

RKB Europe SA
General Condition of Contract
Edition November 2008

In this document RKB Europe SA is also referred to as "the Company".

1 Scope of Applicability

- 1.1 These General Terms and Conditions apply to all contracts of sale of any type of good and/or services, unless otherwise expressly agreed in writing with the Customer.
1.2 Any General Terms and Conditions of the Customer shall apply only if and to the extent to which the Company has expressly consented thereto in writing. An express rejection of the Customer's general conditions is not required.

2 Contract Formation

- 2.1 The Customer's order must be in writing and validly signed.
2.2 A Customer's order shall always be subject to the Company's written confirmation ("acceptance" or "confirmation of order") and the contract shall be deemed to have been concluded only upon such written confirmation ("acceptance" or "confirmation of order") by the Company.
2.3 A purchase shall also be considered concluded by delivering the ordered goods in case where no written confirmation ("acceptance" or "confirmation of order") was issued by the Company.
2.4 Any price list, illustration, catalogue, brochure, circular, advertisement, and other descriptive document constitute no offer, but only an approximate guide and shall be binding on the Company only upon written confirmation ("acceptance" or "confirmation of order") stating a limited acceptance period. Where no acceptance period is specified for the time-limited offer, a 30 days period, starting with the first notice (i.e. "information delivery"), will apply. Where the Company places a time-limited offer, the duly signed Customer's acceptance must reach the Company within the mentioned time-limit in order to be binding for the Company. Any time-limited offer for prompt delivery is subject to prior sales ("first come, first served").
2.5 Where special materials are ordered, the Company reserves the right to ship and charge 10% more or less than the quantity ordered. The Company shall call Customer attention on the difference between the quantity ordered and the quantity to be delivered by the Company, without any interference on contract formation between the parties and for the quantity unilaterally accepted by the Company. Unless otherwise agreed in writing the Company does not accept any restriction of its right to manufacture, sell or offer to any other Customers, goods which may be manufactured specially for a specific Customer or Customers or goods of like pattern.
2.6 The Company reserves right to cancel any uncompleted order, or to suspend delivery, should any of the Customer's commitments to the Company not be met.

3 Contract Amendments

- 3.1 No subsequent agreement, understanding alterations or amendments of a contract in any way altering these terms and conditions shall be binding upon the Company unless made in writing and validly signed by an authorized officer of all parties.

4 Price

- 4.1 For Customers with registered offices in the Swiss Confederation and Customers with registered offices outside the European Union, Company's prices include, except for Value Added Tax (VAT), such other taxes and duties payable in the Swiss Confederation. Duties payable outside the Swiss Confederation are for the Customer's account.
4.2 For Customers with registered offices within the European Union, Company's prices include, except for Value Added Tax (VAT), such other taxes and duties payable in the European Union area.
4.3 Prices include normal packing for both domestic and export markets. Unless otherwise expressly agreed upon in writing, the contract price does not include performances such as, however not limited to, installation, start up, training of Customer's operation and maintenance employees or engineers.
4.4 Shipping costs are for the buyer's account (see below: EXW clause 6.2).
4.5 The Company may make appropriate price increases after contract formation if raw material suppliers have raised their prices significantly between contract formation and delivery date.

5 Payment

- 5.1 Unless otherwise agreed, payment shall be net cash and made within 30 days from the date of shipment delivery. Any payments must be made in full without any deduction. Whatever the means of payment used, payment shall not be deemed to have been effected before the Company's account has been fully and irrevocably credited.
5.2 If the Customer fails to pay by the stipulated date, the Company shall be entitled to interest from the day on which payment was due. The rate of interest shall be 8% above the rate of the main refinancing facility on the European Central Bank in force on the due date of payment. After having notified the Customer in writing, the Company may also suspend its contract performance (i.e. future deliveries and/or warranties) until the Company's account has been fully and irrevocably credited.
5.3 If the Customer has not paid the amount due within three months the Company shall be entitled to terminate the contract by notice in writing to the Customer and to claim compensation for the loss it has incurred.
5.4 If, in the space of time in-between contract formation and product shipment, circumstances affecting the general credit of the customer arise, the company shall have the right to deliver only after receipt of full and unconditional payment.

