



RCM washers europe GmbH

General Terms and Conditions of RCM washers europe GmbH

1. APPLICATION

1.1

Unless expressly agreed otherwise, these “General Terms and Conditions” apply to all contracts for the delivery of goods and associated services of RCM washers europe GmbH (Seller) when doing business with businessmen, legal entities or special estates under public law. It is hereby made expressly clear that deviating conditions, especially terms and conditions for purchase of the Buyer, are not applicable.

1.2

These terms and conditions will be part of any ongoing business relationships with other companies even if the Seller does not refer directly to these terms and conditions in each individual case and if the Buyer has not disputed the terms and conditions.

1.3

In cases of doubt, the interpretation of these commercial terms and conditions is based on the Incoterms as amended.

2. OFFERS AND CONCLUSION OF CONTRACT

2.1

Any offers listed in the catalogues or sales documents of the Seller as well as online – unless these are expressly indicated as binding – are non-binding, i.e. these are only to be understood as a request to make an offer.

2.2

Orders are considered accepted when they were either confirmed in writing or are executed immediately after they were received. In that case, the delivery note or the invoice for the goods will be the order confirmation.

2.3

Where employees of the Seller conclude verbal ancillary agreements or give guarantees that go beyond the written purchase contract, any such must always be confirmed by the Seller in writing. Verbal declarations of the Seller or authorised representatives of the Seller remain unaffected by the preceding regulation.

2.4

If, after conclusion of the contract, the Seller becomes aware of circumstances, especially any defaulting on payments for past deliveries, which, based on prudent commercial assessment, allow for the conclusion that the purchase price claims may be jeopardised as a result of insufficient funds of the Buyer, the Seller has the rights set out in section 321 *BGB* [German Civil Code]. In particular, the Seller is, at their choice, entitled to demand the Buyer to match payments with delivery or to provide adequate collaterals in an appropriate period of time; if the Buyer refuses such or after expiry of the said time limit, the Seller has the right to withdraw from the contract.

2.5

In the event of discontinuation of payments, insolvency, application for insolvency proceedings filed by the debtor, ordering of preliminary insolvency proceedings, opening of insolvency pro-

ceedings or the rejection of insolvency proceedings due to insufficient assets, the Seller has the right to cancel the contract.

2.6

Requests of the Buyer for a subsequent reduction or cancellation of a legally binding order can only be considered subject to separate agreement and – if the goods are not in-stock products – if the original supplier is willing to accept a return of the goods. In any case, the Seller has the right to deduct from any credited amount an appropriate percentage of the net value of any goods returned in due form with the Seller's permission as compensation for handling costs, checks, and re-packaging. Damaged goods will not be credited.

3. DATA PROTECTION

3.1

The Seller saves and utilises personal data (such as name, address, e-mail address, phone number) of the Buyer to fulfil the business agreement. The processing of such data is necessary in order to fulfil the contract. If these data are not provided, the contract cannot be fulfilled.

3.2

The data will be saved for the duration of the business relationship and for any period of time beyond that if statutory retention periods apply, for as long as legal claims arising from the business relationship can be asserted or whenever other justified reasons allow for saving the data for a longer period of time.

3.3

Legal provisions grant the Buyer the following legal remedies in connection with data processing: the right to accessing the data saved in regard to the Buyer, rectification, erasure or restriction of processing or the right to file an objection against processing, the right to data portability as well as the right to file a complaint with a supervisory authority. You can find additional information on data protection in the privacy policy on our website.

4. DELIVERY, TRANSFER OF RISK, DEFAULT, AND EXPORT REGULATIONS

4.1

Unless specified otherwise in the order confirmation, delivery "ex works" is agreed.

4.2

The risk is transferred to Buyer with delivery of the goods. In case of delivery or shipping by freight forwarder, the risk is transferred to the Buyer when the goods are handed over to the freight forwarder or carrier, but at the latest when the goods are leaving the premises of Seller; this also applies if the goods are shipped using vehicles of the Seller. This also applies if the delivery originates on third-party premises (so-called drop-shipping).

