

# WASHTEC CLEANING TECHNOLOGY GMBH

## GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

2015

### 1. Scope

Sales and deliveries of WashTec Cleaning Technology GmbH ("WashTec") shall be made exclusively in accordance with the following General Terms and Conditions of Sale and Delivery ("Terms of Delivery"), which shall be accepted by the customer by the placing of an order or the receipt of delivery. They shall also apply to all future transactions of WashTec with the customer. The application of the customer's conflicting or supplementary terms and conditions shall be excluded, even if such terms and conditions are not expressly objected to by WashTec.

### 2. Conclusion of Contract

2.1 Offers of WashTec shall be non-binding. A contract shall not become effective until it has been confirmed by WashTec in a written confirmation of order and shall be governed exclusively by the contents of the confirmation order and these Terms of Delivery. Oral agreements or promises are only valid if they have been confirmed by WashTec in writing.

2.2 WashTec retains all rights in the sales documentation (in particular pictures, drawings, data on size and weight) and the samples. These items must not be made available to third parties and must be returned to WashTec without undue delay on demand.

### 3. Delivery Periods and Delivery Dates

3.1 Delivery dates and delivery periods are only binding if they have been confirmed by WashTec as binding in writing, if the customer has provided

WashTec in a timely manner with all information or documentation required for the performance of such delivery and – in case advance payment has been agreed - if the customer has paid any advance payments five business days prior to the delivery date in the amount agreed by the parties. If the customer is in default of any advance payments, the delivery date and delivery period will be extended or rescheduled accordingly, as applicable.

Delivery periods agreed by the parties shall begin on the date of the confirmation of the respective order. In the event of additional or supplementary contracts entered into at a later date, the delivery periods and delivery dates shall be extended or rescheduled accordingly, as applicable.

3.2 Events which are unforeseeable, unavoidable and lie beyond the control and sphere of influence of WashTec and for which WashTec is not responsible, such as Acts of God, war and natural disasters or labour disputes, shall release WashTec for their duration from its obligation to make timely delivery or perform timely. Delivery and performance periods and dates, as the case may be, agreed upon by the parties shall be extended or rescheduled, as applicable, by the length of such disturbance, and the customer shall be informed of the occurrence of such disturbance in a reasonable manner. If the end of such disturbance is not foreseeable, or should it continue for more than two months, each party is entitled to rescind the contract.

- 3.3 With regard to products not produced by WashTec itself, the obligation to deliver shall be subject to WashTec's correct and timely receipt of such products from its suppliers.
- 3.4 If deliveries by WashTec are delayed, the customer shall only be entitled to rescind the contract if WashTec is responsible for the delay and after expiry of a reasonable grace period set by the customer.
- 3.5 Should the customer be in default of the acceptance of delivery or should he be in breach of any other obligations to cooperate with WashTec, WashTec shall be entitled to reasonably store the products at the customer's risk and expense, or to rescind the contract in accordance with the statutory provisions, without prejudice to his other rights.
- 3.6 WashTec may make partial delivery for good reason if and to the extent this is reasonable for the customer.

#### **4. Shipment, Passage of Risk, Insurance**

- 4.1 In the absence of any other instruction by the customer,
- (a) shipment shall be made using a reasonable method of shipment in the usual manner of packaging; and
- (b) the risk shall pass to the customer (i) upon delivery of the products to the carrier commissioned by WashTec in case of a contract of sale involving the shipment of products, (ii) upon handover to the customer if the customer collects the products himself, or (iii) upon handover to a third party if a third party authorized by the customer collects the products. Should the customer be in default of acceptance, risk shall pass to the customer upon default. If, in case the products shall be collected by the customer or a third party authorized by the customer, and

delivery is delayed on grounds for which the customer is responsible, risk shall pass to the customer on the date the customer is notified of the readiness of the products for shipment.

- 4.2 A transport insurance shall be taken out only upon request and at the expense of the customer.

#### **5. Prices, Terms of Payment**

- 5.1 Unless the parties have agreed on a certain price, the price shall be determined by the price list of WashTec as applicable at the date of the conclusion of the contract.
- 5.2 All prices of WashTec shall be ex works of the respective plant of WashTec exclusive of statutory VAT in the respective applicable amount and do not include any shipment and packaging costs, which will be charged separately. The customer shall bear any public charges such as possible customs duties, which may arise in connection with the import of the products in the country of destination.
- 5.3 Each invoice of WashTec shall be due for payment without any deductions within 30 calendar days of the date of invoice. The customer shall be in default of payment if this period lapses unsuccessfully. Payments by the customer shall not be deemed to have been made until WashTec has received such payment and can exercise control over the funds.
- 5.4 In the event that the customer is in default of payment, WashTec shall be entitled to demand default interest in the applicable statutory amount. The assertion of a claim for further damages due to the default of payment shall remain unaffected.
- 5.5 Bills of exchange and checks shall only be taken on account of performance upon special arrangement and without

any bank charges or other costs for WashTec.

