

General Terms & Conditions of Sale & Delivery of DewertOkin GmbH

Telefon +49 (0) 5223 979 - 0 · FAX +49 (0) 5223 78185 · info@dewertokin.de · www.dewertokin.de
Weststraße 1 · 32278 Kirchlengern · Germany
Amtsgericht Bad Oeyenhausen · HRB 7338

I. Scope of the General Terms & Conditions of Sale & Delivery (GTCs)

1. These GTCs shall apply exclusively to business operators, legal entities under public law or special funds subject to public law within the meaning of § 310 paragraph 1 of the German Civil Code (BGB) regarding our deliveries and services to the Customer. We shall not recognise any terms and conditions of the Customer that conflict with or deviate from these, unless we have expressly approved their validity in writing. Our GTCs shall also apply in cases where we are aware of the Customer's contrary or deviating terms and conditions and unreservedly perform our supply commitment to this Customer.
2. These GTCs shall also apply to all future transactions with the Customer even if explicit reference is not made to them, in as far as this involves legal transactions of a related kind.
3. In respect of analyses, repairs, modifications, conversions and disposals our "Technical Service" Terms & Conditions shall additionally apply.
4. Amendments to these business terms shall be communicated to the Customer in writing. They shall be deemed approved if the Customer does not lodge a written objection. We shall advise the customer expressly of this consequence when making the announcement. The Customer must mail the objection within 14 (fourteen) days of being notified of the amendments.

II. Contract and Contractual Documentation

1. We may elect to accept within 2 (two) weeks any purchase order that is deemed to be an offer pursuant to § 145 of the German Civil Code (BGB).
2. The scope of deliveries and/or services shall be determined by the written declarations (purchase order, offer or order confirmation) of both contracting parties. Verbal assurances given by employees/representatives of our company prior to concluding the respective contract shall not be legally binding. Ancillary agreements to this contract shall only be valid provided they have been confirmed in writing.
3. We reserve the ownership rights and the copyright to any documents made available to the Customer in connection with the order placement, such as estimates, drawings etc. These documents shall not be reproduced or made accessible to third parties without our prior written consent. If a contract does not come about, any related documentation made available to the Customer must be returned to us without delay.

III. Prices and Payment

1. The prices stated in our order confirmation are authoritative. In as far as nothing to the contrary is agreed, prices shall apply ex works inclusive of commercial packaging plus the statutory rate of VAT.
2. We are entitled to increase the price agreed upon with the Customer corresponding to any extra charges being imposed on us by statutory or official directive following conclusion of the contract, such as taxes, examination levies, customs duties or currency conversion compensations.
3. All payments are to be made in euros by the due date and without any deduction. Failing an agreement to the contrary, invoices shall be paid net within 30 (thirty) days of the invoice date at the latest. Invoices for repairs and invoices for produced samples or for other services are payable net within 14 (fourteen) days of the invoice date.
4. Payment using bills of exchange or cheques shall be effected on account of performance. We shall be entitled to refuse to accept bills of exchange and cheques. Discount charges shall be invoiced as from the date of invoice maturity. If the Customer fails to meet its financial obligations, especially if the Customer does not cash cheques and bills of exchange or discontinues payments, we shall be entitled to collect the balance even if we accepted cheques and bills of exchange. Moreover, we shall then have the right to demand advance payment.
5. Payments shall not be deemed to have taken place until the amount has been finally credited to our account and is available to us there. We reserve the right to use payments to settle the oldest due invoices plus the default interest and costs accrued thereon, namely in the following order: costs, interest, main claim.
6. If the Customer defaults on payment, we shall then be entitled to demand immediate payment of all due amounts. If the Customer fails to pay by the payment deadline, we shall also be entitled to demand security or an advance payment. Interest shall be charged on outstanding debts at the rate of 8 % above the base rate. The right to claim any additional damages remains unaffected.

