

A - General terms and conditions of delivery (INLAND) of DI MATTEO Förderanlagen GmbH & Co. KG

For use vis-à-vis:

1. a person who, when concluding the contract, acts in the exercise of his commercial or self-employed professional activity (entrepreneur);
2. legal persons under public law or special funds under public law.

I. General

1. All deliveries and services are based on these conditions and possibly applicable separate contractual agreements. Deviating purchasing conditions of the Purchaser shall not become part of the contract even the presence of order acceptance.
Especially in the absence of a special agreement, a contract is concluded with the written order confirmation of the Supplier.
2. The Supplier retains the right to samples, cost estimates, drawings and the like. Information of a physical and incorporeal nature - also in electronic form - has property rights and copyrights; they may not be made accessible to third parties. The Supplier undertakes only to make information and documents that are designated as confidential by the Purchaser available to third parties with the Purchaser's consent.

II. Price and payment

1. Unless otherwise agreed, prices are ex works and include loading at the plant, but exclude packaging and unloading. Value added tax at the respective statutory rate is to be added to the prices.
2. In the absence of a special agreement, payment is to be made without any deduction onto the account of the Supplier, namely:
1/3 down payment after receipt of order confirmation,
2/3 as soon as the Purchaser has been informed that the main parts are ready for dispatch; the remaining amount within one month after transfer of risk.
3. The Purchaser is only entitled to withhold payments if his counterclaims are undisputed or legally binding.
4. The Purchaser is only entitled to set off counterclaims from other legal relationships insofar as they are undisputed or legally binding.

III. Delivery time, delay in delivery

1. The delivery time arises from the agreements of the contracting parties. Compliance with these agreements by the Supplier presupposes that all commercial and technical questions between the contractual parties have been clarified, and that the Purchaser has fulfilled all obligations incumbent upon him, e.g. provision of the necessary official certificates or approvals, or the payment of a down payment. If this is not the case, the delivery period shall be extended accordingly in an appropriate manner. This does not apply if the Supplier is responsible for the delay.
2. Compliance with the delivery time is subject to correct and timely self-delivery. The Supplier shall inform the Purchaser of any apparent delays as soon as possible.
3. The delivery period shall be deemed observed if the delivery item has left the Supplier's plant by the delivery deadline, or when a notification regarding readiness for dispatch has been dispatched. If acceptance must take place, the date of acceptance - except in the case of justified refusal of acceptance - shall be decisive; alternatively the notification of readiness for acceptance.
4. If dispatch or acceptance of the delivery item is delayed for reasons for which the Purchaser is responsible, the costs incurred by the delay shall be charged to him, starting one month after notification of readiness for dispatch or acceptance.
5. If non-compliance with the delivery period is due to force majeure, industrial disputes or other events beyond the Supplier's control, the delivery period shall be extended accordingly. The Supplier shall inform the Purchaser of the beginning and end of such circumstances as soon as possible. When, before the transfer of risk, it is determined that the entire performance becomes impossible, the Purchaser may withdraw from the contract without setting a deadline for the Supplier. In addition, the Purchaser may withdraw from the contract when the execution of a part of the delivery becomes impossible with an order, and he has a justified interest in rejecting the partial delivery. When this is not the case, the Purchaser shall pay the contract price applicable for the partial delivery. The same shall apply in the event of the Supplier's inability to perform. Section VII.2 applies in all other respects. When the impossibility or inability occurs during acceptance default, or when the Purchaser is solely or predominantly responsible for these circumstances, he remains obliged to counter-performance.
6. When the Supplier is in default, and the Purchaser suffers damage as a result, the Purchaser shall be entitled to demand a lump-sum compensation for the delay. It amounts to 0.5% for each full week of delay, but in total to not more than 5% of the value of that part of the total delivery that cannot be used in time or in accordance with the contract as a result of the delay.
If - taking into account the statutory exceptions - a reasonable deadline is set for performance after the due date, and if this deadline is not met, the Purchaser shall be entitled to withdraw from the contract within the framework of the statutory provisions. At the Supplier's request, he undertakes to declare whether he will make use of his right of withdrawal within a reasonable period of time.
Further claims arising from delay in delivery shall be determined exclusively in accordance with Section VII.2 of these terms and conditions.

