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General Terms and Conditions of Sale (T&C)

The herein after set forth Terms and Conditions of Sale shall apply to all sales of goods and services to buyers domiciled outside the borders of the Kingdom of Spain with the exception of sales to the U.S.A., Canada and Mexico. For sales of goods and services to buyers domiciled within the borders of Canada, Mexico and the U.S.A., separate Terms and Conditions of Sale shall apply.

As used in these Terms and Conditions of Sale "seller", "we", "our" refers to ROVALMA, S.A., a Spanish limited liability company; "third parties" shall include every person, government, or other entity other than ROVALMA, S.A. and other than buyer. Terms such as "herein," "hereof," and the like shall refer to these General Terms and Conditions of Sale in their entirety.

A General Terms

I. Conclusion of Contract/ Acceptance/ Sole Terms

1. Our goods and services are provided exclusively on the basis of the following Terms and Conditions of Sale. Buyer's terms and conditions of purchase are hereby rejected. Buyer is hereby put on notice that no terms additional to or deviating from the herein set forth terms shall become part of the contract, unless and until letter acceptance of such additional or deviating terms, signed by an officer of Rovalma, S.A. has been issued to buyer. Buyer's placement of an order shall, without limitation and regardless of whether these Terms and Conditions of Sale operate as an acceptance of an order or as a counteroffer, constitute acceptance of the herein set forth Terms and Conditions of Sale.
2. Our offers are not binding.
3. Offers made by buyer are deemed to have been accepted by us (seller) only if we make an express declaration to that effect. Silence in response to such an offer does not constitute acceptance. The same also applies to commercial letters of confirmation sent in electronic form, unless the electronic form has been agreed as the mutual form of communications in the business relation and transmission is made to the address expressly defined for the acceptance of such declarations.
4. Our declarations concerning the conclusion, modification or termination of contracts must be made in writing; however, unless otherwise agreed with buyer, no qualified electronic signature is necessary.

II. Terms and Conditions of Payment

1. The prices shall be as quoted in our offer or confirmation of the purchase order. Any sales or similar taxes, governmental charges or surcharges now or hereafter imposed under any present or future law in connection with the sale and delivery of the Goods and Services purchased hereunder shall be payable by buyer, and if such taxes or fees are paid or are required to be paid by Rovalma, S.A., the amount thereof shall be added to and become part of the price payable by buyer, unless buyer provides Rovalma, S.A. with a valid tax exemption certificate. Additional costs that arise due to extraordinary manufacturing processes or services shall be added to and become part of the price payable by buyer.
2. Payment shall be due no later than stated in our offer, confirmation of purchase order or invoice and it shall be due in the herein stated currency.
3. If it has been agreed that buyer shall release the goods for shipment within a certain period of time after our notification of readiness for shipment (release order), we are entitled to invoice the goods from the date of readiness for shipment; in this event, the selling price is payable within 30 days after the date of invoice.

4. No discount will be allowed unless specifically set forth on the Offer, Acknowledgment of purchase order or Invoice and payment must be effected in a manner such that the payable amount is available to us on due date. Buyer is entitled to offset only against claims which are either undisputed or have become res judicata; buyer shall only be entitled to rights of retention insofar as they are based on one and the same contract.
5. In case of late payments, an interest at a rate of 8% p.a. above the prevailing base lending rate of the Banco de España shall accrue and be charged to buyer.
6. In case of a situation as under Clause 5 above, any other outstanding payments, credits or accounts receivable arising out of any other contract with buyer shall immediately become due and owing and the provisions as set forth in A II 5 to 10 as well as in A III shall immediately be applied to any such other outstanding payments, credits or accounts receivable.
7. If our claim for payment became a risk - irrespective of the maturity of bills of exchange accepted in lieu of payment - due to circumstances appearing subsequent to the conclusion of our contract, which may be held as a significant deterioration of buyer's economic situation we are entitled to demand and receive immediate payment.
8. In case of a situation as under Clause 7 as well as under Part A Section IV Clause 7 we are entitled to revoke buyer's authorisation to collect payments (Part A Section IV Clause 6) from his customers and we are furthermore entitled to demand and receive advance payments for outstanding supplies.
9. Buyer can avoid the consequences referred to under Clause 7 and Part A Section IV Clause 6 by furnishing collateral in the amount of our payment claim at risk. If, in the cases of Clause 7 of Part A Section II or Clause 7 Part A Section IV, buyer fails to make advance payment or furnish securities within a reasonable period of time, we are entitled to rescind the contract under the exclusion of all claims for compensation on the part of buyer.
10. Legal provisions on default in payment shall remain unaffected.
11. In the event of default in payment that is due to a recognisable deterioration in the financial position of buyer, we are also entitled to rescind the contract without previous notice. Buyer agrees that he shall not be entitled to receive any compensation, if we (seller) rescind the contract on above stated grounds.

