

Deuta-Werke GmbH: Standard Purchase Terms

1. General - scope

- 1.1. Purchases are effected only on the purchaser's Standard Purchase Terms set out below. The supplier's contrary terms or terms at variance with these Standard Purchase Terms are not recognised unless the purchaser has explicitly accepted them in writing. These Purchase Terms apply even where the purchaser, while aware of the supplier's contrary terms or terms at variance with these Purchase Terms, accepts goods or services from the supplier without reservation.
- 1.2. All terms agreed between the purchaser and supplier for the purpose of executing a contract must be laid down in writing in that contract. These Standard Purchase Terms apply only in relation to traders and corporate bodies or special funds under public law.
- 1.3. These Standard Purchase Terms also apply to all future business with the purchaser.

2. Tender – tender documents

- 2.1. The supplier is required to accept the purchase-order within a term of 2 weeks, after which it becomes invalid.
- 2.2. The purchaser reserves ownership and intellectual property rights to illustrations, drawings, computations and other documents; they may not be made accessible to third parties without the purchaser's consent. Before passing them to third parties the supplier must have the purchaser's express written consent. This applies in particular to written documents designated "confidential". Documents are to be used solely for production initiated by the purchase-order; once the purchase-order has been processed they must be returned to the purchaser automatically.
- 2.3. The commitment to secrecy remains effective after this contract has been processed. It ceases when and to the extent that the production knowledge contained in the illustrations, drawings, computations and other documents has entered the public domain.

3. Prices – payment terms

- 3.1. The price shown in the purchase-order is binding once the order is accepted. In the absence of written agreement to the contrary the price includes delivery CIP (= carriage paid and insured...) as per INCOTERMS 2000 including packing. The destination is indicated in the individual purchase-order.
- 3.2. The price shown in the purchase-order is without statutory value-added tax.
- 3.3. The purchaser declines to accept mixed-cargo and freight insurance (forwarding, logistics and storage insurance) or costs thereby incurred.
- 3.4. In the absence of written agreement to the contrary payment of the purchase-price is made within 14 days from correct delivery and receipt of invoice with 3% discount, or net within 30 days from correct delivery and receipt of invoice.
- 3.5. If payment is delayed the purchaser is only required to pay interest at 3% above the base-rate at the time.
- 3.6. The purchaser has the offset and retention rights accorded him by law.

4. Delivery date

- 4.1. The delivery date specified in the purchase-order is binding.
- 4.2. The supplier is required to inform the purchaser promptly in writing if circumstances arise or become apparent to him which make adherence to the stipulated delivery date impossible.
- 4.3. In the event of delay in delivery the purchaser has the rights accorded him by the law.
- 4.4. The supplier is not entitled to make part-deliveries.
- 4.5. Where assemblies/components are to be discontinued, the supplier undertakes to give the purchaser the opportunity to place a final purchase-order for reasonable quantities (last-call right).

5. Transfer of risk – documents

- 5.1. In the absence of written agreement to the contrary delivery is to be made CIP (= carriage paid and insured.....) as per INCOTERMS 2000, including packing. The destination should be ascertained from the individual purchase-order.
- 5.2. The supplier is required to state the purchaser's purchase-order number precisely on all transport documents and delivery notes; if he fails to do so, delays in processing are inevitable. The supplier is liable for losses arising.

6. Investigation of defects – warranty

- 6.1. The purchaser is obliged to inspect the goods for possible quality or quantity discrepancies within a reasonable period. Complaint re: obvious defects is deemed punctual if it reaches the supplier within 5 working days. Hidden defects are deemed punctually reported if brought to the supplier's attention within 2 weeks of these defects coming to light.
- 6.2. The purchaser is entitled to his full statutory warranty rights. In particular the purchaser is entitled to demand at his discretion either rectification of the defect or supply of a defect-free delivery item. The supplier is however entitled to refuse the method chosen by the purchaser for making good the defect if it entails disproportionate cost. The supplier must meet the expenses necessary for making good the defect, in particular carriage, transport, labour and material costs. Rights are expressly reserved to make other legitimate claims such as claims for loss-compensation.
- 6.3. If, contrary to Section 4.5, the supplier culpably omits to give due notice of discontinuing production and/or culpably does not offer a reasonable quantity for a final purchase-order (last-call right), the supplier is required to make good to the purchaser the loss thereby incurred.
- 6.4. The statutory warranty period of at least 24 months applies. The warranty period commences on delivery of the goods or, where acceptance subsequent to delivery of the goods has been stipulated, on acceptance.

7. Product liability – exemption – liability insurance

- 7.1. Where the supplier is responsible for a product-liability loss, he is required at the first request to exempt the purchaser from third-party compensation claims if the cause lies within his control and organisation and he is himself liable to third parties.
- 7.2. Within this scope the supplier is also required under §§ 683, 670 of the German Civil Code to make good any outlay arising from or in connection with a recall action conducted by the

purchaser. The purchaser will as far as possible and within reason inform the supplier as to the content and scope of the recall measures to be carried out and 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. Where the purchaser is entitled to further-reaching loss-compensation claims, these are unaffected

8. Industrial property rights

- 8.1. The supplier is responsible for ensuring that industrial property rights and other third-party rights are not infringed in connection with his supply of goods.
- 8.2. If such a claim is made on the purchaser by a third party, the supplier is required at the first written request to exempt the purchaser from these claims. The purchaser is not obliged – without the supplier's consent – to come to agreement with the third party, in particular not to agree a settlement.
- 8.3. The supplier's obligation to exempt relates to all expenses necessarily incurred by the purchaser from or in connection with a claim made on him by a third party.

9. Environmental protection

The supplier warrants that all statutory environmental-protection requirements applicable in the Federal Republic of Germany will be complied with in his supply of products. The products supplied to the purchaser must 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.

10. Retention of ownership - provision

- 10.1. On handover of the contract goods by the supplier the purchaser acquires immediate ownership of those goods. Retention of ownership by the supplier himself, or in the form of expanded or extended retention of ownership by his subcontractors, is not recognised by us.
- 10.2. When the purchaser supplies the supplier with parts for processing or refashioning, he reserves ownership of the supplied goods. Processing or refashioning by the supplier is carried out for the purchaser. Where the reserved goods are 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 when processing takes place.

11 Jurisdiction – place of fulfilment – partial nullity

- 11.1. Where the supplier is a trader or corporate body or special fund under public law and maintains its place of business in **Germany**, the jurisdiction is that at our place of business. We are however also entitled to sue the supplier in the jurisdiction covering his own place of business.
- 11.2. Where the supplier 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 our place of business; we are however also entitled to sue the supplier in the jurisdiction covering his own place of business.

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, recourse to the general courts being excluded. Where the amount in dispute is up to EUR 250,000.00 a single arbitrator shall decide; where it exceeds EUR 250,000.00 an arbitration tribunal consisting of three persons shall decide.

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.

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.

- 11.3. Where the supplier is a trader or a corporate body or special fund under public law, the place of fulfilment is the supplier's place of business.
- 11.4. 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).
- 11.5. If individual provisions in these Standard Purchase Terms or a provision in other agreements are or become void, the legal effectiveness of all other provisions and agreements is not thereby affected.

12 Data protection

- 12.1. Deuta takes care that person-related data are used only in line with the legal regulations.

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