

**General Terms and Conditions of Supply****1. General Provisions**

- 1.1 The General Terms and Conditions of Supply (hereinafter referred to as "AGB") apply to all supplies, both present and future, including proposals, consultancy services and other ancillary services and to all orders placed by us and contracts concluded with us.
- 1.2 Unless explicitly otherwise agreed, these AGB shall apply exclusively. Any other provisions, in particular customer's general terms and conditions of business, purchase or supply, shall not become an integral part of the contract even if they are not explicitly rejected.
- 1.3 Any agreements reached when the contract is concluded – in particular insofar as they alter these Terms and Conditions – require written confirmation by us.
- 1.4 Our offers are not binding unless explicitly otherwise agreed.
- 1.5 If the customer's order is to be classified as an "offer" (Section 145 of the German Civil Code BGB), we have the right to accept this offer within a period of two weeks.

**2. Price, Terms of Payment, Security**

- 2.1 Save as otherwise agreed, prices are deemed to be in EURO and subject to the Value Added Tax respectively applicable. Payment is due no later than 30 days after the invoice date with no deduction for discount.
- 2.2 The customer is only entitled to a right of retention and/or a right of off-set if the counterclaims are undisputed or determined by final judgment of a court of law.
- 2.3 Provided that this has been explicitly agreed, we accept, on account of payment, bills of exchange that are duly taxed and discountable. When accepting bills of exchange or cheques, the debt is not cleared until the bill of exchange or cheque is redeemed. The customer shall bear any discount charges and all costs arising in connection with redeeming the amount of the bill of exchange or cheque.
- 2.4 If the customer is in default of payment, default interest shall be charged at an amount 10 % above the respective basic interest rate of the European Central Bank. The customer has the right to evidence that no damage was incurred by us as a result of the customer's default of payment or that it was considerably lower. Our right to claim provably higher default damage shall remain unaffected.
- 2.5 In the event of default of payment or risk of non-payment of our claims through a deterioration in the creditworthiness of the customer, we have the right to demand immediate payment of our claims, irrespective of the period to maturity of any bills of exchange. We then also have the right to require advance payment or the provision of security before executing supplies which are still outstanding.
- 2.6 We may offset all receivables due to us from the customers against all claims which the customer has against us or DASCOM Europe GmbH.

**3. Passing of Risk, Dispatch, Delivery Date**

- 3.1 Risk passes to the customer when the goods are handed over to the freight forwarder or freight carrier, at the latest, however, when the goods leave the factory or warehouse.
- 3.2 Otherwise the interpretation of commercial terms shall be governed by the version of Incoterms in force and effect at the time the contract is entered into.
- 3.3 Our prices do not include transport, dispatch and freight costs or the charges for cash on delivery and these shall be invoiced separately unless the parties have reached an agreement deviating from this.
- 3.4 The means of transport and the transport route are at our discretion. We shall determine the freight forwarder and the freight carrier.
- 3.5 Goods due for delivery notified as ready for dispatch must be called off without undue delay, otherwise we have the right to store them at the expense and risk of the customer at our discretion.
- 3.6 We have the right to effect partial deliveries.

**4. Delivery Date, Delays to Delivery**

- 4.1 Insofar as goods not manufactured by us are involved, our obligation to deliver is subject to the reservation that delivery to us is effected correctly and punctually, unless the incorrect or delayed delivery was caused by us.
- 4.2 Agreed delivery dates only apply subject to the precondition that all the details of the order have been clarified on time and all the obligations of the customer have been met punctually, e.g. provision of requisite governmental certifications, opening a letter of credit or making an advance payment. Delivery dates relate to the time when the goods are dispatched from the factory supplying the goods or from the warehouse and are deemed to have been complied with upon notification that they are ready for dispatch, if the goods cannot be dispatched punctually through no fault of our own.
- 4.3 If we are prevented from performing our obligations by unforeseen events affecting us or our suppliers, e.g. war, intervention by a higher authority, internal unrest, natural disaster, accident, other interruptions to operations and delays in supply of fundamental operating supplies or precursor materials, which we were unable to avert even with the care reasonable in the circumstances of the case, then the delivery period shall be extended by the length of the disturbance plus a reasonable start-up time. If supply becomes impossible or unreasonable for us as a result of the hindrance, we may rescind the contract; the customer has the same right if the customer cannot be reasonably expected to accept delivery on account of the delay. Any strikes and lockouts are also considered to constitute an impediment for which we are not accountable within the meaning of this section.
- 4.4 If we are in default, the customer may rescind the contract after expiry of a reasonable additional time period of at least 1 month set by the customer.
- 4.5 A right of rescission to which the customer or we are entitled pursuant to section 4.3 or 4.4 shall, in principle, only cover that part of the contract not yet performed. Insofar as partial deliveries already performed should be unusable for the customer, then the customer also has the right of rescission with respect to such partial deliveries.
- 4.6 More far-reaching rights ensuing from default of delivery, in particular claims for damages, are excluded to the extent set forth in Section 8.
- 4.7 The customer is obliged, upon request, to declare within a reasonable period of time whether the customer continues to insist on performance on account of the delay thereof.

