

General Terms and Conditions of Delivery

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1. Application of these Conditions

- 1.1. These conditions exclusively shall apply to the entire existing and future business relationship between Rotocontrol GmbH (ROTOCONTROL) and the customer. Conditions of purchase or other terms and conditions of trade of the customer will not be applied.
- 1.2. Should any of the provisions of these conditions be or become invalid, it shall be replaced by the corresponding statutory provisions. Under no circumstances shall the affected provision in these conditions be replaced by terms and conditions of the customer.

2. Conclusion of Contract, Written Form

- 2.1. Offers made by ROTOCONTROL are subject to confirmation.
- 2.2. The customer is bound by any order placed by it. Such orders shall be accepted by ROTOCONTROL by way of invoice/confirmation of order included with the delivery provided that the orders do not already constitute an acceptance and provided that no other written confirmation by ROTOCONTROL is made.
- 2.3. With respect to the contents of orders and agreements the written confirmation by ROTOCONTROL will be exclusively decisive if the customer does not object immediately in writing. If no further written confirmation is made, the invoice is deemed a confirmation of the order.
- 2.4. Any amendment or supplementary agreement to the contract requires the written confirmation of ROTOCONTROL in order to be effective.
- 2.5. Terminations, notices of rescission of contract, demands for price reduction or for compensation for damage are only effective if made in writing.
- 2.6. Sales representatives or agents of ROTOCONTROL are not entitled to conclude any special agreements with the customer concerning delivery or payment. These Terms and Conditions are exclusively applicable.
- 2.7. If the contract will not be accomplished for reasons the customer is responsible for the customer will have to pay to ROTOCONTROL a contractual penalty in an amount of 20 % of the agreed net total. Further claims of ROTOCONTROL will remain unaffected.

3. Delivery, Date of Delivery

- 3.1. ROTOCONTROL is entitled to make partial deliveries in so far as these do not fall short of what is minimally acceptable.
- 3.2. The customer shall review and acknowledge receipt of the delivery note (Lieferschein). Any objections shall be presented immediately in writing to ROTOCONTROL. Otherwise, the quantity delivered as per the delivery note is deemed acknowledged.
- 3.3. Delivery dates and delivery periods are approximate. They are subject to the receipt of delivery by ROTOCONTROL itself in a proper and timely manner.
- 3.4. Delays in delivery due to operational breakdowns, to measures taken by a public authority or to force majeure give rise to a reasonable extension to the date of delivery. Force majeure, with its result of an acceptable extension to the date of delivery, also includes legal labour conflicts including strikes and lock outs at the ROTOCONTROL operations or its suppliers.

Claims of the customer for compensation for damage caused by delays in delivery due to such events described in 3.4 are excluded pursuant to the provisions contained in section 9 (Liability). The right of the customer to rescind from the contract after the extension date has elapsed remain unaffected.

- 3.5. ROTOCONTROL is liable for delivery delays only if it is responsible for these. If the customer suffers loss proven to have been caused by the delivery delay for which ROTOCONTROL was responsible, the customer may demand compensation in an amount not exceeding 5% of the value of the respective part of the whole delivery. In the case of delay in delivery, the customer may, subsequent to fixing a reasonable extension of the original delivery date and with an express declaration that upon expiry of this time for delivery it refuses to accept performance, set aside the contract if performance fails to take place within the extended time for delivery. Further claims based on delay in delivery, in particular claims for compensation for damage, are excluded in accordance with the provisions contained in section 9 (Liability).

4. Shipment and Transfer of Risk

- 4.1. The shipment of the goods takes place at the risk of the customer (sale to destination according to buyer's instructions pursuant to § 447 German Civil Code). This also applies even if ROTOCONTROL has entered into a separate agreement obliging it to bear the transport costs and/or the costs for transport insurance.
- 4.2. Delivery by ROTOCONTROL takes place ex works.
- 4.3. Loss or damage occurring in the course of shipment shall be immediately reported to the shipping company by the customer. Furthermore, loss or damage caused by shipment shall be noted on the acknowledgement of receipt which is to be submitted to the shipping company and shall also be reported to ROTOCONTROL within a time limit of one week; otherwise, all compensation claims for such loss or damage are precluded.

5. Prices and Price Alteration

- 5.1. The prices are ex works. In each case the value added tax in effect at the time at which the contract was concluded is also payable, if applicable.

- 5.2. If, pursuant to the respective statutory provisions, the costs for disposing of packing materials must be borne by ROTOCONTROL, these costs will be charged to the customer.

- 5.3. The price does not include any performance of services by ROTOCONTROL, such as commencement of operation and initial instruction, repairs or training. These will be charged separately and additionally according to the agreed upon or, alternatively, according to ROTOCONTROL's hourly rates, effective at the time, for working and travelling time plus travelling costs and employee remuneration for additional expenditures. Value added tax will be paid in each of these cases, if applicable.

