

# Standard Terms and Conditions of DeguDent GmbH

## 1. General Provisions

The following Standard Terms and Conditions shall apply only towards enterprises (Section 14 German Civil Code). They form an integral part of all current and future contracts and agreements concluded with us. In particular, they apply to sales and delivery contracts and to any advisory services rendered by us in relation thereto. The Purchaser acknowledges the applicability of these Terms and Conditions – also for follow-up business, if any – by not objecting to them upon receipt, at the latest upon receipt of our goods or other services.

Oral side agreements, exclusions from, amendments of or additions to these Standard Terms and Conditions and to the contracts concluded on the basis hereof require express written confirmation by us to be valid. This shall also apply to any waiver of this written form requirement.

The applicability of other general terms and conditions of the Purchaser is hereby objected to, even for the event that they are submitted to us in a confirmation letter or in any other way. Any unconditional delivery of goods and services as well as the acceptance of payments on our part does not constitute an acknowledgement of any provisions deviating from these Standard Terms and Conditions. Unless otherwise specified in these Standard Terms and Conditions, the terms and definitions of INCOTERMS 2000 shall apply.

## 2. Offers, Contracts, Copyrights

Our offers are subject to confirmation; a contract is only established by our written order confirmation or if orders have been executed by us.

Statements and notifications by the Purchaser subsequent to the conclusion of the contract are only valid if made in writing. We reserve title to and copyright for pictures, drawings, calculations and any other documents. These shall not be made available to any third party. Before passing them on to any third party, our express written consent needs to be obtained.

## 3. Prices, Terms of Payment

All prices are “ex works”, excluding packaging, plus applicable statutory VAT. Payment is due immediately upon invoicing and shall be made to us free payment office, unless otherwise agreed. Deductions of discounts must be agreed separately in writing. The Purchaser may only offset such claims which are uncontested or have become non-appealable.

## 4. Place of Performance, Transportation Insurance

The place of performance is our place of business. Unless otherwise provided for in the order confirmation, delivery is agreed to be “ex works”.

The risk passes to the Purchaser when the products or devices are shipped, even when freight is paid. We principally cover delivery by a transportation insurance; the costs incurred are to be borne by the Purchaser.

Transport packaging and all other packaging subject to the German Packaging Regulations [*Verpackungsordnung*] are not taken back, except for pallets. The Purchaser is obliged to dispose of the packaging at its own costs.

## 5. Delivery, Duty to Cooperate

The scope of our delivery obligation is exclusively defined in the contract concluded with us. Our goods are subject to changes in construction, form and colour resulting from technical improvements or legal requirements, provided such changes are not substantial or otherwise unacceptable for the Purchaser. If the Purchaser can be reasonably expected to accept partial deliveries, these may be made and invoiced.

Terms of delivery are generally stated subject to the cooperation of the Purchaser in accordance with the contract. The compliance with our delivery obligation requires the timely and due fulfilment of the Purchaser's obligations.

If after conclusion of the contract it turns out that the Purchaser does not sufficiently guarantee its solvency, and our claim for payment is endangered, we may withhold delivery until the Purchaser has effected payment or furnished a security. If payment or security has not been received within 12 working days of request, we are entitled to withdraw from the contract. If the Purchaser defaults in calling, taking delivery of, or collecting goods, or if the Purchaser is responsible for a default in shipment or delivery we shall be entitled, without prejudice to any further claims, to charge a flat charge in the amount of locally customary storage costs, irrespective of whether

we store the goods in our warehouse or with a third party. The Purchaser may prove that no damage has occurred or that the amount of damage was lower.

## 6. Delivery Dates, Default in Delivery

Delivery dates, delivery periods and performance periods are agreed in writing. The date of the order confirmation is authoritative for the commencement of such periods. If we are unable to comply with the agreed delivery date for circumstances on our part or on the part of our suppliers which are not within our control, the delivery date shall be reasonably extended. We will promptly inform the Purchaser of such circumstances. If the impeding circumstances still exist one month after expiry of the agreed delivery date, either party may withdraw from the contract. Further claims for default in delivery, for which we are not responsible, shall be excluded.

If we do not receive delivery despite having placed equal orders with reliable suppliers, we will be released from our performance obligation and may withdraw from the contract.

In the event of a default in delivery, the Purchaser shall in case of proven damage be entitled to claim a lump sum default compensation of 0.5 % of the delivery value for each full week of default, maximum 5% of the delivery value. The Purchaser can furthermore grant a reasonable additional period, which may not be less than 15 working days. If the additional period expires without result, the Purchaser is entitled to withdraw from the contract or to claim damages instead of performance. Any claims for damages due to a default in delivery, and claims for damages instead of performance, which exceed the aforementioned lump sum, shall be excluded in all events of delayed delivery, including after expiry of the additional period of delivery.

