

Deuta-Werke GmbH: Standard Terms of Sale and Supply

1.	General – area of applicability	7.3	Where remedying of the defect or supply of a new delivery item fails, the purchaser is entitled at his discretion to cancel the contract or demand an appropriate lowering of the purchase price. Normally at least two attempts to remedy a defect can be expected of the purchaser. Cancellation for trivial breaches of obligations is precluded.
1.1	Supply is effected only on the supplier's Standard Terms of Sale and Supply set out below. The purchaser's contrary terms or terms at variance with these Standard Terms of Sale and Supply are not recognised unless the supplier has explicitly accepted them in writing. These Standard Terms of Sale and Supply apply even where the supplier, while aware of the purchaser's contrary terms or terms at variance with these Standard Terms of Sale and Supply, effects supply to the purchaser without reservation.	7.4	The warranty does not cover losses caused by: <ul style="list-style-type: none">- the behaviour of third parties,- improper use / overtaxing or other fault on the part of the purchaser or a third party,- loss, accidents, lightning strike, water, fire or similar factors not within the supplier's control,- modification or repair work improperly effected by the purchaser or third party without the supplier's prior consent,- faulty installation and/or commissioning by the purchaser or third parties,- natural wear and tear.
1.2	All terms agreed between the supplier and purchaser for the purpose of executing a contract must be laid down in writing in that contract. These Standard Terms of Sale and Supply apply only in relation to traders and corporate bodies or special funds under public law.	7.5	Where the supplier is liable under Section 8 of these Terms, the purchaser's warranty claims expire in accordance with statutory provisions. Warranty claims also expire in accordance with statutory provisions if the defect consists in a third-party right <i>in rem</i> on the strength of which the item's surrender may be demanded, or in another right registered in the Land Register or in the case of a building or item which has been used for a building in accordance with its normal use and which has caused that building to be defective. Warranty claims otherwise expire in one year.
1.3	These Standard Terms of Sale and Supply also apply to all future business with the purchaser.	7.6	The warranty period begins on delivery of the contract goods.
2.	Tender – concluding of contract – tender documents	8.	Liability
2.1	The supplier's tenders are without engagement. Each order becomes binding only after written acceptance (confirmation letter) by the supplier and is binding solely within the terms of that letter.	8.1	The supplier is liable for the full amount of loss where there has been wilful behaviour or gross negligence on his own part or wilful behaviour or gross negligence on the part of senior managerial staff. The supplier is furthermore liable for the full amount of loss for non-compliance with warranties, where a supply risk is accepted, where there is culpable injury to life, limb and health and within the scope of liability under the Product Liability Act.
2.2	The supplier reserves ownership and intellectual property rights to illustrations, drawings, computations and other documents made available by the supplier to the purchaser or a third party named by him; they may not be made accessible to third parties without consent. This applies in particular to written materials designated "confidential". The purchaser must have the supplier's express written consent before passing them to third parties.	8.2	The supplier is ultimately liable for any culpable infringement of major contractual obligations and in the case of gross negligence on the part of individual subcontractors. The extent of the supplier's liability under this Section 8.2 is confined to making good the typical foreseeable loss.
3.	Prices – payment terms	8.3	Further-reaching liability on the supplier's part is expressly precluded.
3.1	Unless the order acceptance indicates otherwise, the supplier's prices are ex-works Bergisch Gladbach as per INCOTERMS 2000 excluding packing, carriage and insurance.	8.4	Where the supplier's liability is precluded or limited, this also applies to the personal liability of his managerial staff, employees, associates, representatives and subcontractors.
3.2	The supplier's prices do not include statutory value-added tax. This is added at the applicable statutory level on the date of invoicing and shown separately.	9.	Jurisdiction – place of fulfilment – partial nullity
3.3	Payment is deemed unduly delayed if the purchaser does not pay within 14 days following delivery. Undue delay in payment obliges the purchaser to pay the supplier interest at 8% above the base-rate.	9.1	Where the purchaser is a trader or corporate body or special fund under public law with his/its place of business in Germany , jurisdiction is that at the supplier's place of business; the supplier is however also entitled to sue the purchaser in the jurisdiction covering his place of business.
3.4	Cheques and/or bills of exchange are accepted solely as conditional payment. All costs arising in connection with successful collection of such debts including interest and discount charges shall be met by the purchaser.	9.2	If the purchaser has his place of business abroad , all disputes arising from the contract or its validity for amounts in dispute up to EUR 50,000.00 shall be settled before the ordinary courts. The jurisdiction is that at the supplier's place of business; the supplier is however also entitled to sue the purchaser at his place of business.
3.5	The purchaser is entitled to offsetting rights only if his counterclaims have been established as legally valid, are uncontested or have been accepted by the supplier. He is moreover entitled to avail himself of the right to withhold only insofar as his counterclaim is based on the same contractual relationship.		Where the amount in dispute exceeds EUR 50,000.00 all disputes shall be definitively settled according to the arbitration code of the Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS) ¹ to the exclusion of the general courts. Where the amount in dispute is up to EUR 250,000.00 a single arbitrator shall decide; where it exceeds EUR 250,000.00 a three-person arbitration tribunal shall decide.
4.	Terms of supply		The definitive amount in dispute is that when the suit is filed; subsequent raising or lowering of the amount in dispute does not affect the competence of the court to which recourse has been had.
