

# GENERAL TERMS AND CONDITIONS OF RC GMBH, FROM 11.01.2016

## **I. Contractors**

- Based on these general terms and conditions (Conditions) between the customer and RC GmbH, Carl-Zeiss-Ring 4, 85737 Ismaning, Germany,  
E-mail: nb@remarketing.company  
Commercial register number: HRB 226367  
Sales tax identification number: DE307016623  
Customs EORI number: DE926213346650518

hereinafter referred to as "provider", the contract is concluded.

The other party is called "customer".

- Our services and offers are exclusively based on these Terms and Conditions. For companies, our Conditions also apply to future similar transactions.
- Conflicting terms and conditions of our customers do expressly not apply. Counter-confirmations of our customers with reference to their own general Terms and Conditions we hereby expressly oppose.
- Our Conditions and services are part of the offer and a subsequent contract. Deviations, changes and additions will require our written confirmation. Conflicting purchasing conditions of our customers do not bind us.
- You will you be notified of changes to these terms and conditions in writing by fax or email. If you not contradict this change within four weeks after receipt of the notification, the changes apply to be accepted from your side. On the right of objection and the legal consequences of silence you will still be informed separately in the case of changing the terms and conditions.

## **II Object of the contract**

- This contract defines, the sales and buying of new and used goods and also services. For details of the respective please refer to the confirmation of the vendor.
- The object of the contract may in treasury, foreign holdings, are fulfilled by own or other people, by own or third-party software, through own or third party services.



- The respective services and supplies are laid down in separate contracts, based on these Conditions.
- Offers from the provider are always non-binding. Orders shall only be deemed accepted if they are confirmed in writing by the provider within 14 days, or within this period, the ordered goods will be sent. The scope of delivery is determined by our written order confirmation or through our actual delivery.
- The provider delivers in principle (unless otherwise indicated) used equipment. The devices are (unless otherwise indicated) delivered without an operating system, software or consumption products (cartridges, etc.).
- Conditions of Purchase of the customer are not binding on us, even if they are not expressly contradicted. By placing an order, the customer accepts this Terms and Conditions.

### **III. Prices, taxes, shipping costs, returns**

- The agreed prices are net prices from the current location. They do not include packaging, freight, insurance and shipping costs. The applicable VAT is charged separately. The specified final price includes in case of dispatch of the purchased item in countries outside the European Community no country customs duties, import taxes or import duties levied by the destination country.
- In case of a return, the customer will pay the shipping costs. The provider sets the destination of return.
- Testing supplied objects (such as disk, ancillary products, etc.), send to the provider, remain in the property of the provider and will not be returned.

### **IV. Delivery**

- The delivery of the object of the contract will be send to the address given by the customer. Delivery takes place at the expense and risk of the customer. Transport insurance is only concluded at the express request of the customer at his expense. Dimensions, weights, illustrations and drawings or other specifications of the customer are only binding for the execution if this is explicitly confirmed in writing.
- If the customer is in default of acceptance, we are entitled to store the goods maximum of 8 weeks on the expenses and risk of the customer. The payment obligation of the customer in this case is not affected. It still depends on them independently after chapter VI of this Agreement.
- The provider is entitled to partial deliveries.



- Shipping costs are calculated separately and are specified for each offer. If the customer wishes a special kind of dispatching, causing higher costs, he has to pay these additional costs.
- Goods can be shipped from any place, by a shipping company, ordered by the provider or customer or other suppliers to the customer. The shipping costs are specified in the respective order confirmation.
- If we carry out the delivery of the product not according to the contract, the customer must grant a grace period to effect performance. Otherwise, you are not entitled to withdraw from the contract.
- Compared to commercial customers the provider takes no dispatch risk.
- The customer is obliged to accept the goods in the agreed time frame.

