

General Delivery and Payment Conditions of Distec GmbH

1. General, Scope of Application

(1) These General Delivery and Payment Conditions exclusively form the basis for all offers, deliveries and any other services provided by DISTEC GmbH - this shall also apply in future. Counter-confirmations given by the customer indicating his business or purchasing conditions shall be contradicted here. Deviating business conditions of the customer can only become part of the contract if they have been accepted by us in written form.

(2) Our General Delivery and Payment Conditions shall only apply to those persons, who act as part of their own industrial or professional activities (entrepreneur) when concluding the contract as well as to legal entities of the public law or an asset under public law.

2. Conclusion of Contract, Self-supply proviso, Re-exportation

(1) Orders will become legally binding with our written confirmation, whose content alone is applicable to the contractual relationship as well as for the scope of delivery and performance. Supplementary agreements, oral statements given by employees or representatives as well as changes to confirmed orders (including changes to contract items) require a written confirmation provided by us in order to become effective.

(2) Our delivery obligation stands under the proviso of timely and orderly self-supply.

(3) All products delivered by us shall be determined to stay in the delivery country agreed upon with the customer. The re-exportation of products basically shall be subject to Foreign Trade Regulations of Federal Republic of Germany or the country of origin and shall be subject to approval for the customer, if any. The customer has to inform himself/herself with regard to these regulations.

3. Prices

(1) In the absence of specific agreements prices shall be ex work or warehouse plus package, dispatch and insurance and respective statutory value added tax.

(2) Prices shall only be applied for the respective order, i.e. not be applicable for orders in the past or in future.

(3) On contracts with an agreed delivery time of more than five (5) weeks both contractual parties can demand a change of the agreed price to such extent, as changes of price formation factors which cannot be modified occur after the contract was concluded by the contractual parties, such as cost reductions or increases due to conclusion of a collective agreement or changes of the price for material. The change of price shall be restricted to the extent required for the settlement of the cost reduction or increase incurred. The contractual party shall be entitled to a respective price adjustment right - even if a factual delivery time of more than five (5) weeks occurs due to delays to be represented by the other party.

(4) The minimum order value is 750,--€ net.

4. Payment

(1) Payments shall be effected, if not otherwise explicitly agreed upon, within 30 days after invoice date net cash without deduction. The payment shall only be considered to be effected if we dispose of the amount (receipt of payment).

(2) Draft and cheque will only be accepted after previous agreement and only on account of performance and shall only be considered to be payment after unreserved crediting. Bank fees, discount charges, draft and other fees plus value added tax shall be charged to the customer according to private discount interest.

(3) If the customer is in delay with payment, we shall be entitled to charge default interest for late payment right from the point of time of delay in the amount of 9% above the basic interest rate which replaces the discount rate from the Bundesbank. The contractual partners are at liberty to prove a higher or substantially lower factual damage. Our rights according to Clause 5 para. 4 and the right to be entitled to charge due date interest of 3% p.a. above the basic interest rate, yet a minimum of 5% p.a. in case of a mutual trading operation right from due date shall remain unaffected.

(4) An offsetting or the exercise of a retention right shall only be allowable on the basis of statutory legal claims of the customer accepted by us which are non-contested and ready for a decision.

5. Delivery Term, Acceptance, Default in Acceptance

(1) If a delivery term is agreed, this shall begin with the date of our order confirmation, however, not before production of the documents, approvals, releases and complete clarification of technical questions to be answered by the customer and to be submitted by the customer, and details on the requested performance to be indicated by the customer.

(2) Delivery term shall be complied with if - before its expiry - circumstances which bring about the passing of the risk occur according to Clause VI.

(3) Delivery term shall be extended - even within a delay - appropriately in case of Act of God and all unforeseeable obstacles occurring after conclusion of contract and which are not to be represented by us if such obstacles have influence on the bringing about of performance which are to be rendered. This shall also apply if these circumstances occur at pre-suppliers. We will inform the customers about the beginning and the end of such obstacles without delay. If such obstacle lasts longer than three months or is determined that it will last more than three months, both the customer and we can withdraw from the contract.

