

Terms and conditions of Dieteg Gerätebau GmbH & Co. KG

I. General

1. Our terms and conditions apply solely for all contracts with our customers. Deviations of these terms and conditions – especially the application of acquisition regulations of the buyer – will not be approved by us unless we have explicitly agreed to their application. Our terms and conditions also apply if we, upon knowing of opposed or deviating conditions of the customer regarding our terms and conditions, perform the delivery unreserved.
2. Our terms and conditions also apply for future contracts with the customer within the scope of the existing business relationship.

II. Offer and prices

1. Our offers can be withdrawn by us at any time until the written notice of acceptance by the customer. Data in prospectus published by us are only part of the agreed condition of the product if they are explicitly indicated as binding.
2. Our prices are quoted in euro ex works (EXW – Incoterms 2010) from Walsrode and do not include the costs for transportation, carriage etc. and the currently valid VAT, these will, should they accrue, be separately invoiced. Costs calculated on date of delivery will be the relevant valid price.
3. Orders made by our customers without prior offer are only binding for us if we acknowledge these, or if we meet these by sending out the goods, verbal supplements to an agreement are only binding if we confirm them in writing.
4. The customer has to consider property right of third parties when using the delivered goods.
5. We can withdraw from the contract should we not be supplied properly or in due time by our suppliers. This only applies if the non-delivery does not lie in our responsibility, especially on completion of a congruent covering transaction with our supplier. We will inform our customer immediately about the unavailability of the goods and will immediately refund any already received trade-offs.

III. Delivery, dispatch, packaging

1. Unless we do not explicitly agree on the contrary with the customer, delivery ex works (EXW- INCOTERMS 2010) will apply. The choice of packaging, the dispatch and the means of transport are optional to us in the case of a lack of agreement.
2. The risk lies with the customer on handover to the haulage contractor or forwarder, up until leaving the site. The risk also lies with the customer upon notification of the readiness of dispatch, if the dispatch or the acceptance is delayed due to reasons outside our responsibility. Should goods which were notified as being ready for dispatch not been retrieved within 10 days, we are authorised to dispatch them by any chosen means or store them at the customers expense. Damages in transit are to be reported to the haulage contractor or the forwarder (German Federal Railways, post).

3. Delivery time starts with the date of order confirmation but not before clarification of all necessary details for the execution of the order, and of the possible production of documents procured by the customer.
4. Delivery time is met when the goods are made ready for dispatch in our site for the customer.
5. Upon circumstances which are not part of our responsibility we are authorised to extend the delivery time appropriately.
6. Part-deliveries are acceptable as far as they are reasonable for the customer.

IV. Force majeure

Force majeure – to be considered as those are circumstances and incidents which cannot be averted with the diligence of a proper company management – suspends the obligation under the contract of the parties for the course of the disruption and the scope of its effect. Should delays arising from this extend over 6 weeks, both contractual partners are authorised to withdraw from the contract regarding the concerned scope of delivery.

V. Redemption of packaging material

Packaging material used by us will be redeemed at the site of our company in Walsrode. The costs of the return will not be carried by us.

VI. Payment

1. Our invoices are to be paid within 14 days as of invoice date with a 2 per cent discount or within 30 days as of invoice date payable net.
2. Discount will only be granted if all due liabilities to be paid from previous deliveries were complied with, and the payment was not made under restriction of commensurability of a condition or any other restriction.
3. Applicable for payments – with cash payments – is the date of presenting the amount of money and – with non-cash payments – is the date of issuance of the credit note.
4. Upon delay of payment and justified doubts regarding the capacity to pay or credit-worthiness of the customer, we are - regardless of our other rights – authorised to demand securities or advanced payments for outstanding deliveries and to make all demands from the business relationship due immediately.
5. In such cases we reserve the right to carry out further deliveries only against prepayment or cash on delivery. The same applies for first deliveries to new customers.
6. The issuing of bills or cheques requires our agreement; charges and costs of these, as well as the risk for a punctual presentation and protest are at the customer's expense.
7. Payments with a debt-discharging effect can only be made directly to us or employees or representatives who are authorised by us explicitly in a written agreement for money collection.

8. The customer can only balance or enforce right of retention or right to refuse performance if their counterclaim was legally determined or is indisputable. The balancing or enforcement of right of retention or right to refuse performance due to a counterclaim for replacement of costs for a rectification of a defect or extra costs for completion due to the same legal relation is divergently from sentence 1 always possible.

VII. Reservation of proprietary rights

1. The delivered goods remain our property until all payment of our outstanding debits from the terms of business with the customer has been effected. The termination of individual outstanding debits in a current account as well as the striking of a balance does not affect the right of property; the reservation refers in such a case to the acknowledged or actual balance. Only the receipt of counter value and crediting of our bank account will apply as payment. The reservation of proprietary rights is not revived for delivery items after the customer acquired ownership to this delivery item and new claims from the business relationship are accrued against it.
2. The reservation of proprietary rights also extends to products generated from processing, mixing or combining our goods to their full value, at which we are classed as manufacturer. If the ownership due to processing, mixing or combining the goods of third parties remains, we also acquire co-ownership in relation of the effective invoice amount of these processed goods.
3. The customer is authorised to liquidate the goods in a proper course of business; this does not apply if it is agreed in the scope of the sale that the outstanding money of the customer towards third parties expires due to offsetting. The customer, as a precaution, assigns all receivables (including all, also after termination of existing, payment balance requests from a current account) in the amount of the final invoice (including VAT) demanded by us, which he is entitled to due to the sale or any other legal reason against his customers or third parties. The assignment, regardless of whether the goods are sold without or after processing, will be accepted. The customer remains authorised to the collection of receivables also after the assignment. Our authority to collect the receivables ourselves remains untouched by this. We obligate ourselves however not to collect the receivables as long as the customer complies with payments of the collected proceeds and does not delay payments. Should this however be the case, we are authorised to demand that the customer reveals all assigned claims and their debtors to us, as well as handing over any necessary information, especially information about the debtor's address and the corresponding documents and to inform the debtors about the assignment.
4. The authorisation according to number VII. 4. does not include the assigning or pledging of the goods or goods produced from them without our agreement as a security. The conclusion of financial contracts (e.g. leasing or factoring) which include the assigning of our right of reservation require our written agreement, unless the contract does not oblige the financing institution to pay the equivalent of the amount of our receivables

directly to us, while there are still receivables on our part open from this business relation.