#### **V. Delivery Time**

- Delivery dates mentioned in our offers and contracts are guidelines only, unless they are expressly designated as binding. Regardless, we will make every effort to fulfill them. All delivery dates are also subject to correct and timely delivery to the provider itself from other parties. This assuming delivery times start with the day of the order confirmation by the provider and are extended to the time, which the customer is in default of payment, subject to any provider rights.
- Unforeseen issues, which are beyond the control of the provider, for example, operational breakdowns, strikes, lockouts, Committee values - with us, the sub supplier or at a transport company -, the delivery time shall be extended accordingly, even if they occur during a delay in delivery.
- The same occurs when governmental or other required permits for the execution of the delivery specifications of the customer are not on time, also in case of delayed information from the customer, which is needed to execute the order and also in case of subsequent modification of the order.
- Partial deliveries are allowed. After an agreed fixed delivery time and delay of more than 6 weeks, also in cases where we are at fault, the customer has to provide a reasonable extension. Only after the expiry of the extension the customer can withdraw from the contract.
- The assertion of claims for damages of any kind is excluded. Supply and purchase take place as seen.



## **VI. Payment, maturity, delay of payment**

- Unless otherwise agreed, the customer is required to pay in advance. The payment has to be made without deduction within a period of 3 calendar days from invoicing. If deviant, the payment had been agreed by invoice and no time for payment in writing, the customer is obliged to settle the invoice in total within 7 days of receiving of the goods. The invoice contains all the information for the transfer and is optionally also sent by e-mail. Spoken prearranged payment agreements do not apply. When paying by direct debit, the debit takes place within 3 calendar days after signing the contract.
- For the timeliness of payments the date of receiving the payment at customer's side is relevant.
- Money orders, checks or bills of exchange are accepted only by special agreement and only on account of payment with all collection and discount charges.
- Payment shall be due from the date of invoice with no subtractions. After the due date, which is determined by the calendar, the customer falls in default without warning. A retention of the customer, which is not based on the same contractual relationship, is excluded. Setting off claims of the customer is excluded, unless these are undisputed or legally established.
- Disks, cables, mice, keyboards, cases and other accessories are charged separately by the supplier.
- The provider is entitled, also against other terms of payment of the customer, offset received payments against the oldest debt. If costs and interest have already been incurred, the provider is entitled to offset the payments first against the costs, then the interest and finally against the principal delivery.
- If the customer delays payment for more than 10 days in arrears, the provider may, without prejudice to any other rights, take back the delivered goods and dispose otherwise. Arising expenses, the customer has to replace. For the use of supplied and returned fetched items we are entitled to a reasonable compensation for use and reimbursement of impairment.



### **VII. Transfer of risk**

- The risk is transferred to the customer with our dispatch or subcontractor's dispatch to the customer, even if free delivery has been agreed. In case of delayed shipping, due to the fault of the customer, the risk is already dated from the date of readiness for shipment to the customer.

### **VIII. Audit obligations and reporting responsibility for Companies**

- If the customer is a company, he is obliged to inspect deliveries of the goods immediately after delivery on errors and he has to inform the supplier immediately in writing without any delay.
- If a defect occurs later on, the announcement must be done immediately after the discovery; otherwise the goods are, also in view of this defect, approved. The dissemination of the purchased items to third parties or their delivery into the country of destination does not release the customer from his duty of notice under this paragraph.
- If the complaint is not, or not received in time, the purchase is subject insofar approved.

### **IX. Retention of title**

- The purchase remains property of the provider until the complete fulfillment of all claims from the purchase contract are fulfilled.
- The customer is not entitled to resell the object of purchase or otherwise dispose of them, in particular to pledge it or transfer them as collateral, as long as the retention of this title exists, ie., as long as the customer has not fulfilled all the requirements of the provider from the affected contract. Also a connection standing under retention of title purchase items with things the customer or property third parties is prohibited.
- If the customer has nevertheless sold or transferred the goods, he owes the provider the amount of the invoice value. Irrespective of whether this takes place before or after any processing of the goods delivered under retention of title, to us. We accept this assignment. Notwithstanding our right to collect the debt itself, you are authorized to collect the claim. In this context, we commit ourselves not to collect the debt, if and when you meet your payment obligations, no application is made for insolvency or similar proceedings or to any stay of payments. Insofar as the above securities exceed the secured claims by more than 10%, we are obliged to release the securities of our choice at your request.
- The customer must immediately notify the provider in writing or in text form, if and when accesses are made by third parties on the subject to retention purchase items. If third parties ask for the reserved goods, in particular about the case of attachment, the customer shall



refer to the property of the provider and inform him immediately. Costs and possible damage contributes to the full extent takes the customer alone.