**5. Defects in the Goods, Incorrect Delivery**

- In the event of defects in the goods the following shall apply:
- 5.1 The goods must be examined by the customer upon acceptance to ascertain any defects and whether the delivery is complete. We must be notified of any obvious defects within a period of two weeks. If no notification of such defects is given within this period, later notification is excluded for defects which could have been detected at acceptance of the type agreed.  
If the customer is a businessman, a public law legal entity or a public law special fund, the precondition for warranty claims by the customer is that the customer has duly complied with its obligations to examine and notify defects in accordance with Section 377 German Commercial Code (HGB). Obvious defects must be notified to us without undue delay.
  - 5.2 As regards new goods which are defective, we shall, at our discretion and giving consideration to the costs, the significance of the defect, and to what is reasonable for the customer, either repair them or recover and replace them with goods free of defects. Repairs shall be effected at our factory in Ulm, Germany, unless otherwise agreed. If the repair work is carried out at a different location and if our transport, transportation and labour costs are increased because the goods are relocated after delivery to a place other than the place of residence or the place of commercial business of the customer, the customer shall bear the additional costs arising as a result. If the repair work or replacement should be abortive – at least 3 attempts within a reasonable time period of at least 1 month set by the customer – the customer may rescind the contract in the event of a considerable defect, otherwise the customer may reduce the purchase price.
  - 5.3 Warranty claims by the customer are excluded for defects and damage due to normal wear and tear, improper handling, operation or operating means, to inadequate maintenance, influences of third party equipment, improper installation or other intervention by the customer or a third party.
  - 5.4 The limitation period for warranty claims shall start to run upon the transfer of risk of the goods pursuant to Section 3.1. The duration thereof shall be restricted to 6 months. The limitation period shall be extended for a further 2 months insofar as the customer is a commercial reseller.
  - 5.5 We provide a warranty for the repair work and replacement in the same way as for the original supply, the original limitation period is not extended.

- 5.6 More far-reaching rights due to defects – in particular claims for compensation for damage not caused to the goods themselves – are excluded to the extent set forth in Section 8; this exclusion of liability does not apply in the event that a guarantee has been given, if the very purpose of the guarantee is to secure the customer against the damage arising.
- 5.7 If the examination of the goods complained of should reveal that there is no defect, we reserve the right to charge the customer for the costs of the examination.
- 5.8 The foregoing provisions shall apply accordingly if the goods supplied are other than those agreed in the contract.

