

General Conditions of Delivery and Payment

DIEPA – Drahtseilwerk Dietz GmbH & Co. KG

Scope

1. These general conditions of delivery apply to business relationships with other companies, legal entities of public law and public law special assets.
We provide our goods and services solely in accordance with the conditions stated below and such conditions shall be applicable to any and all present and future business relationships. Any terms and conditions of our business partner may be applied only subject to our written approval.

General provisions

2. The contracting parties agree that any oral agreements must be set out in writing without undue delay.
3. Purchase orders take effect only if confirmed by us in writing.
4. Any information and images contained in product flyers and catalogues represent customary approximations only. They are not binding, unless explicitly confirmed by us in writing.

Dimensions, weight, quality

5. Standard specifications refer to the version applicable at the time.
6. Deviations from stated dimensions, weight and quality shall be permitted within the scope of DIN or to the extent they reflect applicable current practices within the industry. Deviations other than that require specific approval.
7. Technical data concerning the delivery item and its description are provided without obligation. We reserve the right to make design modifications to the extent they are reasonably acceptable to the buyer. We reserve all rights of intellectual property and ownership with respect to any cost calculations, drawings and other documents that we may provide. Such documents must not be disclosed to Third Parties and returned to us immediately upon request, if the contract is not awarded to us.
8. Product and dimensional data do not represent warranted characteristics. Instead, they provide non-binding information on appearance and workmanship.

Long term and call off purchase agreements, price adjustments

9. In case of material changes regarding wages, material and energy costs affecting any long term contracts (contracts having a duration of more than 6 months or contracts without time limit), each contracting party shall be entitled to request a reasonable price adjustment taking such factors into account.
10. In case of call off purchasing agreements, firm orders must be submitted by call-off at least 6 weeks prior to the desired delivery date.

Prices

11. Pricing is in euro exclusive of sales tax, packaging and freight costs.

Terms of payment

12. Invoices shall be due for payment when the goods have been made available for pick-up or upon shipment and upon receipt of the corresponding invoice. After an additional period of 14 days, the customer shall be in default without any need of further notification.
13. If the goods supplied by us are found to be partially defective and this fact is not in dispute, our business partner nevertheless shall be obliged to make payment for such portion of the delivered goods which are not defective, unless a partial delivery would be of no use to him. Other than that, the partner shall be permitted to make offsets only in case of counter claims which are confirmed by a court of justice or which are not in dispute.
14. In case of a delay in payment, we shall be entitled to claim interest at the same rate, which is charged at the time by our banks for current account loans, however, no less than 8 percentage points above the base interest rate of the European Central Bank applicable at the time.
15. In case of a delay in payment we shall be entitled to suspend the provision of contractual services until full payment has been received. We shall notify our partner of such action beforehand.
16. We will accept bills and cheques subject to prior agreement, on account of performance only and subject to their being discountable. Discount expenses shall accrue beginning with the due date of the invoiced amount. No warranty is given for timely presentation of the bill and cheque and for raising a protest of a bill.
17. If, subsequent to conclusion of a contract, it becomes apparent that our payment claim may be endangered by a lack of liquidity of our partner, we shall be entitled to deny performance, and to set the partner a reasonable time limit to match deliveries with payments or to provide security. In case of rejection by the partner or expiry of the time limit, we shall be entitled to step down from the contract and to claim for damages.
18. We shall be entitled to offset any claims, we have against the partner, regardless of their origin, against all claims the partner may have against us.

Deliveries

19. If not otherwise agreed upon, deliveries having a contract value of at least 500.00 EUR will be made to the receiving station free of charge within the Federal Republic or FCA German sea port, or free of charge to the German border, duty unpaid. Any deliveries below that amount will be carried out ex works. Heavy transports > 25 tons will be carried out ex works, too. A shipment shall be deemed in compliance with the agreed delivery schedule or the agreed lead time, upon timely notification of the partner that the shipment is ready for pick-up or shipment, unless another binding delivery date has been notified in writing.
20. The lead time for delivery shall begin with the date of our written order confirmation. It may be extended appropriately in case the circumstances in accordance with article 50 prevailing.
21. Partial deliveries shall be allowed to a reasonable extent. They shall be invoiced separately.