The limitation of liability shall not apply if the default is caused by intent, gross negligence or substantial breach of duty. It does also not apply if a commercial transaction for delivery by a fixed date has been agreed. The foregoing provisions do not entail any change of the burden of proof to the prejudice of the Purchaser.

## 7. Retention of Title

We retain title to the delivered goods until all our receivables against the Purchaser from the business relationship have been settled, including future receivables from contracts concluded at the same time or later. This shall also apply if receivables are billed periodically and the balance is brought forward and accepted.

The Purchaser is entitled to sell or process the goods in the ordinary course of business. Should processing be required, the Purchaser shall do it for us; we do, however, not incur any ensuing obligation. In the case of processing, connecting or mingling of retained goods with other items, we shall generally acquire co-ownership in the newly created product, i.e. in the event of processing at a ratio of the invoiced value (= invoiced gross value including incidental charges and taxes) of the retained goods at the value of the newly created product, in the event of connecting or mingling at a ratio of the retained goods in proportion to the invoiced value of the other items.

The Purchaser hereby assigns to us all claims arising against its customers or third parties from the resale. The Purchaser remains authorised to collect such claims also after the assignment. Our entitlement to collect claims ourselves shall remain unaffected thereby; we shall, however, not make use of such right as long as the purchaser duly complies with its payment and other obligations. Upon our request, the Purchaser shall inform us about assigned claims and the respective debtors, give us all necessary information for collection, hand over the relating documents and inform the debtor of the assignment.

If the Purchaser acts in breach of contract, in particular in the event of default in payment, we are entitled to withdraw from the contract and take back the goods. For the purpose of taking back the goods, the Purchaser hereby irrevocably grants us access to its business and warehouse premises in order to collect the goods.

Within the scope and period of our retention of title, the Purchaser may neither assign nor pledge any goods or products produced from such goods without our consent. The conclusion of financing agreements (e.g. leasing agreements), which include the assignment of our retention rights, are subject to our prior written consent, unless the contract obligates the financing institution to pay the part of the purchase price owed to us directly to us.

Purchaser must immediately inform us in writing about attachments or other interventions by third parties. Purchaser is prohibited from making arrangements with its customers which might interfere with our rights. We undertake to release collateral pledged to us, if

Purchaser so desires and at our own discretion, provided that the realisable value of the collaterals exceeds the receivables to be collateralised by more than 20 % or if it exceeds their nominal value by more than 50 %.

### **8. Product Information**

Our statements on our products and devices as well as about our systems and procedures are based on extensive research and technical application experience. We provide these results, with which we do not assume any liability exceeding the respective individual contract, in word and writing to the best of our knowledge, but reserve the right to technical amendments within the scope of product development. This, however does not release the Purchaser from personally examining our products and procedure for applicability for own use. Application specifications of the Purchaser are only relevant if we confirmed to the Purchaser in writing upon conclusion of the contract that the delivered products or devices are suitable for the use intended by the Purchaser. This also applies with regard to the safeguarding of proprietary rights of third parties as well as for applications and procedures.

### **9. Defects of Quality**

Claims of the Purchaser for defects of quality regarding newly produced products and devices are statute-barred within one year from delivery or installation of the agreed item of delivery and performance, unless otherwise agreed. Claims of the Purchaser for defects of quality regarding used products and devices are statute-barred within six months from delivery or installation of the agreed item of delivery and performance, unless otherwise agreed. In the event of fraudulent concealment of defects, wilful conduct or the assumption of a quality guarantee, the statutory limitation periods shall apply. The statutory limitation periods shall also apply to recourse claims under purchase contracts for consumer goods of the Purchaser or its customers.

The Purchaser is obliged to personally, or through the recipient named by it as its vicarious agent, examine the goods or performance without undue delay after delivery. With regard to the examination obligation and obligation to notify defects, Section 377 German Commercial Code applies. Obvious defects – also deviations from any agreed quality – have to be notified in writing without undue delay, hidden defects directly upon detection, at the latest however within the limitation period mentioned in para. 1 above. If the Purchaser fails to notify any defect in due form and time, the goods are considered to be approved.

The Purchaser may not derive any further rights from defects of quality which do not or only insubstantially impede the value and the suitability of the goods for the use noticeable to us.

In the case of justified complaints, we are at our choice obliged to either delivery faultless replacements or to remedy the defect without charge, unless the expenses arising from the subsequent performance are disproportionate in comparison with the defect and are unacceptable for us.

