- (5) Payments are considered to be made as soon as the amount is definitively credited to our account and available. We reserve the right to allocate payments to the oldest debt, including interest and expenses, according to the following order: expenses, interests, principal claim.
- (6) If the buyer defaults on payment, we shall be entitled to require immediate payment of all accounts receivable. If the payment deadline is exceeded, we shall also be entitled to demand security or advance payment. Interest of 8% above the base rate shall be payable on accounts receivable.
- (7) All rights shall be reserved for the assertion of any other damage. The buyer may provide evidence of a lower damage.
- (8) The buyer can only set off if his counterclaims are undisputed or have been established by final court decision. The buyer can only exercise a right of retention insofar as this right is based on the contractual relationship.
- (9) In case of performances within the EU, the buyer is obliged to notify his VAT identification number used for the acquisition before performing the transaction. In case of deliveries from the Federal Republic of Germany to non-EU member states, which are not carried out or initiated by us, the buyer has to provide an exportation certificate as required for tax purposes. If the certificate is not supplied, the buyer is obliged to pay VAT on the invoiced amount according to German law.

Article 4 Delivery

- (1) Binding or non-binding delivery dates and periods must be confirmed in writing. Delivery periods shall commence upon conclusion of contract.
- (2) If, as a result of a circumstance for which we are or an agent is responsible, we are prevented from supplying the object of sale on the agreed date or within the agreed period (delay in delivery), we shall be liable in accordance with the statutory provisions. If we are or an agent is not responsible for the delay in delivery, we shall only be liable for foreseeable, typical damage. If the delay in delivery is merely based on an infringement of an unimportant contractual duty, the buyer may assert lump-sum default damages of 0.5 % per week, amounting to a maximum of 5 % of the value of the delivery.
- (3) Force majeure and events which temporarily prevent us from supplying the object of sale at the agreed date or within the agreed period without any fault being attributable to us (e.g. strike, lockout, interruption of business operations due to fire or interception of supply, diseases, atmospheric exposure or disturbance of traffic, delay in the supply with raw material or machinery, war or administrative orders) shall entitle us to postpone the delivery or service for the duration of the impediment, plus an appropriate run-up period. If disturbances lead to a postponement of more than three months, the buyer may withdraw from the contract. Other rights of withdrawal shall remain unaffected.
- (4) The buyer shall be obliged to accept the object of sale. If the buyer defaults on acceptance, we shall be entitled to demand compensation of the resulting damage, amounting to 15% of the net price. The contracting parties may assert a higher or a lower damage.
- (5) In case the buyer is obliged to call the goods or to accept delivery within a specified period, we are entitled to raise an invoice, or - if a reasonable respite fixed by us has passed - to withdraw from the contract completely and to demand compensation for the damage caused by non-acceptance, in particular payment of the purchase price, storage costs and costs of waste disposal.

- (6) In the event of pickup by the buyer or a transport company instructed by the buyer, fixed dates and appointments must be respected. If a fixed date or appointment for pickup of goods ready for dispatch is not respected, we are entitled to dispose of the goods the following day. The buyer shall bear any costs emerging from the default to pick up or the provision of cargo dispositions. If the buyer does not meet the agreed periods and dates of delivery in case of orders delivered in instalments, we are entitled - if a reasonable period of respite fixed by us has passed - to deliver the remaining goods, to withdraw from the part of the contract that has not yet been performed, or to claim for damages.
- (7) We shall be entitled to make part deliveries; they shall be regarded to be an individual business transaction.

Article 5 Transfer of risk - packing

- (1) In case of dispatch, the risk shall pass to the buyer when the goods are passed to the transport agent, or once the goods have left our warehouse for dispatch.
- (2) We shall conclude a transport insurance only in response to a wish expressed by the buyer in good time and at his cost.
- (3) Insofar as nothing to the contrary is agreed, we are not obliged to take packing material back, except for consumer packaging within the meaning of the Packaging Ordinance.

Article 6 Specification of products

- (1) Insofar as nothing contrary is agreed, the condition of the goods is specified exclusively by the specifications in writing. Only the condition described in our specifications is considered as condition of the goods. Public statements, comments and sales promotion shall not specify the condition of the goods.
- (2) Characteristics of models, samples and drawings shall not be binding, unless they are agreed on as condition of the goods in terms of warranted characteristics explicitly. Any references to technical like e.g. DIN-, TRD-, ANSI-, BS-, AFNOR-, TGL-, or similar are to be deemed as specification of the goods but shall not constitute an independent guarantee.
- (3) Information about the condition of the goods and their durability shall not constitute a warranty or an independent guarantee, unless agreed on and qualified as such explicitly.
- (4) We do not give a warranty for the final facility, which is manufactured with the delivered components. In particular, we are not liable for the working or application of these final products. Application, utilization and processing of these products are not carried out under our supervision, and therefore they exclusively belong to the sphere of the buyer.
- (5) Our technical advices (verbally, in writing or by tests) are based on our best knowledge. However, they are only non-binding advices. The buyer is responsible to ensure that no third party's rights are infringed with respect to the proceedings and purposes envisaged.