The Customer is entitled to provide proof of lesser damages. The regulation of § 353 of the German Commercial Code (HGB) remains unaffected by this.

7. In the case of deliveries and services within the EU the Customer must inform us of the Customer's respective VAT ID number, under which the Customer makes payment of purchase tax, and must do so before generating any turnover. In the case of deliveries and services from the Federal Republic of Germany in countries outside of the EU, which are not carried out or arranged by us, the Customer must furnish us with proof of export as required for tax purposes. If proof is not furnished, the Customer must pay over and above this the VAT being charged on the invoice amount for the service within Germany.
8. Any lack of creditworthiness subsequently becoming known shall entitle us, as we see fit, to alter the terms of payment or withdraw from the contract entirely, if necessary after having set a time-limit.

IV. Offsetting and Right of Retention

1. Offsetting counterclaims or asserting the right of retention shall only be permissible in as far as the Customer's claims are undisputed or have been established by a court of law.
2. The Customer shall be entitled to exercise a right of retention only in as far as his counterclaim is based on the same contractual relationship.
3. In the case of legitimate claims in accordance with these GTCs, the Customer shall be entitled to withhold payment but only up to an amount which is deemed appropriate in relation to the defects that have occurred. If the notice of defect proves to be unjustified, we shall then be entitled to demand compensation from the Customer for any expenses we have thereby incurred.

V. Deadlines for Deliveries and Services

1. Delivery deadlines shall be determined in accordance with the written declarations of both contracting parties. A confirmed delivery deadline shall be deemed non-binding, unless it has been expressly confirmed in writing as a "binding delivery deadline". The meeting of any deadline shall be subject to the timely receipt of all the relevant documentation to be furnished by the Customer, including any required permits, releases, prompt clarification and approval of plans, as well as observation of the agreed terms of payment and other contractual obligations. If these obligations are not met on time, the deadline shall be correspondingly extended.
2. If the Customer is in default of acceptance or if the Customer negligently violates any other duty to cooperate, we shall be entitled to demand compensation for the damage incurred, including any additional expenses. We reserve the right to assert further contractual claims. In as far as the aforementioned conditions apply, the risk of an accidental loss or an accidental deterioration of the object of sale passes to the Customer as soon as the Customer is in default of acceptance or in default of payment.
3. If the delay in shipping or delivery takes place on the Customer's request, we may, as from one month after notice of the readiness for dispatch was given, charge storage fees equivalent to 0.5 % of the net invoice amount for every month commenced. The storage fees shall be limited to 5 % of the net invoice amount, unless we can prove that higher costs are involved.
4. The delivery deadline shall be regarded as observed if the fully operational consignment was dispatched or collected within the agreed delivery or performance time. If delivery is delayed for reasons for which the Customer is responsible, the deadline shall be regarded as observed if notice of the readiness for dispatch was given within the period agreed.
5. If the failure to meet a deadline for deliveries or services is shown to be due to mobilization, war, riot, strike or any other unforeseeable impediment (force majeure), then the deadline shall be extended appropriately.
6. Partial deliveries shall be admissible, in as far as the Customer can be reasonably expected to accept them.

VI. Dispatch, Passing of Risk

1. The risk passes to the Customer, even if delivery free domicile has been agreed, as soon as the fully operational consignment has been dispatched or collected. At the Customer's request and expense we shall insure the goods against breakage, fire and damage in transit. Failing any agreement to the contrary, the shipping route and manner of conveyance shall be of our choosing.
2. The goods shall be packed with the utmost care. In as far as we are not legally obliged to take back the packaging, we shall not do so, nor shall we be liable for any costs incurred in disposing of such packaging.

VII. Changes to Products

We reserve the right to make non-major changes to the products even for the period following conclusion of the contract.