IV. Transfer of risk, acceptance

1. The risk shall pass to the Purchaser when the delivery item has left the production plant, even if partial deliveries are made, or the Supplier has

assumed other services, e.g. shipping costs or delivery and installation. When acceptance is required, this shall be decisive for the transfer of risk. It must be carried out immediately on the acceptance date, alternatively after the Supplier's notification of readiness for acceptance. The Purchaser may not refuse acceptance in the event of a minor defect.

2. If dispatch or acceptance is delayed or not carried out due to circumstances for which the Supplier is not responsible, the risk shall pass to the Purchaser on the day of notification of readiness for dispatch or acceptance. The Supplier undertakes to take out the insurances requested by the Purchaser at the Purchaser's expense.
3. Partial deliveries are permissible, insofar as this is reasonable for the Purchaser.

V. Title retention

1. The Supplier retains the ownership title to the delivery item until receipt of all payments - also for any additional services owed - from the delivery contract.
2. The Supplier is entitled to insure the delivery item against theft, breakage, fire, water and other damage at the Purchaser's expense, unless the Purchaser has verifiably taken out the insurance himself.
3. The Purchaser may neither sell, pledge nor assign the delivery item as security. In the event of seizure, confiscation or other dispositions by third parties, he must inform the Supplier immediately.
4. In the event of a breach of contract by the Purchaser, in particular with default in payment, the Supplier shall be entitled to take back the delivery item after a reminder and the Purchaser shall be obliged to surrender it.
5. Due to the retention of title, the Supplier can only demand the return of the delivery item when he has withdrawn from the contract.

VI. Claims for defects

The Supplier shall be liable for defects of quality and title of the delivery to the exclusion of further claims - subject to Section VII - as follows:

Material defects

1. All those parts which prove to be defective as a result of a circumstance prior to the transfer of risk shall be repaired or replaced free of defects at the discretion of the Supplier. The Supplier must immediately be notified in writing of any such defects. Replaced parts become the property of the Supplier.
2. After consultation with the Supplier, the Purchaser shall give the Supplier the necessary time and opportunity to carry out all subsequent improvements and replacement deliveries which the Supplier deems necessary; otherwise the Supplier shall be released from liability for the consequences arising from this. The Purchaser shall only be entitled to remedy the defect itself or have it remedied by third parties and to demand reimbursement of the necessary expenses from the Supplier in urgent cases, where operational safety is at risk, or so as to avert disproportionately large damages, whereby the Supplier must be notified immediately.
3. If the complaint proves to be justified, the Supplier shall bear the direct costs of rectification or replacement delivery, including dispatch. In addition, he shall bear any necessary installation and removal costs, insofar as this was the subject of the original performance, as well as the costs for any necessary provision of the necessary personnel, including travel costs, provided this does not impose a disproportionate burden on the Supplier.
4. Within the framework of statutory provisions, the Purchaser shall have the right to withdraw from the contract when the Supplier - taking into account the statutory exceptions - allows a reasonable deadline for the rectification of material defects or replacement delivery to expire without result. If there is only an insignificant defect, the Purchaser shall only be entitled to a reduction of the contract price. The right to a reduction of the contract price is otherwise excluded.
5. Further entitlements are determined exclusively in accordance with Section VII. 2 of these conditions.
6. No liability is assumed, in particular, in the following cases: Unsuitable or improper use, faulty assembly or commissioning by the Purchaser or third parties, natural wear and tear, faulty or negligent treatment, improper maintenance, unsuitable operating materials, faulty construction work, unsuitable building ground, chemical, electrochemical or electrical influences - unless the Supplier is responsible for them.
7. If the Purchaser or a third party carries out improper repairs, the Supplier shall not be liable for the resulting consequences. The same applies to changes made to the delivery item without the prior consent of the Supplier.
8. For assembly, repairs and other services, Clause V of the General Terms and Conditions of Assembly shall apply instead of Clause 4.

