General Terms of Sale and Delivery of
ROTEC Munich GmbH
Joseph-Dollinger-Bogen 28
D-80807 Munich

1. Applicability, deviating terms of purchasing of the customer

1.1 Our General Terms of Sale and Delivery (hereinafter referred to as “Terms of Sale") apply exclusively. Contrary terms of the customer opposing or deviating from our Terms of Sale such as the customer’s general terms of purchasing are not accepted by us, unless we had expressly agreed to their applicability in writing. Our Terms of Sale also apply when we make unconditional delivery to the customer in knowledge of the conflicting terms of the customer that deviate from our Terms of Sale. If an item is defined in the customer’s general terms and conditions for which our Terms of Sale do not contain a separate provision, they shall apply exclusively nonetheless.

1.2 All agreements for the execution of this contract concluded between the customer and us are documented in writing in this contract.

1.3 These Terms of Sale apply only in relation to entrepreneurs, legal entities of public law and public-law investment funds in the definition of Sec. 310 (1) BGB [German Civil Code].

1.4 Our Terms of Sale also apply to all future transactions with the customer for as long as no other new or modified terms of sale are incorporated.

2. Quotations, conclusion of the contract, quotation documents, consulting, product datasheets

2.1 Our quotations are generally subject to change, i.e. not legally binding, unless they are marked explicitly as being binding or their binding effect has been otherwise expressly agreed. Our quotations generally represent merely suggestions to the customer to place a binding order.

2.2 If the customer’s order can be qualified as an offer pursuant to Sec. 145 BGB, we can accept it within two weeks.

2.3 A contract shall also become effective in the course of current business only when we confirm the customer’s order in writing or in text form (i.e. also by fax or email).

2.4 We reserve property and copyrights on illustrations, drawings, calculations, price lists, and other documents. This also applies to such written documents, which have been earmarked as “confidential.” Any transfer to third parties by the customer requires our explicit written agreement.

2.5 Information and explanations regarding our products and services that are given by us or our vicarious agents are based exclusively on our present experiences. This does not represent any properties and condition with regard to our products.

2.6 The properties and condition of our products follow exclusively from this contract in conjunction with the product datasheets of the contractual products.

3. Prices, offsetting, right of withholding, bad credit

3.1 Unless our order confirmation states otherwise, our prices apply ex-works according to the Incoterms 2010 without packaging and dispatch. These costs will be invoiced separately.

3.2 The statutory value added tax is not included in our prices. It is shown separately on the invoice in the statutory amount as at the date of the invoice. The prices furthermore do not include the charges, levies or customs duties, which will therefore also be invoiced separately.

3.3 The customer shall have rights to offset payments only if its counterclaims have been established as final and absolute or if they are uncontested or acknowledged by us. Furthermore, the customer is authorised to exercise a right to withholding to the extent that its counterclaim is based on the same contractual relationship.

3.4 If facts become known, which substantially impair the customer’s credit rating, in particular attempts of compulsory enforcement against the customer’s assets, opening of insolvency proceedings over the customer’s assets or the provision of an asset disclosure, we shall be entitled to demand prepayment or the provision of securities or to withdraw from the contract.

4. Part delivery, delivery time, delay of acceptance by the customer, force majeure, delivery by our suppliers

4.1 We are permitted to make part deliveries, unless these are unreasonable to the customer.

4.2 The start of the delivery period indicated by us requires that all technical questions are resolved.

4.3 The observation of our delivery obligation furthermore requires the timely and correct fulfilment of the customer's obligation. The defence of the unfulfilled contract remains reserved.

4.4 If the customer is in delay of acceptance or culpably breaches other duties to cooperate, we shall be entitled to request compensation for any damage resulting from this, including any additional costs. Further claims or rights remain reserved.

4.5 If the conditions of Section 4.4 are given, the risk of accidental loss or accidental deterioration of the object of purchase shall transfer to the customer at the point in time when the latter is in delay with acceptance or in default of payment.

4.6 If, notwithstanding the correct and sufficient provision before the contract was concluded with the customer, for reasons not at our fault, we do not receive deliveries or services from our upstream suppliers in compliance with the quantity and quality required for the performance of our delivery or service that we owe under our supply or service agreement with the customer, or if we receive incorrect delivery or late delivery, or if events of force majeure occur and persist not merely a negligible length of time, we shall inform our customers in a timely manner in writing or in text form. In that case, we shall be entitled to postpone the delivery for the duration of the obstruction or withdraw from the contract in full or in part or for the part not fulfilled, provided that we have fulfilled our aforementioned duty to inform and assumed the risk of procurement or given a delivery warranty. Force majeure is equivalent of strike, lockout, intervention by authorities, shortages of energy and raw materials, transport bottlenecks and obstructions caused not at our fault, or operational disruptions caused not at our fault, e.g. due to fire, water or machine damages, and all other obstructions, which have not been caused through our fault in an objective view.