(4) If the customer is in arrears with the acceptance of contract items or payment due to circumstances to be represented by him, we can withdraw from the contract after reminder and fruitless expiry of an appropriate additional respite defined by us or request damages due to non fulfilment. On enforcement of claims for damages due to non fulfilment we can demand compensation without proving this

- in the amount of 20 % of the purchase price if the contract item is part of mass production or standard production to be allowable or

- in the amount of 100 % of the purchase price if this contract item is a custom-built production according to specific customer requests and we had expenditure due to the production of the readiness to deliver.

The contractual parties are at liberty to prove higher or substantially lower factual damage. Irrespective of this the regulations stipulated by law shall also remain unaffected for the ascertaining of damages if the contract has already been completely fulfilled by us.

6. Delivery, Dispatch and Passing of Risk

(1) All shipments shall be at the customer's invoice and at the customer's risk.

(2) If no other agreements were made with regard to the mode of dispatch, we may determine the appropriate mode of dispatch at our own discretion (without warranty for the safest, fastest and most inexpensive transportation).

(3) Part delivery and performance shall be admissible to some reasonable extent.

(4) If the contract item reaches another member country of the European Community, the customer shall be obliged to inform us about his VAT-identification number, the sort of which applicable for this delivery, and his branch of industry before dispatch. This shall also apply correspondingly when involving further states into the regulations authoritative for this provision.

(5) In terms of deliveries the risk passes to the customer no later than when sending the announcement of readiness for dispatch, for lack of such an announcement at the point of time when a delivery leaves our work or warehouse. This shall also apply if part deliveries are made. If the dispatch is delayed due to circumstances we do not have to represent, the risk passes to the customer on the day of readiness for dispatch.

(6) If requested by the customer all dispatches shall be insured ex passing of risk for his invoice. In case of danger we assign claims from the insurance stepwise against the contractual performances rendered by the customer (including reimbursement of the insurance premium) to the customer.

7. Warranty

(1) In case of a purchase which is a commercial business for both parties the customer has to give notice of any kind of defect to us within eight workdays - except hidden defects (Saturday is not considered to be workday) after delivery in writing; otherwise the goods are considered approved. Hidden defects are to be given notice in writing within eight workdays after discovery (Saturday is not considered to be workday); otherwise the goods are considered to be approved despite these defects.

(2) For all injuries to life, body and health, for which we are to be held responsible, and in cases of intent or gross negligence, the period of limitation for defective material claims amounts to two years. Otherwise the period of limitation on defective material claims amounts to one year.

(3) Should the delivered goods display a relevant defect, the customer can demand as a matter of compensation, at our discretion, either a removal of the defect (subsequent improvement) or the delivery of faultless material (replacement). If we are not prepared or are not in the position to provide a subsequent improvement/replacement, in particular, if it is delayed beyond a commensurate period of time, for reasons for which we are to be held responsible, or if the subsequent improvement/replacement is otherwise unsuccessful, then the customer, at his/her discretion, shall be entitled to a rescission of contract or the diminution of the purchase price, if he/she finds other attempts of compensation unsatisfactory.

(4) There shall be no warranty obligation for normal wear and tear, in particular, with regard to wearing parts. Furthermore a warranty obligation shall not be existing if damage or disturbances occur at the contract item which can be traced back to improper treatment or use of inappropriate business conditions.

(5) We have limited liability according to Clause 8 for damage due to faultiness in delivery conditions.

(6) As long as faulty delivery items are not our own make, we shall be entitled to assign our defective material claims against our supplier to the customer and to advise him/her in those recourses (by legal process). According to para. 3 and 5, we may not be brought in to the claim, if the claims against our supplier are not enforceable despite a timely (by legal process) recourse or if the recourse is unacceptable in the individual case.

8. Liability

(1) We are liable according to the regulations of the Product Liability Act as well as in cases of inability which have to be represented and impossibility to be represented. In all other cases of liability the limitation of liability or exclusion of liability of Clause VII para. 5 shall apply correspondingly, in particular, in case of claims due to culpa in contrahendo, infringement of collateral duties (in particular false or omitted consulting or infringement of duties to protect), delay in delivery and performance and tort, whereby delay in delivery and performance represent infringement of a contractual duty in terms of Clause VII para. 5. If the preceding exclusion of liability or limitation of liability refers to any claims incurred on the legal ground of the fault when concluding the contract, the parties agree that the exclusion of liability or limitation of liability contains a disclaimer or a partial disclaimer.