6. Conditions of Payment, Set-Off, Right of Retention

- 6.1. The payment of delivered goods shall be made no later than 10 days commencing with the date of invoice net cash.

Payment for services performed is due immediately and payable without deductions.

With respect to performance and timeliness of payment the entry in a bank account of ROTOCONTROL is decisive.

- 6.2. With regard to the delivery of machines, tools with accessories and installations the following instalment plan shall apply, unless otherwise agreed with the customer: 30% with conclusion of the contract; 60% with notice of readiness for shipment and 10% 14 days after receipt of the final invoice.
- 6.3. Acceptance of bills receivable or maker's own promissory notes requires the prior consent of ROTOCONTROL.
- 6.4. The customer will have only a right of retention or a right of set off with counterclaims if the counterclaims are recognized by a final and absolute court judgment or undisputed. This shall also apply with regard to claims due to defects.

7. Acceptance

- 7.1. In case the assembling of the machines or parts to be delivered is made by ROTOCONTROL respectively one of its representatives together with the commencement of operation generally a so called pre-acceptance will take place at ROTOCONTROL's facilities. The customer will be informed about the date of the pre-acceptance and can attend it. The pre-acceptance standard tests of ROTOCONTROL will be made according to the provided protocol. If the customer wishes further tests, ROTOCONTROL will be entitled to claim an extra fee.
- 7.2. If the pre-acceptance is successful the delivery to the client and the sampling and placing into operation will take place by ROTOCONTROL respectively one of its authorised representatives in the presence of the customer. Afterwards the joint acceptance inspection of the machine will take place by the parties pursuant to the protocol. During the acceptance inspection standard tests of ROTOCONTROL will be carried out. If the customer wants further tests, ROTOCONTROL will be entitled to claim an extra fee.
- 7.3. The result of the acceptance inspections is to be fixed in a protocol, even if the customer wants to refuse the acceptance.
- 7.4. The customer will be entitled to refuse acceptance, if during the acceptance inspection considerable defects which make a start of the production impossible, appear, unless the reason for the defects is due to a component of a third party and the usage of the component has been dictated by the customer. The refusal of acceptance has to be recorded in the protocol and the defects have to be specified in the protocol. The elimination of the defects can take place by way of rectification or replacement. After rectification or replacement a new acceptance inspection shall take place.
- 7.5. If in the course of the acceptance inspection no or minor defects appear so that the production with the delivered good can start in total or partially acceptance shall be deemed to have taken place. In such case ROTOCONTROL will eliminate defects by way of rectification or replacement. If one of the parties requires an acceptance of the elimination of defects such acceptance will be made pursuant to the aforementioned conditions.
- 7.6. If the starting operation at the point of destination will be effected by the customer itself the pre-acceptance test at ROTOCONTROL's premises substitutes the acceptance. If the customer does not take part in the pre-acceptance test substituting the acceptance the acceptance shall be deemed as effected. ROTOCONTROL will inform the customer in its notice regarding the completion about the consequences of its behaviour with regard to the acceptance.
- 7.7. The acceptance shall be deemed to have been made unconditionally without the existence of a protocol in the following cases:
 - if the acceptance inspection for reasons, ROTOCONTROL is not responsible for, cannot be carried out at the date agreed upon or
 - if the customer refuses to cooperate or take part in the acceptance inspection or
 - as soon as the customer uses the services and goods of ROTOCONTROL.

8. Quality and Warranty

- 8.1. Dimensions, performance specifications and other details concerning the condition of the delivery item are part of the specification. They do not establish a representation as to quality which is part of a guaranty. Public advertising announcements/product specifications of third parties or of ROTOCONTROL are not part of the contractual product specifications unless ROTOCONTROL concludes a respective agreement with a customer. As far as the materials to be used by ROTOCONTROL are specified contractually ROTOCONTROL warrants only

