

GENERAL TERMS AND CONDITIONS OF SALE OF DEFLEX® -DICHTSYSTEME GMBH

(Version of 1/2019)

I. Scope/Offers

- These GTCs apply to all contracts, including future contracts, with business people, legal entities under public law and special assets under public law concerning deliveries and other services. The buyer's conditions of purchase shall not apply to us even if we do not explicitly reject them again when we receive them.
- Our offers are non-binding. Agreements, especially verbal ancillary agreements, approvals, guarantees and other assurances from our sales staff before or during conclusion of contracts shall only become binding when we confirm them in writing.
- Documents belonging to the offer such as drawings, figures, technical data, references to standards as well as statements in advertising materials are not quality specifications, quality assurances or guarantees, unless they are explicitly described as such in writing.
- Deviations of the delivery item from offers, samples, trial or advance deliveries are permitted according to the applicable DIN/EN standards or other applicable technical standards.
- The INCOTERMS in their most recent version are decisive for the interpretation of commerce clauses such as "EXW", "FOB" and "CIF".

II. Prices

- Our prices are, unless otherwise agreed, ex works and exclude packaging and statutory VAT.
- If the goods are delivered in packaging, we charge for packaging at cost price; we take delivered packaging back within the legally permitted framework if the buyer returns it to us carriage paid within a reasonable period.

III. Payment and offsetting

- The payment must be made without discount deduction in such a way that we are able to dispose over the amount on the due date. Unless otherwise agreed, our invoices shall be payable according to the details in our offers and order confirmations. The payment must be made in such a way that the amount required to settle the invoice is available to us on the due date at the latest. The buyer shall enter default without warning days at the latest after our payment claim falls due.
- Any discount periods granted shall begin on the invoice date. An agreed discount only ever applies to the invoice value excluding carriage and requires that all the buyer's mature liabilities be settled when the discount is applied.
- Invoices for amounts below 50 euros and for assembly, repairs, forms and shares of tool costs shall fall due immediately and be payable net.
- Counterclaims which are disputed by us or have not been made legally enforceable shall not entitle the buyer either to retention or offsetting. This shall not apply if the buyer's counter claims arise from the same contractual relationship and/or they entitle the buyer to refuse to pay according to Section 320 BGB.
- If the buyer misses the payment deadline, or at the latest if it enters default, we shall be entitled to charge interest in the amount of the relevant bank rates for overdrafts, but at least the statutory default interest. We will also charge the costs which we have incurred in collection of the overdue payment, at least in the permitted amount. We reserve the right to assert additional default damages.
- If it becomes clear after the contract is concluded that our payment claims is put at risk by the buyer's inability to pay or circumstances arise which allow us to conclude that the buyer's ability to pay will deteriorate significantly, we may refuse agreed advance performance and to exercise the rights arising from Section 321 BGB (defence of uncertainty). This shall also apply if our performance obligation has not yet fallen due. In such cases we may also assert all claims arising from the ongoing business relationship with the buyer. The buyer shall also be regarded as lacking ability to pay if it is in default for at least three weeks on a significant amount (10% or more of all payable claims), or if the limit granted to it by our trade credit insurance is significantly downgraded. In the event of default on payment we are also entitled to demand return of the goods after an appropriate grace period, and to prohibit the resale and further processing of the delivered goods. Recall of goods does not constitute withdrawal from the contract. The buyer may avert all these legal consequences by making a payment or paying a security in the amount of our payment claim which is at risk. The above does not affect the regulations set down in the Insolvenzverordnung [Insolvency Regulation].

