

Terms of payment and delivery

I. General

1. The supply of goods and services shall be exclusively governed by these terms of payment and delivery as well as any separate contractual agreements. Deviating purchasing conditions of the customer shall not constitute part of the contract even if the order is accepted by the supplier. Unless agreed otherwise, a contract shall only come into effect when the order is confirmed in writing by the supplier.

2. The supplier shall retain intellectual property rights to all samples, cost estimates, drawings and other information of corporeal or incorporeal nature, including information in electronic format; these property rights may not be made accessible to third parties. The supplier undertakes not to disclose to third parties information and documents classified by the customer as confidential without his consent.

II. Prices and payment

1. Unless agreed otherwise, all prices are quoted ex works (EXW) Wolfsburg, Germany (Incoterms 2000), excluding packaging and VAT at the applicable rate.

2. Unless agreed otherwise, payments must be made in full to the supplier's bank account prior to delivery.

3. If the time limits for payment are exceeded the outstanding amount will attract statutory late-payment interest without the need for a separate reminder. The Supplier reserves the right to charge interest at the relevant rate charged by our bank. In addition, the total balance will become due and payable immediately irrespective of any agreed payment terms. The supplier will charge a €10 reminder fee. This shall be without prejudice to the right of the parties to assert higher or lower damages.

III. Delivery period, delivery delays

1. Delivery dates shall be non-binding, unless they have been expressly confirmed. Adherence thereto by the supplier shall be subject to all commercial and technical questions being clarified between the contractual parties and the customer having fulfilled all his obligations under the contract, e.g. obtain the necessary regulatory certificates or permits, or make an advance payment. If this is not the case, the delivery period shall be extended by the time during which the customer is in default.

2. Adherence to the delivery period shall be subject to timely and correct delivery to us by our suppliers. In the case of unforeseeable circumstances that arise after the conclusion of the contract and which are beyond our control, the delivery periods shall be extended accordingly to take into account the duration of the circumstances preventing delivery - even if the supplier is already in default of delivery. The same shall apply if such circumstances occur at our suppliers or their primary suppliers. The foregoing circumstances include, in particular, problems with procurement of materials and goods.

3. The delivery period shall be deemed to have been observed when the goods have left the works by the end of the specified delivery period or the customer has been notified that the goods are ready for delivery. Where the delivery is subject to acceptance, the acceptance date or the date of notification of readiness to carry out acceptance inspection shall be authoritative, unless there is a justified reason to refuse acceptance.

4. If the dispatch or the acceptance of the contractual item is delayed for reasons, which are attributable to the customer, he shall be charged for costs incurred as a result of the delay commencing one month after the notification that the goods are ready for delivery or ready for acceptance inspection.

5. If the delay in delivery has been caused by force majeure, labour disputes or other events, which are beyond the control of the supplier, the delivery period shall be extended accordingly. The supplier shall notify the customer of the beginning and end of such circumstances as soon as possible.

IV. Transfer of risk, acceptance

1. The risk shall be transferred to the customer once the goods have left the works. This shall apply even in the case of partial deliveries or if the supplier has agreed to pay for additional services, such as delivery or installation. If the delivery is subject to acceptance inspection, the date of acceptance shall be decisive for transfer of risk purposes. The acceptance inspection must be carried out without undue delay by the acceptance date or after notification by the supplier of being ready for acceptance inspection. The customer may not refuse acceptance due to minor defects.

2. If the delivery or acceptance is delayed or does not take place due to circumstances not attributable to the supplier, the risk shall pass to the customer with effect from the date on which the supplier has notified the customer that the goods are ready for dispatch or inspection. The supplier undertakes to take out insurance policies requested by the customer at the customer's expense.

3. Partial deliveries are permissible insofar as this is reasonable for the customer.

V. Retention of title

1. The supplier shall retain the title to the contractual item until all current or future claims arising from the business relationship have been settled in full. This shall also apply when one or all outstanding claims are combined into one invoice and set off against any payments received.

2. The supplier shall be entitled to insure the contractual item against theft, breakage, fire, water and other damage at the customer's expense, unless the customer can demonstrate that he has taken out the relevant insurance policies himself.

3. In the case of attachment, seizure or other third-party dispositions, the customer shall notify the supplier immediately by sending him a copy of the report on assets seized.

4. If the customer is in breach of contract, in particular, in the event of a default of payment, the supplier shall be entitled to recover the contractual item after issuing a reminder, and the customer shall be obliged to surrender it.

5. The supplier may only demand the surrender of the contractual item on the basis of retention of title if he has rescinded the contract.