- the compliance with the specification and not the suitability of the materials for the contractual purpose.
- 8.2. The goods of ROTOCONTROL meet the requirements of applicable German standards. ROTOCONTROL does not warrant that the technical design/structuring complies with foreign standards.
- 8.3. Upon delivery the customer is obliged, at its own expense, to examine the goods delivered without delay and to inform ROTOCONTROL in writing of any defects or wrong deliveries or shortfalls. Hidden defects must be reported to ROTOCONTROL in writing immediately after discovery.
- 8.4. Defects within a partial delivery do not justify rejection of the remaining quantity, unless the customer can prove that due to the circumstances acceptance of only a part of the delivery is unacceptable for it.
- 8.5. Improper handling or normal wear and tear does not provoke warranty claims.
- 8.6. Petite irregularities with regard to the quality or usability do not give the customer warranty claims. Further, warranty claims of the customer are limited to a claim having the defect rectified or to a claim to replacement, at the option of ROTOCONTROL. ROTOCONTROL is entitled to carry out a reasonable number of rectifications or replacements, at least three. Should the attempts of rectification or the replacement prove unsuccessful, the customer – irrespective of any damage claims pursuant to section 9 – has the right to rescind the contract (Rücktritt) or to reduce the purchase price (Minderung). This option is limited to the affected delivery unless such a restriction due to the nature of the goods is unacceptable for the customer.
- 8.7. Claims for defective goods become time barred one year after delivery. Claims for defect services (contract for work) of ROTOCONTROL become time barred within one year after acceptance of services. In case ROTOCONTROL produces incorporeal products (e.g. individual software) claims for defects become time barred within one year after acquaintance by the customer of the defect, to the latest two years after acceptance of the incorporeal goods claims for defects of the customer become time barred. The afore mentioned limitation periods shall not apply as far as the binding statutory limitation periods are longer, if warranty claims are based on deliberate acts or gross negligence on part of ROTOCONTROL or fraudulent concealment of defects by ROTOCONTROL or if damage for life, body or health is caused due to defects. Warranty periods (Garantiefristen) are warranty periods (Gewährleistungsfristen). Warranty claims with regard to rectifications or replacements become time barred three months after rectification or replacement has taken place, but not before expiration of the primary time period.
- 8.8. In case the delivered good is transported to another place than the place mentioned in the order and due to such circumstances the costs connected to rectification and replacement such as transportation, material or labour costs, increase such costs have not to be borne by ROTOCONTROL. This restriction shall not apply if the off-site disposal of the goods corresponds to the intended use of the goods and this use was known to ROTOCONTROL.
- 8.9. Other claims, in particular claims to compensation for damage, are excluded pursuant to the provisions of section 9 (Liability).
- 9. Liability of ROTOCONTROL**
- 9.1. The liability of the ROTOCONTROL is excluded for any damages of whatever kind. This exclusion does not apply
- to damages, which ROTOCONTROL has caused deliberately or with gross negligence
 - in cases of minor negligence for damages, which are based on injury to life, body or health and for damages which are provoked by a breach of fundamental contractual obligations by ROTOCONTROL (see section 9.2 and 9.3 below).
- 9.2. In cases of minor negligent breaches of fundamental contractual obligations the liability of ROTOCONTROL – with exclusion of damages due to injury to life, body or health – is limited to typical loss or damage foreseeable at the time of the conclusion of the contract or the breach of the obligation.
- 9.3. Claims for compensation for damage against ROTOCONTROL for minor negligence pursuant to section 9.1 and 9.2 are excluded if they have not been asserted in court within a period of three months subsequent to the rejection of the claims by ROTOCONTROL or its insurers and ROTOCONTROL /its insurers have informed the customer about the three month period.
- 9.4. The exclusions and limitations in section 9.1 to 9.3 also apply to ROTOCONTROL's liability for its officers, employees and vicarious agents and the personal liability of its officers, employees and persons used by it to fulfil its obligations.
- 9.5. The above exclusions and limitations in sections 9.1 to 9.4 do not apply to claims based on the statute for product liability.
- 9.6. All claims to compensation for damage on the part of the customer expire after one year subsequent to the customer's knowledge of its claim, unless the law provides for a shorter limitation period. For claims based on the Statute for Product Liability, the statutory limitation period applies.
- 10. Copy Right/Retention of Title**
- 10.1. As far as ROTOCONTROL is owner of exclusive rights of use with regard to copy rights for goods and other products of ROTOCONTROL the customer acquires a simple right of use with regard to the goods/products only upon complete payment of all claims of ROTOCONTROL regarding the goods/products. The customer is not entitled without prior written consent by ROTOCONTROL to grant sublicenses.
- 10.2. The delivered goods (goods subject to retention of title) remain the property of ROTOCONTROL until full payment to ROTOCONTROL of all debts owed to it in connection

