RKR Gebläse und Verdichter GmbH
Braasstraße 1 • D-31737 Rinteln
Tel. +49 (0) 57 51 40 04 -0
Fax +49 (0) 57 51 40 04 30
E-Mail: info@rkr.de

General Terms and Conditions

1. Scope of Application, General:

1.1 These General Terms and Conditions shall apply to all agreements entered into with RKR Gebläse und Verdichter GmbH.

1.2 Force Majeure includes events such as natural disasters, governmental measures, acts of war/terrorism as well as industrial disputes and general shortage of raw materials.

2. Entering into a Contract, Content:

2.1. We only enter into contracts by means of written confirmation or confirmation via e-mail. All agreements are made subject to these general terms and conditions, regardless of whether express reference to the same is made. Any varying terms by customers shall not apply.

2.2 A customer shall be deemed to have accepted our offer at the latest upon acceptance of our delivery. In the event that there is no confirmation on our part, the performance of obligations shall be deemed to be an acceptance of the relevant purchase order.

2.3 All offers made by us shall be subject to confirmation on our part. The purchase orders made by customers shall be deemed to be offers to enter into an agreement.

2.4 All variations from these general terms and conditions are subject to a written confirmation on our part.

2.5 In the event that any condition is deemed to be ineffective or void, the rest of the conditions shall remain effecting and binding. The ineffective/void condition shall be replaced by an effective condition, which resembles the economic intention of the parties as close as possible.

2.6 The customer shall only be entitled to assign its rights upon receipt of our prior written consent.

2.7 In the event that a customer intends to terminate a purchase order, this can only be done with our prior consent. In principle, a customer shall be obliged to make payment of a termination fee, which shall be determined according to our termination guidelines. We shall make these guidelines available to a customer upon request for the same.

3. Price, Payment:

3.1. Our prices are exclusive of packaging costs and value added tax.

3.2. In the event that our costs increase subsequent to the execution of an agreement by more than 10% due to reasons beyond our control, such as but not limited to increases in the cost of raw material and the increase of tariff-bound salaries, we shall be entitled to impose a corresponding increase in the price to customers, provided that the delivery is due at least 4 months after the execution of the relevant agreement and provided that we are able to evidence such increase in costs to the customer.

3.3. All invoices shall be paid without deduction on or before the expiry of 10 days from the date the invoice. In the case of a purchase order having a value exceeding EUR 6,000.00, we shall be entitled to require a pre-payment amounting to 1/3 of the price upon receipt of the purchase order and to require payment of another 1/3 of the price upon notification to the customer that the goods are ready for delivery. In the event that a customer does not make timely payments, all other debts due from that customer shall become immediately due and payable and we shall be entitled to require advance payments for future purchase orders. The aforesaid shall also apply in the event that the credit rating of a customer, as rated by a well recognised rating agency or Creditreform, drops. In the event of the aforesaid, we shall be entitled to refuse to make any delivery or perform any services until such time that we receive full payment of the purchase price.

3.4. A customer shall only be entitled to off-set any claims arising in the same supply agreement, provided that such claims have been accepted by us or have been confirmed by means of a final judgment. The customer shall not have any right of retention.

3.5 In the event that a customer fails to make payment on time, we shall be entitled to claim a penalty amounting to 1% of the delayed payment per calendar week, up to a maximum of 10% of the delayed payment. The customer shall be entitled to prove that we suffered less or did not suffer any loss/damage. All statutory claims shall continue to be valid and enforceable.

4. Delivery; Transfer of Risk:

4.1 All delivery datelines shall be deemed to be estimates only and shall only be deemed to be legally binding when expressly stated as such. In all other situations, time shall not be of the essence.

