

General Terms and Conditions of Sale and Delivery of

Dietrich Schwabe Gesellschaft für Steuer-Regel-Armaturentechnik mbH

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1. Scope of application, hierarchy

- 1.1 The following General Terms and Conditions of Sale and Delivery ("**GTC**") have exclusive application to all contracts between Dietrich Schwabe Gesellschaft für Steuer-Regel-Armaturentechnik mbH ("**Company**") and the customer ("**Customer**") and to all performance on the part of the Company and the Customer, including all future business with the Customer, even if these GTC are no longer expressly agreed.
- 1.2 The Company does not acknowledge the Customer's conflicting or supplementary terms of business even if the Company does not expressly refute them. Unreserved performance on the part of the Company or acceptance of performance or payments by the Company does not signify acknowledgement of the Customer's terms of business. The Customer's terms of business do not apply unless the Company expressly acknowledges them.
- 1.3 If any other contractual provisions in a quotation, order confirmation or signed supply contracts should conflict with these GTC, the other contractual provisions shall have priority. Otherwise the various provisions shall apply on an equal footing.

2. Quotations; conclusion of contracts

- 2.1 The Company's quotations are essentially non-binding. The Customer's orders are binding. The Company may accept them within two weeks of receipt.
- 2.2 A contract comes into effect as a result of an order placed by the Customer being accepted by the Company by way of an order confirmation.

3. Information regarding contract penalties

The Customer must inform the Company by no later than on the conclusion of the contract if there should be any contract penalties applicable to its contracting parties.

4. Price, invoices, payment, default

- 4.1 If the contracting parties do not conclude any agreement on prices the agreed prices are quoted ex works, excluding packaging and carriage in particular, plus statutory VAT.
- 4.2 Invoices received are payable net as soon as they are received unless the contracting parties should have come to a different arrangement. Invoices are to be paid exclusively

to the account stated by the Company.

- 4.3 The Company reserves the right to charge the Customer and demand up to 100% of the agreed price before performance is rendered if the Customer should repeatedly fail to comply with its obligations to make payment to or cooperate with the Company or if the Customer's financial situation should seriously deteriorate so that the Company's claims are jeopardised.
- 4.4 If the Customer should fail to pay an invoice that it has received within two weeks of the invoice date or if it should make payment after the agreed period allowed for payment it will be deemed in default (§ 286 German Civil Code) without the need for a prior demand. The Customer will also be in default (§ 286 German Civil Code) if it receives a demand after the due date of payment of the invoice.
- 4.5 If the Customer should be in default with a payment (§ 286 German Civil Code) it will be liable to pay the Company default interest in the sum of 9 percentage points above base rate per annum or 10% per annum, whichever is the greater. The Company reserves the right to claim higher default interest.

5. Set-off, right of retention, assignment

- 5.1 The Company is entitled to offset its own claims against the Customer's claims and to assert rights of retention in so far as permitted by law.
- 5.2 The Customer may only offset its own claims against the Company's claims or assert rights of retention provided that its counter rights/claims have been finally established, are acknowledged by the Company, are not disputed or at least ready for decision. Offsetting or the exercise of a right of retention will similarly be possible where the Customer's claim and the debt due to the Company are based in law on a relationship of mutuality (§ 320 BGB [*German Civil Code*]).
- 5.3 The Company is entitled to assign to a third party any claims deriving from the business relationship with the Customer. The Customer may not assign or transfer rights or claims against the Company to a third party. The provision in § 354 a HGB [*German Commercial Code*] is not affected.

6. Delivery, passage of risk, performance period, force majeure, default in performance and acceptance

- 6.1 In the absence of any specific agreement the Company is only responsible, in principle, for putting goods at the Customer's disposal. It is for the Customer to collect goods at the Company's headquarters. The Company is not therefore responsible, in principle, for the delivery or packaging of goods in particular.
- 6.2 Part-performance is permissible to a reasonable extent. Part-performance will not be

reasonable, for example, if part-performance would be of no use to the Customer or if, prior to part-performance, only a small quantity has (still) not been provided or remains to be provided as a result of part-performance.

- 6.3 In the absence of any specific agreement the risk passes to the Customer as soon as the Company places goods at the Customer's disposal as agreed.

Where the Company is responsible for the carriage of goods the risk passes to the Customer as soon as the Company hands over the goods to the transport company or, if dispatch should be delayed due to no fault on the Company's part, once it has notified the Customer of their readiness for dispatch. If so requested by the Customer the Company will, at the Customer's expense, insure goods against theft, breakages and transportation, fire and water damage as well as any other insurable risks.

- 6.4 Agreed performance periods begin, in principle, on the date of conclusion of the contract, although

- (i) not before all outstanding issues, especially technical questions, have been clarified and it has therefore been established what performance the Company is to render, and
- (ii) not before the Customer has duly rendered in full all acts of cooperation necessary for performance, and
- (iii) not before the Customer has made any advance payment which might be due.