- Processing or conversion by the customer is always done for the provider as manufacturer, but without obligation for him. If the ownership or co-ownership of the provider expires, already with signing of the contract is agreed, that ownership or co-ownership of the buyer shall pass to the vendors with proportional value (invoice value). The customer shall maintain the ownership or co-ownership of the vendor free of charge in this case.
- In addition, charge interest is set at 5% above the current base rate of the Deutsche Bundesbank, which claims the provider. The same applies in the event of the deferral of payments by the provider. The proof of higher damages remains reserved to the provider.

#### **X. Reservations**

The provider reserves the right, in case of unavailability of the promised services or goods, not to fulfill these.

#### **XI. Withdrawal**

If the customer is a company, within the meaning of § 14 German Civil Code (BGB) and upon conclusion of the contract in exercise of his commercial or self-employment, the right of withdrawal does not apply.

#### **XII. Rights for payment and participation delay**

If the customer does not fulfill his obligations on payment out of this contract, the provider is entitled, including the right to request a higher damage, to request immediately without proof of a loss of 20% of the purchase price as compensation and / or at his option, to cancel the agreement. The claim for damages can be claimed from us also with simultaneous recovery of already rendered delivery or partial delivery by the provider.



### **XIII. Warranty, Liability and Limitation of Liability**

- In case we sell used goods, machinery, apparatus or equipment the consumer forfeits any warranty claims, regardless of whether defects or malfunctions of the goods can be recognized or not recognized. When selling brand-new equipment and systems, we assume warranty only to the extent that we can enforce recourse and claim for damages at the providers we take the goods from. For consequential damages we are not liable. For companies, the warranty period is limited to one year for new goods. The customer is granted that he himself can choose between repairs or replacement at a subsequent performance if it is the product is brand-new and the customer is a company.
- Customers have to check the goods immediately latest within 7 working days after delivery of the goods to examine / investigate professionally and possibly with the evaluation of a sufficient number of samples and discovered defects without delay, at the latest report within 3 further working days to us in writing ( e.g. e-mail, fax, letter) to the in chapter. I.1 mentioned address, or email including an exact description of all defects encountered. Failing an inquiry and / or complaint, the goods shall be stated with regard to the deficiencies found and such defects that could have been discovered, as approved.  
Later discovered defects must immediately be notified in an appropriate manner at the latest within 4 working days. Failing a corresponding complaint, the goods shall be with regard to these defects as approved.
- The provider may refuse to remedy defects as long as the customer does not meet its obligations. Any warranty claims shall not entitle the customer to withhold payments or deliveries to us or to offset against them. Turns out the complaint as unfounded, the customer shall bear the costs. The above provisions shall also apply if we have expressly done warranty.
- The limitations of liability in accordance with this paragraph also apply in favor of the employees of the provider and also representatives.
- If the customer is a company, the selection of the type of remedy is the choice of the provider. Otherwise, the legal provisions apply, to the extent there is nothing to the contrary in this section XII. Claims of the customer due to the necessary for the purpose of supplementary performance, in particular transport, travel, labor and material costs are excluded if the expenses increase because the purchased item was subsequently transported to a location other than the branch office of the customer.
- In order to remedy the defect, the customer has to give a reasonable time to the provider at its discretion.
- If the provider replaces items or parts in the course of warranties, the customer shall return the exchanged goods or parts to the provider and assign them to him.



