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- 1. General**
- 1.1 The contract shall be deemed to have been entered into upon receipt of Von Roll BHU Umwelttechnik GmbH's ("Company") written order acknowledgement. In case of binding quotations of the Company the contract shall be deemed entered into by the customer's order. Quotations of the Company shall be binding if designated as binding or if they stipulate an acceptance period.
- 1.2 These General Terms and Conditions of Sale and Delivery shall be in effect if declared applicable in the quotation or in the order acknowledgement. Any conditions stipulated by the customer which are in contradiction to these General Terms and Conditions of Sale and Delivery shall only be applicable if expressly acknowledged by the Company in writing.
- 1.3 All agreements and legally relevant declarations of the parties to the contract must be in writing in order to be applicable.
- 2. Scope of Supplies and Services**
The supplies and services of the Company are exhaustively specified in the order acknowledgement or the binding quotation of the Company and their appendices (such as, but not limited to, product data sheets).
- 3. Technical Documents**
Information in descriptions valid upon conclusion of the contract, such as, but not limited to, gages, weights, operating material consumption and similar, are subject to deviations as far as customary in trade. Designs and specifications are subject to alterations as far as reasonable for the customer upon consideration of its interests.
- 4. Prices**
Unless otherwise agreed upon, all prices shall be deemed to be net ex works (as per INCOTERMS® 2010), without any deduction whatsoever. Any and all additional charges, such as, but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits, shall be borne by the customer.
- 5. Terms of Payment**
- 5.1 Payments shall be made by the customer at the seat of the Company according to the agreed terms of payment, without any deduction for cash discount, expenses, taxes, levies, fees, duties, and the like.
- 5.2 If the payment dates are exceeded and the customer is in delay the Company is entitled, without reminder, to charge interest at a rate that is 8 percentage points higher than the base interest rate as of the payment dates. The right to claim further damages is reserved.
- 6. Reservation of Title**
The Company shall remain the owner of all supplies until having received the full payment in accordance with the contract.
- 7. Delivery Time**
- 7.1 The delivery time shall start upon conclusion of the contract. If the customer is obliged to render payments or provide securities upon ordering the delivery time shall start upon fulfilment of these obligations. The delivery time is subject to correct and timely reception of supply by the Company ("Selbstbelieferung").
- 7.2 If the delivery is delayed due to circumstances for which the customer is solely or by far predominantly responsible or for which neither the customer nor the Company is responsible, the delivery time is prolonged by the period during which said circumstances prevail plus an appropriate start-up time. The customer will be informed promptly.
- 7.3 The Company reserves the privilege of making partial deliveries and shipping overages and underages of weight and/or quantity up to +/- 10%.
- 8. Packing**
Unless otherwise specified packing shall be charged for separately by the Company. The customer is entitled to return transport packing to the Company at the location of the delivery. This right to return must be executed either by returning the packing immediately after the delivery of goods or by providing the packing for pick up at the time of a later delivery. A separate remuneration is charged for the transport of the packing. The customer is entitled to return transport packing at his own costs at the seat of the Company during its business hours. Returned transport packing must be clean, free of contaminants and sorted according to the different packing. If these conditions are not met, the Company is entitled to charge resulting incremental costs for the packing disposal.
- 9. Defects**
- 9.1 The customer is obliged to inspect goods immediately upon receipt and notify the Company immediately, not later than 10 days after receipt of the goods, in writing of any identifiable defects found within the scope of the aforesaid inspection ("apparent defect"). Non-apparent defects shall be reported in writing by the customer to the Company immediately, not later than 10 days after their discovery. Notifications of defects are deemed timely if posted within the time limit. If the customer fails to make a timely and orderly notification of defects, claims based on these defects are excluded, unless the Company fraudulently concealed the relevant defect or assumed a corresponding guarantee.
- 9.2 Defects shall be remedied by the Company within a reasonable period of time (subsequent performance) – at the option of the Company either by correcting the defect or by delivering a non-defective replacement. If subsequent performance fails, is unreasonable for the customer, is refused by the Company or if it is justified for other reasons taking into account the interests of both parties, the customer is entitled to statutory rights without restriction. However, a right of rescission does not exist if the defect is not of substantial nature.
- 9.3 The rights of the customer as to defects are forfeited if the customer without the consent of the Company changes the goods or has them changed by others, unless it can prove that the defects in question have not been caused in whole or in part by such alterations and that the subsequent performance of the defects is not made more difficult.
- 9.4 The Company is not liable for defects caused by normal wear, external influences or operating errors.
- 10. Liability**
- 10.1 The Company shall be liable for damages in accordance with the applicable statutory provisions for personal injury, for damages pursuant to the Product Liability Act, for damages caused by fraudulent behaviour and for damages caused by intentional or grossly negligent conduct of legal representatives or executives of the Company. For all other damages the Company shall – unless provided otherwise in a guarantee assumed by the Company - be liable according to the following provisions:
- 10.1.1 The Company shall be liable for damages whereby such liability will be limited to the amount deemed contractually typical and foreseeable for any damages resulting from slight negligent breach of material contractual obligations (alternative 1) and for any damages caused in absence of any breach of material contractual obligations by grossly negligent or intentional conduct of persons employed by the Company in performance of its obligations (alternative 2).
- 10.1.2 In accordance with para. 10.1.1 alternative 1 above the Company shall not be liable for any loss of profit, indirect damages, consequential damages and third party claims except for claims based on the infringement of industrial property rights.
- 10.2 In all other cases, any and all liability by the Company shall be excluded.
- 11. Statute of Limitations**
- 11.1 The customer's claim for subsequent performance, unless a case of fraudulent behaviour is given, and for damages, unless a case of fraudulent, intentional or grossly negligent behaviour is given, due to a defect as to quality or a defect as to title other than a third party's claim for return based on ownership or on another proprietary right or another right in rem becomes statute-barred within twelve months upon delivery. This limitation period shall not apply if the respective damage of the customer is a personal injury. Claims based on personal injury become statute-barred within the statutory limitation period.
- 11.2 Unless a case of intentional or grossly negligent behaviour is given, the customer's claims based on a breach of contract other than a defect become statute-barred within twelve months upon accrual of the claim. This limitation period shall not apply if the respective damage of the customer is a personal injury. Claims based on personal injury become statute-barred within the statutory limitation period.
- 11.3 Rescission or reduction of price are excluded if the customer's claim for performance or the customer's claim for subsequent performance have become statute-barred.
- 12. Jurisdiction and Applicable Law**
- 12.1 The place of jurisdiction for both the customer and the Company shall be **Leinfelden-Echterdingen** (Germany). The Company shall, however, be entitled to sue the customer at the latter's seat.
- 12.2 The contract shall be governed by German laws, under exclusion of the Vienna United Nations convention on contracts for international sale of goods of April 11, 1980.