Agreed performance deadlines will be extended accordingly, if necessary.

- 6.5 Modifications requested by the Customer and agreed by the Company as well as force majeure, especially unforeseen and unavoidable circumstances for which the Company is not responsible (e.g. pandemics, strikes or lawful lockouts, breakdowns, unpredictable difficulties with sourcing materials and power supplies, problems with the Company's upstream suppliers without fault, transportation delays, shortages of labour, energy or raw materials, official measures) will lengthen the performance period to a reasonable extent. In such a case even performance deadlines that have been agreed will be extended accordingly to a reasonable extent.

If force majeure should continue for more than a temporary period both contracting parties will be entitled to cancel. In such an instance claims in damages are ruled out in the absence of fault. The Company will inform the Customer of the commencement and ending of the force majeure as soon as possible.

Notwithstanding the above rules, as a result of the coronavirus crisis arising in 2020 the parties are in agreement that unexpected situations can always arise in which the Company, without being at fault, might still be able to effect contractual performance but such performance is not just marginally hampered so that the Company is justified in

its performance remaining in abeyance for the duration of that impediment and being resumed once again after the impediment has ceased. The parties are agreed that in such circumstances the Company shall have the right to temporarily cease its performance.

- 6.6 In the event of delay in performance the Company's liability in damages is governed exclusively by clause 9 of these GTC.

If collection or dispatch of goods should be delayed at the request or due to fault of the Customer the Company will store the goods at the Customer's risk and expense. The Company will charge for storage on a weekly basis according to the actual costs incurred, although the minimum respective amount will be 0.5 % of the net value of the goods stored. The Customer will be free to collect the stored goods at its own risk and expense at any time.

Any more extensive rights and claims on the Company's part due to the Customer's delay in acceptance will be governed by statute.

7. Retention of title

- 7.1 The Company reserves title to goods delivered until such time as all payments deriving from the business relationship with the Customer have been received ("**retention goods**").
- 7.2 The Customer is obliged to treat retention goods carefully; it is particularly obliged to insure them at its own expense against loss, water damage and fire in an amount adequate to cover their replacement value. The Customer must produce the insurance policy to the Company on request together with proof of payment of the premiums. The Customer hereby assigns to the Company its rights and claims under its insurance. The Company accepts such assignment. The assignment is conditional on full title having been acquired by the Customer.
- 7.3 The Customer is entitled to resell and process retention goods or combine them with other products in the ordinary course of business. However, the Customer hereby assigns to the Company in advance the full amount of all claims from the resale, processing or combining thereof on behalf of a customer which accrue to it against the latter or a third party. Such assignment also incorporates, in particular, those accounts receivable accruing to the Customer as a result of payment made by its customers to its banks. The Company accepts such assignment.
- 7.4 The processing and combining of retention goods is always undertaken by the Customer on behalf of the Company but without any liability on the Company. In the event of processing and combining with other products the Company acquires joint title to the new goods in the proportion that the invoice value of the retention goods bears to the value of the other processed materials at the date of such processing or combination.

The same applies *mutatis mutandis* where retention goods are mixed with other materials.

- 7.5 The Customer is entitled to collect accounts receivable assigned to the Company provided that the Customer settles its payment commitments out of the proceeds received.
- 7.6 Should the Customer fail to settle its payment commitments the Company may revoke the right of further usage and resale and require the Customer to notify the Company of the accounts receivable assigned and their respective debtors, to provide all details necessary for collection purposes, to hand over the requisite documentation and notify its debtors of the assignment.
- 7.7 Should the Customer fail to settle its payment commitments the Company may also assert its title to the retention goods and demand that they be handed over without the Company having to cancel the contract.
- 7.8 As long as retention or title continues the Customer may not transfer title as security or pledge the goods concerned without the Company's written consent. Seizure of retention goods by a third party must be immediately notified to the Company. Costs incurred by the Company in mounting a defence against such seizure action will be the responsibility of the Customer unless reimbursed by the third party or unless the Customer is not responsible for the need for such defence action.
- 7.9 If the value of security should exceed the Company's accounts receivable by more than 10 % the Company will release such security as the Customer may choose to that extent at the Customer's request.

8. Defect claims, warranty (§ 437 German Civil Code), warranty period

- 8.1 The Customer must inspect goods as soon as they are delivered. If defects should be discovered on inspection the Customer is required to notify the Company of the defects in text form immediately and in any event within 8 working days of receipt of the goods (email or fax will suffice). Should a defect not manifest itself until later the Customer is required to notify the Company of the defect in text form immediately and in any event within 3 working days of discovery (email or fax will suffice). Otherwise the Company's performance will be deemed approved. The provision in § 377 HGB [*German Commercial Code*] also applies.
- 8.2 In the absence of any agreement to the contrary, any deviations in quality, colour, size, quantity, weight or gear that are of low value or customary in the trade and unavoidable technically or by reference to standards do not constitute defects.
- 8.3 If the Company's performance should be defective and complained of by the Customer pursuant to clause 8.1 of these GTC the Company may choose to either remedy the

defect or render faultless performance. The Company must always be given an opportunity to do so within a reasonable period of time unless such period is superfluous. If subsequent performance should fail or be unnecessary the Customer may rescind the contract, reduce the agreed price or claim damages provided that the statutory requirements are met and, in the case of damages, the further requirements of clause 9 of these GTC are satisfied.

