

Terms and Conditions of Delivery and Payment, DELIMON GmbH, Düsseldorf

- I. Offers**
- 1 The Terms and Conditions shall apply to all contracts, deliveries and any other services provided by DELIMON GmbH ('Supplier' and hereinafter also referred to as 'we'/'our') to companies that purchase Delimon GmbH's goods or services (hereinafter 'Buyer'). Any purchasing terms and conditions of the Buyer that deviate from these terms and conditions are hereby rejected. For this reason, they will also not become a component of the contract if the Buyer makes the applicability of its purchasing terms and conditions the basis for the order and we do not expressly reject them after we receive them.
- 2 Offers shall normally be issued at no charge. The prices and delivery times contained therein shall only be binding if the delivery contract comes about within four weeks.
- 3 The documents pertaining to the offer (e.g. depictions, drawings, weights and measures) shall only be approximations, unless expressly designated as binding. The supplier shall retain property rights and copyrights to cost estimates, drawings and other documents, which may not be made available to third parties. The supplier shall be obligated to make plans designated as confidential by the buyer available to third parties only with the buyer's approval.
- II. Scope of Delivery and Performance**
- 1 Exclusively our order confirmation shall be applicable to the scope of the delivery and performance. Collateral agreements and modifications shall require our written confirmation.
- 2 Protective equipment and assembly aids (e.g. set-up consoles) shall only be supplied if agreed upon.
- 3 With respect to the performance of assembly work, the Terms and Conditions of Domestic Assembly attached as an annex shall apply to the execution of assembly work in Germany and the Terms and the Conditions of Assembly Abroad attached as an annex shall apply to the execution of assembly work abroad.
- III. Prices and Payment**
- 1 Unless otherwise agreed to in a special agreement, the prices shall apply to deliveries starting from the place of dispatch and they exclude charges for packaging, shipping, customs duties and value added tax.
- 2 Unless otherwise agreed in a special agreement, our invoices are due within 30 days after the invoice date. Invoices for assembly and repair are due within 14 days of the invoice date.
- 3 Payments by means of bills of exchange or promissory notes are only permitted with our consent, but they will never effect performance. The Buyer shall be responsible for any discount and exchange charges normally made by private banks. A discount deduction for early payment is not permitted.
- 4 If and when payment is not rendered by the agreed due date, the Buyer shall also be in arrears, without prior notice for failure of payment, at the latest if the Buyer does not make payment within 30 days of the due date and receipt of an invoice, or in the event of a dispute about the receipt of the invoice, after the service has been received (§ 286, para. 3 of the German Civil Code (*BGB*)). The Supplier is entitled to charge statutory late-payment interest (§ 288, para. 2 *BGB*) for the duration of the default period. This shall not affect the right of the Supplier to claim higher compensation for default damages upon corresponding evidence.
- 5 Withholding payments or offsetting payments against any of the Buyer's counter-claims which we dispute shall not be permitted unless the counter-claims have been deemed legally binding against us.
- 6 Packing shall be billed at cost prices and not taken back.
- 7 See the price list or inquire for the minimum order value per order confirmation.
- IV. Delivery Period**
- 1 The delivery period shall begin when confirmation of the order is sent, however not before all details pertaining to the order and manufacturing have been clarified, the documents to be provided have been submitted by the Buyer, and any additional parts to be made at our disposal have been discussed.
- 2 The delivery period shall be deemed as having been met if the delivery item has left the factory by the end of the period or the Buyer has been informed that it is ready for dispatch.
- 3 The delivery times and dates indicated do not qualify as a firm deal. Default in delivery shall only exist if we do not comply within a reasonable grace period and none of the following situations exclude a default in delivery.
- 4 Delivery shall be delayed for a reasonable amount of time until the delivery or service is possible if the Supplier is prevented from performance of its duty as a result of unforeseeable circumstances occurring, which the Supplier could not avoid in spite of taking the care reasonably to be expected considering the nature of the circumstances – irrespective of whether these occur in the Supplier's factory or at its subcontractors. These shall include, for example, interruptions of operations, delays in the deliveries of essential raw and building materials, and strikes. If it is impossible to execute a delivery or service due to the above-mentioned circumstances, the Supplier shall be released from its delivery obligation. If the delivery deadline is extended in the above-mentioned circumstances or if the Supplier has been released from its delivery obligation, any of the Buyer's claims for damages that may derive therefrom and rights to withdraw from the contract shall become null and void. If the above-mentioned circumstances occur at the Buyer's, the legal consequences shall also apply to the Buyer's obligation to accept goods and services. We shall also not be responsible for the above-mentioned circumstances if they occur during an already existing delay. In the event delivery is impossible, the Supplier is obligated to immediately inform the Buyer about the occurrence of the above-mentioned events and must reimburse the Buyer for any counter-performance provided.
