



General Terms and Conditions - Products

Note: These terms and conditions are a translation prepared for your convenience. All matters relating to them shall be governed by and construed in accordance with the original version in the German language (Copy available on request).

§ 1 Scope

(1) Our “General Terms and Conditions” shall apply exclusively and form part of every order (contract of sale) subject to which we have an obligation to manufacture, sell or supply products, except where in individual cases different agreements have been made. Any conditions of the Purchaser that are contrary to or vary from or supplement our “General Terms and Conditions” will not be recognized by us unless expressly accepted by us in writing. Our “General Terms and Conditions” shall also apply even if in the knowledge of the existence of such terms and conditions of the Purchaser we make deliveries to the Purchaser without reservation.

(2) Products within the meaning of these “General Terms and Conditions” are Designs, tools, free form parts and general duplicating and reproducing tools as well as data, data storage mediums.

(3) Our General Terms and Conditions of Sale and Supply are applicable to:

- a) Entrepreneurs within the meaning of § 14 BGB (Bürgerliches Gesetzbuch, the public law code of Germany).
- b) Juristic persons and legal entities subject to public law or special property governed by public law.

§2 Quotations and Execution of Contract

(1) Our quotations may be changed without notice and are not binding unless otherwise so agreed.

(2) An order shall only be first deemed accepted upon our written confirmation thereof. All agreements made between us and the Purchaser in regard to the execution of the contract concluded between us, as well as any supplementary agreements, amendments, notice of cancellation or termination of the contract or its annulment must be made in writing. This also applies to a waiver of the written form requirement or its amendment.

(3) Object of the contract is always only the Product ordered by the Purchaser. All cost estimates, reproductions, data, data storage mediums, drawings, drafts, sketches, calculations, descriptions, special technical concepts, samples and other information prepared by us shall remain our property together with the copyright therein. This documentation may fundamentally not be made available to any third party. This applies especially to such written documentation marked as “confidential”. Prior to passing on any such documentation or information to any third party the Purchaser must first obtain our express written consent. If a contract is not concluded, all such documentation and information and any copies or other reproductions of these are to be returned to us immediately.

§ 3

Prices

(1) Our prices are in the currency “Euro” and on the basis of delivery “ex works”. They are understood to be excluding packing, freight, postage, insurance or other expenses. Packaging will be billed in addition insofar as useable transport containers and similar are not provided by the Purchaser. Upon payment of a part of the costs for tools, the Purchaser shall not obtain any rights to said tools.

(2) The statutory Value Added Tax (VAT) is not included in our prices. Any VAT applicable will be shown separately in the statutory amount ruling on the date of invoice and shall be borne by the Purchaser.

(3) We reserve the right to increase our prices correspondingly, if in the period between execution of the contract and completion of the product any increases in costs, in particular as a result of tariff agreements or material price increases, are incurred. We will provide proof of such cost increases to the Purchaser on request.

§ 4

Payment Terms

(1) Unless otherwise agreed, all payments are due on receipt of the invoice and payable in cash without deductions and at no cost to us to our bank account within 14 days of receipt of the invoice. The payment obligation is not fulfilled until the full amount due is unreservedly at our disposal. Non-payment within the aforementioned time limit shall automatically cause the Purchaser to be in payment default, without the precondition of a payment reminder from us or any other presuppositions.

(2) We reserve the right to require payments on account (deposits) in advance and pro rata payments (commensurate with manufacturing stages) insofar as our judgment of the financial situation of the Purchaser gives us reasonable cause for this to be desirable or necessary.

(3) Bills of exchange and cheques will only be accepted on express prior agreement and always solely on the basis of us being only the fulfilment agent. Their acceptance is not to be construed as deferment of payment. Their period of validity must not be less than 10 days and not exceed three months. Credit amounts for bills of exchange and cheques are always made with reservations and conditional to the actual receipt of payment and the date the equivalent value is unconditionally at our disposal. Liability for simultaneous presentation, protest, notification or transfer back in the event of non-redemption will not be accepted. Discount and collection expenses shall be borne by the Purchaser and on request be paid in cash in advance.

(4) Notwithstanding our legal rights, we shall be entitled to withdraw from the contract in the event the Purchaser defaults his payment obligations, he is subject of protest of a dishonoured bill of exchange, there is considerable worsening in his financial situation or if unfavourable credit information reports about the Purchaser (e.g. falling in arrears with payments, cheque and bill of exchange protests) are received. In these cases we shall be entitled to demand full advance cash payment before making any further delivery and, at the expense of the Purchaser, immediately withdraw from circulation all further current accepted bills or drafts, bills of exchange and cheques and to demand cash payment for the costs incurred thereby.