6 Delivery

- 6.1 The INCOTERMS (see: www.incoterms.com) in their respectively valid version shall apply for interpreting standard trade terms.
6.2 Unless agreed upon differently in writing, deliveries
6.2.1 to Customers with registered offices within the territory of the Swiss Confederation or a non European Union country ("third country") will be made ex works (EXW) Balerna (Via Primo Agosto, CH-6828 Balerna - Switzerland)
6.2.2 to Customers with registered offices within the territory of the European Union will be made ex works (EXW) Milano (Via Ernesto Teodoro Moneta 41, I-20161 Milano - Italy)
6.3 Unless agreed upon differently in writing, "delivery period" is 10 months and shall run from the date of contract formation.
6.4 Unless otherwise expressly agreed upon in writing, delivery dates stated by the Company or delivery dates in the end of a "delivery period" are approximate and shall not be deemed "fixed" under article 102 para. 2 of the Swiss Code of Obligations. In case of non-delivery at delivery date (stated by the Company or in the end of a "delivery period"), the Customer must exhort the Company and set a reasonable time limit ("grace period") to the Company (article 107 para. 1 of the Swiss Code of Obligations).
6.5 Compensation for damages in accordance with article 97 para. 1 ("non-delivery") of the Swiss Code of Obligations, is excluded in case of slight negligence by the Company or its employees or any auxiliary person (article 100 para. 1 Swiss Code of Obligations). Analogically, compensation for damages in accordance with article 107 para. 2 ("late delivery") of the Swiss Code of Obligations, is also excluded in case of slight negligence by the Company or its employees or any auxiliary person.
6.6 The presumption of article 190 of the Swiss Code of Obligations shall not apply.
6.7 The Company shall have the right to part deliveries, unless the Customer suffers unreasonable or inequitable harm thereby.

7 Warranty

- 7.1 The Company warrants that at the time of delivery the goods sold hereunder shall be free from defects in material and workmanship. The Customer is obliged to promptly examine the goods upon delivery and shall notify in writing defects without undue delay to the Company. The notification must detail the goods and the defects. If the Customer fails to comply with these obligations, the goods shall be deemed to have been accepted as faultless. The Company reserves the right to reject all claims for shortage made without undue delay and in any event every claim reaching the Company later than fourteen days after shipment delivery.
7.2 The same waiver of redhibitory action (annulment) or impairment ("actio quanti minoris"), in accordance to art. 205 para. 1 of the Swiss Code of Obligations, shall apply post-delivery. During a period of 12 months after the goods have been put into operation, but not exceeding 18 months after the passing of risks under clause 6.2 (or differing agreement), the Company warrants that the goods shall be free from defects in material and workmanship. During this time period the Company shall, at its own choice, replace or repair goods or issue credit for goods becoming "objectionable". If the daily use of the goods exceeds that which is agreed, this period shall be reduced proportionately.
7.3 Notice of defects shall be given immediately and, under no circumstances, later than fourteen days after the expiry of the periods set forth under clause 7.3. If the Customer fails to notify the Company in writing of a defect within the time limits set forth, he loses his right to have the defect remedied. Where the defect is such that it may cause damage, the Customer shall immediately inform the Company. The Customer shall bear the risk of damage resulting from his failure so to notify.
7.4 Warranty applies, provided the allegedly "objectionable good" is returned for examination and our inspection demonstrates the good not to be free from defects in materials and workmanship (i.e. objectionable). Warranty doesn't apply if the Company's inspection demonstrates that the product was not properly mounted, lubricated or used. The allegedly "objectionable goods" may be returned at the expense of the Company only upon receipt by the Customer of definite shipping instructions from the Company.
7.5 If the Customer submits a warranty claim and no defect is found for which the Company is liable, the Company shall be entitled to compensation for the costs it has incurred as a result of the notice.
7.6 Once the Company, based on its examination, decides in favour of warranty according to clause 7 it shall repair the defect at its own cost and without undue delay or proceed to the shipment of a good free from defects in material and workmanship. If, within a reasonable time, the Company fails to fulfil its warranty obligations, the Customer may by written notice exhort the Company and set a time limit (grace period) for completion of the warranty. If, within such final time period, the Company fails to fulfil its obligations, the Customer may proceed with a replacement of the "objectionable good" by a third party. Reimbursement by the Company for reasonable costs incurred shall be in full settlement of the Company's liabilities for the said defect and shall in no event exceed the contractual value of the good subject to warranty.
7.7 In the event the Company determines that it is unable to remedy by repair or replacement of any "objectionable good", the Company's sole and exclusive remedy shall then be refund of the purchase price, or so much of the purchase price as has been paid by the Customer.
7.8 When a defect in a part of the delivered product has been remedied, the Company shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original product for a period of 12 months. For the remaining parts of the product the period set forth under clause 7.3 shall be extended only by a period equal to the period during which the product has been out of operation as a result of the defect.
7.9 The Customer shall at his own expense arrange for any dismantling and reassembly of equipment to the extent that this is necessary to remedy the defect. No dismantling or reassembly of the defective part is performed by the Company. The Company has fulfilled his obligations in respect of the defect when it delivers to the Customer a duly repaired or replaced part. Necessary transport of the product and/or parts thereof from the Company to the Customer in connection with the remedying of defects for which the Company is liable shall be at expense of the Company.
7.10 Defective parts which have been replaced shall be property of the Company.
7.11 Specific qualities of the goods or fitness for particular purposes shall be deemed to have been warranted only if expressly stated in writing.
7.12 In addition to what explicitly stated under clause 7.1-7.11, no warranty shall apply:
7.12.1 To defects arising out of material provided, or out of a design furnished, by the Customer;
7.12.2 To defects due to causes arising after the risk has passed under clause 6.2 (or differing agreement);
7.12.3 To defective parts delivered by third parties, however the Company shall be obliged to assign to the Customer its corresponding claims against third parties;
7.12.4 To faults or damage by abnormal use or arising in consequence of faulty maintenance, fault repair by the Customer, alterations carried out without the Company's written consent, negligence or improper handling or storage of the goods by the Customer or his agents;
7.12.5 To consequences for any inexpert alterations or repairs carried out by unauthorised persons;
7.12.6 For the sale of used goods;
7.12.7 To goods not in the plant of the original Customer;
7.12.8 If and as long as the Customer fails to comply with his obligations under the contract, unless his failure to comply is negligible or the Customer is legally entitled to refuse performance.
7.13 The remedies under clause 7 shall be Customer's exclusive remedies for breach of this warranty or other claims for defects in goods. The Company makes no warranties, either express or implied (including, without limitation, warranties of merchantability or fitness for a particular purpose), other than those above set forth. The full purpose of this exclusive remedy shall be to provide the Customer with repair and replacement of defective goods in the manner provided for. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as the Company is willing and able to repair and replace defective goods in the described manner.

