

GENERAL TERMS AND CONDITIONS

§1 GENERAL

1.1 The following conditions apply to all of our offers, sales, deliveries and services and form an integral part of the contract. They also apply to all future business relationships, even if they are not explicitly agreed again.

They do not apply if our contractual partner is a private individual and not acting professionally or commercially.

1.2 Any conditions of the purchaser or to the contrary are explicitly excluded. They do not apply even if the purchaser has based his order or other clarification on them, unless explicitly agreed to by us in writing.

§2 OFFERS AND ORDERS

2.1 Our offers are subject to confirmation if they are not designated as binding in writing. The acceptance of orders becomes binding once they are confirmed in writing or on delivery of the goods.

2.2 The documents on which the offer or the order confirmation are based, such as illustrations, drawings, information on dimensions and weights remain in our title and should normally only be considered approximate values. They can only become binding contractual content if we explicitly confirm them in writing.

§3 PRICES

3.1 Our prices are deemed „ex-works“ unless otherwise agreed with the purchaser. Packaging costs are not included in the price.

3.2 Statutory value-added tax is not included in our prices and shall be indicated separately on the invoice, charged at the applicable rate on the date of invoicing.

§4 LEAD TIME

4.1 All delivery dates stated are approximate only, unless we have explicitly confirmed them in writing as binding. For non-binding delivery dates, a delivery made within 5 working days after the given delivery date shall be deemed on time.

4.2 If it is our fault that the explicitly agreed delivery deadline cannot be maintained or we get into default for any other reason, then the purchaser shall grant us a reasonable period of grace, starting on the 6th working day. Once this period of grace expires, the purchaser is entitled to rescind the contract.

4.3 If we are temporarily prevented from performance in whole or in part or if performance is made considerably more complicated in whole or in part due to force majeure or other extraordinary circumstances not caused by our negligence, the agreed delivery time shall be extended by the duration of the impediment to performance. The same shall apply to any deadline set for performance by law or by the purchaser, particularly to periods of grace in the event of delay.

4.4 Prior to expiry of the delivery time or period for performance, as the case may be, extended according to Paragraph 3, the purchaser shall neither be entitled to rescission nor to damages. If the impediment to performance lasts longer than 12 weeks, both the purchaser and we shall be entitled to rescission in so far as the contract has not yet been performed. If the purchaser is entitled to rescission without the setting of a period of grace by contract or by law (e.g. due to discontinuation of interest), this right shall remain unaffected.

4.5 In the case of a possible delay in delivery, unless it is based on intention or gross negligence, any claims for damages of any kind shall be excluded.

§5 DISPATCH

5.1 Shipment is done at the purchaser's expense. The risk regarding the goods shall pass to the purchaser upon loading of the goods, including if freight-paid delivery has been agreed or delivery has been made with our own vehicles. We are not obliged to provide transport insurance unless this is explicitly confirmed in writing and specified by the INCO TERMS stated by us.

Unless otherwise explicitly agreed in writing, we shall be entitled to make partial deliveries to a reasonable extent and charge them separately.

§6 PAYMENT

6.1 Unless otherwise explicitly agreed in writing, our invoices shall be due in full immediately on receipt of delivery and invoice.

6.2 The purchaser shall be in default even without having been warned by us if he fails to pay the purchase price within 10 days after the due date of the invoice or equivalent payment schedule.

6.3 If the purchaser is in default with a payment, his entire payment obligations from the business relationship with us shall be due immediately. In this case, we shall be entitled to charge interest at the statutorily fixed amount as and from the relevant time. The seller shall be entitled to prove that the damage is greater.

6.4 The purchaser shall only be entitled to set-off, even if notifications of defects or counter-claims are asserted, if the counter-claims are determined with final and binding effect, acknowledged by the seller or undisputed. The purchaser shall only be permitted to exercise a right of retention if his counter-claim is based on the same contract of sale.

§7 DOUBTFUL SOLVENCY

7.1 If we become aware of any circumstances that justify doubts about the purchaser's ability to pay after conclusion of the contract, we may make any further deliveries dependent on an advance payment of the goods by the purchaser. We may set a reasonable deadline to the purchaser for the advance payment of the goods and rescind the contract if we do not receive the advance payment in due time; the purchaser may provide security by bank guarantee instead of the advance payment. If we have already delivered the goods, the purchase price shall be due for payment in full immediately, regardless of any agreed payment terms.

7.2 Doubts about the purchaser's ability to pay shall be justified, amongst other reasons, if an application for the institution of insolvency proceedings against his assets has been filed or if he fails to make payments to us or to third parties in due time.

§8 GUARANTEE/LIABILITY

8.1 The buyer shall inspect the goods in good time before acceptance/acknowledgement carefully for damage and shortages - and in the case of refrigeration products/frozen products, for the prescribed storage/goods inward temperature. Any complaints shall be specified in full on the receipt/delivery docket and be confirmed by the carrier in writing.

8.2 If there are any complaints, the receiver shall carry out or have carried out in time all the necessary measures including a full written description of all the facts. DESIETRA GmbH shall be informed immediately by the customer/purchaser/receiver and without delay if there is a complaint.

In addition to these checks, the customer/purchaser/receiver shall check the goods in regard to quantity, type and quality immediately upon receipt.

Any hidden defects shall be reported immediately following their discovery, and no later than within 14 days.