4.3

The transport of the goods will be insured by the Seller on the express request of the Buyer.

4.4

If dispatch is delayed on the request of or due to fault of the Buyer, the goods are stored at the risk and costs of the Buyer. In this case, the communication that the goods are ready for dispatch is equivalent to dispatch. The risk is transferred to the Buyer at the time the Buyer delayed acceptance or payment.

4.5

Partial deliveries of reasonable extent are permissible.

4.6

The delivery period is extended appropriately – also in case of default – in case of occurrence of force majeure events and in case of any unforeseen obstacles that become apparent after conclusion of the contract that the Seller is not responsible for (especially also interruptions to operations, industrial action, lockout, disruption to traffic infrastructure, cyber-attacks on the IT system), if and insofar such events have a demonstrable serious impact on the delivery of the sold item. This also applies if any such events occur at suppliers of the Seller and their suppliers. Start and end time of such obstacles are communicated by the Seller to the Buyer immediately. The Buyer may demand the Seller to state whether the Seller wishes to withdraw or deliver within a reasonable period. If the Seller does not make such declaration without delay, the Buyer may withdraw. In this event, any and all claims for damages are excluded. The above regulations apply mutatis mutandis to the Buyer if any such events occur for the Buyer.

4.7

In case of delay, the Seller is only liable for own fault and fault of their vicarious agents. The Seller is, however, obliged to assign to the Buyer any claims they may have towards their suppliers.

4.8

In case of a delayed delivery, the Buyer has to, on request of the Seller and within a reasonable period, declare whether the Buyer still insists on delivery or if the Buyer withdraws from the contract and/or demands payment of damage compensation instead of the service as a result of the delay.

4.9

Exporting certain goods may result in approvals being required, based on the type, use or final destination of these goods. In case of exports, the Buyer will be informed of the pertinent national and international export regulations, such as export control regulations of the European Union.

5. PRICE AND PAYMENT

5.1

The prices are given excluding VAT.

5.2

Unless agreed otherwise, the purchase price is payable immediately and without deductions upon receipt of the goods and invoice.

5.3

The Seller will only accept bills of exchange eligible for discounts as payments after a corresponding agreement was reached. Crediting for bills of exchange and cheques is always subject to receipt and minus the expenses associated with cashing with the value date being the day on which the counter value is available to the Seller.

5.4

Delay of payment is subject to legal regulations. In particular, the Seller has the right to demand interest of 9 percentage points above the base rate and a flat-rate of EUR 40 for compensation claims in case of default. Any discounts that may have been agreed are not applied as long as the Buyer delays payment of previous deliveries.

5.5

The Seller may also accelerate any and all claims, irrespective of term of any received and cashed bills of exchange, if the Buyer fails to comply with payment conditions and if circumstances become known that allow the conclusion that the claims of the Seller are jeopardised by insufficient liquidity of the Buyer. In the latter case, the Seller has the right to make any further deliveries dependent on matching payment with delivery or the provision of appropriate securities.

5.6

In case of delay of payment on the part of the Buyer, the Seller may revoke the direct debit authorisation (clause 8.6) and may demand the Buyer to match payment with delivery for all pending deliveries. The Buyer may, however, prevent this legal consequence by providing securities with a value equal to that of the outstanding payments.

5.7

A refusal to pay or withholding of payments is not permitted if the Buyer was aware, at the time the contract was concluded, of the defect or other reason for complaints on which non-payment is based. This also applies if the Buyer failed to realise the defect as a result of gross negligence, unless the Seller concealed the defect or any other reason for complaint with fraudulent intent or if the Seller gave a guarantee for the characteristics of the goods. In addition to the above, only amounts appropriate to the defect or other complaints may be withheld.