IV. Delivery periods

- Delivery periods and deadlines have been complied with if the delivery item has left our plant when they arrive
- Our delivery obligation is contingent on correct and timely self-delivery, unless the incorrect or delayed self-delivery is our fault.
- Instances of force majeure entitle us to delay the deliveries by the duration of the hindrance and an appropriate start-up period. This shall apply even if such events occur during an existing delay. Force majeure also includes currency, trade policy or other official measures, strikes, lockouts, operational disturbances not caused by us, obstruction of transport routes, delays in important supplies and clearances and all other circumstances which make the deliveries and services significantly more difficult or render it impossible, and which are not our fault. It does not matter whether the circumstances affect us, the supplier or another sub-supplier. If the above events make it unreasonable for one of the parties to carry out their part of the contract, it may withdraw from the contract by means of an immediate declaration in text form.

V. Retention of title

- All delivered goods remain in our possession (reserved goods) until all claims arising from the business relationship have been fulfilled, regardless of legal reason, including condition claims or claims arising in the future (balance reservation). The balance reservation does not, however, apply to prepayment or cash transactions, which are carried out step-by-step. In such cases the delivered goods shall remain in our possession until the purchase price for these goods is paid in full.
- The reserved goods shall be handled and processed for us as the manufacturer in the sense of Section 950 BGB, without obligating us. The processed goods shall count as reserved goods in the sense of Clause V/1. If the reserved goods are processed, connected and mixed with other goods by the buyer, we shall co-own the new item in proportion to the invoice value of the reserved goods to the invoice value of the other goods used. If the connection or mixing causes our ownership to lapse, the buyer hereby transfers to us its ownership rights to the new inventory or the item in the amount of the invoice value of the reserved goods and shall retain them for us without charge. The co-ownership rights arising in accordance with these provisions count as reserved goods in the sense of Clause V/1.
- The buyer may only sell the reserved goods in the ordinary course of business, under its standard terms and conditions and if it is not in default, provided that the claims arising from the resale of the goods go over to us in accordance with Clauses V/4 to V/6. The buyer is not entitled to dispose over the reserved goods in any other way.
- The buyer's claims arising from the resale of the reserved goods are hereby assigned to us. They shall serve as security in the same scope as the reserved goods. If the reserved goods are sold by the buyer together with other goods not sold by us, the assignment of the claim arising from the resale only counts in the amount of the resale value of the resold reserved goods. If goods are sold to which we have co-ownership rights according to Clause V/2, the assignment of the claim counts in the amount of these co-ownership shares.
- The buyer is entitled to collect claims arising from the resale until we revoke it, which we may do at any time. If the buyer is in default on payment we are also entitled to demand that the item be returned after an appropriate grace period, and to prohibit the resale and further processing of the delivered goods. Recall of goods does not constitute withdrawal from the contract. The buyer is obliged at our request to inform its customers immediately of the assignment to us - if we do not do this ourselves - and to give us the information and documents required for collection.
- The buyer must inform us immediately of pledging or any other adverse effects by third parties.
- If the value of existing securities exceeds the secured claims by more than 50% total, we are obliged to release securities of our choice at the buyer's request.

VI. Execution of deliveries

- Risk shall be transferred to the buyer for all transactions, including prepaid and free deliveries, on handover of the delivery to a carrier or freight forwarder, but at the latest when the goods leave our warehouse or - for drop shipments - the supplier. The buyer shall bear the obligation and costs of unloading. We will only take out insurance on the buyer's instruction and at its expense.
- Externally visible damage (e.g. damage in transit) must be recorded in the freight papers (delivery receipt) before the goods are accepted. The damage identified must be confirmed by the delivery driver. Only after this may the receipt of the goods be acknowledged. Special care must be taken when opening the packaging of sensitive goods (e.g. insect protection) to ensure that no damage is caused by e.g. a box cutter.
- We are entitled to provide partial deliveries within a reasonable scope. Over- and under-deliveries of up to 10% of the agreed quantity are permissible for non-stock items.
- We are entitled to manufacture the whole ordered quantity for call orders or have it manufactured as a closed quantity. Any change requests can no longer be considered after the order has been placed, unless this has been expressly agreed. Call dates and quantities may, if no fixed agreements have been made, only be complied with within the framework of our delivery or manufacturing capabilities. If the goods are not requested in accordance with the contract, we are entitled to charge for them as if they have been delivered after an appropriate grace period has expired.
- Requests and type classifications must be submitted for roughly the same monthly quantities for contracts with ongoing deliveries. If requests are not made or classification carried out in good time, we are entitled after fruitless expiry of a grace period to carry out classification ourselves and to deliver the goods or withdraw from the remaining part of the contract and to demand compensation instead of service. Our inventory must be inspected at the end of the contract.

