

## General terms and conditions of sale and delivery

**D+P, Dosier- u. Prüftechnik GmbH, Emil-Eigner-Str. 3, D 86720 Nördlingen**

### § 1 General terms

**1.1** These terms and conditions of sale and delivery are valid for our (hereinafter called „supplier“) present and future deliveries and services (incl. advice and consulting) in cooperation with enterprises (hereinafter called „orderer“).

Enterprises within the sense of these business conditions are natural or legal entities or legal partnerships that enter into a business relation and who carry out commercial or self-employed activities. These General terms and conditions are considered to be accepted with entering into a business relation and shall apply for the period of its duration.

**1.2** Terms and conditions of sale and delivery of the orderer shall not apply even if the supplier does not explicitly object. Deviating, corresponding or supplementary terms and conditions of sale and delivery shall not become an integral part of the contract – even if they are known – unless their validity is expressly consented to in writing. These terms and conditions shall be deemed to be agreed by the orderer at the latest with the acceptance of the delivery and performance.

**1.3** The sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the place of residence of the supplier. However, the supplier shall be entitled to sue at orderer's registered office.

**1.4** This contract including its interpretation shall be governed by German law with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

### § 2 Offer and contract conclusion

**2.1** The supplier's offers are without obligation until acceptance by the orderer and therefore can be revoked up to the receipt of the written declaration of acceptance of the orderer any time. The supplier unrestrictedly reserves all exploitation rights in all attached estimates of cost, drawings or other documents or data. The supplier has the exclusive right of use and disposal. The documentation may not be made accessible to third parties without the prior consent of the supplier and shall, upon request, be returned without delay to the supplier if an order is not placed. Sentences 1 to 3 are accordingly valid for documents of the orderer, however, these can be made admissible to such third parties, who are allowably entrusted with deliveries by the supplier.

**2.2** In case of indications of dimensions and weights, illustrations and specifications, the supplier makes every effort to ensure best accuracy. These indications shall

only be deemed binding for the execution if they are expressly confirmed as binding by the supplier upon conclusion of the contract. This will also apply if the order is made based upon an offer submitted by the supplier. Gross weights and box dimensions can only be stated with approximate values.

### § 3 Prices and setoff

**3.1** All prices of the supplier are ex works / warehouse plus valued added tax valid at the date of invoicing, excluding packaging; this will be charged separately.

**3.2** The purchaser can only set off against such claims that are undisputed and legally established.

### § 4 Terms of payment

**4.1** Unless other payment periods have been agreed, payments shall be made as follows: Either within 30 days from dated of invoice without any deduction or payment within 10 days from date of invoice with 2% discount. Payment shall be made by bank transfer or cheque. For the timeliness of the payment the receipt by the supplier is decisive.

**4.2** The claims of the supplier shall become due immediately if and insofar as the payment claim of the supplier as a result of circumstances occurring subsequently, which result in a fundamental deterioration in the assets of the customer, is endangered. In these cases, the supplier is still entitled to execute outstanding deliveries only against advance payment or security.

### § 5 Delivery time

**5.1** The delivery date determined in writing in the confirmation of the order shall be the delivery time. If the purchaser does not provide the documents to be procured by him, such as required approvals and releases, in particular plans, as well as the compliance to the agreed terms of payment and other responsibilities in due time, the delivery time shall be extended accordingly.

**5.2** If the supplier is hindered from fulfilment of his obligation after the conclusion of the contract upon occurrence of unforeseeable, unusual circumstances, which he could not prevent despite of reasonable care in the circumstances of the case, in particular breakdowns, official sanctions and procedures, delays in the delivery of essential resources, energy supply difficulties, the delivery period will be extended - as far as these circumstances lead to delays - in a reasonable scope. If delivery becomes impossible due to these

circumstances, the supplier is released from the delivery obligation.

**5.3** In the case of strike and lockout the delivery period shall be extended to an reasonable scope, as far as these events lead to delays. If the delivery becomes impossible, the supplier is free from his delivery obligation.

**5.4** If the supplier proves that despite of his due selection of subcontractors and despite of conclusion of the necessary contracts with reasonable conditions, he was not supplied on time by his subcontractors, the delivery period will be extended by the period of delayed delivery caused by the subcontractors. In the case of impossibility of delivery by the subcontractors, the supplier has the right to withdraw from the contract.

## § 6 Shipment and risk assumption

**6.1** If the shipment (loading and transport) of the goods is delayed for a reason for which the purchaser is responsible, the supplier is entitled to store the goods at the costs and risk of the purchaser and to exclude the responsibility of the supplier, to take all steps deemed appropriate for the preservation of the goods and to invoice the goods as delivered. The same applies if goods declared ready for shipment are not retrieved within 4 days.

**6.2** If the goods are sent to the purchaser at the wish of the purchaser, the risk of accidental loss and accidental deterioration of the delivery item shall pass to the purchaser upon handover of the delivery item to the forwarding agent, carrier or dispatcher. This also applies if the shipment is not made from the place of performance and / or the supplier bears the freight costs.