5.8

The Buyer may only offset claims against the Seller's claims to the extent to which their counter-claims are undisputed or were determined with legally binding effect, insofar as they are based on the same contract concluded with the Seller and/or if they would entitle the Buyer to refuse performance pursuant to section 320 BGB.

6. RETENTION OF TITLE

6.1

The Seller retains ownership of the goods until the entire purchase price was paid. In regard to goods that the Buyer obtains from the Seller as part of an ongoing business relationship, the Seller retains title to the goods until the Buyer has settled all claims against the Seller under that business relationship, including any future claims and any claims resulting from simultaneous or later contracts (balance reservation). This also applies if individual or all claims of the Seller are included in one current invoice and if the balance was calculated and accepted. The balance reservation does not, however, apply to advance payments or cash transactions subject to concurrent performance. If the payment of the Buyer results in any liability of the Seller in connection with bills of exchange, the retention of title will not expire before the bill of exchange is redeemed by the Buyer as the payer. In case of delay of payment on the part of the Buyer, the Seller is entitled to collect the goods after having issued a warning and the Buyer is obliged to return the goods.

6.2

If the goods that are subject to retention of title are processed into a new, moveable item by the Buyer, such processing takes place on behalf of the Seller without the Seller incurring any obligation in this regard; the new item will become the property of the Seller. In case of processing together with goods not belonging to the Seller, the Seller acquires joint ownership in proportion of the value of the goods that are subject to retention of title to the value of the other goods at the time of processing and in proportion to the processing value. If the goods that are subject to retention of title are combined, mixed or merged with goods not belonging to the Seller pursuant to sections 947, 948 BGB, the Seller becomes a co-owner in accordance with legal provisions. If the Buyer acquires sole ownership as a result of combination, mixing and merging, the Buyer already assigns co-ownership rights for the other goods to the Seller at the time of combination, mixing and merging. In this cases, the Buyer has to store the items that are owned or co-owned by the Seller, which are also goods subject to retention of title in accordance with the previous regulations, free of charge.

6.3

If the goods that are subject to retention of title are sold, either by themselves or together with goods not belonging to the Seller, the Buyer already now, i.e. at the time the contract is concluded, assigns any claims arising from such resale to an amount equal to the value of the goods that are subject to retention of title, including any and all ancillary rights and with priority over all others; the Seller accepts the assignment. The value of the goods that are subject to retention of title

is the invoice amount of the Seller, which is, however, disregarded if opposed by third-party rights. If the sold goods that are subject to retention of title are co-owned by the Seller, the assignment of claims covers that amount corresponding to the co-ownership share of the Seller.

6.4

The Buyer may only resell, use or install the goods that are subject to retention of title as part of ordinary business operations and only under the proviso that the claims in terms of section 6.3 are actually assigned to the Seller. The Buyer is not, however, entitled to make any other dispositions regarding the goods that are subject to retention of title, especially not to pledge or assign these goods as security. An assignment by way of real factoring is only permissible if the Buyer communicates the fact, the factoring bank, and the accounts the Buyer keeps with that bank to the Seller and if the factoring proceeds are higher than the value of the secured claim of the Seller. The claim of the Seller becomes payable immediately after the factoring proceeds are credited.

6.5

The Seller authorises the Buyer, subject to the proviso of revocation, to collect the claims as assigned pursuant to sections 6.3 and 6.4 from their customers. The Seller will only collect such claims themselves if the Buyer fails to comply with their payment obligations, also those towards third parties, or if compliance with these seems in jeopardy. On request of the Seller, the Buyer has to disclose the debtors of the assigned claims and has to report assignment thereof; the Seller has the right to also communicate such assignment to the debtors on own initiative.

6.6

The Buyer notifies the Seller immediately of any compulsory enforcement measures third parties take against the goods that are subject to retention of title or the assigned claims, including a submission of the documents necessary to file objections.

6.7

If and when the Buyer ceases to make payments and/or applications for insolvency proceedings into the assets of the Buyer are filed, the right to resell, utilise or install the goods that are subject to retention to title or the right to collect the assigned claims expire; likewise, such authorisation to collect claims also expires in case of complaints associated with cheques or bills of exchange. Any inalienable rights of the insolvency administrator remain unaffected.