Defects of title

1. If the use of the delivery item leads to an infringement of industrial property rights or copyrights in Germany, the Supplier shall, generally speaking, procure the right for further use for the Purchaser or modify the delivery item in a manner reasonable for the Purchaser such that the infringement of the property right no longer exists.
If this is not possible, for economically reasonable terms or within a reasonable period, the Purchaser shall be entitled to withdraw from the contract. The Supplier shall also be entitled to withdraw from the contract under the aforementioned conditions.
In addition, the Supplier shall indemnify the Purchaser against undisputed or legally established claims of the relevant property right owners.

2. Subject to Section VII.2, in the event of infringement of industrial property rights or copyrights, the obligations of the Supplier, as specified in Section VI.8, are final.

They only exist when

- the Purchaser immediately notifies the Supplier of asserted infringements of industrial property rights or copyrights,
- the Purchaser supports the Supplier to an appropriate extent in the defence of the asserted claims or enables the Supplier to carry out the modification measures in accordance with Section VI.8,
- all defensive measures, including out-of-court settlements, are reserved to the Supplier,
- the defect of title is not based on an instruction of the Purchaser and
- the infringement was not caused by the Purchaser modifying the delivery item on his own authority or using it in a manner not in accordance with the contract.

VII. Liberty of the supplier, exclusion of liability

1. If the delivery item cannot be used in accordance with the contract, as a result of culpably omitted or faulty suggestions by the Supplier, or advice by the Supplier that took place before or after conclusion of the contract, or through culpable violation of other contractual ancillary obligations - in particular instructions for operation and maintenance of the delivery item - the provisions of Sections VI and VII.2 shall apply to the exclusion of further claims by the Purchaser.
2. For whatever legal reasons, the Supplier shall only be liable for damage that has not occurred to the delivery item itself
 - with intent,
 - in the event of gross negligence on the part of the owner / the executive bodies or senior employees,
 - in the event of culpable injury to life, limb or health,
 - in the case of defects which he maliciously concealed,
 - within the scope of a guarantee promise,
 - in the event of defects in the delivery item, insofar as liability is assumed in accordance with the Product Liability Act for personal injury or property damage to privately used objects.

VIII. Statute of limitations

All claims of the Purchaser - on whatever legal grounds - become statute-barred after 12 months. For claims for damages according to Section VII. 2 a-d and f, the statutory periods shall apply. They shall also apply to defects in a building or to delivery items that have been used for a building in accordance with their normal use and have caused its defectiveness.

IX. Use of software

If software is included in the scope of delivery, the Purchaser shall be granted a non-exclusive right to the use of the delivered software, including its documentation. It is provided for use on the delivery item intended for this purpose. Use of the software on more than one system is prohibited.

The Purchaser may only copy, revise, translate or convert the software from the object code to the source code to the legally permissible extent (§§ 69 a ff. UrhG) (German Copyright Act). The Purchaser undertakes not to remove manufacturer's details - in particular copyright notices - or to change them without the express prior consent of the Supplier.

All other rights to the software and the documentation, including copies, remain with the Supplier or the software Supplier. Sublicensing is not permitted.

X. Applicable law, place of jurisdiction

All legal relationships between the Supplier and the Purchaser shall be governed exclusively by the law of the Federal Republic of Germany applicable to the legal relationships between domestic parties.

The place of jurisdiction is the court responsible for the registered office of the Supplier. However, the Supplier is entitled to bring an action at the Purchaser's headquarters.

XI. Assembly

If an assembly is owed, the General Terms and Conditions for Assembly shall apply additionally.