

General Terms & Conditions of Sale & Delivery of DewertOkin GmbH

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Amtsgericht Bad Oeynhausen · HRB 7338

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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 Section 310 para. 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 fulfil our supply commitment to the Customer.
2. In respect of analyses, repairs, modifications, conversions and disposals our "Technical Service" Terms & Conditions shall additionally apply.

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 Section 145 of the German Civil Code (BGB).
2. The scope of deliveries and/or services shall be determined by the declarations in writing or text form (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 or in text form.
3. We reserve the rights of ownership and copyrights to all information released to the customer in connection with order placement in both tangible and intangible forms, as well as in electronic format; such information may only be duplicated or shared with third parties with our prior consent. Documents released to the customer must be returned to us immediately if no contract is concluded or if we request the customer to do so.

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, inspection fees, 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 without any deduction 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 without any deduction within 14 (fourteen) days of the invoice date at the latest.
4. 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, principal claim.
5. 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 (currently 9 %) above the base rate as provided for in Section 288 of the German Civil Code (BGB), whereby the right to claim more extensive damages shall remain reserved. The Customer is entitled to provide proof of lesser damages. The regulation of Section 353 of the German Commercial Code (HGB) remains unaffected.
6. In the case of deliveries and services within the EU the Customer must inform us of its 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.

7. Any lack of creditworthiness subsequently becoming known shall entitle us, as we see fit, to alter the terms of payment or, if necessary after having set a time-limit, withdraw from the Contract entirely.

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 its 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, however, only to such an extent as deemed in reasonable proportion 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 declarations of both contracting parties, rendered in writing or text form. A confirmed delivery deadline shall be deemed non-binding unless it has been expressly confirmed in writing or in text form as a "binding delivery deadline".
2. The keeping of delivery dates and deadlines is subject to the proper and timely availability of supplies. We will inform the customer immediately of delays as they become apparent.
3. Delivery within the delivery period is conditional upon the timely receipt of all documents to be supplied by the customer, necessary authorisations, approvals, timely clarification and approval of plans, compliance with the payment terms and agreed and other contractual duties. The delivery deadline will be extended accordingly if these duties are not fulfilled in time.
4. If the customer delays acceptance or has culpably violated other obligations of cooperation, we will be entitled to demand compensation for damages we incur as a result, including any additional expenses. Further claims are reserved. If the requirements above are met, the risk of accidental loss or accidental deterioration of the purchased object shall transfer to the customer at the point in time when the customer falls into default of acceptance or payment.
5. 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 0.6 % 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.
6. The delivery deadline shall be regarded as met 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 met if notice of the readiness for dispatch was given within the agreed period.
7. If failure to meet the deadline for deliveries or services can be proved to trace back to mobilisation, war, riot, strike, lockout, epidemic, pandemic or the occurrence of other unforeseeable obstacles beyond our scope of influence and risk (force majeure), the deadline will be extended accordingly.
8. 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 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 thereof.

VII. Changes to Products

We reserve the right to make non-major changes to the products or changes in the context of technical progress, also 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 Section 377 of the German Commercial Code (HGB).
2. The Customer may not refuse to accept deliveries because of minor defects.
3. In as far as the delivered goods display a defect or defects, we shall be entitled, at our discretion, to repair the defective goods or replace them with faultless goods. The Customer shall give us the opportunity to render subsequent performance twice within a reasonable period of time. If subsequent performance should fail, or we are justified in refusing subsequent performance on account of disproportionately high costs, the Customer may, as it so elects, and without prejudice to any other damage claims in accordance with Item IX. hereof, withdraw from the Contract or demand a reduction in the purchase price.
4. If the parties have agreed on specifications for the purchased object, objective requirements for the purchased object shall not be applied if the purchased object is determined to be defective.
5. Claims on the grounds of defects are excluded in the case of only insignificant deviation from the agreed quality 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 equipment or due to unsuitable electrical or electrochemical influences. Should the Customer or third parties make improper alterations or repairs to the goods, or if the Customer modifies the goods, no warranty claims may be asserted for these nor for any resulting consequences.
6. 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.
7. 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 purpose. Non- intended use, in particular non-observance of our supplied installation guide/fitting instructions relating to charging, connection, operation or storage, as a result of which the accumulators could sustain damage, shall exclude claims of this kind.

IX. Other Claims for Damages; Inability to deliver; recourse

1. Regarding damage not incurred by the object of delivery itself, we are only liable in the following cases, subject to point 2, no matter the legal bases:
 - a. in the case of intent and gross negligence,
 - b. in the case of culpable injury to life, body or health,
 - c. in the case of defects which we maliciously concealed,
 - d. within the framework of an assured warranty,
 - e. in the case of defects in the object of delivery, where we are liable for personal injury or damage to privately used objects under product liability law.
2. In the event of culpable violation of essential contractual duties, we will also be liable in the case of mild negligence, though this will be limited to reasonably foreseeable damage typical of the contract. There shall be no other claims for damages.
3. If it is impossible to complete the delivery, the customer will be entitled to demand damages unless we are not responsible for our inability to deliver. However, the customer's claim to damages shall be limited to 10% of the value of the part of the delivery that cannot be usefully operated due to our inability to deliver. This limitation shall not apply in cases of intent, gross negligence or injury to life, body or health where liability is mandatory.
4. Pursuant to section 478 of the German Civil Code (Recourse of the entrepreneur) the customer shall only have recourse claims against us if the customer has not made any agreements with their purchaser that extend beyond statutory claims for defects.

X. Limitation

Our claims – regardless of the legal bases – shall expire after 24 months; this shall also apply to the expiry of recourse claims in the supply chain pursuant to section 445b(1) of the German Civil Code. The limitation period from section 445b(2) of the German Civil Code remains unaffected; it will end no later than five years after the date on which the supplier delivered the object to the seller. These rules regarding the expiry of recourse claims and the limitation period do not apply if the last contract in this supply chain is a consumer good purchase. The statutory periods apply for

claims for damages pursuant to section IX. They also apply for defects in a structure or for deliverables that were for a structure in a manner consistent with their typical use and caused that structure to become defective

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 the liabilities resulting from the business relationship with us have been met and paid off. 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 20 %. 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 the Customer meets its 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 eventuality the Customer shall hereby already grant us permission 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 articles under a brand shall not be regarded as consent to the use of this brand for the products made therefrom.

XIII. Software use

If software is included in the scope of delivery, the purchaser shall be granted a non-exclusive right to use the software provided and its documentation. It will be released for use on the deliverable object intended for such purposes. The software may not be used on more than one system. The purchaser may only reproduce, revise or translate the software or convert the object code to the source code to the extent permitted by law (sections 69a et seq. German copyright act). The

purchaser is obliged not to remove manufacturer information – especially copyright notices – or to modify them without the express prior consent of the supplier.

All other rights to software and documentation, including copies of such, remain with the supplier or the software supplier. The software may not be sublicenced.

XIV. 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 Kirchlingern, 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.

XV. Partial 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.