- 5.6 The customer is only entitled to a set-off if its counterclaim is uncontested, ready for decision or has been finally adjudicated.
- 5.7 The customer is only entitled to assert a right of retention to the extent that his counterclaim is based on the same contract and is uncontested, ready for decision or has been finally adjudicated.
- 5.8 If WashTec becomes aware of the risk of the customer's impossibility to perform (*mangelnde Leistungsfähigkeit*) after the conclusion of the contract, WashTec shall be entitled to make any outstanding deliveries only against prepayment or the provision of adequate security. If such prepayments or security have not been rendered even after the expiration of a reasonable grace period set by WashTec, WashTec may partially or totally rescind individual or all of the affected contracts with the customer. WashTec shall be entitled to assert any further rights it may have.

## 6. Retention of Title

- 6.1 The delivered products shall remain the property of WashTec until any and all claims of WashTec arising under its business relationship with the customer have been fully paid.
- 6.2 In the case of current accounts, this retention of title shall serve as security for the claim for the balance to which WashTec is entitled.
- 6.3 The customer shall only be allowed to sell the products subject to retention of title ("Secured Products") within normal and proper business transactions. The customer is not entitled to pledge the Secured Products, grant chattel mortgages on them, or make other dispositions endangering WashTec's

title to them. The customer hereby assigns its receivables arising from the resale of the Secured Products to WashTec, and WashTec hereby accepts such assignment.

- 6.4 The customer shall provide WashTec at all times with all desired information concerning the Secured Products or receivables assigned to WashTec under this contract. Attachments of or claims by third parties to the Secured Products shall be immediately reported to WashTec by the customer and accompanied by the necessary documents. The customer shall at the same time advise the third party of WashTec's retention of title.

The costs of a defense against attachments and claims shall be borne by the customer.

- 6.5 The customer is obliged to treat the Secured Products with care for the duration of the retention of title.
- 6.6 Should the realizable value of the securities exceed all of WashTec's claims that are to be secured by more than 10 %, the customer shall be entitled to demand a release to such extent.
- 6.7 Should the customer be in default of material obligations such as payments to WashTec, WashTec may, after rescission of the contract according to the statutory provisions, request surrender of the Secured Products and may make use of them otherwise for the purpose of satisfying its matured claims against the customer without prejudice to any other rights it may have. In such case, the customer shall immediately surrender the Secured Products and grant WashTec or WashTec's agents access to the same.
- 6.8 In the case of deliveries to other jurisdictions in which the foregoing provisions governing the retention of

title do not have the same security effect as in Germany, the customer shall do everything to create equivalent security rights for WashTec without undue delay. The customer shall cooperate in all measures which are necessary for the validity and enforceability of such security rights.

- 6.9 On WashTec's demand, the customer is obliged to insure the Secured Products appropriately, to provide WashTec with the respective proof of such insurance and to assign the claims arising from such insurance to WashTec.

## 7. Trademarks and Advertising

- 7.1 The customer shall not perform and may not authorize a third party to perform any act that may endanger the trademarks or other intellectual property rights used by WashTec in relation to the products. In particular, the customer may not obscure, alter or remove in any manner the trademarks and/or other distinctive features, whether imprinted or attached, that are part of WashTec's products and may not include or attach any other features.
- 7.2 The entire sales promotional, advertising and sales material ("Advertising Material") provided by WashTec shall remain the property of WashTec. The customer may use this Advertising Material only in accordance with the instructions of WashTec and in relation to the sale of the products, and the customer may not authorize any third party to use the Advertising Material.
- 7.3 The customer may only advertise the products and use the Advertising Material and the trademarks of WashTec for this purpose if WashTec has granted its prior express consent in writing. WashTec may withdraw its consent at any time; in such case the entire advertising of the customer must

be ceased at the customer's expense according to the instructions of WashTec. Irrespective of WashTec's consent, the customer shall in any event remain responsible for ensuring that all advertising measures or advertisements fulfill the statutory requirements, if any, and do not breach any industrial property rights of third parties.

## 8. Quality, Customer's Rights in case of Defects, Duty to Inspect the Products

- 8.1 Upon passing of the risk the delivered products shall be of the agreed quality. The quality will exclusively be determined by the specific written agreements concerning the characteristics, features and specifications of the products (*Beschaffenheitsvereinbarung*).
- 8.2 Information provided in sales catalogues, price lists and any other informative literature provided by WashTec or any other descriptions of the products shall under no circumstances constitute a guarantee for any specific quality of the products; such specific quality or durability guarantees must expressly be made in writing.
- 8.3 WashTec reserves its right to change the products slightly with regard to their construction, material and/or finish to the extent their agreed characteristics are not changed thereby.
- 8.4 The customer's rights in case of defects of the products shall require that he inspects the delivered products upon delivery without undue delay and notifies WashTec of any defects in writing and without undue delay, but no later than two weeks following delivery; hidden defects must be notified to WashTec in writing without undue delay upon their discovery.

