

General Terms and Conditions of Sale

DEHN SE („DEHN“) version of 1st January 2021



1. APPLICABILITY; ORDERS; DEFINITIONS

- 1.1. These General Terms and Conditions of Sale (“**Terms and Conditions**”) apply to all deliveries of goods and materials including those which have been specifically developed or customized for the customer (“**Customer**”) (“**Products**”), and all works and services or other performance (“**Services**”) by DEHN.
- 1.2. These Terms and Conditions apply exclusively. Conflicting, deviating or supplementary terms and conditions of the Customer are hereby rejected and will not become part of the contract, unless DEHN expressly agrees to their validity in writing. It does not constitute consent, for example, if DEHN delivers the Products or provides the Services without reservation while being aware of conflicting or deviating terms and conditions of the Customer.
- 1.3. These Terms and Conditions, in the version applicable at the time the contract is entered into, also apply as a framework agreement to subsequent contracts within the meaning of clause 1.6 with the same contractual partner, without DEHN having to refer to them again.
- 1.4. “**Offer**” is an offer (in any form) to the Customer to supply Products or Services. “**Order Confirmation**” is the confirmation of an order by the Customer to deliver Products and Services by DEHN.
- 1.5. Offers are non-binding. Offers from DEHN are generally non-binding unless they have been confirmed in writing by DEHN in an Order Confirmation. DEHN may revoke, modify or amend the Offer at any time as long as DEHN has not yet confirmed the order.
- 1.6. Any (i) order by the Customer (offline or online through DEHN’s online shop) which DEHN confirms without reservation in an Order Confirmation, (ii) Order Confirmation submitted by DEHN with reservation or amendment of the Customer’s order, but accepted by the Customer (also by implied conduct), or (iii) other agreement between the Customer and DEHN regarding delivery of Products and Services to which these Terms and Conditions apply, constitutes a “**Contract**”.
- 1.7. If the term “**in writing**” is used in these Terms and Conditions it also includes communication by email, fax or other forms of electronic communication.

2. CHANGES

- 2.1. Each Contract is based on the laws and regulations applicable at the time the Offer is submitted. In the event that the Customer desires modifications of design or workmanship within the scope of what is technically feasible or acceptable to DEHN, DEHN shall submit an amended offer pertaining to the effects of such modifications, in particular with respect to increased or reduced cost or to the date of delivery.
- 2.2. Changes that DEHN makes to the technical implementation of the Products ordered and/or Services are permissible as long as such changes are reasonable to the Customer and the function is not materially changed.

3. OWNERSHIP OF RIGHTS

DEHN retains all ownership rights, copyrights and property rights in documents, materials and other items (such as Offers, catalogs, price lists, cost estimates, plans, drawings, illustrations, calculations, product descriptions and specifications, handbooks, samples, models and other physical and/or electronic documents, information and items) that DEHN provides to the Customer, even if such rights are the result of the collaboration with the Customer or of the Customer’s instructions. This also applies expressly to patentable inventions and know-how which result in the context of the Contract. The Customer may only use these rights for the purposes designated in the Contract. The Customer may not pass them on or make them available to third parties without DEHN’s prior written consent, unless it is required in the context of the Contract. At DEHN’s request, the Customer must return them to DEHN and destroy (or delete) any physical or electronic copies if they are no longer required in the normal course of business or no longer required to satisfy statutory requirements concerning archiving documents.

4. ADVICE; DELIVERY OF PRODUCTS AND PROVISION OF SERVICES

- 4.1. Technical advice, proposals for safety and concepts including recommendations regarding selection of Contract Products or information provided by DEHN in seminars is provided to the best of DEHN’s knowledge, but is non-binding information only and does not release the Customer from the obligation to examine the Products supplied by DEHN for their suitability for the intended processes and purposes. Application, use and processing of Products are beyond the control of DEHN and therefore the exclusive responsibility of the Customer. Therefore, it is necessary for the Customer to assess each case individually.

- 4.2. Information on DEHN’s website or in print media, e.g. illustrations, drawings and measurements are non-binding unless they have been expressly designated as binding by DEHN.
- 4.3. All dates or periods for delivery of Products or provision of Services (“**Delivery Date/s**”) are non-binding and represent a mere estimate by DEHN, unless DEHN has expressly designated them as binding.
- 4.4. The timely and proper delivery of Products or provision of Services is subject to the following:
 - a) DEHN’s receipt of necessary information, materials, products, components, documents, permits, approvals and Customer’s performance of any other obligation to support or cooperate with DEHN or its sub-suppliers or subcontractors, in a timely and correct manner;
 - b) timely receipt by DEHN of payments, down-payments or other securities (e.g. letter of credit, guarantee) to be made according to the Contract;
 - c) timely provision of the name and address to which the delivery should be made and/or Services provided;
 - d) timely and correct delivery/performance by DEHN’s suppliers and subcontractors, provided DEHN has instructed the third party in such a timely manner that prompt delivery/performance can be expected; and
 - e) no Force Majeure Event (as defined under 4.7) has occurred at DEHN or one of DEHN’s suppliers or subcontractors.