5. The customer has to inform us immediately about access of third parties to goods and receivables belonging to us.
6. Upon contravention of contract by the customer, especially regarding delay of payment, we are authorised according to legal regulations to withdraw from the contract and to retract the goods. In order to retract the goods the customer must allow us herewith irrevocably to access his business and store rooms without hindrance and to retrieve the goods. We are authorised to use the goods after retrieving them. The proceeds of sale will be set off against the accounts payable by the customer – less appropriate processing costs – according to § 367 German Civil Law.
7. The customer is obliged to treat the goods with care; he is especially obliged to insure them sufficiently at his expense at replacement value against fire, water, and theft. As far as maintenance and inspection works are necessary the customer must carry them out regularly at his expense and risk.
8. The customer carries all pre-trial and legal costs which have to be expended on the abolition of an attachment or of other access of third parties to the goods and on the replacement, insofar as they cannot be retrieved by the third party. If we are authorised to enforce claims assigned to us according to this number VII, the customer has to reimburse us the necessary pre-trial and legal costs.
9. Should the value of the securities exceed our receivables by more than 10 percent, we will release securities of our choice on demand of the customer.

VIII. Guarantee

1. Claims and rights of the customer due to faults (henceforth also “claims for faults”) require that he complies with his inspection and objection obligation accordingly. All information regarding suitability, processing and use of our products, and other information are carried out according to our best knowledge, but does not however exempt the customer from own inspections and tests.
2. Our information concerning the article of sale and subject of agreement, regarding the use etc. are merely descriptions or identifications and not assured qualities. Industry variations are reserved, unless otherwise agreed.
3. Should the subject of agreement be faulty, we are entitled to, differently from § 439 Clause 1 German Civil Law, choose between the rectification of the fault or delivery of a new free of faults item. Rejected goods may only be returned with our explicit agreement.
4. The customer can enforce compensation if we caused the fault only according to the additional conditions of number IX.

IX. Liability of damages

1. Our liability of damages, irrespective of legal basis, especially also due to impossibility, delivery delay, violation of rights at contract negotiations or unauthorised act, is limited under the measure of this number IX.
2. We are absolutely liable, as far as relevant, according to the Product Liability Act, for fraudulent concealment of faults, for damages due to violation of life, body or health, on intention or as far as we accepted guarantee. As far as gross negligence is concerned, we only accept a restricted liability for the foreseeable damage, typical for the contract at the start of the contract.
3. Upon slight negligent violation of significant rights and obligations, which occur from the contents and purpose of the contract, we are also only restricted liable for the foreseeable damage, typical for the contract.
4. Except for the cases mentioned in number IX. 2. and 3. we are not liable for slightly negligent caused damages.
5. As far as a liability of damages is excluded or limited, this also applies for the personal liability of our employees and institution.

X. Statue of limitation

1. Claims of the customer for supplementary performance due to faults of the subject of agreement are limited to one year after delivery date. The claims of the customer for supplementary performance due to faults according to § 438 Clause 1 No. 2 German Civil Law and § 634a Clause 1 No. 2 German Civil Law remain unaffected thereof.
2. Other claims of the customer due to breach of duty by us, especially claims for damages (e.g. at a violation of a supplementary performance made by us) or claims from a guarantee, are limited to one year after delivery date. The right of the customer to withdraw from the contract remains unaffected if it is due to a breach of duty caused by us, which is not based on a fault. Divergently from clause 1 the statutory periods of limitation apply for the following claims of the customer:
 - 2.1. according to the Product Liability Act as well as due to damage from the violation of life, body, health or significant rights and obligations from the contract,
 - 2.2. due to a damage, based on an intentional or gross negligent breach of duty caused by us or one of our assistants,
 - 2.3. due to fraudulent concealment of a fault,
 - 2.4. for reimbursement of expenses according § 478 Clause 2 German Civil Law.
3. The legal regulation concerning the commencement of limitation, the suspension of statute of limitation, the suspension and the restart of deadlines remain unaffected.
4. Our receivables against the customer lapse according to the statutory regulations.

XI. Storage of data

We store data within the scope of our mutual business relations according to the Federal Data Protection Act.

XII. Place of execution, court of jurisdiction, applicable law

1. Place of execution for our deliveries and performance is our site in Walsrode, place of execution for all payments is Walsrode.
2. Sole court of jurisdiction for all claims from the business relation, especially from our deliveries and performance, is Walsrode. We are however authorised to sue the customer at his domicile.
3. Solely the law of the Federal Republic of Germany applies to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
4. Should individual regulations of the contracts become legally void or become void by law, the validity of the remaining contract will not be affected hereby. The legally void or void by law regulation is classed as replaced by such regulation which comes closest to the economical meaning and purpose of the legally void or void by law regulation in a legally effective manner. The preceding regulation applies appropriately at loopholes. Should the legally void or void by law regulation be a general term and condition as defined by §305 German Civil Law, § 306 Clause 1 and 2 German Civil Law is to be applied.