- 5 If the Buyer incurs damages due to a delay that arises through the fault of the Supplier and a grace period has expired to no avail, the Buyer is entitled to demand compensation for the delay to the exclusion of any further claims. It shall be one-half of one per cent for each full week of the delay, but the total maximum charge of 5 per cent of the value of the said component in the total delivery, which cannot be used on time or be used in the manner stipulated in the contract as a result of the delay.
- 6 If dispatch is delayed upon request or because of the Buyer's circumstances, the Buyer shall be charged for any costs incurred for storage beginning one month after it has been notified that the goods are ready to be dispatched; in the event the goods are stored in our factory, the Buyer will be charged a minimum of at least one-half of one per cent of the amount on the invoice per month. However, after setting a reasonable deadline and if this deadline has passed to no avail, we are entitled to dispose of the delivery item in another way and to deliver the item to the Buyer after an appropriately extended deadline.
- 7 Observing the delivery deadline assumes that the Buyer has fulfilled its contractual obligations.
- V. Passage of Risk and Reception**
- 1 The risk shall pass to the orderer upon the dispatch of the delivered parts to the orderer, even in the case of partial deliveries or if the supplier has assumed other performances (e.g. the shipping costs or the carriage and set-up).
At the orderer's request, the shipment shall be insured by the supplier against theft, breakage, transport, fire and water damage and other insurable risks.
- 2 If the shipment is delayed due to circumstances for which the orderer is responsible, the risk shall pass to the orderer from the date the shipment is ready for delivery; however, the supplier shall be obligated to affect the insurance policies requested by the orderer at the latter's cost.
- 3 Even if they contain minor defects, delivered objects must be received by the orderer, without prejudice to its rights from Section VII.
- 4 Partial deliveries shall be permissible.
- 5 The delivery shall be considered as fulfilled:
a) in the case of agreements on a lump-sum price which includes the assembly work, as soon as the readiness for operation is documented. If the orderer fails to provide an opportunity to document the readiness for operation within 14 days after the notice that the object is ready for operation, the object shall be considered as proven to be ready for operation even without the documentation.
b) in the case of all other delivery contracts, after the shipment has been made or, in the absence of shipping instructions, upon the notice that the object is ready for operation.
- VI. Retention of Title**
- 1 The supplier shall reserve the title to the delivered object until receipt of all payments from the delivery contract.
- 2 The supplier shall be entitled to insure the delivered object at the cost of the orderer against theft, breakage, water and other damage, unless the orderer itself has verifiably taken out insurance.
- 3 The orderer may not pledge or transfer the delivered object by way of security. In the case of attachments and seizures or other disposals by third parties, the supplier must be notified thereof without delay.
- 4 In the event of conduct by the orderer in breach of contract, particularly in the event of default in payment, the supplier shall be entitled to take back the object after a warning and the orderer shall be obligated to surrender the object.
- 5 The Buyer may resale the goods under reservation of title until it is revoked, but if the purchase price claim against its customer has been assigned to the Supplier, it can disclose the assignment to the end customer in the event the Buyer is in arrears.
- 6 Processing, installation and alteration of goods which are under reservation of title by the Buyer shall only take place for the Supplier. The Supplier shall retain ownership or its share of ownership of the new object that is produced at the invoice value of the delivery item.
- 7 As security for the Supplier's claims against the Buyer, the Buyer shall also assign the claims to the Supplier that stem from the sale of the products associated with the goods under reservation of title to a third party.
- 8 The Supplier shall release the securities to which it is entitled upon the request of the Buyer if and to the extent that the realisable value of the securities exceeds the claims to be secured by more than 10 %; the selection of the securities to be released shall be the responsibility of the Supplier.
- VII. Defect Complaints and Warranty**
- 1 The customer's claims for defects assumes that it has properly fulfilled its duty to inspect for and give notification of defects in accordance with section 377 of the German Commercial Code. Material defects of the goods must be reported immediately in writing, at the latest seven days after they were delivered. Material defects which cannot be discovered within this period must be reported in writing after they are discovered, at the latest before the limitation period expires, and any modifications and processing must be stopped immediately. Unless otherwise agreed, the limitation period for claims for defects pertaining to the delivery of goods and assembly which are not intended or provided for buildings is 12 months; it is calculated from the date of delivery, or in the event of a default in acceptance, from the date risk is transferred.
- 2 After an agreed acceptance of the goods is carried out by the Buyer, any complaints of defects that were able to be determined given the nature of the acceptance agreed upon and that were not recorded in the acceptance report shall be excluded.
- 3 In the case of legitimate defect complaints made in due time, we may, at our choice, remedy the material defect or supply a defect-free thing (subsequent performance). In the event the subsequent performance fails or is refused, the orderer may reduce the purchase price or rescind the contract after establishing a reasonable subsequent grace period that expires unproductively. If the material defect is not significant, the order shall only be entitled to reduce the purchase price. The orderer may only demand the rescission of the contract if construction work is the subject of the warranty or if the defect reduces the value or fitness of the work rendered by us in a not merely insignificant fashion.
