



## Rox - Klimatechnik GmbH

### TERMS AND CONDITIONS OF SALE AND DELIVERY

All present and future deliveries and services including proposals, consultations and other additional services are governed solely by the following conditions.

#### **1 Quotation**

- 1.1 Our quotations are subject to change.
- 1.2 Documents pertaining to the quotation, such as illustrations, drawings, samples and weight specifications are only intended as an approximate guide unless expressly stated as legally binding.

#### **2 Order confirmation**

- 2.1 Orders, transactions undertaken by phone or fax and oral agreements and supplementary agreements shall become legally binding for us only once we have confirmed them in writing.
- 2.2 The buyer's terms and conditions of purchase are hereby rejected. The buyer's terms and conditions of purchase shall not apply, even if we do not expressly reject them again after their receipt. These general terms and conditions of sale are deemed to be recognised by the buyer no later than with the acceptance of our deliveries.
- 2.3 Additional deliveries or additional services, including those caused by changes or circumstances that could not be taken into account when preparing the project due to lack of knowledge, shall be paid for at current prices.

#### **3 Price**

- 3.1 All prices are subject to change and reflect the current cost situation. Unless otherwise agreed in writing, prices are net ex works and do not include costs for packaging, loading, freight, customs duties, insurance, assembly or commissioning. Prices are subject to VAT.
- 3.2 We reserve the right to adjust prices should changes to costs occur prior to the date of delivery.

#### **4 Shipping and packaging, transfer of risk**

- 4.1 Unless otherwise agreed, we will arrange shipping, whereby the choice of route and method shall be ours. To the best of our ability and without liability we will select the most economical and quickest method of shipping.
- 4.2 The risk passes to the buyer once the goods have left our factory; this also applies where pre-paid deliveries have been agreed.
- 4.3 Part deliveries are permitted.
- 4.4 Unless otherwise agreed, packaging and loading are invoiced separately at cost. If closed crates are returned freight-free in a useable condition, half of the amount charged for packaging shall be credited to the buyer. There is no reimbursement for cardboard boxes or open crates.

#### **5 Terms of payment**

- 5.1 Unless otherwise agreed in writing, payment shall be made in cash, without deduction, namely:
  - 1/3 upon order confirmation,
  - 1/3 when the goods are ready for dispatch,
  - The remainder is payable within 3 weeks of delivery or notification that the goods are ready for dispatch.Payment must be made within the stated payment periods without making any deduction or setoffs.
- 5.2 We accept discountable and properly taxed bills of exchange as payment where this has been explicitly agreed. Credits in relation to bills of exchange and cheques shall be made subject to receipt less disbursements, the value date being the date when we have access to the equivalent funds.
- 5.3 If the payment term is exceeded interest and commission shall be calculated according to the respective bank rates for short-term credit, subject to a minimum interest rate of 5 % above the base rate pursuant to Diskontsatzüberleitungsgesetz (DÜG).
- 5.4 All our claims/receivables shall be due and payable immediately, regardless of the maturity date of any received and credited bills of exchange, if the terms of payment are not adhered to and if we become aware of circumstances which in our opinion are capable of impairing the buyer's creditworthiness. In such cases we are also entitled to effect outstanding deliveries only against advance payment, or to withdraw from the contract following the granting of a reasonable additional period of time and to claim damages on account of non-performance. We may further disallow the resale and processing of the delivered goods and request their return or the transfer of the direct ownership of the goods supplied at the buyer's expense and also revoke the authorisation to collect pursuant to point 6, paragraph 6.7. In the aforementioned cases the buyer gives advance consent to the removal of the delivered goods.
- 5.5 We are entitled to securities for our receivables of conventional kind and extent, also if they are conditional or temporary.
- 5.6 Should difficulties arise in transferring the amount payable to Germany, regardless of the reason, any disadvantages arising shall be borne by the buyer. The buyer bears the currency risk from the date of the contract for any sales effected in foreign currencies. If it is not possible to comply with the agreed method or channel of payment, the buyer is obliged to make the payment according to our wishes.

#### **6 Retention of title**

- 6.1 All delivered goods shall remain our property (goods on retention) until all receivables, particularly the respective balance accounts receivable, owed to us, regardless of the legal reason, are paid in full. This also applies if payments are made in settlement of specifically designated receivables.
- 6.2 For us as manufacturers, the working and processing of the goods on retention shall be effected within the meaning of Section 950 of the German Civil Code, without committing us. The processed goods apply as goods on retention within the meaning of paragraph 6.1. Where the goods on retention are processed, combined or mixed by the buyer with other products, we shall have a right to co-ownership of the newly created item in the same proportion as that of the invoice value of the goods on retention to the invoice value of the other goods used. Should our title lapse due to combination or mixing, the buyer shall already at this stage assign to us his share of the title to the new supplies or the item to the extent of the invoice value of the goods on retention and shall hold them for us free of charge. Our rights to co-ownership thus generated shall be considered as goods on retention within the meaning of paragraph 6.1.
- 6.3 The buyer may only sell the goods on retention in the ordinary course of business subject to his standard conditions so long as he is not in default, provided the receivables from the resale pass to us pursuant to paragraphs 6.4 to 6.6. He is not entitled to make any other dispositions with respect to the goods on retention.
- 6.4 The buyer's receivables from the resale of the goods on retention are hereby assigned to us. They serve as security to the same extent as the goods on retention.
- 6.5 If the goods on retention are sold by the buyer with other products not sold by us, the receivables from the resale shall be assigned to us only in the amount of the invoice value of the goods on retention actually sold. In the event of the sale of goods for which we hold a right of co-ownership pursuant to paragraph 6.2, the portion of the receivable corresponding to our co-ownership shall be assigned to us.
- 6.6 If the goods on retention are used by the buyer to carry out a contract for work or services, paragraphs 6.4 and 6.5 shall apply correspondingly to the receivables from this contract.
- 6.7 The buyer is entitled to collect receivables from sales pursuant to paragraphs 6.3 and 6.6 until this permission is revoked by us, which shall be admissible at any time. This right of revocation shall only be used in those cases listed in paragraph 5.4 [of these conditions]. The buyer is not entitled to assign receivables under any circumstances. The buyer is obliged at our request to inform his customer immediately of the assignment to us – insofar as we do not do so ourselves – and to provide us with the information and documentation required for collection.