## § 7 Acceptance

The purchaser may not refuse to accept deliveries due to insignificant defects.

## § 8 Guarantee and liability

**8.1.** Claims for defects of the purchaser suppose that the purchaser has orderly fulfilled his obligation to inspect and complain under § 377 HGB. The replacement of lost profits is excluded.

**8.2** Defects of the delivered item, which are obvious upon delivery, shall be informed to the supplier within an exclusion period of 10 days since delivery in written form. Other defects shall be informed in writing to the supplier within an exclusion period of 10 days of discovery.

**8.3** The liability of the contractor for damages and reimbursement of expenses arising from this contract is - irrespective of the legal reason - also limited to a total amount of the liability in the amount of the contract. This does not apply in the case of intent.

**8.4** Insofar as there is a defect in the delivery item, the supplier is entitled, at his discretion, to remedy the defect in the form of a remedial action of the defect or to deliver a new defect-free item. In the case of remedial action of the defect or replacement, the supplier is obliged to pay all necessary expenses for the purpose of supplementary performance, in particular transport, travel, labor, and material costs shall be borne by the customer, unless the goods have been transported to a place other than the purchaser's agreed place of business, unless the shipment complies with its proper use.

**8.5** If the supplementary performance fails, the customer can - without possible claims for damages according to No. 8.7 - withdraw from the contract or reduce the remuneration.

**8.6** Claims for defects do not exist with only irrelevant deviations from the agreed quality, with only insignificant impairment of the usability, with natural wear or damage after the transfer of risk due to faulty or negligent treatment, excessive stress, unsuitable equipment, low-quality work, or due to special external influences arise, which are not required by the contract, as well as non-reproducible software errors. If the customer or a third parties makes incorrect changes, installation / removal or repair work, there are no claims for defects for these and the resulting consequences.

**8.7** Claims for damages of the customer, in particular for damage of the obligation and tort are excluded. This does not apply to fraudulent concealment of the defect, failure to comply with a quality guarantee, injury to life, health or intentional or grossly careless breach of duty by the supplier. However, the claim for damages for the infringement is limited to the contractually typical, predictable damage, as far as there is no other of the above-mentioned causes. A change in the burden of proof with disadvantage for the purchaser is not included in the before mentioned regulation.

**8.8** Recourse claims of the purchaser against the supplier according to § 445a BGB (recourse of the seller) exist only to the extent that the purchaser has not made any agreements with his customer in excess of the legal claims for defects.

## § 9 Retention of title

**9.1** The objects of the deliveries (reserved goods) remain the property of the supplier until fulfillment of all claims against the purchaser arising from the business relationship, including future claims, including balance claims for current account, which the supplier has against the customer, regardless of the legal reason for their development, even if the purchase price for specially designated claims should be paid.

**9.2** Insofar as the value of all security rights to which the supplier is entitled exceeds the amount of all secured claims by more than 20%, the supplier shall release a corresponding part of the security interests at the

request of the ordering parties; the supplier is entitled to choose between different security rights.

**9.3** In the case of attachments, seizure or other decrees or interventions by third parties, the purchaser must inform the supplier immediately. In case of an entitled interest, the purchaser must immediately provide the supplier with the information required to claim his rights against the customer and hand over the necessary documents.

**9.4** In case of breaches of duty by the purchaser, in particular in the case of default, the supplier shall be entitled to withdraw from the contract after the unsuccessful procedure of a reasonable deadline set for the purchaser in addition to the return; the legal provisions on the dispensability of setting a deadline remain unaffected. The purchaser is obligated to surrender. The withdrawal or the assertion of the retention of title or the seizure of the reserved goods by the supplier does not constitute a withdrawal from the contract, unless the supplier has expressly stated this.

#### **§ 10 Fulfillment reserve and place of fulfillment**

**10.1** The fulfillment of the contract is subject to the reservation that there are no barriers on the basis from German, US and other applicable national, EU or international regulations of foreign trade law as well as no embargos or other sanctions.

**10.2** The customer is obliged to provide all information and documents required for export, shipment or import.

**10.3** Place of fulfillment for payment and delivery is 86720 Noerdlingen.

#### **§ 11 Damage of copyrights and industrial property rights of third parties**

**11.1** An assessment of whether the documents provided by the customer violate any rights of third parties, in particular copyrights, industrial property rights (design patents, patents, utility models, trademarks), is the customer's responsibility.

**11.2** If the supplier is claimed by third parties for the use, exploitation or duplication of the documents and documents provided by the purchaser for infringement of copyrights and / or industrial property rights or for violation of the unfair competition, the purchaser shall support the supplier to defend against these violations and to compensate for all damages (including legal fees and legal costs) which the supplier shall suffer.

#### **§ 12 Liability of the contract**

**12.1** The contract remains binding even in the case of legal invalidity of individual provisions in its other parts. This does not apply if the adherence to the contract would be an unreasonable hardship for the party.

**12.2** Changes to these conditions require the text form.

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