- 8 Consequential damages and losses
- 8.1 Company's responsibility for any claims, damages, losses or liabilities arising out of or related to its performance of this contract or the goods covered hereunder, including but not limited to, any repair or replacement of goods under the warranty shall not exceed the sales price of the particular individual product which is the source of buyer's claim.
- 8.2 In no event shall the Company be liable for any special, indirect, consequential, or punitive damages of any character, including but not limited to, loss of use of productive facilities or equipment, loss of profits, loss of production, loss of use, loss of contracts or for any other consequential or indirect loss whatsoever, whether suffered by buyer or any third party, irrespective of whether such claims or actions for damages are based upon contract, warranty, negligence, strict liability or otherwise.
- 8.3 Article 1 of the Swiss Product Liability Law ("Legge federale sulla responsabilità per danno da prodotti" [LRDP]; "Produkt haftpflichtgesetz" [PrHG]), outlaws the exclusion of liability for damages to a person or damages resulting out of the private use or consumption of the good. Swiss Product Liability Law shall not apply to goods leaving the territory of the Swiss Confederation in case where a foreign "strict liability" ("responsabilità causale", "Kausalhaftung") of the same nature is less stringent.
- 9 "Force majeure"
- 9.1 Either party shall be entitled to suspend performance of his obligations to the extent that such performance is impeded or made unreasonably onerous by any of the following circumstances: industrial disputes and any other circumstance beyond the control of the parties such as fire, war, extensive military mobilization, insurrection, requisition, seizure, embargo, restrictions in the use of power and defects or delays in deliveries by sub-contractors caused by any such circumstances.
- 9.2 A circumstance referred to in this clause, whether occurring prior to, or after the formation of the contract, shall give a right to suspension or delivery extension only if its effect on the performance of the contract could not be foreseen at the time of the formation of the contract.
- 9.3 The party claiming to be affected by "force majeure" shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance.
- 9.4 If either party suffers unreasonable or inequitable harm by a delay due to "force majeure", the respective party shall have the right to rescind the contract after giving notice in writing.
- 10 Retention of Proprietary Rights
- 10.1 The goods delivered, including technical documents, shall remain property of the Company until the Company's claims against the Customer have been satisfied in full.
- 10.2 The Customer must notify the Company without delay of any attachment or other violation of the ownership of the Company by third parties.
- 10.3 If and to the extent the Company has claims against the Customer arising from transactions or dealings of any nature with the same Customer other than those referred to at the above clause 10.1, all goods supplied to the Customer shall remain property of the Company until all Company's claims against the Customer from all such transactions or dealings have been satisfied in full. If the value of the security provided exceeds the claims to be secured by more than twenty percentage points the Company shall be obliged to release the security of its choice at the Customer's request.
- 10.4 If the Customer fails to make any payment when due, he shall be obliged to return the goods that are subject to the Company's ownership rights after notice has been given by the Company, without affecting other rights. The Customer shall, in such event, be obliged to ship back these goods to the Company at his own risk and expense. The Customer shall be obligated to insure the goods delivered at his own expenses as long as they remain property of the Company.
- 10.5 If the goods with respect to which title has been retained become part of a new item by way of connection or is built-in and if such item is owned by the Customer, it is hereby agreed that the Customer transfers co-ownership to the new item to the Company and acts as bailee without compensation for such item. The Company's co-ownership share shall be determined by the relationship of the value of the goods with respect to which title was retained to the value of the new item. The Customer hereby assigns to the Company all claims against Company's Customers resulting from the sale of the goods with respect to which title was retained. If the goods with respect to which title was retained are sold together with other goods that are not owned by the Company, then the Customer assigns to the Company such part of the claim resulting from the sale that is equal to the invoiced amount for the goods with respect to which title was retained. If an item with respect to which title was retained is only partially owned by us and is sold, the part of the claim resulting from the sale that is assigned to the Company will be equal to the company's percentage of ownership in the goods with respect to which title was retained. The Company grants authority to the Customer to collect any claims resulting from the further sale of the retained goods. If requested, all Customer must deliver to the Company all information and documents required to enforce the Company's rights.
