

General conditions of supply for Food Machines

I Scope of Supply Conditions

1. The present General Conditions of Supply for Food Machines apply to all supplies of Rheon Automatic Machinery GmbH and her affiliated companies exclusively.
2. Opposing or deviating conditions of the customer will not become part of the contract. This shall apply even without an expressive objection or in case orders are accepted without reservation.

II Quotation and scope of delivery

1. All information given in estimates, as to dimensions, weights, outputs etc., as also leaflets, drawings and illustrations accompanying quotations, are not binding unless specifically described as guaranteed. Foundation drawings prepared by us are binding only as regards dimensions. We accept no responsibility for the structural correctness or stability of such foundations.
2. The customer is responsible for the correctness and timely provision of the information he has to provide, with particular reference to drawings.
3. Until we have confirmed the order in writing, our offers and quotations are not binding. Orders, ancillary agreements and amendments are invalid without our written confirmation. The extent of what is included in the delivery is governed by our written confirmation.

III Prices

1. Unless specially agreed, prices are ex works and exclusive of packing, transport, insurance and erection. In the event of production costs fluctuating – and in particular the cost of manufacturing and auxiliary material, wages, salaries, freights etc. – after our estimate or our confirmation of order has been issued and up to the time of delivery, we shall be entitled to modify the price quoted or agreed accordingly, and more than once if need be. Price increases of this kind shall not entitle the customer to withdraw from the contract. Amounts paid on account shall not be excepted from such price adjustment.
2. Packing – where required – will be charged at cost and shall not be returnable. Any packing sent on loan shall be returned to us at once, carriage paid.

IV Terms of payment

1. Unless otherwise agreed, payment shall be made, without any deductions, free Düsseldorf, namely one-third on receipt of confirmation of order and one-third as soon as the customer is informed that the principal parts are ready for consignment. Balance within one month thereafter. Bankers' orders, cheques, discountable bills etc. shall be deemed to constitute payment only when credited. The date of receipt of payment shall be deemed to be, whatever the mode of remittance, the date on which we have the amount at our disposal after crediting. Payments in advance or on account shall not bear interest.
2. In the event of failure to pay on a due date, we shall be entitled to charge interest at 8% above the basic interest rate. Should a customer be more than 4 weeks behind hand with an instalment, the entire balance shall become payable forthwith.

3. The customer shall not be entitled to withhold payments or offset them against any counterclaims unless the counterclaim is undisputed or recognised by declaratory judgment.

V Delivery and time

1. In the absence of express confirmation, the time of delivery quoted shall not be binding.
2. The time of delivery shall run from the despatch of the confirmation of order, but not until the customer has sent whatever information he has to supply, or before approvals or releases or the receipt of an agreed payment on account.
3. The delivery time shall be deemed to have been adhered to if, by the time it expires, the item on order has left our works or advice has been given that it is ready for despatch.
4. The time of delivery shall be appropriately extended in the event of action arising out of labour disputes – strikes and lockouts in particular – or of there being unforeseen hindrances beyond our control, irrespective of whether these arise at our own works or those of our sub-contractors, e.g. production breakdowns, rejection of work or delay in the supply of essential raw materials or parts, provided it can be shown that such hindrances have substantially affected the production or delivery of the item order. The circumstances referred to above shall not be answered for by us if they arise during an already existing delay. In case of any consequence, we will inform customers of the commencement and end of such hindrances.
5. Should a customer sustain loss through delay for which we are at fault, he shall be entitled, to the exclusion of further claims, to demand compensation for the delay. For each complete week of delay, this shall be equal to one-half per cent., subject however, to a maximum of 5 per cent., of the value of that part of the total delivery which, owing to the delay, cannot be used in good time or for the proper purpose.
6. Should despatch be delayed at the wish of the customer, he shall be charged storage costs, commencing one month after advice of readiness for despatch, but, if stored at our works, at least one-half per cent of the invoice amount for each half month. We shall be entitled, however, if, after an appropriate time limit has been set, this has been allowed to expire to no purpose to dispose of the item on order elsewhere and to effect delivery to the customer after an appropriately extended time.
7. Adherence to the delivery date presupposes compliance by the customer with his contractual obligations.
8. Where a customer has stipulated that the goods be held on call, he shall be bound to take delivery by at latest one year after the signing of the contract, unless some other time limit shall have been agreed upon.