Article 7 Warranty

- (1) We warrant that the goods are faultless according to the respective state of the art.
- (2) The claims of the buyer in this respect shall be limited to a claim to rectification of defect or replacement. We shall be at liberty to choose between rectification of defect or replacement. We shall not be liable for any defects which are caused by buyer's attempt of rectification. Should the rectification of defect or replacement fail, the buyer may demand reduction or withdraw from the contract. The rectification of defect shall be deemed to have failed if and insofar as a reasonable period of grace set for said rectification of defect has passed without result. The conditions to exercise the right of withdrawal shall be determined pursuant to section 323 of the German Civil Code.
- (3) The warranty period for new goods shall be one year, calculated as from delivery. In case of rectification the warranty period will be suspended until completion of rectification work. The warranty is excluded for the sale of used goods.
- (4) We shall be liable pursuant to statutory provisions insofar as the buyer asserts damage claims, which are based on fraudulent intent, wilful intent or gross negligence, including fraudulent intent, wilful intent or gross negligence of our representatives or agents. Insofar as we are not accused of wilful infringement of contract, the liability shall be limited to foreseeable, typical damage and to a maximum equal to the amount covered by our insurance. Any further liability shall be excluded. To this extent, we shall not in particular be liable for damage, which has not occurred to the object of delivery, unless said damage refers to injury to life, body and/or health. Liability pursuant to the German Statute on Liability for Defective Products (*Produkthaftungsgesetz*) shall remain unaffected.
- (5) In the event of a rectification of defect, we shall be obliged to bear the necessary expenses for the purposes of rectification, in particular transport, travel, work and material costs; this shall not apply insofar as the costs are increased due to the fact that the object of purchase was brought to a place other than the place of performance.
- (6) The provisions under this section shall also be applicable to damages that might occur with respect to rectification or replacement of products.
- (7) The buyer's claims arising from liability for defects shall require that the buyer has met his duty to inspect the goods and to notify any complaints in due time, pursuant to section 377 of the German Commercial Code. Notification of faults, defects and variations in quantity must be made without delay and in writing. Notification of visible defects must be made within 7 days after delivery. Other defects, which could not be detected within this period even upon due inspection, shall be notified within 7 days after discovery. If the buyer does not respect his notification duty, his claims based on such complaints shall be excluded.
- (8) In case the buyer files in a complaint in respect of defects of the goods, we reserve the right to inspect and check the unchanged goods.
- (9) The warranty is excluded for any damages which are based on inaccurate or careless usage, exceeding load of the goods or electric or chemical influences which are contractually not allowed. Insofar as nothing contrary is agreed, the same applies if the buyer converts the goods with different products.

Article 8 Liability due to other causes in law

- (1) Any liability for damages not addressed in sections 6. and 7. shall be excluded, regardless of the legal reason of the claim. This shall apply in particular to the liability pursuant to culpa in contrahendo, breaches of contractual duties and tort liability pursuant section 823 of the German Civil Code.
- (2) The exclusion or restriction of our liability shall also apply to the liability of our employees, labourers, associates, representatives and agents.

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Article 9 Reservation of ownership

- (1) The object of purchase shall remain our property until such times as the accounts receivable in connection with the contract of sale have been settled. If the buyer is a merchant within the meaning of the German Commercial Code, we shall reserve the right of ownership to all objects of delivery until such times as all payments arising from the business relationship have been received.
- (2) The buyer shall be entitled to pass on or to sell the objects of delivery during the ordinary course of business and with our consent only; in case, he shall here and now assign all claims to us, to the amount of the final invoice owed by him for the purchase price (including VAT), that are due to him from the sale from his customer or a third party, irrespective of whether the objects of delivery were sold in a processed or unprocessed state. The buyer shall still be authorised to collect these accounts receivable even after the assignment. Our authority to collect the accounts receivable shall remain. We shall undertake not to collect the accounts receivable as long as the buyer contractually satisfies his payment commitments and no application for insolvency proceedings is filed. If one of the last mentioned circumstances comes about, the buyer must provide us with all information at our request that are necessary to collect the assigned accounts receivable, hand over the corresponding documents as well, and inform the respective debtor (third party) of the assignment.
- (3) The object of delivery shall always be processed or reformed for us. If the goods delivered are inseparably assembled or mixed with goods that are a third party's property, then we shall acquire co-ownership in the new goods or the mixed stock. The proportion of title shall follow from the proportion of the value of the goods delivered by us under retention of title and the value of the other goods at the time of processing. The object created by processing shall be subject to the same provisions as the object delivered under reservation. If the object of delivery is inseparably combined with other objects not belonging to us, then we shall acquire co-ownership in the new object, proportionate to the value of the object of delivery to the other constituents. If mixing is performed in such a way that the buyer's object is to be viewed as the main object, it shall be agreed that the buyer shall transfer proportionate co-ownership to us. The buyer shall keep the sole property or co-property thus created for us.
- (4) Insofar as the value of the securities exceeds the accounts receivable to be secured by more than 20%, the seller shall be obliged to release securities to which he is entitled upon demand of the buyer. We may choose the securities to be released.

Article 10 Altered circumstances with the buyer

- (1) If the financial situation of buyer worsens considerably (e.g. uncovered check or bill of exchange or filing for insolvency or composition proceedings), if the buyer disposes of goods we supplied under reservation of ownership in excess of the normal course of business, or if the buyer dissolves his company, then we shall have the right to declare all our claims arising from the business relationship as immediately payable, to repurchase bills of exchange at the buyer's costs, and to continue supply only against advance payment or provision of security.
- (2) In the event of discontinuation of payment or excessive indebtedness of the buyer or upon filing of insolvency or composition proceedings, we shall be entitled at our option to assert the above rights or to withdraw from the contract according to the statutory provisions.

Article 11 Venue - place of performance - applicable law

- (1) Place of performance for all deliveries shall be our seat and registered office.
- (2) Düsseldorf shall be the venue. However, we shall be entitled to bring action against the buyer at his place of residence.
- (3) The contract shall be governed by the law of the Federal Republic of Germany exclusively. The United Nations Convention on Contract for the International Sale of Goods shall not apply.
- (4) In the event of individual provisions of these terms being ineffective, the effectiveness of the contract shall not be affected. Ineffective provisions shall be replaced by the statutory provisions.