(2) If our liability is excluded or restricted due to the previous regulations (also according to Clause VII para. 5), this shall also apply to personal liability of our employees, staff, representatives and vicarious agents.

(3) Limitation of claims of the customer vis-a-vis us acts in accordance with Clause VII para. 2, if this does not refer to claims from tort or according to Product Liability Act.

9. Retention of Title and other Securities

(1) We reserve the right to the title of the goods delivered until complete fulfilment of all - also future - claims (including collateral claims, such as costs for exchange, interest) from the business connection with the customer. If there is a current account agreement, the retention of title shall only be existing until complete settlement of the accepted balance. On receipt of cheque or draft the fulfilment shall only come into being if the cheque or draft is cashed and we can use the amount without any recourse risks. If payment is agreed upon with the customer on the basis of cheque-draft-procedure, the retention of title also covers the cashing of the draft issued by us and cashed in by the customer and shall not expire due to crediting of the cheque received.

(2) The customer may reprocess and sell the goods within the orderly and usual business course, however may not pledge or assign them for security.

(3) The customer shall be obliged to treat the reserve goods with care and to insure it appropriately against theft, destruction and damage at his own costs. On pledge, seizure, damage and loss the customer has to inform us without delay. The customer shall bear all costs which have to be paid, in particular, within the scope of an action in opposition to execution of a judgement, brought by a third party who claims title to the attached property, for the revocation of a pledge and for replacement of the contract items, if they cannot be collected by third parties.

(4) In case of delay of payment or if the customer infringes other substantial contractual duties, we shall be entitled to a temporary taking back of the reserve goods. The exercise of the right to take back shall not represent a withdrawal from contract.

(5) The customer shall already now assign purchase price claims, labour claims or any other claims incurred from a resale, a reprocessing or other legal ground (e.g. in case of insurance, tort) with regard to reserve goods (including the accepted balance from a current account agreement or the then existing "causal balance" in case of insolvency of the customer's business partner) in the amount of the invoice of the reserve goods; we accept the assignment. We shall authorise the customer reversible to collect the claim assigned to us for invoices from us in his own name. This collection authorisation can only be revoked if the customer cannot meet his payment obligations. In such case and if requested by us the customer has to submit statements required on the assigned claims, has to provide respective documents and has to inform the debtor about the assignment.

(6) The reprocessing or change of contract items by the customer will always be done for us. If the contract item is processed with other subjects not belonging to us, we acquire joint ownership of the new goods in the relation of the value of the contract item to the other processed subjects at the time of processing. For the subject coming into existence due to reprocessing the same shall be applicable as for the subjects delivered under retention of title.

If the contract item is connected with other subjects to a standard subject which does not belong to us and our ownership lapses for this reason, it shall be agreed that the ownership of the customer on the standard subject shall be assigned to us pro-rata (i.e. in the relation of the value of the contract item to the other connected subjects at the point of time of connection). The customer shall be entrusted with our joint ownership free of charge. For the subject coming into existence due to the connection the same shall apply as for the subjects delivered under retention of title.

(7) If the realisable value of the securities allowed according to the above-stated regulations exceeds our claims vis-a-vis the customer more than 10 % not only for a short period of time we will release securities at our discretion if requested by the customer. The above-stated coverage limit of 110% shall be increased by the value added tax amount if we are burdened with value added tax when exploiting the safety subject coming into existence for us with a delivery of the customer with value added tax.

10. Final regulations

(1) The customer shall authorise us by doing without a statement to process person-related data within the scope of the admissibility of the Federal Data Protection Act if this is required for the implementation of the contractual relation.

(2) Unless otherwise agreed upon the place of performance shall be Munich.

(3) If the customer is merchant in terms of a commercial code, judicial persons of the public law or public-legal funding, the jurisdiction for all rights and duties of the contractual parties from any kind of business - even with regard to disputes for drafts and cheques - shall be Munich. Correspondingly it shall apply if the customer does not have a general national jurisdiction, changes his residence or common place of living after conclusion of contract to another state or his residence or common place of living is not known at the point of time of when taking legal action. We shall also be entitled to sue the customer at his general jurisdiction.

(4) The law of the Federal Republic of Germany under exclusion of the UN-purchase right shall be applicable for these General Terms and Conditions and the overall legal relation between us and the customer.