Shipment and transfer of risk

22. We will select appropriate routes and means of transportation as well as choose a suitable forwarder or carrier, if not otherwise instructed.
23. In case of delays in loading or shipping of goods caused by the buyer, we shall be entitled at our own discretion and for the account and risk of the buyer to hold the goods in store, to take any and all appropriate measures necessary for maintaining the goods in useful condition, and to invoice the goods as if they had been delivered. The same applies if goods having been readied for shipment are not called-off within 4 days. Legal provisions concerning delays in acceptance of delivered goods shall remain unaffected.
24. In case of damages caused in transit, the buyer must notify us immediately and have the forwarder draft an appropriate protocol.
25. The risk shall pass to the buyer at the time when the goods are handed over to the forwarder or carrier, however, no later than at the time of leaving our factory or warehouses. This is applicable also if shipment is arranged by us.
26. Unless otherwise agreed upon or unless this would not reflect common practice, the goods shall be delivered without packaging and without corrosion protection. Packing material made of paper, plastic, jute etc., as well as one-way-pallets and one-way-reels shall be invoiced and not taken back. Reels on loan will be invoiced and must be paid in full. They will be credited if returned in good condition within a time limit of 2 months for an amount of 1/2 of the value invoiced.

Lead times, delivery delays

27. Lead times will be specified under the proviso that all details of the contract will be clarified in time and that the buyer complies with his contractual obligations in time. The lead times provided are approximations only, unless delivery on a specific date has been expressly agreed upon. If the scheduled date of delivery is exceeded by more than two weeks, the buyer may place us in default by notification of the delay in writing and by the original time limit by a reasonable margin. Precondition of this would be, however, that the buyer has complied with all his contractual obligations in a timely fashion. These include the duty to cooperate or subsidiary duties, such as the provision of documents and certificates, making any required advance payments, checking of drawings or models or similar activities.
28. If delivery is delayed due to circumstances as described under article 50, or due to actions taken or omitted by the partner, an extension to the time limit shall be granted as is reasonable under the given circumstances...
29. The partner may withdraw from the contract in case of non-compliance with the agreed delivery time schedule and if we have not remedied the situation within the stated time limit.

Retention of title

30. We retain title to the delivered goods until all receivables arising out of the business relationship with the partner have been paid in full.
31. The partner shall be entitled to sell the goods in the ordinary course of business, as long as he fulfils his obligations arising from his business relationship with us in due course of time. He shall be obliged to secure our rights when reselling any of the retained goods.
32. If the partner does not comply with his obligations, specifically in case of delayed payments, we shall be entitled to withdraw from the contract and to retrieve any goods supplied, if the partner does not comply with his obligations after having been requested to do so within a reasonable time limit. Any legal provisions regarding the dispensability of the requirement to give notice remain unaffected. The partner shall be required to surrender the delivered goods. We shall be entitled to withdraw from the contract, if insolvency proceedings have been opened in respect of the assets of the partner.
33. Any claims and rights arising from any authorized sale or leasing of retained goods by the partner, shall be assigned to us by the partner as security. We herewith accept such assignment.
34. Any processing or modification of the retained goods shall be carried out by the partner on our behalf. If the retained goods are processed jointly with objects not in our possession or combined lastingly with such objects, we shall receive title to the new objects in proportion of the purchase price of the retained goods to the other processed or combined items at the time of processing or combination.
If our goods are joined to other movable objects to form a uniform object, or if they are lastingly combined, and such other objects are regarded as the main objects, the partner shall then transfer to us proportionate co-ownership to the extent that he owns the main object. The partner shall hold ownership or co-ownership on behalf of us. The objects created by way of processing or combination or joining shall be subject to the same conditions as the retained goods.
35. The partner shall inform us immediately of any execution proceedings against the assigned claims or other securities as initiated by a third party, providing us without delay with all documents necessary for defending the case. The same will be applicable to all other kinds of infringements as well.
36. If the value of the existing securities exceeds the secured claims by more than 20 percent, we agree to release securities at our discretion in an appropriate amount.