- 10.6 If the law of the country where the goods are situated after delivery does not permit to the Company to retain the property of the goods, the Company shall be entitled to rights as closely related to the Company's rights stated above, as the law permits. The Customer shall give to the Company every assistance in taking any measure required to protect Company's rights of property or such other rights as aforesaid.
- 10.7 The retention of title under clause 10.1-10.6 shall not affect the passing of risk under clause 6.2 (INCOTERMS).
- 11 Intellectual Property Rights
- 11.1 The Company shall not be liable if the manufacturing of the goods supplied is based on specifications or drawings provided by the Customer or if the application of the goods infringes third party rights.
- 11.2 The Customer agrees to indemnify and hold the Company harmless for any loss, cost, liability or expense resulting from infringement, or claimed infringement, of Intellectual Property Rights in connection with goods manufactured by the Company in accordance with Customer's specifications..
- 12 Regulation (EC) No. 1334/2000
- 12.1 Regulation (EC) No. 1334/2000 sets up a Community regime for the control of exports of dual-use items and technology. "Dual-use" items are goods, including software and technology, which can be used for both civil and military purposes.
- 12.2 According to the regulation CE 1334/2000, the Company declares that all the products it handles as per business scope are generic mechanical components and therefore intended for civil purposes only."
- 12.3 The Customer agrees to indemnify and hold the Company harmless for any loss, cost, liability or expense resulting from infringement, or claimed infringement, of Regulation (EC) No. 1334/2000.
- 13 Confidentiality
- 13.1 The Customer shall keep strictest secrecy about and may not disclose the contents of technical documents or any know-how to any third party. The Customer may not use such technical data or know-how for any purpose other than those envisaged by the contract.
- 13.2 This confidentiality obligation shall remain in force also after the expiration of the sale contract.
- 14 Severability
- 14.1 Even if an individual provision herein is or becomes invalid the remaining provisions of the contract or of the General Conditions shall remain valid. This also applies to issues the parties intended but failed to address.
- 15 Drawings and other documents
- 15.1 The Company reserves all property rights and copyrights for cost estimates, drawings and other documents provided to the Customer. Those documents may not be utilised for purposes other than those specified by the Company or otherwise disclosed to third parties.
- 16 Applicable Law and Jurisdiction
- 16.1 The validity, construction and interpretation of all documents relating to this sale, and the rights and duties of the parties thereto shall be governed by the laws of the Swiss Confederation, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG).
- 16.2 For all disputes arising out of or in connection with the contractual relationship between the Company and its contractual counterpart (the Customer), where the amount in controversy, excluding court fees and legal expenses, is below CHF 200'000.—, the competent jurisdiction shall be Lugano (Switzerland).
- 16.3 Where the amount in controversy, excluding court fees and legal expenses, is beyond CHF 200'000.—, all disputes arising out of or in connection with the contractual relationship between the Company and its contractual counterpart (the Customer), shall be finally settled in arbitration under the Rules of Arbitration of the International Chamber of Commerce (ICC), by three arbitrators appointed in accordance with the said Rules. The place of arbitration shall be Zurich (Switzerland). The language of the arbitration shall be English. Any Party shall have the right to have recourse to and shall be bound by the pre-arbitral referee procedure of the International Chamber of Commerce (ICC) in accordance with its Rules for a Pre-Arbitral Referee Procedure. Neither party shall be prevented from having recourse to a court of competent jurisdiction for the purpose of seeking urgent conservatory or interim measures, being specified that the arbitral tribunal shall also have the power to order such measures.
- 16.4 Any dispute arising out of or in connection with the interpretation of clause 16.2 and/or clause 16.3 shall be finally settled in arbitration under the Rules of Arbitration of the International Chamber of Commerce (ICC), by three arbitrators appointed in accordance with the said Rules. The place of arbitration shall be Zurich (Switzerland). The arbitral tribunal shall resolve about its competency, according to the amount in controversy. Specifics under clause 16.3 shall apply.

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