- 4 If the orderer does not immediately give us the opportunity to convince ourselves of the material defect, e.g. if the orderer fails to provide the protested merchandise or samples thereof without delay, all rights due to the material defects shall no longer be applicable.
- 5 With respect to merchandise sold as downgraded material, the orderer shall not be entitled to any rights from material defects related to the specified reasons for the downgrade or those material defects which the orderer must commonly expect. In the case of the sale of a material, our liability due to material defects shall be excluded.
- 6 Unless expressly warranted, patterns, samples, analytical data and other information on the quality or dimensions of merchandise shall represent non-binding framework specifications.
- 7 If orders involve the processing of materials made available to us, we will not be liable for the quality of the materials delivered or for their processability. Mandatory liability under the Product Liability Act shall remain hereby unaffected.
- 8 We shall assume any expenses related to the subsequent performance, provided such expenses are reasonable in each specific case, particularly in relation to the purchase price of the merchandise. We shall not assume any expenses arising from the fact that the sold merchandise was brought to a different location than the registered office or branch of the orderer, unless this was consistent with the stipulated use. Expenses arising from the fact that the orderer breaches a duty incumbent upon it to cooperate are to be borne by the orderer.
- 9 Any recourse rights of the buyer in accordance with § 478 of the Civil Code shall not be prejudiced hereby.
- VIII. Liability for Ancillary Duties**
- If the delivered item, through the fault of the Supplier, cannot be used by the Buyer in the manner described in the contract as a result of non-performance or incorrect execution of ancillary contractual obligations – especially instructions for the operation and maintenance of the delivery item –, the rules in sections VII and IX shall apply accordingly to the exclusion of the Buyer's further claims. Excluded from the disclaimer of liability and from the limitation of liability are the liabilities mentioned in section 309, no. 7 of the *BGB* and liability under the German Product Liability Act.
- IX. Orderer's Rescission Right**
- 1 The orderer may rescind the contract if the entire performance becomes definitively impossible for the supplier from the passage of risk. This shall also apply in the event of any incapacity on the part of the supplier. The orderer may also rescind the contract if, in the case of an order for similar objects, it becomes impossible to deliver part of the quantity and the orderer has a legitimate interest in refusing a partial delivery; if this is not the case, the orderer may reduce the consideration accordingly.
- 2 If a default in performance in the terms of Section IV of these Terms and Conditions of Delivery exists and the orderer grants the defaulting supplier a reasonable subsequent grace period with the express declaration that the orderer will refuse to accept the performance after the expiration of the grace period and the grace period is then not met, the orderer shall be entitled to rescind the contract.
- 3 If the impossibility occurs during default in acceptance or due to the fault of the orderer, the orderer shall remain obligated to render the consideration.
- 4 The orderer shall further have a rescission right if the supplier negligently allows to pass unproductively a reasonable subsequent grace period granted to it in order to render an improvement or replacement delivery concerning a defect for which the supplier is responsible within the meaning of these Terms and Conditions of Delivery. The orderer shall also have a rescission right if the improvement or replacement delivery by the supplier is impossible. Other rights to withdraw from the contract under sections 323, 324, 326 para 5 of the *BGB* shall also remain unaffected.
- 5 As permitted by law, any further claims of the orderer shall be excluded hereby, particularly any claims to further rescission, termination or reduction of the purchase price or to compensation of damage of any type, even damage not incurred to the delivered object itself.
- X. Supplier's Rescission Right**
- The contract shall be adjusted accordingly in the case of unforeseen events in the terms of Section IV of these Terms and Conditions of Delivery, provided such events substantially alter the economic significance or content of the performance or have a substantial effect on the supplier's operations and in the case the performance is subsequently determined to be impossible. If such an adjustment is not financially reasonable for the supplier, the supplier shall be entitled to rescind the contract in whole or in part.
The orderer shall not have any damage compensation claims due to any such rescission. If the supplier plans to avail itself of its rescission right, the supplier must notify the orderer thereof immediately after learning of the scope of the event, even if an extension of the delivery period was initially agreed with the orderer.
- XI. Return Deliveries**
- Return deliveries of material must be sent to:
Delimon GmbH, Niederlassung BEIERFELD, 08344 Grünhain-Beierfeld, Am Bockwald 4
- XII. Data processing notice**
- In accordance with the German Federal Data Protection Act (Bundesdatenschutzgesetz – BDSG) and the General Data Protection Regulation, we are required to inform you, as our customer, that we store data concerning your company and the details of contact persons provided to us, insofar as necessary for business purposes and permissible, ourselves or have this data stored by a third party. Naturally, this only concerns details that stem directly from our business relationships. We explain details about how data is saved and your rights in our information sheet. "Bijur Delimon International - data protection notice in accordance with EU General Data Protection Regulation for business partners and their contact persons."
- XIII. Place of jurisdiction and applicable law**
- German law shall apply to the contract and any potential disputes which arise from the interpretation and fulfillment of the contract; the competent court in Düsseldorf, Germany shall be the legal venue for any disputes.