Other grounds that justify delayed delivery/performance and arise from the Contract, applicable law or otherwise, remain unaffected.

- 4.5. DEHN is not required to verify the accuracy of the figures or other information or documents provided by the Customer for the provision of Services. DEHN will however inform the Customer of any obvious inconsistencies which it notices when providing the Services.
- 4.6. Delivery Dates shall be reasonably extended by such time period by which one of the above mentioned events delays DEHN’s delivery or performance.
- 4.7. “**Force Majeure**” is any event outside of the reasonable control of DEHN or its suppliers of which DEHN is not at fault, including, but not limited to government measures relating to monetary and trade policy, strikes and lawful lockouts, acts of God or public acts, war, terrorism, civil unrest or insurrection, civil war, blockades, embargoes, sanctions, disasters, epidemics, pandemics, floods, fires, earthquakes, explosions, storms, cyberattacks, governmental orders or market-related problems in the procurement of materials and goods. Force Majeure includes, in particular, restrictions in the ability of DEHN or its suppliers to deliver the Contract Goods or provide Services where such restrictions are caused by or in connection with the Corona-virus, including e.g. border closures, shortage of goods, lack of personnel, export restrictions, plant closures, business interruptions. DEHN will inform the Customer about the beginning and the end of such events as soon as possible.
- 4.8. Unless otherwise agreed in the Contract, DEHN will deliver the Products pursuant to INCOTERMS® 2020 FCA Mülhausen, Germany from DEHN’s plant (“**Place of Delivery**”). Unless otherwise agreed, the risk of accidental loss and accidental deterioration in the case of shipment will pass to the Customer upon handover of the shipment to the carrier designated by the Customer, but at the latest upon handover of the Product to the Customer.
- 4.9. The shipment will only be insured against breakage, transport damage and fire damage on special request by the Customer and at the Customer’s expense.
- 4.10. DEHN is entitled to render part performance, if (a) part performance is suitable for the Customer’s contractually intended use, (b) rendering of the remaining performance is secured and (c) the Customer does not face significant additional costs.

5. CUSTOMER’S OBLIGATIONS

Unless otherwise agreed, the Customer is responsible (among other things) for (i) the official permits and/or consent required for the performance of the Contract, (ii) the timely and correct provision of the information required to execute delivery or performance by DEHN and its suppliers or subcontractors (e.g. technical plans, drawings, floor plans, material lists, test material), materials, Products, components, documents, releases, (iii) the timely and correct fulfillment of all other obligations to support or cooperate with DEHN or its suppliers or subcontractors, as well as (iv) the immediate notification of all circumstances within its sphere of influence that could have an effect on the delivery or Service.

The Customer must provide or fulfill all necessary information, materials, Products, components, documents, permits, releases and all other obligations to support or cooperate with DEHN or its suppliers or subcontractors in a timely and correct manner. The Customer must reimburse DEHN all additional costs which result from culpable non-fulfillment of its obligations.

