

# Deuta-Werke GmbH: Standard Purchase Terms

## 1. General Information - Scope

- 1.1 The purchases are effected only on the Purchaser's Standard Purchase Terms set out below. Contradictory or supplementary General Terms of the Supplier or any other terms and conditions differing from these Standard Purchase Terms shall only apply when acknowledged expressly by the Purchaser in writing. The Standard Purchase Terms shall apply even in case the Purchaser accepts goods/services without reservation being aware of the Supplier's contradictory or supplementary General Terms or any other terms and conditions differing from these Purchase Terms.
- 1.2 These Standard Purchase Terms shall apply also to all future business dealings with the Purchaser.
- 1.3 These Standard Purchase Terms shall apply only in relation to traders and corporate bodies under public law or a special fund under public law.

## 2. Tender – Tender Documents

- 2.1. The Supplier agrees to acknowledge the purchase order within a term of two weeks after which it is deemed to be accepted by the Supplier.
- 2.2. The Purchaser reserves ownership and intellectual property rights to illustrations, drawings, computations and other documents; they may not be made accessible to any third party without the consent of the Purchaser. The disclosure to any third party requires expressly the prior written consent of the Purchaser. This applies in particular to written documents designated "confidential". Documents shall be used exclusively for the execution of the purchase order and shall be returned to the Purchaser automatically after processing of the purchase order.
- 2.3. The obligation to maintain confidentiality shall survive the processing of this contract and ceases when and to the extent the know-how contained in the illustrations, drawings, computations or other documents will be in public domain or the Supplier has received information to this effect by a third party without any violation or infringement of the obligation to maintain confidentiality or has developed the know-how through independent good faith efforts.

## 3. Prices – Payment Terms

- 3.1. With the acceptance of the purchase order the prices shown in the purchase order become binding. Unless otherwise agreed in writing the prices include DDP (= delivery duty paid) as per INCOTERMS 2010 including packing. The place of destination is indicated in the individual purchase order.
- 3.2. The prices shown in the purchase order are net prices plus VAT.
- 3.3. The Purchaser will not accept mixed-cargo and freight insurance (forwarding, logistics and storage insurance) and any costs thereby incurred.
- 3.4. Unless otherwise agreed in writing the payment will be effected within 14 days with 3 % discount or net within 30 days starting from the correct receipt of the delivery and the invoice.
- 3.5. In case of late payment the Purchaser undertakes to pay interest amounting to 3 %-points above the base rate at the time.
- 3.6. The Purchaser has the right to withhold and to set-off as accorded him by law.

## 4. Delivery Date

- The delivery date specified in the purchase order is binding.
- 4.2. The Supplier undertakes to inform the Purchaser immediately in writing in the event it becomes apparent due to any circumstances arising that the delivery is delayed. In the event of late delivery the Purchaser has the rights accorded him by law.
  - 4.4. Partial delivery shall be subject to prior written consent of the Purchaser.
  - 4.5. The Supplier undertakes to provide to the Purchaser the opportunity to place final purchase orders for reasonable quantities (last-call right) in the event assemblies/components are discontinued.

## 5. Transfer of Risk - Documents

- 5.1. Unless otherwise agreed in writing the delivery shall be effected on the basis of DDP (delivery duty paid) as per INCOTERMS 2010 including packing. The place of destination is indicated in the individual purchase orders.
- 5.2. The Supplier undertakes to state the exact purchase order number, the number of the relating framework contract, the EDP-number and the drawing number of the Purchaser on all transport documents and delivery notes; in case he fails to do so this will inevitably lead to delays in the order processing. The Supplier shall be liable for any losses resulting from this.

## 6. Defects Analysis – Liability for Defects

- 6.1. The Purchaser undertakes to inspect the goods/services received for possible discrepancies in quality or quantity within a reasonable period of time. The notification of obvious defects is deemed in due time if received by the Supplier within a term of 2 weeks after detection. The same term shall apply to the notification of hidden defects.
- 6.2. The Purchaser is entitled to his full statutory warranty rights. In particular, the Purchaser is entitled to demand, at his discretion, either the rectification of the defect or the delivery of a delivery item/service free from any defect. The Supplier, however, shall be entitled to refuse the kind of subsequent performance requested by the Purchaser provided this means disproportionate costs to him. The supplier undertakes to bear all expenses resulting from the subsequent performance, in particular carriage costs, transport costs, labour costs and material costs. The Purchaser reserves expressly all rights, such as, the right of rescission, of reduction or liquidated damages.
- 6.3. In the event the Supplier culpably omits to give due notice of discontinuing production and/or culpably fails to offer a reasonable quantity for a final purchase order (last-call right) - notwithstanding the provisions mentioned under paragraph 4.5 – the Supplier is obliged to compensate for the damages resulting from this to the Purchaser.
- 6.4. Warranty claims shall be subject to the statutory period of 24 months. The warranty period commences on delivery of the goods/services or on acceptance provided acceptance subsequent to delivery of the goods/services has been agreed.