III. Collaterals

We (seller) are entitled to demand and obtain collaterals which are customary in the business in nature and amount, even if our claims are conditional or limited in time.

IV. Reservation of title

1. All goods delivered shall remain our property (goods in which title is reserved) until all accounts receivable from buyer are settled. This shall also apply to future and conditional claims, e.g. from acceptor's bills of exchange. We (seller) are entitled to assign our receivables against buyer.
2. If the goods in which title is reserved are machined, processed, combined and mixed with other goods by buyer, we shall have joint title to the resulting merchandise, proportionally in the amount of the invoiced value of the goods in which title is reserved. If by such combining, mixing or processing our title ceased to exist, buyer shall hereby assign to us the proprietary or expectant rights to which buyer is entitled in the resulting merchandise, proportionally and in the amount of the invoiced value of the goods, inclusive of any eventual interests accrued for late payment. In such case buyer shall keep the resulting merchandise in custody for us free of costs. In proportion to our co-ownership rights the resulting merchandise shall be deemed to be goods in which title is reserved as defined under Clause 1.
3. Goods in which title is reserved may only be resold by buyer in the normal course of his business at normal terms and conditions and as long as he is not in default, always provided that he shall retain title on the products sold by him and the claims from the resale shall be assigned to us as set forth in Clauses 4 and 5 of this section IV, Part A. Buyer shall not be entitled to dispose in any other way of the goods in which title is reserved. Use of the goods in which title is reserved to perform contracts for works and materials or contracts for works and services shall also be deemed to constitute resale in the meaning of this Section IV, Part A.
4. All claims accruing to buyer from the resale of goods in which title is reserved by us (seller) are hereby assigned to us. They shall serve as collateral to the same extent as the goods in which title is reserved in the meaning of Clause 1.
5. If the goods in which title is reserved are resold by buyer together with other goods, the claim from the resale shall be assigned to us proportionally in the amount of the invoiced value of the goods in which title is reserved, inclusive of any eventual interests accrued for late payment. In the case of resale of goods in which we have co-ownership rights in accordance with Clause 2 we shall be assigned a part of the claim in the amount of our proportion of co-ownership.
6. Buyer is entitled to collect claims resulting from the resale of goods in which title is reserved unless we revoke this authorisation in the cases mentioned in Part A Section II. Clause 7 and Section IV. Clause 7. At our request and unless we do so ourselves, buyer shall notify his customers immediately of the assignment to us and furnish us with the information and records required to effect collection of payment. Buyer shall in no event be authorised to assign such claims; this applies also to all kinds of factoring transactions, which shall not be permitted - irrespective of the authorisation to collect payments.
7. In case of payment arrears, we are entitled to forbid the further processing of the goods supplied, to claim restitution of the goods and, at our discretion, if required to enter the premises of buyer and to remove the goods. Restitution of the goods shall not constitute rescission from the Contract.
8. In case buyer's property were seized or otherwise became subject to third party rights buyer shall inform us immediately.
9. If the value of collaterals from buyer that we dispose of exceeds the value of accounts receivable by more than 10% in total we shall be obliged, at buyer's request, to release collaterals in the appropriate value; in case we dispose of different kinds of collaterals we are free in the selection of which ones we shall release.