(5) The Purchaser shall only be entitled to rights of lien and to offset counterclaims, if his counterclaims are legally validated, uncontested or accepted by us. In addition he shall only be entitled to exercise any right of lien insofar as his counterclaim is of the same contractual essence.

§ 5

Purchaser's Artwork

(1) The artwork as submitted to us by the Purchaser shall already be prepared in a manner fully capable to use. Additional costs arising as a result of any change requirements by the Purchaser after work has commenced or additional services being necessary due to non-usability of the artwork shall be at the expense of the Purchaser.

(2) The Purchaser shall be responsible for ensuring that the documents to be supplied by him, such as photos, original data, artwork, drawings, sample documents or similar are complete and correct as to their content. The Purchaser shall be liable for ensuring that the rights of third parties are not violated through the use of these documents. Otherwise the Purchaser shall fully indemnify us against any occurring liability.

(3) Insofar the Purchaser places at our disposal original data or artwork or other documents, which are used by us for further processing for manufacturing purposes, the Purchaser shall only have a claim to the return of the artwork or other documents submitted by him. We shall have all rights of ownership and copyright on reproduction artwork, transfer films, reproduction data and data storage mediums and similar produced by us as part of the manufacturing process. The Purchaser shall have no claim to placing these at his disposal. Object of the contract is only the Product manufactured by us. The reproduction artwork, transfer films, reproduction data and data storage mediums and similar produced by us as part of the manufacturing process shall be stored by us for a maximum period of 10 years from the date of receipt of the order. Upon the express written request of the Purchaser this storage period shall as an individual case be extended against reimbursement of the costs incurred.

(4) All liability for loss of or damage to artwork submitted by the Purchaser, which is not of our responsibility, shall be excluded. Appropriate insurance shall be concluded by the Purchaser himself and at his own cost.

§ 6

Delivery Lead Time

(1) The delivery lead time stated by us shall begin with the date of our order confirmation but not, however, before receipt of all tooling to be reworked, reproducible artwork and all other necessary work copy to be furnished by the Purchaser as well as not before approval of the final proofs by the Purchaser.

(2) The delivery lead time shall be deemed to be met if the goods to be delivered have left our works or warehouse prior to its expiry date or we have notified the Purchaser of the readiness for dispatch.

(3) We shall not be liable for any delays in delivery and services due to force majeure and due to events which make delivery substantially more difficult or impossible for us also if such occur at our suppliers or subcontractors and that we or our suppliers or our subcontractors can not be held responsible for. In these events we are entitled to defer delivery by the period of hindrance plus a reasonable time for the restart or to fully or partially terminate the unperformed part of the contract. In the event the hindrance lasts longer than a period of one month, the Purchaser shall, after granting a reasonable extension of time, be entitled to terminate the unfulfilled part of the contract.

(4) Compliance with our delivery obligation shall assume and be subject to the timely and proper fulfilment of the Purchaser's obligations.

(5) In the event of default by the Purchaser in taking delivery or his violation of any other co-operative obligations we shall without prejudice to our legal rights be entitled to claim compensation for damages and additional costs incurred by us as a result. In this case the risk of accidental loss or deterioration of the contractual goods shall pass to the Purchaser with effect from that point in time at which he defaults in taking delivery.

§ 7

Passing of Risk

(1) Unless stated otherwise in the confirmation of order, delivery "ex works" shall be agreed. The risk in the goods shall pass to the Purchaser no later than upon dispatch of the contractual goods, which shall also apply to any partial deliveries that may be made.

(2) Partial deliveries shall be permitted.

(3) Insofar it is the Purchaser's express wish stated in writing, we shall cover the delivery risk by providing transport insurance, the cost of which shall be borne by the Purchaser.

(4) In the event that dispatch is delayed as a result of circumstances that are the responsibility of the Purchaser, the risk in the goods shall pass to the Purchaser with effect from the date of the notification that the goods are ready for dispatch. We shall, however, on request of the Purchaser and at his expense effect the insurance cover that he requires.

§ 8

Retention of Title

(1) The property in all goods supplied by us shall remain with us until payment in full of all outstanding amounts owed by the Purchaser at the time of delivery and the amount owed for the delivery of the current contractual goods, including all extra and incidental costs, claims for damages and compensation and for the redemption of cheques and bills of exchange, has been received and is unconditionally at our disposal. If payment by cheque against bill of exchange shall have been agreed, then fulfilment shall only become effective with the redemption of the financing bill of exchange. The property reservation shall also remain effective if we take over individual amounts outstanding into a current invoice and the balance is drawn and accepted.

(2) In case that, on the occasion of concluding the contract and with our consent, the property rights in the goods supplied by us shall be assigned to a third party as security for granting the Purchaser a loan or other means of financing the price to be paid to us, the Purchaser herewith assigns to us his future interest in rem in the products supplied for the case that, at the time of the release of the secured property by the financing third party, payment in full for all claims for outstanding debts against the Purchaser has not been received. The future interest in rem shall be to the extent that the goods supplied shall again become proviso property to secure our financial balance claim.