## 7. Product Liability - Indemnity - Liability Insurance

- 7.1. Inasmuch as the Supplier is responsible for any product-liability defect he shall be obliged to indemnify the Purchaser against any claims for damages of third parties provided the cause lies within his control and organisation and he himself is liable to third parties.
- 7.2. Within this scope the Supplier undertakes under §§ 683, 670 of the German Civil Code to compensate for any expenses arising from or in connection with a recall action conducted by the Purchaser. The Purchaser agrees - as far as possible and reasonable - to inform the Supplier as to the content and scope of the recall measures to be carried out and to give him opportunity to comment.
- 7.3. The Supplier undertakes to maintain a product liability insurance policy with an overall sum insured of EUR 3 million per personal injury/material loss. Whereas the Purchaser is entitled to further indemnification for loss, this shall remain unaffected.

## 8. Property Rights

- 8.1. The Supplier is obliged to ensure that industrial property rights and other third-party rights are not infringed in connection with his supply of goods/services.
- 8.2. If a third party makes such a claim on the Purchaser, the Supplier shall undertake at first written request to indemnify the Purchaser against these claims. The Purchaser is not obliged – without consent of the Supplier – to make any arrangements with a third party, in particular not to conclude any settlement.
- 8.3. The obligation of the Supplier to indemnify applies to all expenses arising out or are in connection with a claim made on him by a third party.

## 9. Environmental Protection

- The Supplier warrants to comply with all statutory environmental-protection requirements applicable in the Federal Republic of Germany in his supply of products.
- The products supplied to the Purchaser may not contain any of the substances listed below: PCT (polychlorinated tetraphenyls), PBDE (polybrominated diphenyl ethers), SCCP (short-chain chloroparaffins), nonylphenol.
- The following substances should be avoided: chromium(VI) compounds, cobalt chloride, isocyanate, phthalates (BBP, DBP, DEHP), polyvinyl chloride, organic tin compounds, triphenyl phosphate (TTP). Should these substances be unavoidable and contained in the tendered and supplied products, the Supplier is obliged to bring this separately to the Purchaser's attention.
- Furthermore, the Supplier undertakes with regard to registration, evaluation, authorization and restriction of chemicals (REACH) according to the European Regulation (EC) no. 1907/2006 to inform the Purchaser immediately as soon as he becomes aware of the presence of a substance of very high concern (SVHC) above a mass per unit volume of 0.1 % in the raw materials delivered to him. EU Suppliers of manufactured items that are processed in the Purchaser's products in a relevant amount shall also be obligated to inform the Purchaser without further request if the products delivered by them contain a SVHC with over 0.1 % by mass.

## 10. Retention of Title – Provision

- 10.1. On delivery of the goods/services by the Supplier the Purchaser acquires immediate ownership of those goods/services. Retention of title by the Supplier himself, or in the form of prolonged or extended retention of title by his subcontractors, will not be acknowledged by the Purchaser.
- 10.2. In the event the Purchaser provides the Supplier with any parts for processing or refashioning he reserves title of the supplied parts. Processing or refashioning is carried out by the Supplier on behalf of the Purchaser. In case the reserved property is processed together with other goods not belonging to the Purchaser, the Purchaser acquires joint ownership of the new goods in the same proportion as that of the value of the Purchaser's goods to that of the other processed goods at the time of processing.

## 11. Jurisdiction – Place of fulfilment – Partial Nullity

- 11.1. In the event the Supplier is a trader or corporate body or a special fund under public law and maintains its place of business in **Germany**, the place of jurisdiction shall be the location of the Purchaser's headquarter. The Purchaser, however, shall also be entitled to sue the Supplier in the jurisdiction covering his own place of business.
- 11.2. In the event the Supplier's place of business lies abroad, any dispute arising from the contract or its validity for an amount in dispute up to EUR 50,000.00 shall be settled before the ordinary courts.  
In the event the amount in dispute exceeds EUR 50,000.00 any dispute shall be settled irrevocably according to the arbitration code of "Deutsche Institution für Schiedsgerichtsbarkeit e. V. (DIS)"<sup>1</sup>, excluding the jurisdiction of a general court. In case the amount in dispute is up to EUR 250,000.00 a single arbitrator shall decide; in the event the amount in dispute exceeds EUR 250,000.00 an arbitration tribunal consisting of three persons shall decide.

The amount in dispute when filing a lawsuit shall be relevant, a subsequent increase or decrease of the amount in dispute does not affect the competence of the court to which recourse has been had.

The arbitration venue shall be the Purchaser's place of business. The language of arbitration is German unless the contract has been drawn up in a different language, in which case that language is the language of arbitration.

- 11.3. In the event the Supplier is a trader or a corporate body or a special fund under public law, the place of fulfilment is the Purchaser's place of business.
- 11.4. This Standard Purchase Terms are governed by and construed exclusively according to the laws of the Federal Republic of Germany, to the exclusion of the United Nations Covenant on Contracts for the International Sale of Goods (CISG).
- 11.5. In the event that any provision of this Standard Purchase Terms is held to be invalid, illegal or unenforceable, validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

## 12. Data Protection

- The Purchaser shall take care that personal data are used exclusively according to the statutory provisions.

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<sup>1</sup> "German Institution for Arbitration" (Tr.).