B. Execution of Delivery

I. Delivery terms/ delivery dates

1. Delivery periods shall start with the date of our purchase order confirmation, however, not before all details of the order shall be fully clarified; the same shall apply correspondingly with respect to delivery dates. All delivery periods and dates are conditional on current availability of materials and present production schedules.
2. If buyer is in delay with his contractual obligations – including cooperation obligations or ancillary duties – such as but not limited to opening of a letter of credit, furnishing required domestic or foreign certificates or effecting advance payments, we are entitled - irrespective of any additional statutory or contractual right which we dispose of due to buyer's default - to appropriately extend our delivery periods and dates in accordance with the requirements of our production processes.
3. The date of despatch ex works shall be decisive for determining our compliance with delivery periods or dates.
4. In cases of force majeure, the contractual obligations of both parties are suspended and the periods and dates for the fulfilment of contractual obligations are postponed accordingly. Circumstances of force majeure shall be but shall not be limited to: labour disputes in own manufacturing facilities or in those of subcontractors or suppliers, transport delays, machine failures, disasters, riots, shortages of labour, fuel, power, materials and supplies, subcontractor or supplier delay including but not limited to failure by subcontractor or supplier to make timely delivery, governmental actions as well as other circumstances which are reasonably unforeseeable or beyond our reasonable control. Both contractual parties are entitled to withdraw from the contract either immediately upon mutual agreement or at the earliest six weeks after receiving such notification. We (seller) shall not be liable for any damage, loss, fault, or expenses on the side of buyer arising out of delivery delays caused by or imposed by events of force majeure.
5. In the event of failure to comply with delivery periods, buyer is entitled to withdraw from the contract only after he has granted us (seller) a reasonable extension for delivery combined with the declaration that he will refuse acceptance after expiry of the extended delivery period. The right on buyer's side to claim performance shall expire when the extended delivery period has elapsed without that delivery shall have been effectuated. We (seller) shall use reasonable efforts to deliver within the time specified; however, we (seller) shall not be liable for any expense, loss or damage whatsoever suffered by buyer as a result of our failure to deliver by the specified date.
6. Buyer is entitled to withdraw from the contract in the event that we (seller) shall notify buyer in written and prior to the passing on of the risk of damage or loss that we (seller) shall be unable to fulfil our contractual obligations in whole. Beyond such situation, buyer is also entitled to withdraw from the contract if a part of our contract obligations turn out impossible to be fulfilled by us and if buyer has a legitimate reason to reject a partial fulfilment. If the latter is not the case buyer remains obliged to pay the contractual price corresponding to the partial delivery made. Impossibility in the meaning of this clause shall also include subjective impossibility. For the remainder, Part C shall remain applicable.

II. Dimensions/ Weight/ Quality Specifications

Deviations from contracted dimension, weight or quality specifications are permitted within the range allowed by DIN or customary business practice. Weight shall be established on our regularly calibrated weighing facilities and shall be decisive for invoicing. The reports concerning the regular calibration of our weighing facilities can be reviewed by interested clients at our domicile. If items are not weighed individually in the ordinary course of business, the total weight of the contracted items shall be used.

III. Shipment/ Risk of Loss

1. We shall appoint the forwarder or the freight carrier.
2. If, for a reason for which buyer is responsible, takeover or despatch of the goods were delayed, we (seller) shall be entitled, at our discretion and at buyer's risk and expense, to put the goods into storage and to take all further measures deemed suitable to preserve the goods. We shall also be entitled in such case to invoice the goods as delivered. The same applies, if goods notified ready for shipping are not called up in due course. The statutory regulations in respect of default in acceptance shall remain unaffected.
3. The Risk of Loss shall pass to buyer when the goods are handed over to the forwarder or carrier, latest, however, when leaving our plant or warehouse.
4. We (seller) shall not be responsible for insuring shipments unless specifically requested by buyer and any insurance so requested shall be at Buyer's sole expense.
5. In the case of loss or damage of goods while in possession of a forwarder or freight carrier, we (seller) will assist buyer in making claims against the carrier/ forwarder; however, buyer shall arrange and be responsible for the appropriate ascertainment or facts by the competent bodies according to applicable terms and within required time periods. Moreover, final settlement of the claim shall be buyer's sole responsibility.
6. In the event that, contrary to the normal case as set forth in Clause 1, it is agreed, that buyer has the contracted goods be picked up by a forwarder or freight carrier chosen and commissioned by himself (buyer), the risk of loss or damage is passed on when the goods are handed over to the forwarder or freight carrier at our manufacturing or warehouse facilities. In this case, we (seller) shall furthermore not be liable for deviations in dimensions and weight with respect to the contracted goods nor shall we be responsible for assisting buyer in making claims against the carrier/ forwarded in the case of loss or damage of goods while in possession of the forwarder/ carrier, after the takeover by the forwarder/ freight carrier has taken place.

IV. Claims based on Defects

1. The goods are in conformity with the contract if they do not or do not deviate significantly from the agreed specifications at the time of the passing-on of the risk; contract conformity and absence of defects concerning our goods are determined exclusively in accordance with the express agreements on quality and quantities of ordered goods. Liability for a specific use or purpose or specific suitability is assumed only to the extent to which this is expressly agreed in writing; otherwise **the risk of suitability / fitness for a specific purpose and use lies exclusively with the buyer**. We are not liable for any deterioration or loss or improper treatment of the goods after the risk has been passed on.

