

Terms of Delivery and Payment of Dantex Deutschland GmbH

Valid from 21 July 2014

1. Applicability

1.1 All goods and services supplied by us – including prospective supplies – to companies within the meaning of § 14 BGB [German civil code], legal public-law entities or public-law special funds (hereinafter referred to as the Customer) shall be governed exclusively by our Terms of Delivery and Payment as set out below.

An entrepreneur within the meaning of § 14 BGB is a natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its trade, business or profession.

1.2 The present Terms of Delivery and Payment shall likewise apply to future business relations, even where they have not been explicitly re-agreed. Any conflicting or dissenting terms and conditions of the Customer shall not form part of the contract, even where we do not explicitly object to same.

2. Conclusion of contract

2.1 Unless explicitly described as binding in the text of the offer, our offers are non-binding. A contract shall come into effect only where we confirm the order in writing. The contents and scope of the contract shall be governed by our written order confirmation.

2.2 We reserve the rights of ownership and copyright in respect of cost estimates, illustrations, drawings and other documents; these shall be treated confidentially by the Customer and must not be made available to third parties.

2.3 Changes to the technical design of the ordered goods shall be permitted unless this substantially alters the functioning of the goods or unless the Customer furnishes proof that the change is unreasonable for him.

2.4 We warrant the quality or durability of the goods only where this has been explicitly pledged in our order confirmation or in our advertising.

3. Delivery time and force majeure

3.1 Unless explicitly described as binding, delivery periods shall be non-binding.

3.2 The start of the delivery period specified by us shall be contingent upon the clarification of all technical issues.

3.3 Delivery deadlines and delivery periods shall be under reserve of being supplied in a correct and timely manner ourselves.

3.4 The delivery period shall be appropriately extended where changes are subsequently requested by the Customer or in the event of hindrances to delivery

for which we are not responsible (in particular natural disasters or industrial disputes affecting us or our sub-contractors). In such a case, we will as soon as possible notify the Customer of the start and end of such circumstances. We shall not be liable for disruptions of business operations that are not our fault, including during a default in delivery. Where, for such reasons, we can no longer reasonably be expected to fulfil our obligations, we shall be authorised to cancel the contract. The Customer shall not be entitled to claim damages on the grounds of such cancellation. We shall also then be authorised to cancel the contract where the Customer was first notified of an extension of the delivery period.

4. Passing of risk, insurance

4.1 The risk of accidental loss or deterioration of the product or service shall pass to the Customer upon completion of the product and notification of readiness for shipment. The same shall apply where there is a delay in shipment as a consequence of circumstances for which we are not responsible. Where there is no notification of readiness for shipment, the risk shall pass to the Customer upon handover of the product to the carrier and no later than when the product leaves the factory or warehouse. The same shall apply where our means of transport are used or in the case of freight free delivery.

4.2 The Customer shall be obliged to sufficiently insure the product for as long as our retention of title exists. Irrespective thereof, we shall be authorised – but not obliged – to insure the product for transport to the Customer and to invoice the thereby incurred costs.

5. Prices, price changes

5.1 Unless otherwise agreed, our prices shall apply ex works/place of dispatch inclusive of loading, but exclusive of packaging, freight costs, insurance and statutory VAT. Such items will be invoiced separately.

5.2 We reserve the right to appropriately change our prices where, after conclusion of the contract, there are cost reductions or increases, especially due to changes of the technical design within the meaning of section 2.3, wage settlements or changes in the prices of materials. On request, we will furnish proof thereof to the Customer.

5.3 The Customer shall be entitled to set off only such claims that have been acknowledged by us or that have been assessed in a legally binding judgement.

6. Terms of payment

6.1 Our invoices shall be payable without deduction within 30 days after the invoice date. In case of payment within 14 days, we will grant a 2% discount, but only where all previous due invoices have been paid. We do not accept bills of exchange or cheques.

