

I. Applicability

1. These General Terms and Conditions of Purchase shall apply to all business dealings with suppliers or with other contractors (hereinafter collectively called "the Seller") even in the case that such sellers are not referred to again in later agreements. The General Terms and Conditions of the seller are hereby expressly rejected.
2. Any variation to these General Terms and Conditions of Purchase agreed on for a specific order shall supersede and supplement these General Terms and Conditions of Purchase.
3. Amendments and supplements to these General Terms and Conditions of Purchase, including waivers of the requirement of a written form, shall be made in writing. Oral agreements shall enter into effect only upon written confirmation by the parties to the contract and provided that the parties to the contract do not immediately oppose such oral agreements.

II. Offers/Orders

1. Costs incurred in drawing up and submitting an offer shall be borne by the Seller.
2. Orders placed by Delwo Metallhandel GmbH shall be binding only when made out in writing and signed by us. Orders placed orally or on the telephone shall only be binding for us if subsequently confirmed by an order submitted in writing. On accepting an order the Seller recognises that he has inspected the documents submitted and has informed himself of the mode of execution and the scope of delivery. We exclude liability on our part for any apparent errors, incompleteness, typing errors or miscalculations in documents submitted by us. The Seller shall be obliged to notify us of any such errors so that we may rectify errors and submit a new order.
3. Any variations in quantity and quality from the wording and the content of our order and subsequent amendments to the agreement require our express written acknowledgement.
4. We request that our orders be confirmed immediately or at the latest within one week of being placed. Failure to confirm receipt shall entitle us to revoke our order. Any variation from our order and any documents which may have been submitted accordingly or any variation in the condition, quality, functional capacity, etc. of the goods/services to be supplied which does not comply with order specifications or with goods/services supplied hitherto requires our written approval.
5. We may modify technical details up to four weeks prior to the delivery date. Should original or reference samples be made available to us, series production shall only commence subsequent to release in writing.

III. Prices

1. Unless otherwise expressly agreed in writing, total prices and unit prices agreed shall be fixed prices and shall apply until an order has been completely processed, if the Seller does not generally reduce the respective prices.
2. Prices are understood to be DDP our point of destination including freight, packing and additional charges. We shall assume only the most favourable freight costs for any separate carriage forward delivery agreed on unless a specific method of delivery has been stipulated.
3. The Seller shall not grant to us any prices and conditions less favourable than those granted to other purchasers if and to the extent that said purchasers offer the Seller the same conditions or equivalent conditions.

IV. Payment/Reservation of Ownership

1. Orders shall be separately invoiced upon fulfilment of all obligations for delivery.
2. The following payment conditions shall apply unless otherwise specifically agreed: a cash discount of 3 % shall be deducted for invoices settled within 14 days; invoices settled within 60 days shall be paid in full. Payment shall become due upon receipt of an invoice for goods fully delivered free from defects or for services rendered and accepted and upon the surrender of any reports or similar documentation included in the scope of delivery in accordance with this agreement. This shall apply accordingly for partial deliveries of goods or for the partial performance of services. Delays as a result of incorrect or incomplete invoices shall not affect discount periods.
3. If advance payments have been agreed for which there is no corresponding counter-value at the time of making payment we shall be entitled to concurrently request a guarantee of payment from a bank. The Seller shall bear the costs incurred for such a guarantee, which shall be withdrawn when a service is rendered or goods are accepted.
4. Payments shall be made by cheque or bank transfer. Payment is considered to be in time if cheques are sent on the due date or if banks are authorised to make a transfer on the due date.
5. Should the situation arise, we shall be entitled to withhold appropriate amounts of payment to merchants from the point in time when setoffs occur. This shall not apply if the Seller provides due security.
6. Any reservation of the Seller's ownership shall be recognised provided that ownership of the object of purchase is assigned to us when payment is made for said object of purchase (standard reservation of ownership) and when any additions (in particular relating to trade ownership and group ownership) accordingly do not apply. The latter are hereby expressly rejected.
7. Our approval is required for the transfer of debts owed by us to the Seller. Payments shall only be made to the Seller.

V. Dispatch/Delivery

1. Unless stipulated otherwise, goods shall be delivered to the address indicated on our order.
2. Partial deliveries and the passing on of our orders to third parties (sub-suppliers and sub-contractors) shall be subject to our written approval. The Seller shall bear any additional costs incurred.
3. The Seller shall bear the risk of accidental loss or deterioration (in particular the transport risk) until we have effective control over the goods supplied at the specified forwarding address. Risk shall be passed on upon acceptance in the case of service contracts and of corresponding contracts for material and labour and of deliveries, including assembly or installation.