The Purchaser is obliged to re-assign any replaced or exchanged parts to us.

If the subsequent performance fails, the Purchaser shall at its choice be entitled to withdraw from the contract or to request reduction of the purchase price. If according to legal regulations we are obliged - irrespective of the cause in law - to pay damages based on a defect, this obligation to pay damages shall be limited according to clause 10 below.

### **10. Liability**

Any liability for damages exceeding the provisions set forth in clause 9 shall - irrespective of the legal nature of the asserted claim - be excluded. This in particular applies to claims for damages from *culpa in contrahendo*, for other breaches of duty or claims under the law of torts for compensation of damage to property according to Section 823 German Civil Code.

This does not apply insofar as liability is mandatory, e.g. according to the Product Liability Act, in any case of intent, gross negligence and due to the violation of essential contractual obligations. The claim for damages for violation of essential contractual obligations, however, shall be restricted to the foreseeable damage typical for this kind of contract, unless liability is based on intent or gross negligence or harm to life, body or health. The foregoing provisions do not entail any change of the burden of proof to the prejudice of the Purchaser. Insofar as the liability for damages is excluded or restricted in respect of us, this shall also apply to the personal liability for damages of our employees, staff members, assistants,

representatives and vicarious agents. Insofar as the Purchaser is entitled to claims for damages according to this Clause 10, these shall fall under the statute of limitations upon expiry of the limitation period applicable to claims for defects of title regarding newly manufactured products and devices according to Clause 9. In the event of claims for damages according to the Product Liability Law, the legal statute of limitations regulations shall apply.

### **11. Statute of Limitations**

Claims of the Purchaser other than claims based of defects shall be statute-barred within two years from statutory commencement of the statutory limitation period. The foregoing limitation does not apply to our liability arising from intent and gross negligence, tort, the Product Liability Act, and in the case of culpable injury to body, life and health.

### **12. Return of Goods**

Goods delivered to the Purchaser free of defects cannot be returned or replaced without our prior written approval. Approved returns by the Purchaser are credited with a deduction from the purchase price. Goods in opened packages and products whose delivery was made more than 6 months before, can generally not be returned or replaced. All returns are at the expense and risk of the Purchaser.

### **13. Disposal of Electrical and Electronic Devices**

Our electrical and electronic devices are B2B products and not intended for private use.

After discontinuation of use, the Purchaser is obliged to properly dispose of delivered electrical and electronic devices within the meaning of the German *“Act Governing the Sale, Return and Environmentally Sound Disposal of Electrical and Electronic Equipment”* (ElektroG) of 16 March 2005. The Purchaser holds us free and harmless from the obligations according to Sec. 10 Para. 2 ElektroG (producer's obligation accept returned goods) and indemnifies DeguDent from any claims of third parties relating thereto.

The Purchaser shall contractually obligate commercial third parties to whom it resells the delivered electrical and electronic devices to properly dispose of the products after discontinuation of use and to pass on the corresponding obligation in case of a further resale.

If the Purchaser does not comply with its obligation to contractually obligate third parties to whom it resells the electrical and electronic devices to assuming the disposal duties and their passing on, the Purchaser will be obliged to accept return of the delivered goods after the discontinuation of use at its own costs and to properly dispose of them in accordance with the statutory obligations.

Our claim for acceptance of return and indemnification by the Purchaser shall not become time-barred before the expiry of two years after the final discontinuation of use of the device. The two-year period with suspension of expiration shall at the earliest commence upon our receipt of a written notification of the Purchaser on the discontinuation of use.

### **14. Statements of Account**

The Purchaser is obliged to review statements of account, in particular balance confirmations as well as other accounts and notices for correctness and completeness. Objections against statements of account have to be submitted within one month from receipt; other objections shall be raised without undue delay. The omission of timely objections is considered as approval; statutory claims of the Purchaser for justified objections after the expiry of the period shall remain unaffected.

### **15. Place of Jurisdiction**

If the Purchaser is a merchant, the place of jurisdiction shall be our registered office. However, we are also entitled to take action against the Purchaser at its general place of jurisdiction.

### **16. Governing Law**

All legal relationships between the Purchaser and us shall be governed by the laws of the Federal Republic of Germany, to the exclusion of the UN Convention on the International Sale of Goods (CISG).

### **17. Partial Invalidity**

Should individual provisions of these Terms and Conditions be or become invalid as a whole or in part, the validity of the remaining provisions shall remain unaffected thereby.

### **Note:**

We regularly store and process the Purchasers' data by EDP to the extent required for proper handling of the contractual relationships.