- 8.4 The warranty period is 12 months from delivery of the goods. In cases governed by §§ 438(1) No. 2, 438(3), 445b BGB [German Civil Code], 634a(1) No. 2 and 634a(3) BGB [German Civil Code] the limitation period provided for therein shall apply. If the Company should be liable in damages under the warranty pursuant to clause 9 of these GTC the warranty period for such claim in damages will be determined by statute.

9. Company's limited liability in damages

- 9.1 If the Company, its legal representatives, employees or agents should be in breach of duty either through gross negligence or with intent, especially under the contractual relationship, or if they should commit a tortious act through gross negligence or with intent, the Company will be liable pursuant to statute for the resultant loss or damage to the Customer.
- 9.2 If the Company, its legal representatives, employees or agents should be in breach of duty merely through simple negligence the Customer's claims in damages against the Company of any kind whatsoever and based on any legal grounds, especially for breach of duty under the contract or in tort, are ruled out. This does not apply to breach of an essential contractual obligation through simple negligence. In such an eventuality liability is limited to foreseeable damage typical of the contract. An essential contractual obligation means one the proper fulfilment of which constitutes a condition sine qua non and on the fulfilment of which the Customer regularly relies and is entitled to rely.
- 9.3 The above exclusion and/or limitation of liability does not apply to liability based on culpable injury to life, limb or health, nor to liability for fraudulent concealment of a defect, nor to liability for non-fulfilment of a guarantee of quality (§ 444 BGB [German Civil Code]) and nor to liability under the *Produkthaftungsgesetz* [German Product Liability Act]
- 9.4 The statutory rules on burden of proof are not affected by the above provisions.

10. Rights to materials provided

- 10.1 All the Company's papers, documents and other items with which the Company provides the Customer in the execution of its order, such as e.g. documents on the goods, texts, designs, drawings, calculations etc. and information contained therein (together called "**Materials**"), remain the property of the Company unless the Company

transfers title to Materials to the Customer by contractual arrangement.

- 10.2 All copyright, registered designs, trademarks, patents, utility models and other intellectual property relating to Materials belongs exclusively to the Company. The Customer must not make Materials available to third parties or pass them on to third parties, nor may it reproduce same for such purpose.
- 10.3 The copying of Materials is only permitted in so far as agreed. The Company may demand the return of Materials at any time. The Customer must return Materials to the Company at its request. In such a case the Customer must destroy any copies made and confirm that they have been completely destroyed.

11. Confidentiality regarding trade secrets

- 11.1 Both contracting parties are obliged to keep all of the other contracting party's trade secrets divulged in the course of collaboration and to treat as confidential all information and documentation relating thereto and to use it only for the execution of the order. This applies to information and documentation regarding prices, price calculations and the content of bids. This obligation will continue to apply for 5 years beyond the end of the contractual relationship.
- 11.2 Business partners, agents and staff of the contracting parties must also be obligated accordingly even after their employment relationship has come to an end.
- 11.3 The duty of confidentiality does not extend to information proven to have been already known at the date of disclosure or transmission, information that is public knowledge or that becomes public knowledge without any breach of obligations contained in this agreement, information that the other contracting party releases for publication in writing, information which one of the contracting parties lawfully receives from a third party without the imposition of a duty of confidentiality, or information which has to be disclosed to third parties by one contracting party by virtue of statutory obligations, especially in the course of judicial proceedings or pursuant to an official order. In the event of an obligation of disclosure each of the contracting parties is required to comprehensively inform the other contracting party of that obligation as soon as the obligation becomes known.

12. Agents, place of performance, proper law, forum, severability clause

- 12.1 The Company may use third parties or agents with regard to any contractual performance.
- 12.2 The place of performance for all services arising from the contractual relationship is the Company's registered office.
- 12.3 German law shall have exclusive application to the exclusion of private international law

and the UN Convention on the International Sale of Goods (CISG).

- 12.4 Germany is the International place of jurisdiction. The exclusive local place of jurisdiction is the Company's registered office provided that the Customer is a business, legal person governed by public law or a special fund under public law.
- 12.5 If a provision of these GTC should be or become invalid, incapable of implementation or incomplete the validity of the other provisions will not be affected thereby. The provision that is invalid, incapable of implementation or incomplete will be replaced by such provision as the contracting parties would reasonably have agreed upon if they had been aware of such invalidity, non-implementation or incompleteness.