VII. Liability for defects

- The investigation of goods and reporting of defects is subject to the provisions of the Handelsgesetzbuch (HGB) [German Commercial Code] with the following proviso:
 - The buyer is responsible for investigating the characteristics of the goods which are relevant to its use immediately after delivery and reporting defects to us immediately in writing. In the event of planned installation or attachment of the goods in or on other products, the characteristics relevant to installation or attachment also include the goods internal characteristics. The buyer is responsible for investigating the goods even if a test or other material certificate was delivered with them. Defects which cannot be uncovered immediately after delivery even by careful checking must be reported in writing immediately after they are discovered.
 - If the buyer installs or attaches the goods without investigating, at least through spot checks, the characteristics relevant to the intended purpose of the goods before installing or attaching them (e.g. by means of functional tests or a test installation), this represents a particularly serious breach of the due diligence required in relation to use (gross negligence). In this case, the buyer shall only have rights arising from defects in relation to these characteristics if the relevant defect was maliciously concealed or a guarantee was provided of the quality of the item.
- If the buyer identifies defects on investigation of the goods or thereafter, it is obliged to provide us with the rejected goods or samples thereof for checking purposes, and to allow us to carry out a check on the rejected goods within an appropriate period. Otherwise the buyer may not appeal to defects in the goods.
- In the event of justified, immediately defect reports, we may either rectify the defect or replace the goods with defect-free ones. If we fail or refuse to make good, the buyer may reduce the purchase price or withdraw from the contract after an appropriate period has been set and has expired without success. If the defect is not significant, it shall only have the right to reduce the purchase price.
- If the buyer has installed the defective goods in another item or attached them to another item according to their nature and intended purpose, it may only demand compensation for the necessary costs of removing the defective goods and installing or attaching the repaired or replacement goods ("removal and installation costs") in accordance with the following provisions.
 - Removal and installation costs are only necessary if they are directly connected with the removal or disassembly of the defective goods and the installation or attachment of identical goods, arise under normal market conditions and are proven to us by the buyer by submission of appropriate receipts at least in text form.
 - Further costs incurred by the buyer for consequential damages caused by the buyer, such as lost profits, business interruption costs or additional costs for procuring replacements are not direct removal and installation costs and are therefore not eligible for compensation according to Section 439 (3) BGB. The same applies to sorting costs and additional costs arising from the fact that the sold and delivered goods are located at a location other than the agreed place of fulfillment.
 - The buyer is not entitled to demand advance payments for removal and installation costs and other costs associated with rectification.
- If the expenses asserted by the buyer for rectification are disproportionate in the individual case, particularly in relation to the purchase price of the goods in defect-free condition and in view of the importance of the breach of contract, we are entitled to refuse to reimburse these expenses. Expenses are disproportionate especially if the asserted expenses, especially for installation and removal costs, exceed 150% of the price charged for the goods or 200% of the reduced value of the goods determined by the defect.
- Further claims are excluded according to Clause VIII. This applies particularly to claims for reimbursement of
 - Damages which did not arise in the goods themselves (consequential defect damages).
 - Costs for self-rectification of a defect without the legal requirements for this being met and removal and installation costs, to the extent that the goods delivered by us were no longer available in their original condition at the time of installation or removal or a new product was produced from the delivered goods before installation.
- An unjustified demand for defect rectification entitles us to compensation if the buyer could have established by carefully checking that no material defect was actually present.