4.2 We shall only adhere to delivery datelines only in the event that the customer has duly performed all obligations falling due to be performed prior to delivery, in particular, the furnishing of all information necessary for the performance of the purchase order, the presentation of all necessary governmental and regulatory approvals, checks and permits as well as the payment of any pre-payments. In the event that any such obligation is not performed on time, the dateline for delivery shall be correspondingly extended for the duration of the delay. We shall be entitled to set datelines for the performance of the customers' obligations prior to delivery and to terminate the agreement in the event that these datelines are not adhered to. In the event of such a termination, we shall be entitled to claim reimbursement from the customer for all costs, which have been expanded in anticipation and/or in performance of the relevant agreement.

4.3 In the event that we are prevented from performing our obligations due to unforeseeable circumstances, despite the exercise of reasonable care, the time for delivery shall be extended for the duration of the unforeseeable circumstances. The aforesaid shall also apply in the event of any interruptions in our own operating procedures, interruptions in the operating procedures of our suppliers (insofar as it is not reasonable for us to seek alternative supplies), including our freight carries, interruptions by reasons of any measures taken by the government or other public body, interruptions of transportation channels. If the aforesaid would cause any delivery or performance impossible, we shall be released from our obligations to the customer and shall not be obliged to compensate the customer for any loss incurred.

4.4 All deliveries shall be made pursuant to the terms of offered or confirmed Incoterm (Incoterms 2010). Unless otherwise expressly agreed upon, the risk in the goods shall transfer to the customer at such time that the goods are ready for delivery. The aforesaid shall apply even when we are obliged to bear the costs of delivery and/or the transportation of the goods is insured by us. In the event that the delivery of the goods is delayed by reason of the customer, we shall be entitled to receive compensation at the fixed rate of 1,5% of the relevant invoice sum for each month of storage or any part thereof. In the event that we arrange for the relevant goods to be stored at third party premises, we shall be entitled to receive reimbursement of all cost incurred for such storage include an administrative/handling charge amounting to 8% of the incurred storage costs. Any increase in price for delivery shall also be borne by the customer. The customer shall be entitled to prove that we incurred lower or no costs at all.

4.5 Insofar as the customer is not unreasonably disadvantaged by the same, we shall be entitled to make partial deliveries.

4.6 In the event that the customer requests for additional freight, special packaging and/or orders any goods with unusual specifications/qualities, the customer would have to bear the costs of delivery. We shall make reusable packaging available to the customer on loan, which the customer has to return to us at its own costs. In the event that the reusable package loaned to the customer is not sent back to us on or before the expiry of 3 months in a good and defect-free condition, we shall be entitled to charge the customer for all costs incurred in purchasing new packaging of a comparable standard. Such charges shall be payable on an immediate basis and without any deduction.

4.7 In the event that the customer transports the goods without our consent or request, it shall bear the risks in the goods until such time that the goods reach the supplier.

5. Retention of Title:

5.1 We shall retain title in all goods delivered as well in all goods, which were processed or developed from the goods delivered by us until such time that receive full payment of all claims, which we may have against the customer, whether current or raising in the future ("Retained Goods"). The customer shall, in this regard, be obliged to ensure that all Retained Goods are stored separately and identified as goods belonging to us.

5.2 In the event that the customer joins, mixes, processes or develops the goods delivered by us, it shall be deemed to have done so for and on our behalf, except that we shall not undertake any obligation arising from such processing or development. In the event that the customer joins, mixes, processes or develops the Retained Goods with other goods ("Developed Goods"), we shall become co-owners of the results of such processing. The extent of title/co-ownership shall be a value, which reflects the proportion of to the value of the Retained Goods used for such process.

5.3 The customer hereby assigns and transfers the title of Developed Goods.

5.4 The customer shall only be entitled to sell Retained Goods and Developed Goods in the ordinary course of business and under the condition that title is retained. The customer shall not be entitled to grant any security, pledge or take any other measures, which would cause any danger to our title rights. The rights rising from the same is hereby transferred to us. In the event that the Retained Goods or Developed Goods are sold, the customer hereby assigns all arising rights and claims to us in to its full extent. In the event of any Developed Goods, rights equivalent to the value of the Retained Goods used in creating the resulting goods shall be transferred to us.