- It is prerequisite for any warranty that the customer properly meets all owed pursuant to § 377 HGB inspection and complaint.
- Subject to the following exceptions are claims of damages against us, limited on the contract typical and foreseeable damages with no claim for of any loss of profit. In case of data loss, we shall only be liable for damages if you have backed up your data files regularly proven and at least once a day and prove this; the amount of our liability is however limited to the restoration expenses (re-uploading the saved data on a replacement disk). All claims for damages against us shall expire within one year from date of delivery.
- Any extended warranties under this paragraph exceeding liability of the vendor are excluded.
- The warranty in the event of assumption of a guarantee for the quality of the goods or in the case of fraudulent concealment of defects remain unaffected by the above provisions. The same applies to the provisions of § 478 and 479 BGB for recourse to a company against the supplier.
- The liability for defects does not apply to the normal usage and tear, nor damages that have arisen after the transfer of risk from faulty or negligent treatment, excessive stress or improper storage.
- Errors in data processing programs can be prepared by the prior art never completely. The customer hereby notes of this circumstance.
- As far as the provider gives third party software to the customer, the guarantee statement is part of this agreement. The customer is in this case feels free to claims this guarantee statement against the third party. The provider takes no warranties and liability which is beyond the content of the statement of the third party.
- The customer is obliged to examine delivered software for obvious defects, notice to an average customer and notify such to the provider within 7 days after delivery in writing. To meet the deadline, the dispatch is sufficient. As far as for deficiency only error images are recognizable, these are communicated as accurately as possible in writing.
- If the customer changes or expands programs or program components or he orders such modifications or extensions by third parties, the warranty expires.
- Commercial inspection and complaint according to § 377 HGB the customer remains unaffected.

#### **XIV. Assignment and pledging ban**



- Claims or rights of the customer against the provider shall not be assigned or pledged without the latter's consent, unless the customer has established a legitimate interest in the assignment or pledge the provider in writing and received its confirmation.

#### **XV. Limitation period**

- If the customer is a company, claims for defects are barred when purchasing used items within a period of 6 months from delivery of the purchased item, moreover, within a period of one year after delivery of the purchased item. This limitation also applies to contractual and non-contractual claims for damages of the customer, based on a defect of the purchase object. §§ 478, 479 BGB remain unaffected.
- The statute of limitations of the Product Liability Act remains unaffected.

#### **XVI. Protection of data privacy, availability of order data**

- In connection with the development, conclusion, execution and termination of a purchase agreement on the basis of these Conditions, data will be collected, stored and processed by the provider. This is done in accordance with legal provisions. The provider will not share personal data of customers to third parties, unless that he was legally obliged to do so, or that the customer has expressly consented. If a third party uses, in connection with the handling processing procedures, data for services, the provisions of the Federal Data Protection Act are complied with. The information communicated by the customer regarding order data will be processed for contact purposes only within the framework of the contract and only for the purpose for which the customer has made the data available. The data is only used to the extent necessary for the shipping company, which takes over the delivery of the goods according to order. The payment data is forwarded to the agency responsible for paying the bank. Unless the provider has to fulfill commercial retention periods or take control of a legal nature, data can be stored up to ten years.
- However, this data will be, after completion of the order, no longer available / accessible for the customer. The customer agrees to store the data himself, which the supplier sent to him.

#### **XVII. Language, choice of law, jurisdiction**

- The contract shall be drawn up originally in German. This English version is only to translate in common words, definitely not in juridical language. The further implementation of the contractual relationship takes place in German. There is only the law of the Federal Republic of Germany.
- The validity of the United Nations purchasing law is excluded.



- The place of performance and jurisdiction for both parties, for all current and future claims out of the business relationship, including claims in exchange and documentary evidence, is Munich, Germany. The same applies if the customer has no general jurisdiction in Germany or the domicile or habitual residence at the time of action are not known.
- In the event of a dispute only the German version of these Terms and Conditions does apply.

**XVIII. Salvatoric Clause (Final clause)**

- If any provision of these Conditions be invalid or be unenforceable or become, the remaining provisions of these Terms and Conditions remain unaffected hereof, unless a party would be penalized as unreasonable by the elimination of individual clauses that it will no longer be expected to adhere to the contract.