VI. Delivery Dates/Delivery Periods

1. Delivery dates and delivery periods agreed are binding and shall commence on the date of an order. Goods shall have been received by us at the receiving area within the delivery period or on the delivery date. The Seller shall notify us immediately of any anticipated delays in delivery. This shall not, however, release the Seller from any claims for damages to which we may be entitled. We shall not be obliged to accept goods or services prior to the delivery date.

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Date: 1 July 2007

2. Failure to comply with delivery dates or delivery periods shall entitle us, subsequent to reminder, to terminate this agreement and/or to request compensation for loss or damage in lieu of goods or services; we shall also be entitled to insist on performance or supplementary performance of the contractual obligation and claim for losses due to delay and for the reimbursement of monies spent in vain.
3. Time is agreed to be of the essence for firm deals and we shall be entitled to terminate the agreement and/or to request compensation for loss or damage in lieu of performance.
4. We shall be entitled to claim for 15% of the total net order value in the event of non-performance and for 0.5% of the total net order value per commenced week up to a maximum 25% of the total net order value and/or to terminate the agreement in the event of a delay in performance. Proof of additional compensation, to be borne by the Seller in this case, shall not be excluded by the aforesaid provision. The Seller may also provide evidence that no damage occurred or that far less damage occurred than that for which a general claim had been submitted. Any contract penalty paid shall be credited against a claim for compensation.
3. The warranty period shall be two years and shall commence on the date on which performance has been completed (acceptance and/or installation or assembly, as the case may be).
4. Repairs, remedies or replacements shall interrupt limitation.
5. The Seller shall already assign to us, in fulfilment, all of the claims to which he is entitled due to defects which occurred on our premises or to which he is entitled to enforce against his supplier/sub-contractor on the basis of a lack of a warranted quality. The Seller shall make available to us all of the documents required for enforcing such claims. The Seller shall be entitled to request reassignment of such assigned rights should we fail to assert said rights.
6. The Seller shall release us from any claims by third parties – in particular those relating to product liability – resulting from defectiveness of partial performance undertaken by him on our products (in particular concerning the supply of raw materials and components).

VII. Declaration on Originating Status

1. The Seller shall be obliged at our request to enable declarations made by him on the originating status of goods sold to be verified by the customs authorities and shall also be obliged to provide necessary information in this respect as well as any confirmation that may be essential.
2. The Seller shall also be obliged to compensate for any damage that may be incurred in the event that the origin declared by him is unfounded and/or is not recognised by the respective authority due to irregular certification or to the absence of the possibility of verification. The Seller shall not be liable if he proves that the aforesaid is not due to personal wrong on his part.

VIII. Warranty and Liability

1. Incoming goods shall be examined by us in terms of transport damage and identity insofar as these are apparent within the framework of the legal obligation to inspection and to give notification of defects under § 377 HGB (German Commercial Code).
2. If goods/services are defective or fail to conform with agreed properties, we may at our own discretion file legal guarantee claims or request rectification or replacement. Should any rectification or replacement requested by us fail or prove to be defective within a respective adequate extension period we may – in the event that the Seller is a merchant entered in a commercial register – rectify defects ourselves or have defects rectified by third parties or purchase goods in replacement at the expense of the Seller, also for sales contracts. If the operating safety is at risk and/or in order to avoid exceptionally extensive damage for us or for third parties, we shall be entitled, also without prior agreement and at the expense of the Seller, to rectify defects and to repair damage should it no longer be possible to notify the supplier of the defects and the imminent damage and to grant him even a short period of time to remedy such defects or damage himself.

IX. Production Tooling (in particular tools) and Raw Materials

1. Any accessory equipment made available by us or produced for us (tools, models, drawings and other documents of any type, i.e. production tooling) may only be used for executing our orders and may only be made available to third parties (also in part) upon prior written agreement by us. Such production tooling shall be sent to us immediately exempt from all charges upon our request, but at the latest two years after they were last used. Production tooling and raw materials made available by us shall remain our property. The production, handling and processing of such production tooling produced by the seller on execution of our order results in our acquiring ownership of said tooling.

X. Final Provisions

1. The place of delivery or performance for all supplies and services is the point of destination specified by us, or, in the event that no such point of destination be specified, Neunkirchen.
2. Insofar as the Seller is a merchant entered in a commercial register, is a body corporate or public separate property or does not have any general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction is Neunkirchen. We are however, also entitled to bring an action against the Seller at the respective court of law in his domicile.
3. The laws of the Federal Republic of Germany shall apply for all legal relations between our company and the Seller on exclusion of the standard UN Convention on Contracts for the International Sale of Goods (CSIN). In the event that any provision of this agreement or these terms and conditions of purchase be ineffective, the effectiveness of the remaining agreement and provisions shall remain unaffected.