8.3 If these notification periods under § 8.1 to § 8.2 are not adhered to, warranty claims cannot be invoked subsequently. DESIETRA GmbH is likewise not obliged to make subsequent deliveries, if and where the customer/purchaser fails to meet his contractual obligations.

The warranty shall likewise not apply if the customer/purchaser handles the goods improperly.

8.4 Subsequent performance in terms of the warranty claims may be in the form of the removal of the defect or a new delivery of goods at the purchaser's discretion. We are entitled to refuse the manner of subsequent performance chosen by the purchaser if the costs for same are disproportionate. Any reduction of the purchase price or cancellation of the contract by the purchaser is excluded during the subsequent performance. Subsequent performance shall be deemed to have failed after the second failed attempt. In the event that subsequent performance has failed or the seller has completely refused subsequent performance, the purchaser can at his discretion demand a reduction in the purchase price or withdraw from the contract

8.5 Claims for damages based on a defect as set forth in the following provisions can only be lodged by the purchaser if subsequent performance has failed or we have refused subsequent performance. The right of the purchaser to lodge further claims for damages in accordance with the following provisions shall not be affected.

8.6 We shall be liable without limitation according to the statutory provisions for intentional or grossly negligent breaches of duty as well as for damages resulting from any mortal, bodily or physical injury. We shall also be liable if such negligence pertains to a breach of a contractual obligation whose performance is of central importance in accomplishing the purpose of the contract and only limited up to the amount of the typically foreseeable damage.

8.7 The limitation of liability under Paragraph 8.6 shall apply accordingly to claims other than contractual claims for damages, particularly claims based on tort, with the exception of the claims under the Product Liability Act. Furthermore, it shall also apply in favor of our employees, representatives and vicarious agents.

8.8 To the extent that we have given a guarantee of quality and/or durability with respect to the goods or parts of the goods, we shall also be liable in line with this guarantee. However, we shall only be liable for damage based on the lack of the guaranteed quality or durability but not accrued directly on the goods if the risk of such damage is visibly included in the guarantee of quality and durability.

8.9 We shall also be liable for damages caused by ordinary negligence as far as this negligence concerns the violation of such contractual obligations, the compliance with which is particularly important for the achievement of the purpose of the contract (cardinal obligations). However, we shall only be liable as far as the damages are typically associated with the contract and foreseeable. In all other cases, we shall not be liable for any ordinary negligent violations of collateral duties not essential in terms of the contract. The limitations of liability included in §7 shall also be applicable as far as the liability for the legal representatives, executive employees and other vicarious agents of the seller is concerned.

8.10 Any further liability shall be excluded regardless of the legal nature of the claim asserted. Where the seller's liability is excluded or limited, this shall also apply to the personal liability of his employees, representatives and vicarious agents.

§9 RETENTION OF TITLE

9.1 We retain title to the goods (conditional goods) until all payments from the purchase agreement are received. The goods delivered shall not be transferred to the purchaser's ownership until said purchaser has fulfilled all of his obligations from the business relationship, including accessory claims and claims for damages.

9.2 The purchaser shall inform us in writing without delay of any intervention by third parties, especially with regard to foreclosure measures or any other impairment of ownership. The purchaser shall be liable for the settlement of any damages or costs incurred through such a breach of duty or in the course of necessary protective measures against access or intervention by third parties.

9.3 Should the purchaser not effect payment in spite of our having issued a reminder, we shall be entitled to instruct the purchaser to release the goods under retention of title in his possession to us without prior notice. The purchaser shall cover the cost of shipment. In the seizure of goods under retention of title, we are always entitled to withdraw from the contract. On receipt of the goods under retention of title, we are free to utilize them as we see fit. Any income thus derived shall be offset against our outstanding claims.

§10 PLACE OF FULFILMENT

The place of fulfilment for payments is Fulda and for our goods deliveries, the delivery site.

§11 DATA PROTECTION

The personal data acquired by the purchaser in the context of the business relationship shall, where required by us for the fulfilment of the contract or the implementation of pre-contractual measures, be processed by us in accordance with art. 4 no. 2 GDPR. Legal basis for this processing is art. 6 para. 1 S. 1 lit. b GDPR. The data collected in relation to this will be deleted by us as soon as storage is no longer necessary, or processing limited, where a statutory retention requirement (such as retention of tax-relevant documents as per § 147 para. 3 German Fiscal Code (AO): 10 years) applies.

§12 PLACE OF JURISDICTION AND APPLICABLE LAW

12.1 The contractual relationship between us and the purchaser, even if the purchaser's place of residence or business is abroad, shall be governed by the law of the Federal Republic of Germany. The enforcement of the Uniform Law on the International Sale of Goods and the law governing the conclusion of international purchase contracts is excluded.

12.2 The purchaser is not authorized to assign claims from the purchase agreement without the consent of the seller.

12.3 If the purchaser is a merchant, a legal person governed by public law, or a special fund under public law, then the place of jurisdiction for both parties shall be Fulda. We reserve the right, nevertheless, to sue the purchaser at his general place of jurisdiction.

§13 SEVERABILITY CLAUSE

The invalidity of individual provisions of these General Terms and Conditions or of the supply contract agreed with the purchaser shall not affect the validity of the remaining provisions. An ineffective provision shall be replaced by a provision coming as close as possible to its economic content.

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