4.7 If a delivery date or a delivery deadline has been bindingly agreed and if the agreed delivery date was exceeded due to incidents pursuant to Section 4.6, the customer shall be entitled to withdraw from the part of the contract not fulfilled yet after an unsuccessful expiration of an appropriate grace period. Further claims of the customer, especially such of damage compensation, shall be excluded in that case.

4.8 The foregoing provision according to Section 4.7 shall apply analogously if, for reasons named in 4.6, the further continuation of the contract is objectively unacceptable to the customer, even without a contractual agreement of a fixed delivery date.

5. Liability in the event of a delay of delivery

5.1 We shall be liable pursuant to the legal regulations, insofar as the underlying purchase agreement is a firm deal in the definition of Sec. 286 (2) no. 4 BGB or Sec. 376 HGB [German Commercial Code]. We accept liability in accordance with the legal provisions in that the Purchaser, as a consequence of a delay in delivery caused by us, is entitled to claim that its interest in further contract fulfilment has ended.

5.2 Furthermore, we accept liability in accordance with the legal provisions where a delay in delivery is due to any intentional or grossly negligent breach of contract for which we are responsible; any fault by our representatives or agents shall be treated as our fault. If the delay of delivery is due to a gross negligent breach of contract for which we are responsible, our liability for damage compensation shall be limited to the foreseeable, typically occurring damage.

5.3 In that case, we shall also be liable according to the statutory provisions if a delay of delivery that was caused at our fault is the result of a culpable breach of an essential contractual duty. In such a case, liability for damages shall be limited to the predictable and typically occurring damage.

5.4 Furthermore, our liability for damages shall be excluded in the case of a delay in delivery.

5.5 Further legal claims and rights of the customer remain reserved.

6. Transfer of risk, packaging costs

6.1 Unless determined otherwise in the order confirmation, delivery is agreed ex-works according to the Incoterms 2010.

6.2 Separate agreements apply to the acceptance of returned packaging.

6.3 On the customer's request, we shall obtain insurance cover for the delivery. The costs incurred for this shall be borne by the customer.

7. Software use

7.1 If software is included in the scope of delivery, the customer shall be granted a non-exclusive right to use the delivered software including its documentation.

7.2 The customer has the right to install the software on optionally many workstations. However, the use of the software on a workstation shall be permissible exclusively in combination with a dongle that contains the licence key.

7.3 The customer may only reproduce, revise, translate or convert the software from the object code into the source code to the legally permissible extent (Sec. 69a seqq. UrhG [German Copyrights Act]).

7.4 The customer undertakes to neither remove the manufacturer information, in particular not the copyrights marks, nor modify them without our explicit prior approval.

7.5 All other rights to the software and the documentation including copies shall be retained by us or the software provider.

7.6 The granting of sublicences by the customer is not permissible

8. Warranty for defects

If a material defect of the object of purchase was present already at the time of the transfer of risk, the following provisions shall apply regarding our warranty for defects to the customer:

8.1 If the customer is a merchant, the customer's claims of defect require that the customer has duly fulfilled its obligations for inspection and notification of defects that are owed pursuant to Sec. 377 HGB. It applies in this regard that an obvious defect must be notified to us in writing at the latest within a week from delivery of the products. Otherwise, the products will be deemed approved by the customer in light of the defect concerned.

8.2 If there is a defect on the object of purchase, we shall have discretion to choose either subsequent fulfilment by a correction of defects or delivery of a new item without defects. In case of remedy of the defect or replacement delivery, we will be obligated to bear all expenses required for the purpose of the subsequent fulfilment, in particular transport, travel, work and material costs, provided that these are not increased because the purchased object has been transported to a different place than the place of fulfilment. If the statutory conditions are given, we shall bear the customer's expenses pursuant to Sec. 439 (2) BGB.

8.3 If subsequent fulfilment fails, the customer shall have a right of withdrawal or reduction at its choice.

8.4 We shall be liable pursuant to the statutory provisions if we have fraudulently concealed a defect or given a warranty.

8.5 Our liability shall be determined according to the legal regulations if the customer asserts damage compensation claims, which are based on intent or gross negligence, including intent or gross negligence by our representatives or vicarious agents. If we are not accused of any intentional or gross negligent breach of contract, our liability for damage compensation shall be limited to the predictable, typically occurring damage.

8.6 We shall be liable pursuant to the legal regulations if we culpably breach an essential contractual duty. In this case, as well, however, our liability for damage compensation shall be limited to the predictable damage typically occurring. An essential contractual duty is given when the breach of the duty relates to a duty, the fulfilment of which the customer regularly relies and may rightly rely upon.

8.7 Liability for culpable injury to life, body or health remains unaffected. This shall also apply to the mandatory liability pursuant to the Product Liability Act.