VIII. Warranty

1. The Customer's right to claim under the warranty shall be subject to the Customer having duly fulfilled the inspection and notification obligations in accordance with § 377 of the German Commercial Code (HGB).
2. The Customer may not refuse to accept deliveries because of minor defects.
3. If despite all due care the supplied goods display a defect that was already existing at the time the risk passed, then we shall, at our discretion and subject to receiving notification of the defect within the required time, repair or replace the defective goods. We must always be given the opportunity to render subsequent performance within a reasonable period of time. Any claims to recourse shall remain unaffected by the above ruling.
4. The period of limitation for claims based on defects shall be 24 (twenty-four) months after the goods supplied by us have been handed over to the Customer. Claims based on defects requiring improvements, replacement deliveries or services expire after 12 (twelve) months, at the earliest however upon expiry of the time-limit specified in the first sentence of paragraph 4, section VIII hereof. The legal provisions regarding suspension of expiration, suspension and recommencement of limitation periods shall remain unaffected.
5. Should the subsequent performance fail, the Customer may withdraw from the Contract or demand a reduction in the remuneration.
6. Claims on the grounds of defects are excluded in the case of only insignificant deviation from the agreed characteristics, or only insignificant impairment of the usability or for damage arising after the passage of risk caused by erroneous or careless handling, excessive stress, unsuitable operating device or due to unsuitable electrical or electrochemical influences. Should the Customer or third parties make improper alterations or repairs to the goods, no warranty claims may be asserted for these nor for any resulting consequences.
7. The common wear of products which by their very nature have a limited lifespan, e.g. accumulators, batteries and handsets, and which are subject to a continual loss of power, which depending on the intensity of use (or application, intended purpose) varies, shall qualify as normal wear and tear and shall not constitute a defect.
8. Consumables and wearing parts, in particular supplied accumulators, shall only be subject to liability for material defects provided these have been used properly and for the intended use. Not intended use, in particular non-observance of the installation guide relating to charging, connection, operation or storage, as a result of which the accumulators could sustain damage, shall exclude claims of this kind.
9. Liability for material defects shall likewise be excluded in the case of products which the Customer has modified or completed.
10. The Customer cannot assert claims for expenses incurred due to subsequent performance, in particular transportation, infrastructure, labour and material costs, if these expenses are increased because the purchased goods were conveyed after delivery to another location than the Customer's place of business, unless doing so complies with their designated use.
11. The Customer shall have a right of recourse against us pursuant to § 478 of the German Civil Code (recourse by a commercial entity) only in as far as the Customer shall not have entered into any agreement on defects with his own contracting partner which goes beyond the entitlements provided by the law.

IX. Other Claims for Damages

1. Any claims for damages and reimbursement of expenses the Customer may have (hereinafter referred to as "Claims for Damages") which go beyond these GTCs (in particular sections VIII and X.), based on whatever legal grounds, in particular due to infringement of duties arising in connection with the contract or tort, shall be excluded.
2. The above shall not apply in the case of mandatory liability, e.g. under the German Product Liability Act (Produkthaftungsgesetz), in the case of intent, gross negligence, injury of life, body or health or breach of substantial contractual obligations. Claims for damages relating to the breach of substantial contractual obligations shall, however, be limited to the foreseeable damage which is intrinsic to the contract, unless caused by intent or gross negligence or based on liability for injury of life, body or health. The above provision does not imply a change in the burden of proof to the detriment of the Customer.
3. To the extent that the Customer has a valid claim for damages in accordance with section IX, it shall be time-barred upon expiration of the limitation period applicable to defects pursuant to section VIII.

In the case of claims for damages under the German Product Liability Act, the statutory provisions governing limitation periods shall apply.

X. Impossibility

1. In as far as a delivery proves impossible to carry out, the Customer shall be entitled to claim damages, unless we are not responsible for the impossibility. The Customer's claim for damages shall, however, be limited to the equivalent of 10 % of the value of the part of the delivery which, owing to the impossibility, cannot be put to the designated use. This limitation shall not apply in the case of mandatory liability based on intent, gross negligence or injury of life, body or health. This does not imply a change in the burden of proof to the detriment of the Customer.