VI Transference of risk; Taking of delivery

1. Even in the case of expressly freight-free consignments, the risk shall be transferred to the customer at latest when the part deliveries are handed over to the forwarding agent, carrier or other person or undertaking specified for the

hand-over. Only at the request and for account of the customer will we insure consignments against breakage, conveyance and fire risks.

2. Should despatch be delayed by circumstances for which we cannot be held responsible, the risk shall be transferred to the customer from the date on which the goods are ready for despatch; we shall be under the obligation, however, of taking out such insurances as the customer may require at this request and for his account. In such cases, we shall be entitled to take the item on order into store or to arrange for its storage. The customer shall bear the storage risk and cost. At the expiration of one month from the date of the advice of readiness for despatch, at least one-quarter per cent of the invoice amount shall be charged for each month or part thereof, as storage charge. After a reasonable time, we shall be entitled to dispose elsewhere of the item on order.
3. Even if slightly defective, goods offered for delivery shall be taken delivery of by the customer, without prejudice to the rights arising under a section VIII – Guarantee.
4. Delivery in instalments shall be permitted.

VII Ownership condition

1. All goods supplied by us shall remain our property until all claims (main and subsidiary) in respect of this or other deliveries have been met. If the value of the goods under retention of title succeed the value of our open credits for more than 110 %, we are obliged to release the exceeding security.
2. Customers shall neither dispose of the goods nor assign for save keeping, nor pledge or otherwise encumber them.
3. Until paid for in full, customers shall insure the goods delivered against loss or damage of any kind, for an appropriate sum.
4. In the event of delay in payment, we shall be entitled to rescind the contract after expiration of deadline fixed for the payment, hence to take the goods delivered back and to claim for damage. In the case of rescinding the contract the customer shall make good to us not only the loss of profit, the cost incurred and the use made of the goods supplied, but also any reduction in value for which we are not responsible and other damages we are suffering from the customer's failure to perform. The customer has no right of lien or retention of our property.

VIII Guarantee

For faults in the goods supplied, including the absence of any qualities concerning which an express assurance has been given, we will accept liability, to the exclusion of any further claims, as follows:

1. We shall either repair or replace free of charge any parts that at single-shift operation within a period of 12 months (at multi-shift operation within a period of 6 months) are subject to faults, especially fault design, unsatisfactory materials or bad workmanship. Immediate written advice shall be sent to us upon such defects either obvious and detectable on delivery or coming to light later, or the goods are treated as

approved by the customer. Parts replaced shall become our property.

2. In any case the customer's warranty claims are subject to a limitation period of 1 year after delivery to the customer.
3. No liability will be accepted for loss sustained on the following grounds: improper or inexpert use, faulty installation or starting by customers or third parties, normal wear, faulty or careless treatment – and particularly overloading – unsuitable working materials, substitute materials, faulty construction work, unsuitability of site, or chemical, electrical or electro-chemical action, where not attributable to a fault on our part.
4. Customers, after agreement with us, shall allow the requisite time and opportunity for carrying out whatever repairs or replacements appear to us to be reasonably necessary, failing which we shall be released from liability under the guarantee. Only in urgent cases, in which the safety of working is threatened – whereof immediate advice must be given to us – or in the event of our being behindhand with the remedying of a defect, shall the customer be entitled to put it right himself or cause it to be put right by third parties and call upon us to make a reasonable refund of the cost thereof.
5. Of the direct cost arising out of repairs or replacements, we will bear – provided the complaint proves to have been justified – the cost of any replacement parts, including carriage, as well as the reasonable cost of taking down and re-fitting, and furthermore, where such can reasonably be expected according to the circumstances in particular instances, the cost of any fitters and other labour supplied by us. Any other cost shall be borne by the customer.
6. The same guarantee shall apply to replacements and repairs as to the goods themselves. The time limit for the guarantee in respect of defects in the goods themselves shall be extended by the period for which work is interrupted by the work of repair or replacement.
7. We may refuse to make defects good if the customer fails to comply with the obligations laid upon him.
8. Alteration or repair work carried out by customers or third parties inexpertly or without our prior consent shall relieve us of liability for the consequences thereof.
9. Customers shall have no further claims and in particular shall not be entitled to compensation for loss or damage other than the loss or damage of the goods supplied.
10. We do not guarantee nor warrant that the customer can produce his intended products by our machines and their attachment equipments flawlessly or in quantities planned by the customer.