8.8 Liability in the event of recourse taken by the customer in the supply chain against us remains unaffected if the last contract in this chain is not for a purchase of consumer goods in the definition of Sec. 474 BGB.

8.8 Liability is excluded unless the foregoing provides otherwise.

9. Limitation of customer's claims

9.1 Claims of the customer against us, regardless of the legal reason, shall become time-barred in 12 months from the start of the statutory limitation period.

9.2 The statutory limitation periods apply to the customer's damage compensation claims according to Sections 8.4 to 8.8 and in the case of Section 438 (1) No. 2 BGB.

9.3 In the event of claims pursuant to Section 8.8, Sec. 445b (2) BGB (suspension) shall remain unaffected.

10. Total liability

10.1 Any liability for damage compensation to a further extent than provided for in Sections 8 and 9 of these Terms of Sales shall be excluded regardless of the legal nature of the claim asserted. This applies in particular to damage compensation claims in result of fault in the conclusion of the contract, fault for other breaches of duty or tort claims for compensation of property damages according to Sec. 823 BGB.

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10.2 The limitation pursuant to Sec. 10.1 shall also apply if the customer does not demand compensation of the damage but instead the compensation of useless expenses in lieu of performance.

10.3 Insofar as liability for damages is excluded or limited in relation to us, this shall also apply with regard to the personal liability for damage compensation of our employees, workers, staff, representatives and vicarious agents.

11. Reservation of title

11.1 We reserve the title of the object of purchase up until receipt of all payments under the supply agreement. In the event of any actions by the customer contrary to the contract, in particular in the event of a payment delay, we shall be entitled to take back the object of purchase. Taking back the object of purchase constitutes a withdrawal from the contract. After the return of the object of purchase, we shall be entitled to deduct their liquidation proceeds less the appropriate costs for the liquidation from the customer's liabilities.

11.2 The customer is obligated to treat the object of purchase with care. It is obligated in particular to protect it appropriately and purchase insurance at its own cost for fire, water and theft damage with cover of the value as new. Insofar as maintenance and inspection work is required, the customer must conduct such at its own costs within due time.

11.3 In the event of attachments or other encroachment by third parties, the customer shall immediately notify us in writing so we can file lawsuit in accordance with Sec. 771 ZPO [German Code of Civil Procedure]. Insofar as the third party is unable to refund us for the legal and out-of-court costs of an action according to Sec. 771 ZPO [German Code of Civil Procedure], the customer shall be liable for the loss incurred by us.

11.4 The customer is entitled to resell the object of purchase in the course of ordinary business. However, on this day already, it assigns to us all claims up to the amount of the final invoice (including the value added tax), which arise for it against its buyers or third parties from the resale, notably regardless of whether the object of purchase has been resold without or after processing. The customer shall be authorised to collect these receivables also after the assignment. Our authority to collect these receivables ourselves remains unaffected thereof. However, we undertake not to collect the receivables for as long and insofar as the customer fulfils its payment obligations from the received proceeds and does not default on payment, and particularly, for as long as it has not filed for settlement or insolvency proceedings or a similar discontinuation of payments has occurred. If this is the case, however, we may demand that the customer disclose the assigned receivables and their debtors and provide all information required for collection, surrender the related documents and inform the debtors (third parties) of the assignment.

11.5 The processing or conversion of the object of purchase by the customer shall always be done on our behalf. If the object of purchase is processed together with other items that are not our property, we shall acquire joint ownership of the new object in proportion of the value of the object of purchase (invoiced amount, including VAT) relative to the other processed items at the time of the processing. The item produced by processing is subject to the same provisions as the goods that were delivered subject to the retention of title.

11.6 If the object of purchase is mixed inseparably with other items that are not our property, we shall acquire joint ownership of the new object in proportion of the value of the object of purchase (invoiced amount, including VAT) relative to the other mixed items at the time of the mixing. If the mixing takes place in a manner that the customer's object is to be regarded as the primary object, it shall apply as agreed that the customer transfers the co-ownership to us. The customer shall store the item in sole or joint ownership on our behalf.

11.7 As security for our claims against the customer, the customer assigns to us claims against third parties, which arise against a third party from connecting the object of purchase with land.

11.8 We undertake to release securities provided by the customer on its request, insofar as the realisable value of our securities exceeds the claims to be secured by more than 10%. We shall have the choice of the securities to be released.

12. Applicable law, place of fulfilment, place of jurisdiction

12.1 All legal relations between the customer and us are governed by the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

12.2 The place of fulfilment for all liabilities arising between the customer and the contracts concluded with us is the place of the registered office of our company.

12.3 If the customer is a merchant in the definition of the HGB [German Commercial Code], the exclusive place of jurisdiction is the place of our registered office. We are also entitled to sue the customer at any other statutory place of jurisdiction.

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