- with the business relationship. Furthermore, the goods subject to retention of title remain the property of ROTOCONTROL until full payment of all future debts owed by the customer.
- 10.3. The joining, adapting / processing or restructuring within the meaning of § 950 of the German Civil Code (hereinafter uniformly referred to as "processing") of the goods subject to a retention of title takes place free of charge for ROTOCONTROL, i.e. the latter is legally the manufacturer of the new goods within the meaning of § 950 of the German Civil Code.
- Where the customer or its subcontractor join goods subject to a retention of title to objects owned by others, the joining takes place simultaneously for ROTOCONTROL (free of charge) and for the customer, and in addition, if the customer has entered into an agreement in this regard with the owners of other objects involved in the joining, the joining also takes place for these other owners with the understanding that ROTOCONTROL, the customer and, if applicable, the other owners shall be regarded at all times and in all aspects of the joining as joint manufacturers of the single, new objects. The provision of § 947 subsection 2 German Civil Code is explicitly excluded.
- 10.4. Pledges or transfers of ownership to third parties by way of security of the goods subject to the right of retention and the assignment or pledging of expectancy rights are excluded.
- 10.5. In the case of default of payment on the part of the customer, the goods subject to the right of retention shall, upon demand, be returned immediately to ROTOCONTROL without the need for ROTOCONTROL to first repudiate the contract. The same applies where there is a substantial deterioration in the financial situation of the customer.
- 10.6. If the customer acquires the goods subject to the right of retention for the purpose of reselling, or of joining or processing to be followed by their resale, the customer is entitled to sell the goods subject to the right of retention in the ordinary course of business. If the customer does not buy the good subject to the right of retention for the purpose of reselling or of joining or processing to be followed by their resale, a resale without the prior consent of ROTOCONTROL is not permitted.
- All claims arising from a resale of the goods subject to a right of retention are hereby assigned to ROTOCONTROL effective as of the time at which they come into existence, in the full amount and together with all secondary and security rights. ROTOCONTROL hereby accepts the assignment. In the case where ROTOCONTROL is only entitled to a joint ownership share of the goods subject to a right of retention, the assignment is then deemed to extend to that amount equivalent to the proportionate value of the particular goods subject to a right of retention which form the basis of the joint ownership share which ROTOCONTROL has invoiced the customer, such also ranking first. Any other assignment of or encumbrance on these claims or parts of claims is not permitted.
- For the ascertainment of third party debtors (their first name and surname, address and the amount of the debt) the books of the customer are decisive. ROTOCONTROL has the right to inspect such books during the normal business hours of the customer.
- 10.7. The customer may, provided that it fulfils its payment obligations towards ROTOCONTROL, collect the debts resulting from an announced resale on its own account in the ordinary course of business. The assignment of the debt, even for the purposes of collecting the debt in the course of factoring, is excluded unless the assignee, simultaneously with the assignment and for the duration of time for which ROTOCONTROL has claims against the customer, is obliged, to the extent of the debt owed to ROTOCONTROL, to pay this to the latter directly.
- 10.8. The customer's right to processing or joining/combining as well as the right to resell the goods subject to a right of retention and also the right to collect on the debt expires upon discontinuance of payment, a protested cheque or bill by the customer, an effected pledging of the goods subject to a right of retention, a petition in bankruptcy in relation to the assets of the customer. In these cases, ROTOCONTROL is entitled to collect on the debts which have been assigned to it. ROTOCONTROL shall be informed immediately of the assigned debts with regard to the basis of the debt, the amount and the date of origin including the information concerning the third party debtor.
- 10.9. Subsequent to a setting aside of the contract or subsequent to an unsuccessful fixing of a time limit pursuant to § 323 German Civil Code and upon expiry of the time limit without performance, ROTOCONTROL is entitled to freely dispose of goods which have been taken back. The customer shall be credited with the proceeds of the disposition. The reasonable costs for retrieving, reconditioning and selling the goods will be deducted from the proceeds of the disposition. For goods which were manufactured by ROTOCONTROL, the maximum amount to be credited is the direct cost price of ROTOCONTROL without administration and distribution costs.
- 10.10. The customer is obliged, at its own expense, to adequately insure the goods subject to a right of retention for their original value and to the usual extent, in particular however, to insure against loss due to fire, storm, water and theft and to provide evidence of such insurance protection to ROTOCONTROL upon its request. The customer hereby assigns to ROTOCONTROL the claims to which it is entitled against the insurer and/or other third parties in conjunction with the goods subject to the right of retention in the amount corresponding to ROTOCONTROL's share of the goods subject to the right of retention. ROTOCONTROL accepts the assignment.
- 10.11. If and when the secured claims are secured to more than 110% by goods subject to a right of retention and/or assignments or by other collateral securities, ROTOCONTROL shall, upon demand by the customer, release security rights, at ROTOCONTROL's choice, up to the aforementioned limit.
- 11. Place of Performance, Place of Litigation, Applicable Law**
- 11.1. The place of performance of payment and delivery of goods is Trittau.
- 11.2. For customers who/which are merchants possessing full commercial capacity, legal entities under public law or special funds under public law, it is agreed that the place of litigation is Hamburg/Germany as the place where the Regional Court/Regional Court of Appeal closest to Trittau has its seat. But, ROTOCONTROL is entitled to sue the customer at its legal venue.
- 11.3. German law is exclusively applicable with exclusion of the Convention on Contracts for the International Sale of Goods (CISG).