6. The supplier shall be entitled to rescind the contract and demand immediate return of the delivered object on the grounds of an application to open insolvency proceedings.

7. The customer shall be entitled to sell the contractual item in the ordinary course of business. However, the customer hereby assigns all claims arising from the sale of the contractual items to the supplier. The customer shall remain entitled to collect receivables even after they have been assigned. This shall be without prejudice to the authority of the supplier to collect receivables. However, the supplier undertakes not to collect receivables as long as the customer duly complies with his payment obligations and

- the collection authorisation has not been revoked, and
- no application for the opening of insolvency proceedings has been filed.

The supplier can demand that the customer

- informs him about the assigned claims and the related debtors,
- provides him with all the information necessary for debt collection
- provides him with the relevant documents, and
- informs the debtors of the assignment, unless this has already been done by the supplier.

If the contractual item is sold on together with other goods that are not owned by the supplier, the customer's claim against the end-buyer shall be deemed to have been assigned in the amount equivalent to the delivery price agreed between the supplier and the customer.

The processing or transformation of reserved goods shall always be carried out by the customer on behalf of the supplier. If the reserved goods are processed with other goods not owned by the supplier, the supplier shall acquire joint ownership of the new goods in proportion of the value of the reserved goods to the other processed goods at the time of processing.

If the goods of the supplier are combined or inseparably mixed with other moveable goods into one unified item and if the other item can be regarded as the main item, the customer shall transfer the proportionate joint ownership to the supplier, provided that he owns the main item. The customer shall preserve the sole or joint ownership on behalf of the supplier. In all other respects, the same provisions shall apply to items produced as a result of processing, transforming, combining or mixing as to goods delivered under the reservation of title.

8. In the case of deliveries to countries where the aforementioned retention of title is not permissible or does not have the same effect as in German law, the customer shall be obliged to undertake all the necessary acts and declarations to agree on a provision that approximates as closely as possible the economic purpose of the aforementioned retention of title. If it is necessary to register the retention of title or another provision as set out in this clause for such provisions to be effective, the customer shall consent to such registration.

VI. Claims for defects

The supplier guarantees that the goods and services are free of material defects and defects of title - to the exclusion of any further claims - and without prejudice to Section VII - as follows:

Material defects

1. Any parts which prove to be defective due to circumstances occurring before the transfer of risk must be repaired or replaced free of charge at the choice of the supplier. If such defects are identified, they must be notified to the supplier without undue delay. Replaced parts shall become the property of the supplier.

2. After consultation and agreement with the supplier, the customer is obliged to give the supplier the opportunity to carry out all the necessary repairs or to offer a replacement; otherwise the supplier shall be released from liability for the consequences arising therefrom.

In particular, when the contractual item is located abroad and the customer is not a consumer, the supplier shall only be obliged to rectify the defect at his own premises, whereby the customer shall bear the cost of delivery and collection. Should the supplier rectify the defect at the premises of the customer at the customer's request, the customer shall bear the travel and accommodation costs of the fitters as well as the transport costs for spare parts; the remaining costs shall be borne by the supplier.

If the customer's registered office is located abroad where the import of spare parts is subject to import tax and / or customs duties, such charges shall be borne by the customer or reimbursed to the supplier.

3. Of all the costs arising directly as a result of rectifying the defects or offering a replacement, the supplier shall only bear the costs of the replacement item, provided that the complaint proves to be justified. The supplier shall also bear the costs of disassembly and installation as well as the costs of any necessary fitters and assistants at his own premises.

If the customer is a consumer, the supplier shall also bear the costs of dispatch and delivery, provided the customer is domiciled in Germany.

4. Under the statutory provisions, the customer has a right to rescind the contract - taking into account the statutory exceptions - when the reasonable period given to the supplier to rectify the defect or provide a replacement has passed without yielding a result. In the case of minor defects, the customer shall only be entitled to reduce the contractual price. In all other respects, the right to reduce the contractual price shall remain excluded. Further claims shall be determined in accordance with Section VII 2 of these terms.

5. No responsibility shall be accepted in the following cases, in particular: unsuitable or inappropriate use, incorrect assembly or commissioning by the customer or third parties, natural wear and tear, incorrect or negligent treatment, improper maintenance, unsuitable equipment, defective construction works, unsuitable foundations, chemical, electrochemical or electric influences - insofar as they are not attributable to the supplier.

6. If the customer or a third party make improper attempts to rectify the defect, the supplier shall not be liable for the consequences. The same shall apply to changes made to the contractual item without the supplier's prior consent.