**6. Reservation of Title**

- 6.1 The goods delivered remain our property (goods subject to retention of title) until all the claims against the customer to which we are entitled within the framework of our business relationship have been satisfied.
- 6.2 Any processing or reworking of the goods subject to retention of title shall be effected for us as manufacturer within the meaning of Section 950 German Civil Code (BGB), without committing us. Whenever the goods subject to retention of title are processed or combined by the customer with other goods, we are entitled to joint ownership of the new thing in proportion to the invoice value of the goods subject to retention of title and the invoice value of the other goods used. The processed or reworked goods and our joint ownership rights are deemed to be goods subject to retention of title within the meaning of Section 6.1. If our ownership should lapse through connection, then the customer transfers to us now already the ownership rights to the new thing in the amount of the invoice value of the goods subject to retention of title and holds custody thereof for us free of charge.
- 6.3 The customer may only process or resell the goods subject to retention of title in the normal course of business as long as the customer is not in default. The customer is not authorised to effect any other disposition of the goods subject to retention of title. The customer must notify us without undue delay of any attachment or other impairment of the goods subject to retention of title by third parties.
- 6.4 Any claims of the customer from the resale of the goods subject to retention of title (including all balance claims from the current account) shall be assigned to us as security now already. If, pursuant to Section 6.2, we only have joint ownership in the goods resold, a proportionate part of the claim shall be assigned to us, commensurate with our joint ownership share.
- 6.5 The customer has revocable authority to collect the claims assigned as long as the customer complies with its payment obligations. If the customer is in default of payment, the customer is obliged, at our request, to notify its customers immediately of the assignment to us - unless we do so ourselves - and to provide us with the information and documentation necessary to collect the claim. At any event the customer has no right to otherwise assign the claims.
- 6.6 In the event of default of payment by the customer, we have the right to recover the goods subject to retention of title and to access the customer's facility to this effect. Such recovery is not deemed to constitute rescission of the contract.
- 6.7 If the realisable value of the existing security exceeds the claims secured by more than 20 % on aggregate, then at the request of the customer we are obliged to release security to this extent at our discretion.

**7. Documentation, Computer Programs**

- 7.1 The customer has the right to duplicate and translate all technical documents (technical descriptions, circuit diagrams, logic diagrams, pulse diagrams, adjustment and maintenance regulations etc.), supplied with the goods for use in connection with the utilisation and installation of the equipment, at the customer's facility or that of its customer. The customer undertakes, however, not to disclose such documentation to third parties and not to replicate the goods supplied or parts thereof or to have them replicated by third parties.
- 7.2 We or our licensors exclusively hold the copyright, present and future industrial property rights of any kind and all rights to use computer programs supplied. The customer is not permitted to use the computer programs in excess of the statutory minimum use.

**8. General Exclusion of Liability**

- 8.1 Our liability is based exclusively on the agreements reached in the foregoing sections. All rights not explicitly conferred therein, for example to rescission or to compensation for damage of any kind – irrespective of the legal ground therefore, in particular also on account of a violation of duty, tortious acts or culpa in contrahendo – are excluded.
- 8.2 This exclusion of liability does not apply in case of intent, gross negligence by the officers or executives of the company, in the event of culpable breach of material contractual duties, insofar as achieving the object of the contract is jeopardised as a result thereof (liability is restricted in this respect to compensation of foreseeable damage typical of the type of contract unless one of the aforementioned cases applies), to claims under the German Product Liability Act (Produkthaftungsgesetz) or to claims on account of fatal or physical injury or damage to health.
- 8.3 In the event of a breach of material contractual duties we are also liable in the event of gross negligence by persons who are not executives and in the case of slight negligence. In the case of slight negligence, liability is restricted to reasonably foreseeable damage typical of the type of contract. Material contractual duties exist when exemption of liability relates to a duty which must be fulfilled to make the proper execution of the contract at all possible and which the customer regularly relies on compliance with.
- 8.4 Further liability is excluded, in particular compensation for damage not incurred by the subject of the contract itself. The same shall apply insofar as the warranty is effectively excluded.
- 8.5 No change to the burden of proof to the detriment of the customer is connected with the foregoing provisions.

**9. Place of Performance, Partial Invalidity**

- 9.1 Place of performance is the place of the supplier factory or warehouse.
- 9.2 In the event that individual provisions of the contract should be ineffective, the remainder of the contractual provisions shall remain binding.

**10. Jurisdiction and Venue**

- 10.1 The courts of Ulm have jurisdiction and venue over all legal disputes, including litigation on bills of exchange and cheques, insofar as the customer is a businessman, a public law legal entity or a public law special fund. We reserve the right to take action against the customer at the court having general jurisdiction over the customer.
- 10.2 All legal relationships between us and the customer shall be governed exclusively by the laws of the Federal Republic of Germany relevant to legal relations between domestic parties, to the exclusion of all provisions on the conflict of laws and the UN Convention on Contracts for the International Sale of Goods (CISG).

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