6.8

If and insofar as the realised value of the securities of the Seller exceeds the claims that are secured by more than 10%, the Seller agrees to release a corresponding part of the collaterals on request of the Buyer. The Seller may choose which securities they release.

6.9

If and insofar as the value of the goods that are subject to retention of title is an issue, this amount is equal to the gross invoice amount of the Seller for these goods.

7. REPORTING DEFECTS, WARRANTY AND LIABILITY

The Seller will only be liable for material defects in terms of section 434 BGB as follows:

7.1

The Buyer has to inspect the received goods for damage and quality immediately and has to report any obvious defect to the Seller in writing without undue delay. If defects are not detected until a later point, the Buyer has to report these to the Seller in writing without undue delay after discovery. If the Buyer fails to report the defect in time, the goods shall be considered accepted. In this case, any and all rights of the Buyer stemming from defects cease to be valid. In case of mutual commercial transactions between businessmen, section 377 *HGB* [German Commercial Code] remains unaffected.

7.2

If installation of the goods or affixing of the goods to something is intended, the Buyer has to check suitability of the essential characteristics of the goods for installation, affixing, and subsequent use as intended already upon receipt of the goods and has to report any damage to the Seller in writing without undue delay, provided that an inspection of such characteristics is feasible at such time, depending on the type and form of the goods. If the Buyer fails to report a defect in accordance with the first sentence even though an inspection would have been feasible or if the Buyer fails to report defects in time, the goods shall be deemed accepted. In such case, the Buyer is not entitled to any rights associated with defects. In case of mutual commercial transactions between businessmen, section 377 HGB remains unaffected.

7.3

If the Buyer, should the goods be installed or affixed, fails to check suitability of the essential external and internal characteristics of the goods for such purpose and subsequent use as intended already upon receipt of the goods to the extent possible by exercising reasonable diligence prior to installation or affixing the goods, the Buyer is guilty of gross negligence in terms of sections 439 clause 3, 442 clause 1 second sentence BGB. In this case, the Buyer shall only be entitled to defect-related rights if the defect in question was concealed with fraudulent intent by the Seller or if the Seller has given a guarantee for the characteristics of the goods.

7.4

If the Buyer does detect defective goods, the Buyer is obliged to return the defective goods or samples thereof to the Seller for tests and to allow for a testing of the goods within an appropriate period of time. If such permission is not granted, warranty rights shall be forfeit. Until completion of the inspection by the Seller, the Buyer must not make any dispositions regarding the defective goods, i.e. these may not be shared, resold or processed.

7.5

In case of justified complaints, the Seller has the right, under consideration of the type of defect and the justified interests of the Buyer, to decide on the form of subsequent performance (replacement delivery, reworking). If the subsequent performance is unsuccessful or if no such takes place despite appropriate grace periods having been set by the Buyer, the Buyer – irrespective of any claims for damage compensation pursuant to section 8 of these terms and conditions – has, at their choice, the right to demand reduction or, in case of not only minor defects, to withdraw from the contract.

7.6

If the Buyer has installed defective goods in or affixed them to other items as per their intended use by the time risk is transferred, the Buyer may only demand compensation for the removal of the defective goods and installation or affixing defect-free goods (“removal and installation costs”) from the Seller pursuant to section 439 clause 3 BGB in accordance with the provisions set out in sections 7.7 and 7.8.

7.7

Only those removal and installation costs are considered necessary pursuant to section 439 clause 3 BGB that are: related to the installation or affixing of identical products, which were incurred at market prices, and which the Buyer proves to the Seller by way of submission of suitable proof, at least in written form. The Buyer is not entitled to any advance payments for removal and installation costs. Neither does the Buyer have a right to unilaterally offset any claims for compensation for removal and installation costs against any purchase price claims or other payment claims of the Seller without the Seller’s permission. Section 5.8, however, shall remain unaffected. Any claims of the Buyer exceeding the usual removal and installation costs, especially any costs caused by consequences of the defect such as loss of profit, including calculated profit margins, costs of business interruptions or additional costs incurred when procuring replacements, are not removal or installation costs and therefore cannot be reimbursed as part of subsequent performance in terms of section 439 clause 3 BGB.