7. If we provide materials suggestions for media which come into contact with construction components, the tables used are provided by the manufacturers of materials and are non-binding. This shall not be construed as a guarantee of durability. In cases of doubt, it is recommended that the customer carries out durability tests using the materials in question. For fitted or loose third-party products included in the delivery, e.g. drives, floating ring seals, etc., the supplier shall assign the guarantees provided by the respective manufacturers to the customer.

Defects of title

8. If the use of the contractual item leads to the infringement of intellectual property rights in Germany, the supplier shall acquire the right at his expense, which will allow the customer to continue using the contractual item or modify the contractual item in a manner acceptable to the customer and which removes the infringement of intellectual property rights. If this were to be too expensive, or it could not be done within a reasonable time limit, the customer shall be entitled to rescind the contract. The supplier shall also be entitled to rescind the contract under the aforementioned circumstances. In addition, the supplier shall indemnify the customer against undisputed or legally established claims of the relevant holders of intellectual property rights.

9. Without prejudice to Section VII 2, the obligations of the supplier referred to in Section XIV.8 shall be exhaustive with regard to the infringement of intellectual property rights.

This shall only be the case if

- the customer notifies the supplier immediately of any claims regarding infringements of intellectual property rights,
- the customer provides the supplier with appropriate assistance in warding off such claims or enables the supplier to carry out the modification measures in accordance with Section VI.
- all defensive measures, including out-of-court settlements, remain the preserve of the supplier.
- the defect of title is not the result of instructions issued by the customer, and
- the infringement has not been caused by the fact that the customer has the modified the contractual item without authorisation or used it in a manner, which does not comply with the contract.

VII. Liability

1. If the contractual item cannot be used by the customer as foreseen by the contract due to a fault of the supplier as a consequence of omitted or flawed implementation of suggestions and advice given before or after entering into the contract or as a result of the breach of other ancillary contractual obligations, in particular, instructions for operating and maintaining the contractual item, the provisions of Sections VI and VII 2 shall apply accordingly.

2. The supplier shall only be liable for damage that has not been sustained by the contractual item - on whatever legal basis - in the case of

a. intent,

- b. gross negligence of the owner / corporate body or senior employees,
c. culpable injury to life, body or health,
d. in the event of defects, which have been maliciously concealed or where the absence of such defects has been guaranteed,
e. liability for damage to privately used objects or personal injury suffered as a result of defects of the contractual item under the German Product Liability Act.
f. culpable breach of material contractual obligations, however, limited to contractually typical, reasonably foreseeable damage.
Any further claims are excluded.

VIII. Limitation period

Unless provided otherwise in a separate contractual agreement, all claims of the customer - on whatever legal basis - are subject to a limitation period of 12 months.

The statutory limitation periods shall apply to claims for damages pursuant to Section VII 2 a - f. They shall also apply to construction defects or contractual items, which have been used for their intended purpose as part of a construction and have been the cause of its defect.

IX. Use of software

If software is included in the scope of supply and services, the customer shall be granted a non-exclusive right to use the supplied software, including its documentation. The software shall be licensed for use solely in conjunction with the contractual item for which it is intended. Use of the software on more than one system is prohibited. The customer may only copy, edit or translate the software or convert the object code into the source code to the extent permissible by law (Articles 69a et seq. of the German Copyright Act) The customer undertakes not to remove or change manufacturer information and in particular, copyright notices without the prior express consent of the supplier. All other rights to the software and the documentation, including copies, shall be retained by the supplier or software supplier. The granting of sub-licences shall not be permitted.

X. Applicable law, jurisdiction

1. The contractual relationship between the supplier and the customer shall be exclusively governed by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on the Sale of Goods (CISG).
2. The courts at the registered office of the supplier shall have exclusive local and international jurisdiction. However, the supplier shall be entitled to bring an action before a court at the location of the registered office of the customer.

XI. Export controls

A number of products of the supplier are classified as dual-use goods and are thus subject to EU export controls. In this context, the customer shall provide the supplier with any necessary documents, without the need for an advance request. The customer hereby warrants that he complies with the EU export regulations. The customer shall indemnify the supplier against any third-party claims arising from a breach of these regulations by the customer. The foregoing shall be without prejudice to the duty of the customer to notify the supplier immediately if the end-use destination of the goods is outside the EU.

Version: October 2011

ASM-Dimatec Deutschland GmbH
Lehmkuhlenfeld 2
38444 Wolfsburg, Germany