- 8.5 In the event of any notification of a defect, WashTec shall have the right to inspect and test the products to which objection was made. The customer will grant WashTec the required period of time and opportunity to exercise such right. WashTec may also demand from the customer that he returns the product to which objection was made to WashTec at WashTec's expense. Should the customer's notification of the defect prove to be unjustified and provided the customer has realized this prior to the notification of the defect or has not realized it in a negligent manner, the customer shall be obliged to reimburse WashTec for all costs incurred in this respect, e.g. travel expenses or shipping costs.
- 8.6 WashTec shall be entitled to remove the defect at its option by remedying the defect or delivery of a replacement ("Subsequent Performance"), both free of charge to the customer.
- 8.7 The customer shall give WashTec the necessary reasonable period of time and opportunity for Subsequent Performance.
- 8.8 The customer shall only have the right to remedy the defect himself or have the defect remedied by a third party and demand compensation of his necessary expenses from WashTec in instances of emergency in which the safety of operations is endangered, in order to avert a disproportionately great damage or if WashTec is in default with remedying the defect; always provided that the customer notified WashTec thereof beforehand.
- 8.9 Items that have been replaced by WashTec shall, upon WashTec's demand, be returned to WashTec.
- 8.10 The customer's rights in case of defects shall be excluded in the following events: (i) natural wear and tear, (ii) defects of the products due to

reasons for which the customer bears responsibility, such as inappropriate or improper use, non-observance of the operations instructions, incorrect start-up of operation, or faulty treatment (e.g. excessive wear), (iii) incorrect assembly and/or installation by the customer or a third party commissioned by the customer, and (iv) the use of unsuitable accessories or unsuitable spare parts or the performance of inappropriate repair works by the customer or a third party commissioned by the customer.

8.11 WashTec shall bear the costs for shipment, travel, labor and material which accrue for the purpose of Subsequent Performance.

8.12 Should the Subsequent Performance fail, should such remedy be unreasonable for the customer or should WashTec refuse such remedy according to Section 439 (3) German Civil Code ("*BGB*"), the customer may, at its option, rescind the contract in accordance with the statutory provisions or reduce the purchase price and/or claim either damages pursuant to Clause 9 of these Terms of Delivery or the reimbursement of its futile expenses.

8.13 The limitation period for the customer's claims for defects shall be twelve months beginning with the hand-over of the products to the customer. The provisions on the statute of limitations of Section 479 BGB shall remain unaffected. The statutory limitation period shall apply

- (a) to the customer's rights with respect to defects concealed in bad faith or caused intentionally;
- (b) if and to the extent WashTec has assumed a guarantee;
- (c) to the customer's damage claims due to culpably caused personal injuries;

- (d) to the customer's damage claims for damages caused by WashTec intentionally or by gross negligence;
- (e) to the customer's damage claims due to other reasons than defects of the products; as well as
- (f) to claims under the German Product Liability Act or any other mandatory statutory liability.

## **9. Limitation of Liability and Damage Compensation**

9.1 Subject to the provisions in Clause 9.2 of these Terms of Delivery WashTec's statutory liability for damages shall be limited as follows:

- (i) WashTec shall only be liable for damages caused by a slightly negligent breach of a material contractual obligation up to the amount of the typically foreseeable damage at the time of entering into the contract;
- (ii) WashTec shall not be liable for damages caused by a slightly negligent breach of a non-material contractual obligation.

9.2 The limitation of liability as set out above does not apply to any mandatory statutory liability (in particular to liability under the German Product Liability Act), if and to the extent WashTec has assumed a guarantee, nor to any liability for culpably caused personal injuries.

9.3 The customer shall take all reasonable measures necessary to avert and reduce damages.

## **10. Product Liability**

If the customer sells the products, whether unchanged or changed, whether after processing, transformation, joining, blending or mixing with other products, the customer shall indemnify WashTec in their internal relationship against any

product liability claims of third parties if and to the extent the customer is responsible for the defect leading to the liability also within their internal relationship

## **11. Miscellaneous**

11.1 Amendments of and supplements to this contract and/or these Terms of Delivery and any additional agreements must be in writing in order to become effective. The same shall apply to the waiver of or any amendment to this written form requirement.

11.2 If a provision of the contract and/or these Terms of Delivery is invalid, in whole or in part, the validity of the remaining provisions shall remain unaffected hereby. In such case, the parties undertake to replace the invalid provisions by a valid provision coming closest to the commercial purpose of the invalid provision.

11.3 The laws of the Federal Republic of Germany shall apply exclusively to these Terms of Delivery and the parties' contractual relationship with the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

11.4 Exclusive venue for any and all disputes arising from or in connection with the parties' contractual relationship shall be Augsburg, Germany. WashTec is entitled, however, to sue the customer at any other court having statutory jurisdiction.