- 6.8 If the value of the existing securities exceeds the secured receivables by a total of more than 10 %, we are, at the buyer's request, obliged to release security items of our choice. The buyer must inform us immediately of an attachment of a claim or other impairment by third parties.
- 6.9 If the retention of title or the assignment is not effective according to the law by which the goods are governed, a security corresponding to the retention of title or the assignment under this jurisdiction is deemed as agreed. If the cooperation of the buyer is required here, he must undertake all measures necessary to substantiate and maintain such rights.
- 7 Delivery periods, delivery dates**
- 7.1 Delivery periods and delivery dates are only approximate, and we will strive to meet these.
- 7.2 Delivery periods begin with the date of confirmation of our order, but not, however, before full clarification of all order details and procurement of all necessary local or foreign official certifications. Delivery periods and delivery dates relate to the time of the dispatch ex works. They are deemed to have been met when the ready-for-dispatch note has been issued, if the goods cannot be dispatched in time for reasons that are beyond our control.
- Delivery periods shall be extended - without prejudice to our rights resulting from the buyer's default – by the period by which the buyer is in default with his obligations arising from this or any other contracts. This applies accordingly to delivery dates.
- 7.3 Paragraph 7.2 above also applies in the event that delivery periods or delivery dates were expressly agreed as fixed.
- 7.4 If we are in default, the buyer may withdraw from the contract after the expiry of a reasonable period of grace, if the goods have not been declared as ready for dispatch (for delivery excluding installation) or not made available for acceptance (for delivery including installation) by the expiry of the prescribed period. If a contract penalty has been agreed, the buyer has no right of withdrawal for the period for which the contract penalty has been paid.
- 7.5 If the buyer insists on part deliveries, because a full delivery is not possible within the time limit due to suppliers' default, costs of subsequent dispatches of missing items/parts shall be borne by the buyer.
- 8 Force majeure and other hindrances**
- Incidents of force majeure shall entitle us to postpone delivery by the period of the obstruction and a reasonable restart period or to withdraw from the contract entirely or in part for that part of the contract which has still not been fulfilled. Strikes, lockouts and any other circumstances that materially aggravate our delivery or make it impossible shall be deemed equal to force majeure regardless of whether such circumstances occur with us or one of our suppliers. The buyer may demand notification as to whether we intend to withdraw from the contract or deliver within a reasonable period. The buyer is entitled to withdraw if we fail to issue a notification.
- 9 Complaints**
- The goods must be checked immediately upon delivery; complaints about visible defects must be made within 14 days of receipt of goods, otherwise they are deemed to have been approved.
- 10 Copyright, confidentiality**
- All drawings, images and technical comments relating to the objects supplied remain our property and shall be entrusted to the inquirer or customer on condition that they will only be for personal use and will be returned immediately if no orders are placed. As with our quotations, they may not be passed on or made available or communicated in any other way to any other third parties without our approval.
- 11 Place of performance, jurisdiction**
- 11.1 The place of performance for both contracting parties is the place of the supplying factory. The place of jurisdiction for both contracting parties is Betzdorf. We are also entitled to sue the buyer at their general place of jurisdiction. We may submit a complaint to the district court irrespective of the value of the object in dispute.
- 11.2 For all legal relations between us and the buyer the same law is applicable as to relations between domestic parties at our registered office, under exclusion of any foreign law.
- 12 Warranties**
- 12.1 We provide warranties for workmanship and performance of our products only to the extent that we repair all those parts free of charge or have the option to deliver replacement parts for those that fail or prove to be unsuitable within six months of transfer of risk demonstrably as a consequence of defects in materials, workmanship or design. Liability shall be limited to the value of the invoice amount applicable to the defective part, excluding costs of fitting, removal, and freight and travelling expenses. We shall provide warranties for those parts of the delivery not produced by us, such as drive motors, pumps, starters etc., only to the extent as have been granted by our suppliers. More far-reaching warranties (e.g. cancellation of the sale, reduction of purchase price or damages) are, as far as legally permissible, excluded.
- 12.2 In particular, claims for damages deriving from incorrect installation, negligent handling, usual wear and tear, corrosion or as a result of excessive load or stresses by chemical or electrical influences of which we were not informed in advance are excluded.
- 12.3 All warranties will be void if the terms of payment are not adhered to by the due date, unless compulsory legal provisions provide to the contrary.
- 13 Partial invalidity**
- If any one of these general terms and conditions of sale should be wholly or partially ineffective, the other provisions shall remain valid to their full extent.

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