VIII. General limitation of liability

- We are only liable for breach of contractual and non-contractual obligations, especially due to impossibility, default, faulty advice, fault when initiating contracts and illegal actions - including those carried out by our executives and other agents - in cases of intention and gross negligence, in the latter case limited to the contractually typical damages which were foreseeable when the contract was concluded.
- The limitations arising from VIII.1 shall not apply in the event of culpable breach of important contractual obligations. Important contractual obligations include the obligation of timely delivery as well as the freedom of the goods from defects which significantly affect their functionality or fitness for use and also consultancy, protection and care obligations intended to protect the buyer or its staff from significant damages. These limitations shall also not apply in cases of mandatory liability according to the Produkthaftungsgesetz [Product Liability Act], in the event of injury to life, body or health and if and to the extent that we maliciously conceal defects in the item or have guaranteed that it would be free of them. Regulations on the burden of proof shall remain unaffected by this.
- If we are in default on a delivery or other service, the buyer may demand reimbursement of the default interest along with the service; in cases of slight negligence, however, this is limited to 10% of the agreed price for the service which is in default. The buyer's right to compensation instead of service according to VIII.1 and VIII.2 remains unaffected.
- Unless otherwise agreed, contractual claims which the buyer has against us on the occasion of or in connection with the delivery of goods shall expire one year after the goods are delivered. This shall not apply to the extent that Section 438 (1) (2) BGB, Sections 478, 479 BGB or Section 634 (a) (1) (2) BGB prescribe longer periods, or in case of injury to life, body or health, in the event of an intentional or grossly negligent breach of obligation by us or if a defect is maliciously concealed. In cases of defective rectification, the limitation period shall not begin again.

IX. Copyright, secrecy

- We reserve ownership rights and copyright to all quotations, drafts, drawings and other documents; they may only be made available to third parties in agreement with us. Drawings and other documents belonging to offers must be returned on request.
- If we have delivered items according to drawings, models, samples or other documents handed over by the buyer, the latter shall guarantee that these documents do not breach third-party copyrights. If third parties prohibit us from manufacturing and delivering such items by appealing to copyrights, we are entitled - without being obliged to check the legal basis - to cease any further activity and to demand compensation if the buyer is at fault. The buyer also undertakes to release us from all associated third-party claims.
- If the customer uses our development services (re- or new developments), the customer is obliged to treat the results transmitted as confidential. The customer shall not disclose the results (especially drawings) to third parties without our prior written consent. This shall apply even if the customer only uses our development services and does not commission the other services we offer.

X. Test parts, forms, tools

- If the buyer must provide parts for the execution of the order, they must be delivered free to the place of production in the agreed quantity, or otherwise in a greater quantity for any rejects, in a timely manner, for free and free from defects. If this does not happen, the buyer shall bear any resultant costs and other consequences.
- The production of test parts including the costs for forms and tools shall be borne by the buyer. The proportional form and tool costs shall be calculated on delivery of the sample. If the serial delivery is not approved within six months of the delivery of samples true to the drawings, we will also charge the buyer for the remaining costs of the tool.
- Payment of cost shares for forms and tools does not grant the buyer any rights to the forms and tools. Forms and tools shall remain in our sole ownership unless we have explicitly completely or partially transferred them to the buyer on the basis of a separate agreement. We reserve ownership of our forms and tools under all circumstances.
- Our liability for tools, forms and other production equipment provided by the buyer is limited to due diligence as we would exercise it for our own items. The buyer shall bear the costs of maintenance and care. Our retention obligation shall lapse two years at the latest after the last production from the form or tool.

XI. Place of performance, jurisdiction and applicable law

- The place of performance for our deliveries, for rectification and for the buyer's payments is our plant. The place of jurisdiction is the seat of our head office. We may also bring an action against the buyer at its place of jurisdiction.
- All legal disputes between us and the buyer shall be subject to German law, to the exclusion of the provisions of the United Nations Convention of 11/04/1980 on Contracts for the International Sale of Goods (CISG).

XII. Authoritative version

In case of doubt, the German version of these General Terms and Conditions of Sale shall be authoritative.