5.6 The customer shall be authorized to enforce all our claims arising from Retained Goods and Developed Goods for as long as it does not breach any obligation owed to us.

5.7 The customer hereby grants us the right to inspect all premises, in which Retained Goods and Developed Goods are stored and to enter the said premises for the purpose of removing such Retained Goods and Developed Goods or for securing the same as we may decide in our absolute discretion. In this case, the value of the realization minus the costs of realization shall be credited to the customer.

5.8 In the event that the value of the Retained Goods and Developed Goods exceed more than 20% of the value of our claim against the customer, the customer is entitled to demand for a corresponding release of security held by us.

5.9 In the event of any execution proceedings taken against the Retained Goods, Developed Goods or and/or any of the rights assigned to us, the customer shall be obliged to inform us of the same immediately and furnish us with all documentation necessary for the interruption and intervention of such proceedings without delay. The costs of any intervention shall be borne by the customer.

5.10 In the event that the retention of property requires any formal steps to be taken pursuant to the laws of the place of delivery, the customer shall be obliged to inform us of such steps and to take all steps to ensure that such formalities are fulfilled. In the event that the customer fails to fulfill its obligation as set out in this clause, the customer shall be obliged to compensate us for all losses, which we may suffer as a result of the failed retention of title.

6. Quality of the Goods, Further Processing:

6.1 The specifications confirmed by us shall be the only terms governing the quality of the goods sold by us. Unless otherwise expressly confirmed in writing, all information contained in catalogues shall not be deemed to be binding and to be merely examples for use. Sound measurements in specifications or catalogues are free field measurements taken in 1 m distance from the outline of the unit without radiating noise of the pipe (tolerances ± 2 dB(A)), in accordance with DIN EN ISO 2151. The sound measurements are data of single units.

6.2 Furthermore, the drawings/plans prepared by us and accepted by the customer shall govern the quality of goods delivered. Insofar as the customer does not reject our drawings on or before the expiry of 14 working days, our drawings shall be deemed to be approved.

6.3 All technical advice given pursuant to customer specification with regards to the possibilities of using our products as well as any information/advice relating to the same shall not be deemed to be product-related advertisement/information, which influenced the purchase of the same. The customer shall solely be obliged to verify as to whether the ordered/suggested goods is suitable for the purposes intended by the customer. We shall not undertake any liability for such suitability.

7. Warranty:

7.1. We warrant the delivery of goods, which fulfill the quality requirements, as contained in clause 6 hereinabove. Other than as aforesaid, we do not take over any warranty with regards to the goods delivered.

7.2. The customer shall be obliged to inform us of any lack in the number of goods sold and any patent defects discovered without delay and in any case, on or before the expiry of one calendar week from the date on which the goods are received. The customer shall be obliged to inform us of any latent defects upon discovery of the same without any delay. In the event the customer does not inform us of any defect within the datelines contained herein and in the event that the customer does not enable us to inspect those goods, the customer shall be deemed to have waived its claims relating to all defects. We shall not be deemed to have waived our right to require the customer to waive its claims against us by reason of delayed notification by reason of our inspecting the allegedly defective goods.

7.3 All rights to claim for breach of warranty, including all rights to claim for replacement/rectification and compensation for defects and losses suffered by reason of wrongful/inaccurate advice shall become time barred after the expiry of 12 calendar months from the date of delivery. The 12-month limitation period shall not be interrupted by reason of any rectification works. All newly delivered parts shall have a 12-month warranty. Notwithstanding the aforesaid, the rights to claim on these parts shall also become time barred upon the expiry of the limitation period agreed upon with the customer.