- 6.2 In case of default of payment by the Customer, we shall be authorised to immediately demand payment of all claims arising from the entire business relationship. Any agreed discounts, price reductions, etc. shall cease to apply in such a case. For the period of default, the Customer shall pay interest on the debt in the amount of 8 percentage points above the base interest rate.
- 6.3 Where the Customer fails to comply with the terms of payment, we shall be authorised to demand immediate payment in cash of all goods and services. Where we become aware of circumstances that cast doubt on the creditworthiness of the Customer (such as failure to comply with the terms of payment), we shall be authorised to execute outstanding deliveries only against advance payment, payment on delivery or against security or to cancel the contract and to demand damages. Having cancelled the contract, we shall further be authorised to immediately recover the goods at the expense of the Customer.
- 7. Retention of title**
- 7.1 Our deliveries are always subject to retention of title. We retain title to the goods until all claims arising from the business relationship with the Customer have been paid in full. In case of running accounts, retention of title shall be deemed as security for the amount outstanding.
- 7.2 The Customer shall be entitled to resell goods under retention of title (with the exception of machines and plants) within the ordinary course of his business. For this case, the Customer shall assign to us his payment claim in the amount of the value of the goods under retention of title. At our request, the Customer shall inform us of the debtors of the assigned claim and notify such debtors of the assignment. However, the Customer may neither pledge nor transfer the goods under retention of title as security.
- 7.3 Treatment and processing of goods under retention of title shall in all cases take place for us as manufacturer within the meaning of § 950 BGB, but with no obligation on our part. The processed goods shall be deemed goods under retention of title within the meaning of the present terms and conditions. Where goods under retention of title are processed or inseparably assembled or mixed with other objects that are not our property, we shall acquire co-title in the new goods in the ratio of the invoice value of the goods delivered by us under retention of title and the invoice value of the other included goods at the time of processing or mixing. The thereby resulting co-title rights shall be regarded as goods under retention of title within the meaning of the present terms and conditions. The Customer shall be obliged, at our request, to notify the purchaser of our ownership rights in the goods under retention of title.
- 7.4 The Customer shall be authorised to collect the receivables arising from the resale of goods without prejudice to our own authority to collect. As long as the Customer duly complies with his payment obligations, we ourselves will not assert any claims. At our request, the Customer shall inform us of the debtors of the assigned claims and notify such debtors of the assignment. This shall not affect our right to notify the third-party debtors of the assignment on our own. The Customer shall be barred from assigning the claim against the third-party debtors to third parties or from entering into a non-assignment agreement with the third-party debtors.
- 7.5 The Customer shall be obliged to inform us immediately and by the fastest available means of any seizure or other impairment of our security interests by third parties. The Customer shall be obliged to provide us with all documents necessary for safeguarding our rights and to reimburse the costs incurred by us as a result of any required intervention.
- 7.6 A change of the whereabouts of supplied machines and plants shall require our prior written consent. The Customer shall maintain the supplied machinery and equipment in flawless condition.
- 7.7 Where the realisable value of the securities exceeds our claims by more than 10%, we will, at the request of the Customer, release securities of our choosing to that extent.
- 8. Warranty, notification of defects, limitation period**
- 8.1 The Customer shall examine the received goods for defects immediately upon receipt. The Customer shall give written notification of any defects immediately upon receipt of the goods and no later than within 14 days. The same period shall apply to concealed defects starting from the time of discovery. Where defects are not notified in a timely manner, warranty claims shall be void.
- 8.2 In the case of justified complaints, we shall, at our option, either rectify the defect or supply a replacement. Where we fail within a reasonable period to rectify the defect or supply a replacement, the Customer shall be entitled to cancel the contract or to demand a reduction of the purchase price. The right to cancel the contract shall be excluded where there is only an immaterial breach of duty on our part.
- 8.3 The limitation period for warranty claims shall be:
- one year where new goods are supplied;
 - one year in the case of a work the success of which consists in the manufacture, maintenance or modification of a product or in the provision of planning or supervision services therefor;
 - five years in the case of the supply of goods that, according to their commonly practised use, have been used for a building and have caused defects of said building.
- 8.4 The limitation period shall begin upon delivery of the goods or, in case of a work within the meaning of section 8.3 b, upon acceptance.
- 8.5 Warranty claims shall be excluded:
- for used machines or other used goods unless liability for defects has been explicitly agreed;
 - in case of the depletion and wear of materials and parts that, by their nature, are subject to unavoidable

ble and routine wear, such as rollers, brushes, springs, blades, lamps, filters, etc.;

- c, where the Customer fails to carry out, or cause to be carried out, the required maintenance and care as specified in the operating instructions.

8.6 There shall, in particular, be no warranty claims for defects that arise after the passing of risk as a consequence of inappropriate or improper use, incorrect installation or putting-into-operation by the Customer or third parties, impermissible operation, natural wear and tear, unsuitable operating fluids, unsuitable installation location, lack of stability or inappropriate guaranteeing of the power supply. There shall further be no warranty claims for non-reproducible software errors. Where the Customer or a third party carries out improper repairs, we shall bear no liability for the therefrom resulting consequences. The same shall apply to any modification to the supplied goods undertaken without our prior consent.

8.7 Notwithstanding above sections 8.3, 8.5 and 8.6, the statutory periods for claims for damages shall apply in the case of

- damages arising from injury to life, limb or health due to a negligent breach of duty by us or a wilful or negligent breach of duty by one of our legal representatives or agents or
- other damages due to a grossly negligent breach of duty by us or a wilful or grossly negligent breach of duty by one of our legal representatives or agents.

9. Limitation of liability

9.1 We shall be liable under the statutory regulations in the case of injury to life, limb or health attributable to us or to one of our legal representatives or agents.

9.2 The following shall apply to other damages:

- a, We shall be liable under the statutory regulations for damages due to a wilful or grossly negligent breach of duty by us or by our legal representatives or agents.
- b, Liability shall be limited to the foreseeable, contract-typical damages, and to no more than the value of the supplied goods, in the case of damages due to a breach of material contractual duties as a consequence of simple negligence by us or our legal representatives or agents.
- c, Claims for other damages in respect of a breach of secondary or minor duties in the case of simple negligence shall be excluded.

9.3 Claims for damages arising from delay due to simple negligence shall be excluded; the statutory rights of the Customer after the end of a reasonable period of grace shall remain unaffected.

9.4 The exclusions or limitations of liability shall not apply where we have fraudulently concealed a defect or given a warranty for the characteristics of the product.

9.5 The claims of the Customer to reimbursement of wasted expenditures instead of damages in place of performance and our liability under the Product Liability Act shall remain unaffected.

10. Liability for indirect damages

We shall not be liable, except in cases of wilful intent or gross negligence, for indirect damages as a consequence of defective delivery, such as loss of production, loss of profit or additional consumption of materials.

11. Non-assignment

The Customer shall not be entitled, without our consent, to assign rights under contracts concluded with us to third parties.

12. Service

Where we undertake installation, service or instruction or the supply of service parts, there shall apply, in addition to the present Terms of Delivery and Payment, the service terms and conditions of Dantex Deutschland GmbH as well as the cost rates for individual service orders of Dantex Deutschland GmbH.

13. Applicable law, place of performance, jurisdiction

13.1 Exclusively German law shall apply. Application of the United Nations Convention on the International Sale of Goods (CISG) shall be excluded.

13.2 Darmstadt Regional Court shall have venue and jurisdiction. However, we shall also be authorised to take legal action against the Customer at the place of his registered office.

Dantex Deutschland GmbH

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