Material defects

37. Appearance and workmanship of the goods shall comply with the agreed technical specifications. If supplies are to be made in accordance with drawings, specifications and models etc. provided by our partner, this partner shall bear the risk of suitability of such documents for the intended purpose. The supplied goods shall comply with contractual requirements at the time of transfer of risk in accordance with article 25.
38. We shall not be liable for any improper use of the supplied goods, of their faulty installation or their being put into service by the partner or third parties, normal wear and tear, or careless handling, and we cannot be held liable for the consequences of improper modifications or modifications carried out without our approval or of maintenance work carried out by the partner or a third party. The same applies for defects which diminish the value or usefulness of the goods only to a negligible extent.
39. Claims based on material defects expire after 12 months. This does not apply, if legal provisions require longer time limits, specifically regarding defects in buildings and in goods, which are commonly used in buildings, and which have caused defects in those buildings.
40. If acceptance tests of the goods or inspection of first-off samples had been agreed, claims for defects are not allowed to the extent that such defects could have been identified during careful acceptance testing or inspection of the first-off samples.

41. We must be given the opportunity to investigate the any stated claims. Rejected goods must be returned to us immediately upon request. Transportation will be for our account if the claims are found to be justified. Non-compliance of the partner with such obligations or modifications carried out by the partner without our approval on the rejected goods shall void any claims for material defects he may have had.
42. In case of a justified and timely complaint, we shall at our discretion either repair the faulty goods or provide replacements free of defects.
43. If we do not comply with our obligations or if we do not comply within a reasonable time as agreed upon in the contract, the partner shall be entitled to request compliance in writing, setting a final time limit for performance. Upon expiry of such time limit the partner may request a price reduction, withdraw from the contract or carry out any required repair work himself or have such repair work carried out by a third party for our risk and account. Reimbursement of costs will not be made to the extent that increased costs have been incurred due to that fact that the goods were moved to a different location subsequent to delivery by us, unless this would have been done in the course of proper use of the goods.
44. Legal claims for reimbursement on the side of the partner vis-à-vis us exist only to the extent that the partner has not entered into any agreement with his own customer, which would exceed claims for material defects allowed by law. The scope of claims for reimbursement shall be governed also by the last sentence of article 43.

Other claims, liability

45. Unless otherwise agreed upon in the following, other and more extensive claims of the partner against us shall be excluded. This is specifically true for claims for damages in relation to violation of obligations arising from obligations by contract or from unlawful acts. For this reason we shall assume no liability for damages which were not incurred on the supplied goods themselves. Specifically, we shall assume no liability for loss of profit or other losses regarding the assets of the partner.
46. The above limitations on liability shall not apply in case of intent, gross negligence on the part of our authorized representatives or management staff as well as culpable violation of any agreed material obligations. In case of culpable violation of any agreed material obligations, we shall be liable - except in cases of intent or gross negligence of our authorized representatives or management staff - only for such damages which may be reasonably expected and which may be considered typical for the contract.
47. Moreover, the limitations on liability shall not be applicable in cases, where, in accordance with product liability law, liability must be assumed for personal injury or property damage on privately used objects. They will furthermore not be applicable in case of loss of life, bodily harm or impairment of health, and in case of the goods not having any of the warranted properties, if and to the extent such warranty was given with the specific intent to guard the partner against damages, which are not being incurred on the supplied goods themselves.
48. To the extent that our liability has been excluded or limited, this shall also apply to the personal liability of our staff, workforce, authorized representatives and our vicarious agents.
49. Legal provisions concerning the burden of proof remain unaffected hereof.

Force majeure

50. Force majeure, labour conflicts, civil unrest, government interventions, lack of supplies by our sub suppliers, and other unforeseeable, inevitable and grave events shall relieve the contracting parties of their obligation to perform their contractual duties to the extent such events may affect such duties and for their duration. This is true also if such events occur at a point in time, when the contracting party affected by such events is in default, unless that party has caused such default by wilful intent or by gross negligence. The contracting parties agree, that they will, to the extent that this would be reasonable, immediately provide any pertinent information and to adjust their obligations to the changed circumstances to the best of their knowledge and ability.

Place of performance, place of jurisdiction and applicable law

51. If not otherwise specified in our order confirmation, the place of performance shall be the seat of our company.
52. The place of jurisdiction for any disputes, including disputes related to bills and cheques, shall be the seat of our company. We shall also be entitled to initiate court proceedings at the seat of the partner.
53. The contractual relationship and this text shall be governed by and construed in accordance with the laws of the Federal Republic of Germany excluding the Convention on Contracts for the International Sale of Goods. It shall be executed in both German ("Allgemeine Liefer- und Zahlungsbedingungen") and the English ("General Conditions of Delivery and Payment") language. In the event of any inconsistency between the German and the English version the German version shall prevail.