2. Contents of the agreed specifications and any expressly agreed purpose do not constitute a guarantee; the granting of a guarantee requires a specific written agreement to such purpose.
3. Buyer has to examine goods or services upon receipt without delay. Claims based on defects can only be taken into consideration if defects are reported without delay in writing, the latest 48 hours after receipt; latent defects must be reported without delay after their discovery, however no later than 6 months after receipt of such goods or services. After an agreed acceptance has taken place, any complaint about defects which should have been discovered in the course of the acceptance procedures is excluded.
4. In the event of complaints with regard to defects, buyer has to give us (seller) an opportunity to examine the goods alleged to be defective without delay; at our request, the goods alleged to be defective or a sample of the same must be made available to us at our expense. In the event that complaints are unjustified, we (seller) reserve the right to charge the freight and transshipment costs as well as the costs of examination to buyer.
5. In case of sales of downgraded goods, buyer shall have no warranty rights concerning such defects which were either indicated by us or customarily to be expected as a typical implication of a specific downgrading reason.
6. In the event that goods shall be found to be defective, we (seller) are entitled - at our (seller's) choice - to repair or replace such goods. We (seller) shall be furthermore entitled, at our option, to refund the purchase price of such goods, in the event that the cost of repair or replacement shall exceed the value of the agreed purchase price. If we fail to restore contract conformity within a reasonable period of time, buyer may notify us a reasonable deadline for compliance; if the deadline expires without compliance having been effected, the buyer may withdraw from the contract; no further claims shall be available - Part C remaining applicable.
7. In the event that there is a legal defect, we (seller) shall be entitled to restore contract conformity by eliminating the legal defect within two weeks upon buyer's receipt of goods. Furthermore Clause 6 sentence 3 of this Section shall apply.
8. The liability period for defective goods expires - except in the case of wilful act - one year after buyer's receipt of goods. Repair or replacement deliveries shall not cause recommencement of the liability period.
9. Buyer's rights of recourse against us (seller) are restricted to (I) provisions of applicable statutory law, (II) limited to the extent of the claims based on defects brought by third parties against buyer and (III) shall always be conditional on that buyer has complied with his obligation to notify us respective defects without delay and in accordance with the provisions of statutory law.
10. If goods, which are subject of complaint, are treated or further processed without seller's written agreement, any and all liability obligations shall expire.

C. General Liability Limitations

1. Unless otherwise set forth in these Terms and Conditions of Sale, we shall **only** be liable for damages due to the infringement of contractual or non-contractual obligations, including the phase of contract negotiations, in case of **wilful intent or gross negligence or in case of infringement of cardinal contractual obligations** on the part of our legal representatives or contractual agents. The claim to damages for infringement of cardinal contractual obligations shall be limited however to **the foreseeable, contract specific typical damage and shall not exceed the total net value of the contract. Seller and buyer hereby expressly agree that in no case will seller be liable for damage for delay, removal or installation costs, downtime, loss of business or profits, loss of production, or any similar or dissimilar consequential, incidental or indirect damages.**
2. ROVALMA, S.A. **explicitly excludes all liabilities for the results and quality of heat treatments performed by third companies or other entities.**
3. The above liability restrictions shall not apply in cases of harm to life, physical injury or harm to health.
4. Claims based on personal injury or damage to privately used goods under the Real Decreto Legislativo 1/2007 of 16.11.2007 (BOE número 287 de 30/11/2007) remain unaffected from the above set forth provisions.

D. Miscellaneous

I. Export Certificate(s)

If a buyer domiciled outside the Kingdom of Spain or an agent of such buyer collects goods and transports or despatches them abroad, buyer shall furnish any and all export certificates as required under Spanish tax law. In the event, that such certificates shall not be furnished, buyer shall be obliged to pay to us (seller) any and all applicable Spanish sales tax, export charges, fees or other levies, taxes, duties, governmental charges or surcharges now or hereafter imposed under any present or future law in connection with the sales and exports with respect to the purchased goods.

II. Applicable Law

These Terms and Conditions shall be construed in accordance with and governed by the law of the Kingdom of Spain. The parties specifically exclude the application of the United Nations Convention on Contract for the International Sale of Goods (CISG).

III. Place of Performance/ Place of Jurisdiction

Place of performance for our (seller's) delivery obligations shall be the location of the supplying plant or the warehouse from which we supply. The place of fulfilment for buyer's payment obligation as well as the place of jurisdiction for both parties shall be Barcelona, in the Kingdom of Spain. We (seller) are also entitled, at our option, to enter and take legal actions against buyer at buyer's general legal venue.

IV. Severability

Whenever possible, each portion or provision of these Terms and Conditions shall be interpreted in such manner as to be effective and valid under applicable Spanish law, but if any provision hereof shall be prohibited by or invalid or unenforceable under Spanish law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating or affecting the validity or enforceability of any other portion or provision of these Terms and Conditions.

V. Assignment

These Terms and Conditions shall be binding upon and shall inure to the benefit of the successors and assigns of seller and buyer provided, however, that buyer may not assign or transfer this contract, in whole or in part, except upon the prior written consent of seller.