4.1	The start of the delivery period specified by the supplier in the order acceptance is contingent on definitive clarification of all technical issues.		The arbitration venue is the supplier'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.
4.2	Cases of <i>force majeure</i> – in particular plant stoppages, delays in delivery of essential raw materials or factory materials and supplies, strikes and lockouts – suspend the parties' contractual obligations for the duration of the disruption and to the extent of its effect. If <i>force majeure</i> leads to a terminal, lasting, irreparable obstacle to performance, the supplier is entitled to cancel the contract. Such a terminal, lasting and irreparable obstacle to performance is generally the persistence of <i>force majeure</i> for a period of 6 weeks.	9.3	The laws of the Federal Republic of Germany apply exclusively, to the exclusion of the United Nations Covenant on Contracts for the International Sale of Goods (CISG).
4.3	Adherence to the supplier's delivery commitment is contingent on punctual and proper discharge of the purchaser's obligations.	9.4	Where the purchaser is a trader or a corporate body or special fund under public law, the place of fulfilment is the supplier's place of business.
4.4	If the purchaser defaults in accepting delivery or culpably infringes other duties to co-operate, the supplier is entitled to demand the particular loss incurred including any additional outlay. In this case the risk of accidental loss or accidental depreciation of the delivery goods passes to the purchaser at the time default by the latter starts.	9.5	If individual provisions in these Standard Terms of Sale and Supply or a provision within other agreements are/is or become(s) wholly or partly void, the legal effectiveness of all other provisions and agreements is not hereby affected.
4.5	The supplier is entitled to make part-deliveries on a reasonable scale.	10.	Data protection
5.	Transfer of risk	10.1	Deuta takes care that person-related data are used only in line with the legal regulations.
5.1	Unless the order acceptance indicates otherwise, delivery is agreed to be ex-supplier works as per INCOTERMS 2000.		
5.2	At the purchaser's request the shipment will be insured against transport risks. The costs incurred for this will be met by the purchaser.		
6.	Retention of ownership		
6.1	Goods are supplied subject to retention of ownership pending final payment of all outstanding accounts receivable existing at the time of delivery and future accounts arising under the business relationship. These include all incidental claims, e.g. exchange charges, financing costs and interest.		
6.2	The purchaser is obliged to treat the supplied goods carefully; he is obliged in particular to insure them adequately at his own expense for their nominal value against loss through fire, water damage or theft. Where maintenance and inspection work is necessary, the purchaser must perform this in good time at his own expense.		
6.3	The purchaser may neither pawn the supplied goods nor pledge them as security. In the case of seizure and other third-party interventions the purchaser must inform the supplier promptly of them in writing and provide the supplier with all the information and documents needed for safeguarding his rights. The attention of the enforcement officer or a third party must be drawn to the supplier's ownership right. The purchaser bears all costs necessarily incurred for reversing the seizure and replacing the supplied goods unless these can be recovered from the third party.		
6.4	The purchaser is entitled to resell the supplied goods in the normal course of business; he now assigns however to the supplier in advance up to the amount of the invoice total (including value-added tax) all claims accruing to him against his buyer or third parties from resale, irrespective of whether the supplied goods were sold without or after further processing. The purchaser remains entitled to collect this debt even after it has been assigned. The supplier's entitlement to collect the debt himself is not hereby affected. The supplier undertakes however not to collect the debt as long as the purchaser meets his payment obligations from the takings received and has not defaulted on payment. The same applies if an application has been filed to institute insolvency proceedings or payments have ceased. If this is the case we may demand that the purchaser discloses the assigned debts and the debtors to us, gives us all the information necessary for collecting them, hands over the relevant documents and informs the debtors of the assignment.		
6.5	Processing or refashioning of the supplied goods by the purchaser is always performed for the supplier. The purchaser's contingent right to the supplied goods is carried over to the processed/refashioned items. Where the supplied goods are processed with other goods not belonging to the supplier, the supplier acquires joint ownership of the new goods in the same proportion as that of the value of the supplied goods to that of the other processed goods when processing takes place. That which applies to goods supplied subject to reservation applies to the goods produced by processing. Where the supplied goods are combined inseparably with other goods not belonging to us, we acquire joint ownership of the new goods in the same proportion as that of the value of the supplied goods to that of the other combined goods when combining takes place. Where the manner of combining is such that the purchaser's goods are to be considered the main substance, the supplier acquires joint ownership in proportion. The purchaser holds the sole or joint property thus produced in safe custody for the supplier.		
6.6	The purchaser also assigns to the supplier his claims against his customers as security for the supplier's claims against the purchaser accruing against a third party from linking of the supplied goods with a piece of real estate.		
7.	Warranty for defects		
7.1	Each warranty is contingent on the purchaser having duly discharged his commercial-law duty to inspect for and report defects.		
7.2	Where there is in the supplied goods a defect for which the supplier is responsible, the supplier is entitled at his discretion to remedy the defect or supply a new item. In the case of defect remediation the supplier is obliged to bear all costs necessary for remedying the defect, in particular carriage, transport, labour and material costs, except insofar as these are increased by conveying the delivery item to a place other than the place of fulfilment.		

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¹ "German Institution for Arbitration" (Tr.).