(3) The Purchaser shall be obliged to co-operate and assist with any measures that we intend to carry out in order to protect our property or instead exercise any other comparable right on the products supplied. Without our consent the Purchaser shall neither pledge nor assign the contractual goods as security and shall notify us without delay of any execution orders, attachments, confiscations or other dispositions by third parties and shall send us copies of the corresponding documents to enable us to take legal action pursuant to § 771 ZPO (the law of the Federal Republic of Germany covering civil action). Insofar as the third party is unable to reimburse us for the costs incurred in court and out of court for the litigation pursuant to § 771 ZPO, the Purchaser shall be liable for the irretrievable amount.

(4) We shall be entitled to insure the contractual proviso goods against the risks of theft and damage caused by breakage, by fire or by water and other such causes at full renewal value and at the expense of the Purchaser, insofar the Purchaser fails to provide proof of having already effected such insurance. If the Purchaser has effected the insurance, we shall be entitled to obtain confirmation from the respective insurer of the existence of adequate insurance cover. Insofar service and inspection work is required the Purchaser shall be obligated to carry such out in a timely manner and at his expense.

(5) In case of payment default by the Purchaser and subsequent to sending Purchaser payment reminder and setting a deadline for payment, we shall without prejudice to our legal rights be entitled to recover the contractual proviso goods and the Purchaser shall be obligated to hand over said goods. The enforcement of the title reservation right as well as any attachment or seizure of the contractual goods by us shall not be construed as cancellation of the contract, unless this had been expressly confirmed by us in writing. After recovery of the goods supplied we shall be entitled to sell or otherwise commercially exploit said goods, the proceeds of which, less a reasonable amount for the exploitation costs incurred by us, shall be credited against the Purchaser's liabilities with us.

(6) As long as the contractual goods are subject to our ownership reservation, the Purchaser shall not without our consent be entitled to resell these other than in the ordinary course of his business. If we have agreed to the further sale, then the Purchaser shall be obligated to disclose the existence of the ownership reservation to the third party. The Purchaser may only sell or otherwise dispose of the contractual goods on the condition of maintaining our reservation of ownership. The Purchaser already assigns to us herewith and now as precautionary security the entire claim resulting from any further sale by him or any other legal basis relative to the contractual proviso goods. We authorize the Purchaser revocable to recover in his name the assigned claim on our behalf and for our account. Our right to recover the claim directly shall remain unaffected by this. We commit ourselves, however, to not exercise our right to recover the claim as long as the purchaser meets his payment obligations out of the proceeds received, is not in arrears with payments and especially no petition for insolvency proceedings is made or payments are suspended.

Should any of these events be the case, however, we shall be entitled to demand that the Purchaser discloses to us the assigned claims and their debtors, provides full information necessary for debt recovery, hands over the relevant documentation and informs the debtors of the claim assignments. Moreover we commit to releasing, on demand of the Purchaser, any claims assigned to us insofar these are not only temporarily not required as security, especially insofar they exceed the value of our unpaid claims to be secured by more than 45 per cent.

(7) Any processing or transformation of the proviso goods supplied shall only be undertaken by the Purchaser on condition of maintaining our ownership reservation and exclusively in our name and interest. Should our proviso goods be processed or in any way transformed with other objects not of our property, we shall acquire co-ownership in the new object at the relative value of our proviso goods to the other objects at the time of processing or transformation. Besides this, the same shall apply for the new object resulting from processing respectively transformation, as is valid for the proviso goods supplied.

§ 9

Material supplied by Purchaser

(1) The property in the material delivered to us by the Purchaser for the purpose of further manufacture or processing – such as in particular used tools – shall be transferred to us at the time of being handed over to us. If the Purchaser shall supply the tools respectively the used tools himself, these must either have been originally manufactured by us or correspond with the specifications of tools as manufactured by us; otherwise we shall not be obligated to use these for the production of the tools and shall not assume any liability whatsoever for any defects.

(2) The property in the material handed over to us by the Purchaser and the end product produced by us from this shall continue to exist during all stages of manufacture or processing. The manufacture or processing performed by us shall take place exclusively in our name and in our interest.

(3) We reserve all title and property rights pursuant to § 8 of these conditions in the end product supplied.

§ 10

Examination and Defect Notification Duty

(1) The Purchaser shall examine the goods immediately after delivery insofar this can be considered as reasonable in the ordinary course of business and, should a defect be apparent, notify us of the defect in writing expressly with details of the complaint within one week of receipt of the goods.