7.8

If the costs of subsequent performance, including any expenses claimed by the Buyer in terms of section 439 clause 3 BGB are disproportionate – especially in comparison to the purchase price of defect-free goods and under consideration of the importance of the lack of conformity with the contract – the Seller has the right to refuse subsequent performance and reimbursement of such expenses.

7.9

Claims of the Buyer for expenses associated with subsequent performance, especially transport costs, road costs, labour costs, and material costs, are excluded to the extent to which these increase as a result of the goods having been subsequently transported to a location other than the premises of the Buyer or other than agreed in the contract, unless such transport is part of the intended use of the goods.

7.10

In case of unjustified complaints about defects, the Buyer has to reimburse the Seller for the resulting costs if the Buyer knew or failed through negligence to discover that there is no defect but that the cause for the issue the Buyer raised in their complaint originated in their own sphere of influence.

7.11

Claims for material defects become time-barred after 12 months after delivery. This time limit does not apply insofar as the BGB, pursuant to section 438 clause 1 no. 2 (buildings and items used for building), section 438 clause 3 (fraudulent concealment), section 445(b) clause 1 (right of recourse) - if the end customer is a consumer, and section 634(a) clause 1 no. 2 (construction defects), specifies longer periods.

7.12

Rights to recourse pursuant to sections 445(a), 478 BGB only apply insofar as the Buyer is justifiably held liable and only to the extent permitted law, but not to any arrangements made to accommodate the parties which the Buyer has agreed on with the Seller. Additionally, the party entitled to recourse must have complied with its own obligations, especially the obligations associated with reporting defects.

7.13

The Seller's liability for compensation or reimbursement of expenses in case of material defects is governed by section 8 (General Limitation of Liability).

8. GENERAL LIMITATION OF LIABILITY

8.1

The Seller is liable in accordance with legal provisions insofar as the Buyer asserts claims for damages based on intent or gross negligence, including intent and gross negligence of its representatives or vicarious agents. Furthermore, the Seller is liable in accordance with legal provisions for culpable violations of contractual duties. Major contractual duties in this sense are any such that are necessary for fulfilment of the contract in due form and compliance with which the contractual partner can usually rely on. Insofar as the Seller is not accused of intent or gross negligence, liability for compensation of damages is limited to the foreseeable, typical damage for this type of contract. This does not include any changes to burden of proof at the disadvantage of the Buyer. The liability for culpable injury to life, limb or health shall remain unaffected.

8.2

Any claims for damages beyond the above are not permitted, irrespective of legal grounds. This also applies insofar as the Buyer demands reimbursement of futile expenses rather than damage compensation instead of performance.

8.3

The liability for gross culpability and damage claims resulting from injury to life, limb or health becomes time-barred in accordance with statutory regulations.

8.4

In addition to the above, the statute of limitations set out for claims for defects in section 7.11 applies.

9. PLACE OF PERFORMANCE, PLACE OF JURISDICTION, AND APPLICABLE LAW

9.1

The place of performance for deliveries and payments under contracts subject to these terms and conditions is the place of business of the Seller.

9.2

The place of jurisdiction for any and all disputes between the parties arising from or in connection with contracts subject to these terms and conditions (including action brought in regard to cheques and bills of exchange) is, if the Buyer is a businessman, legal entity or special estate under public law, the registered place of business of Seller. The Seller, however, has the right to bring action against the Buyer before any other court.

9.3

The relationship between the parties to the contract is exclusively governed by the law of the Federal Republic of Germany, under exclusion of the CISG provisions.