IX Withdrawal from contract

1. Should it be impossible for us to complete delivery before the transference of risk, the customer may withdraw from the contract. He may withdraw likewise if, an order having been placed for a number of similar items, the execution of part of the order is impossible as to quantity and he can show that he has an interest in refusing partial delivery; if that is not the case, he may reduce payment to correspond.

2. Where delay in delivery occurs within the meaning of section V of these Conditions, if the customers should allow to us, an appropriate extension of time, expressly stating that he will refuse to take delivery when this has expired, then, in the event of our being to blame for failure to comply with this extension of time, the customer may withdraw from the contract.
3. Should the impossibility arise (see Para I) during delay in acceptance or should it be the fault of the customer, he shall still be liable to carry out his part of the contract.
4. The customer may also withdraw from the contract in the event of our wrongfully allowing to elapse, without compliance, any reasonable extension of time allowed to us for repairing or making good a defect for which we are liable under these Conditions of Supply. The said reasonable extension of time shall not commence until the defect and our liability therefore have been acknowledged or proven.
5. Any other claims by the customer, beyond the foregoing, shall be excluded, particularly as regards alteration, cancellation or abatement, as well as the making good of losses of any kind, including such as are sustained otherwise than to the goods themselves.

X Our right of cancellation

In the event of unforeseen circumstances such as those mentioned in section V, para.4, where these substantially alter the financial or content of the contract or have a considerable effect on our work, if it should subsequently prove impossible to carry out the contract, we shall be entitled to withdraw partially or entirely therefrom. The customer shall not be entitled to compensation for such withdrawal. Should we propose to avail ourselves of the right of withdrawal, we shall be under the obligation of informing the customer accordingly, directly upon becoming aware of the full effect of the said circumstances, even where an extension of time for delivery has already been agreed upon with the customer.

XI Installation and starting

We recommend that customers entrust to us the installation of food processing machines, large fully automatic plants and special machines. Should such installation work be undertaken by us under our separate Conditions of installation, the necessary foundation, masonry and carpentry work and the supply of the requisite labour, lifting tackle and lubricating and cleaning materials shall all be borne by the customer. We will hold ourselves liable for our fitting staff in accordance with our guarantee and shall charge the rates customary in special engineering work for their services. The customer will be expected to pay for the outward and return conveyance of the kind of tools provided by us on loan.

XII Used goods

If, in special cases, we should offer and sell used machines of our own or other make, we will endeavour to deliver these in the best possible condition. In no case, unless otherwise expressly agreed, can we guarantee or accept liability for used machines.

XIII Competent court, place of fulfilment, applicable law

The place of fulfilment for deliveries and payments shall be Düsseldorf, the Court of Düsseldorf being the competent court. All disputes shall be settled in accordance with the laws of the Federal Republic of Germany excluding the rules of conflict of laws. The application of the United Nation Convention on contracts for international sale of goods of April 11, 1980, shall be excluded.

XIV Binding nature of contract

Even if particular points in the terms of the contract should have no effect in law, the contract shall nevertheless be binding. Where a separate delivery contract is made, all such points in the foregoing Conditions as are not expressly set aside by special written agreement shall remain valid.