(2) Should the Purchaser fail to notify us of the defect claim the goods shall be deemed to be accepted, unless the defect is of a kind that was not recognizable by the examination. If any such defect first becomes apparent at a later date, notification of the defect claim with an explicit description of the apparent defect shall be made in writing within one week of the date the subject defect became apparent; otherwise the goods shall also in view of this defect be deemed as having been accepted.

(3) The examination obligation shall extend in particular to proofs, structured samples, general technical test certificates (test samples) as well as documentary records and minutes. Complaints regarding faulty products are to be accompanied by an illustrative sample. The rights of the Purchaser shall be maintained by timely despatch of the notification.

(4) We shall not refer to these provisions if knowledge of the defect was concealed with intent, if we have expressly accepted our obligation to make good the defect or insofar we are liable for conduct with intent.

(5) The foregoing provisions shall also apply if we have delivered a quantity, which varies from the agreed amount, insofar as the delivered amount does not vary so substantially from the order that we would have had to assume the Purchaser's refusal to approve thereof.

§ 11

Liability for Defects

(1) The Purchaser's right to liability claims for defects shall presuppose that he has met his examination and complaint of defect obligations pursuant to § 10 of these conditions.

(2) Insofar a material defect of our responsibility exists in a product at the time the risk passes to the Purchaser, we shall at our option be entitled to either make good the material defect or to replace the goods (hereinafter in total referred to simply as "remedy"). The Purchaser must do notification of a material defect in writing.

The Purchaser's right to claim for defects shall lapse within one year from the date of delivery of the goods.

This time limitation for the right to claim for defects shall merely be restrained during the period of remedy, commencing with the date the written notification of the defect is received by us and until completion of the remedy or respectively the complete failure to perform the remedy.

(3) We shall not be liable for defects based on supplies respectively services from the Purchaser or third parties which are neither our contractual suppliers nor our contractual subcontractors, just as we shall not be liable for any damages caused by or through such defects.

(4) The Purchaser shall allow us a reasonable period of time for the remedy in his complaint of defect. In case of complete failure to perform the remedy in spite of three attempts by us to do so, the Purchaser shall have the right to either a reduction in the amount payable to us or at his option demand that the contract be revoked. All other rights including legal rights to liability claims for defects or for compensation are excluded in this connection, insofar we are not liable for any act with intent; whereby § 12 of these conditions shall apply to claims of compensation for damages.

§ 12

Other Liability; Liability Exclusion; Cancellation

(1) Our liability for contractual or legal liability based claims as a result of violation of contractual or extra-contractual obligations shall be limited to intent and gross negligence; besides we shall also be liable for cardinal obligations essential to contract fulfilment and achievement of contractual purposes.

In case of liability for simple negligence, our liability shall be limited to the direct damage and in an amount corresponding to the sum assured under our product liability insurance, insofar the contract typical and foreseeable damages do not exceed this. In the latter case the liability shall be limited to the corresponding and in type and amount contract typical and foreseeable damages. We are prepared to afford the Purchaser an insight into our policies at his request. The foregoing limitations of liability shall not apply in case of simple negligent injury to life, body and/or health.

(2) The foregoing limitations of liability shall correspondingly apply to the liability of our contractual suppliers and sub-contractors.

(3) The Purchaser shall exempt us and our contractual suppliers and sub-contractors from claims for damage by third parties resulting from fulfilment of the causal related contractual tasks and assignments, and which exceed our liability or the liability of our contractual suppliers or sub-contractors according to the foregoing provision in § 12 (1).

(4) Liability subject to compulsory legal regulations of the product liability law, the liability law or the road traffic law and comparable regulations shall remain unaffected.

(5) Save as provided in other stipulations of these conditions, the Purchaser's sole right to withdraw from the contract shall be insofar a contractual or legal breach of duty of our responsibility exists; if this exists in defects of our responsibility, then exclusively § 11 of these conditions shall apply to the Purchaser's right to withdraw from the contract.

(6) The Purchaser shall, in the absence of any other provisions in these conditions, be liable in accordance with the legal regulations.

§ 13

Venue for Jurisdiction, Place of Performance, Applicable Law

(1) Any legal action for disputes resulting from the contractual relationship shall, if the Purchaser is a merchant (trading person, firm or corporation), a juristic person or legal entity under public law or a special property governed by public law or has no general venue of jurisdiction in the Federal Republic of Germany, be filed at the court competent for our head office or for our branch office executing the delivery. We shall also be entitled to file lawsuits at the venue of the Purchaser's head office.

(2) Insofar our confirmation of order does not provide otherwise, our business domicile shall be the place of performance.

(3) All contractual relationships shall be exclusively governed by and construed in accordance with German law to the exclusion of UN commercial law.

DEVINE GmbH + Co. KG
Dated 2010-11