7.4 In the event of an established defect, the customer shall have the right to demand for rectification within a reasonable time, which shall be at least 14 days long. We shall retain full discretion to decide whether to rectify or replace the defective goods. In the event that our efforts for rectification fail, the customer shall be entitled to enforce its statutory rights. The customer shall however only be entitled to terminate an agreement on the basis of fundamental breach in the event that a defect affects at least 30% of the value of the delivered goods.

7.5 In the event of a defective part delivery, the replacement of a whole delivery or the remaining part deliveries cannot be claimed by the customer.

8. Liability:

8.1. In the event of any loss or damage caused by defective products, except for bodily injury or death, our liability shall be limited to the value of our product liability insurance up to 2.5 million Euros. The aforesaid shall not apply in the event of gross negligence or willful neglect.

8.2 In the event that it is necessary for us to recall defective products, our liability with regards to the costs arising from such recall shall be limited to the scope and value of our product recall insurance. The customer shall moreover only be entitled to claim reimbursement for such costs only when we are informed of all recall measures and are given reasonable time to work with the customer in the recall.

8.3 In the event of delay, we shall be liable to the customer in the value of 0.5% for each complete week of delay of the value of the delayed goods up to a maximum of 5% of the same. In addition, all claims with regards to compensation shall be limited to claims for compensation for additional costs, which can be proven/verified (covering purchase made on the basis of 3 comparable quotations). Claims on the basis of delay shall be limited to the delayed part of the delivery or service. The customer shall be obliged to make all claims for damages at the latest with the payment of the final payment, failing which all such claims shall be deemed to be waived.

8.4 In the event of the breach of obligations, which are not fundamental (the failure to deliver defect-free goods shall be deemed to be fundamental), we shall not be liable for any simple negligence other, except in the event of bodily injury or death.

8.5 Insofar as the applicable law, in particular case law demands for the compulsory recall of products, we shall be liable to the customer in the value and in the scope of our product recall insurance. The aforesaid shall only apply insofar as it can be proven that the recall was caused by a fault on our part. We shall furthermore only be obliged to compensate the customer in the event that we are duly informed of the recall, are given reasonable time to take our own measures of recall and have refused to take the same.

8.6 Insofar as the applicable law allows for a limitation of liability or an exclusion of liability in a wider scope as contained in this Clause 8, such limitation or exclusion shall be deemed to have been agreed upon.

9. Software:

We grant a license for our software only to the extent of using the same in direct connection with the use of our products. Any copying, decompiling, modification or translation as far as the publishing (in particular publishing at the internet) is not allowed. The granting of sublicenses is not permitted.

10. Prohibition against Reverse Engineering:

The customer is, regardless of any existing industrial property rights, prohibited from directly or indirectly exercising any reverse engineering on our products in any manner whatsoever. In the event of a breach of this prohibition, we shall be entitled to take all necessary steps to protect our rights and shall be entitled to exercise all our rights, including statutory rights. In addition to the aforesaid, we shall be entitled to impose a penalty amounting to 150% of the current list price of the relevant product on the customer.

11. Place of Performance, Jurisdiction:

The place of delivery shall be the factory/warehouse nominated by us for the performance of the agreement. The place for performance of payment obligations shall be Rinteln. The place of jurisdiction will be the court for the area of Rinteln or alternatively, if we so elect, the court in the domicile of the customer, shall have jurisdiction to hear all disputes arising from the terms contained herein.

12. Choice of Law:

These terms shall be governed by the laws of the Federal Republic of Germany, except with regards to the right of assessing the application and effectiveness of these terms, in particular, the terms relating to limitation of liability. The law of the domicile of the customer shall apply in this case. The United National Convention for the International Sale of Goods (CISG) shall apply.

13. Arbitration:

In the event of any dispute, which has a value exceeding 200,000 Euros, the dispute shall be finally resolved by means of arbitration, which shall be held in Hannover pursuant to the current ICC arbitration rules. The arbitration shall be held in the English language. There shall be three arbitrators.