XI. Retention of Title

1. All deliveries effected by us are carried out exclusively under retention of title. Title to the supplied goods shall pass to the Customer only after all outstanding payments resulting from the business relationship with us have been paid. In the case of an account current the retention of title is deemed to serve as security for our balance claim.
2. We undertake to release at the Customer's request, the security to which we are entitled to in as far as the realizable value of our security exceeds the debt to be secured by more than 10 %. The choice of the securities to be released shall be incumbent upon us.
3. The Customer is entitled to resell within the normal course of business the supplied goods and the objects resulting from their processing. The Customer must retain ownership of the reserved goods until such time as the purchase price is paid in full by its own customers. All the Customer's claims arising from the resale of the reserved goods are already assigned to the Supplier who hereby accepts the assignment. This also applies to claims concerning the reserved goods arising for any other legal reason. If the reserved goods are sold by the Customer together with third-party goods, whether with or without mutual agreement, the outstanding purchase price to the amount of the value of the reserved goods shall be deemed assigned to us. The Customer is authorized to collect the assigned claims as long as he meets his contractual obligation vis-à-vis the Supplier.
4. The retention of title also applies to the end products resulting from the processing, mixing or combining of the Supplier's goods to their full value. In the event that the ownership right of third parties shall prevail in the case of the processing, mixing or combining with their goods, we shall acquire the right of co-ownership in the end product, in proportion to the invoiced values of the processed, mixed or combined goods. In all other cases the same applies to the ensuing end product as applies to the goods supplied subject to retention of title.
5. The goods supplied under retention of title may not be pledged to third parties nor be assigned as security until the secured claim has been paid in full. The Customer undertakes to notify us without delay of any change in title or risk to the property of the Supplier through imminent seizure, interventions by third parties or similar actions. Law enforcement officers must be notified of our retention of title. The Customer is liable for all costs and damages incurred as a result of neglecting to provide the aforementioned notifications or information regarding necessary interventions.
6. If the Customer is in default of payment, we are entitled to demand the return of all the objects supplied under retention of title and/or to withdraw from the contract in accordance with the legal provisions. For such an instance the Customer grants us permission already now to enter his business premises.
7. The Customer undertakes to take out adequate insurance cover to protect the goods supplied under retention of title and hereby makes advance assignment to us of any claims resulting from said insurance contracts.

XII. Industrial Property Rights, Copyright, Trade Marks, Brands

1. It shall not be admissible for the Customer to offer or supply substitute products in lieu of our products by making reference to such products, nor to associate our product names, trademarked or not, with the term substitute in price lists or other commercial papers, nor to compare or contrast same with the designations and/or descriptions of substitute products.
2. When using our products for manufacturing purposes or during further processing, it is likewise not admissible for the Customer to use our product designations and/or descriptions, in particular our brands, on such goods or their packaging, or in the related printed matter and advertising material, in particular as information on component parts, without our prior consent.
3. The supply of products under a brand shall not be regarded as consent to use of this brand for the products made therefrom.

XIII. Place of Performance, Jurisdiction and Applicable Law

1. Place of performance for all obligations arising out of the contractual relationship shall be the respective seat of our company.
2. The jurisdiction for all disputes arising out of the contractual relationship shall be Kirchlengern, Germany. We are, however, entitled to file a suit at the Customer's place of business.
3. All contracts shall be subject to German law. The application of the United Nations Convention on Contracts for International Sale of Goods (CISG), dated 11th April 1980, is excluded.

XIV. Invalidity

Even if an individual provision or provisions should prove legally invalid, this shall not affect the validity of the other aforementioned provisions which shall remain in full force and effect. Void provisions shall be replaced by new provisions in keeping with the purpose of the contract and the interests of the contracting parties.

Note: This is an English translation of the German original and is provided for information purposes only. Solely the German version of these GT&Cs is legally binding.