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6. PRICES; PAYMENT TERMS

- 6.1. DEHN's prices for delivery of Products or provision of Services (collectively: "Prices") are for delivery FCA Mühlhausen, Deutschland (INCOTERMS® 2020) from DEHN's plant including customary packaging, applicable VAT will be added, unless otherwise agreed. Unless otherwise agreed in writing, the Customer will be charged separately for additional costs such as costs for transport, insurance, freight, special packaging or travel costs and expenses.
- 6.2. DEHN may increase the Prices if there are at least 4 weeks between when the Contract was entered and delivery of a Product or provision of a Service and DEHN's costs for manufacturing, packaging, delivery of the Product or provision of the Service have increased and DEHN is not responsible for the cost increase. In this case the price increase may not exceed the increase in costs. If there is a reduction in costs, DEHN will reduce the Prices accordingly.
- 6.3. Invoices will be issued for each individual delivery of Products and/or Service. Unless otherwise agreed in writing, payment shall be due 30 days after receipt of DEHN's invoice without any deduction in the currency specified in DEHN's invoice.
- 6.4. DEHN can make deliveries/Services subject to advance payments or provision of securities if the Customer has its registered office abroad, if the Customer is in default with payments, if there are indications that the Customer cannot make its payments or if the financial situation of the Customer deteriorates considerably (e.g. deterioration of Customer's credit rating). DEHN is not required to accept securities or advance payments if there is reason to believe that such payments or securities of the Customer can be contested in the event of its insolvency or similar proceedings.
- 6.5. Outstanding claims will bear interest at a rate of nine (9) percentage points above the base interest rate published by the Central Bank of Germany, however not less than twelve (12) percent. Interest is immediately due and payable. DEHN reserves the right to claim further damage.
- 6.6. The Customer may only offset its counterclaim for payment against a claim for payment of DEHN or assert a right of retention, if its counterclaim (aa) is undisputed, (bb) is subject to a final decision of a competent court or (cc) in the event of offsetting, is synallagmatic (i.e. interdependence of performance and consideration in a reciprocal contract) to DEHN's claim against which the Customer offsets or (dd) in the event of a retention, is based on the same contractual relationship as DEHN's claim against which the Customer asserts its right.

7. RESERVATION OF TITLE

- 7.1. DEHN hereby reserves title in all Products delivered in the context of the Contract ("Reserved Goods"). Title does not transfer to the Customer until payment has been made in full. In the event that the Customer purchases Products from DEHN in the context of an ongoing business relationship, DEHN reserves title until all claims against the Customer from such business relationship are paid in full. This also applies if one or all of DEHN's claims have been included in a current account and the balance has been established and acknowledged.
- 7.2. The Customer may use, process, alter, combine, mix and/or sell the Reserved Goods in its usual course of business. In the event of resale, the Customer hereby assigns to DEHN all claims with all ancillary rights which accrue to the Customer from the resale against the purchaser or against third parties, irrespective of whether the Products covered by this reservation of title are sold in their original form or after treatment or processing. The Customer is still authorized to collect this claim even after it has been assigned. This does not affect DEHN's authority to collect the claim itself. DEHN will not exercise this right as long as the Customer duly meets all payment obligations in accordance with the conditions set forth herein. DEHN may demand that the Customer discloses DEHN's assigned claims and their debtors, provides all information required to collect the claims, hands over the related documents and notifies the debtors of such assignment. If the Reserved Goods are resold together with other Products that do not belong to DEHN, then the Customer's claims against the purchaser or third-party customer are deemed assigned to DEHN, whereby such assignment will be in the amount of the delivery price agreed between the Customer and DEHN.
- 7.3. Treatment and processing of the Reserved Goods is always carried out for DEHN as manufacturer, whereby obligations do not arise for DEHN as a result. If the Reserved Goods are processed or irreversibly mixed with other items which do not belong to DEHN, DEHN will acquire co-title in the new item in the ratio of the invoice value of the Reserved Goods to the other goods at the time of such combining or mixing. The co-ownership rights which arise in this manner are deemed to be Reserved Goods within the

meaning of this provision. To secure DEHN's claims against the Customer the Customer also assigns to DEHN such claims that accrue to it against a third party from combining the reserved Goods with real property; DEHN accepts such assignment already now.

- 7.4. As long as DEHN's retention of title is in place, the Customer is prohibited from disposing of Reserved Goods in a manner deviating from the above provisions without the prior consent of DEHN. If Reserved Goods are seized by third parties or otherwise subject to third-party claims, the Customer is required to inform DEHN as soon as possible, if possible by telephone, fax or email and to inform the third party of DEHN's reservation of title. The Customer is required to provide DEHN with a seizure report (Pfändungsprotokoll) and an affidavit about the identity of the seized items.
- 7.5. If the Customer so requests, DEHN will release the Reserved Goods and any items and claims by which they have been replaced to the extent that their estimated value exceeds the amount of the secured claims by more than 50%. DEHN is free to select the items to be released.
- 7.6. In the event of conduct by the Customer in breach of contract, particularly default in payment, DEHN will be entitled to rescind the Contract in accordance with statutory provisions and repossess the Reserved Goods. The Customer will bear the costs of such repossession. Once DEHN has repossessed the Reserved Goods it is entitled to sell them; the proceeds from the sale will be offset against the liabilities of the Customer minus reasonable selling costs.
- 7.7. In the event of export transactions in countries in which the above reservation of title is invalid, DEHN reserves the right to safeguard its right of ownership in accordance with the respective statutory provisions of the receiving country. The Customer is required to support DEHN to the extent necessary.

8. DELAY IN ACCEPTANCE

- 8.1. DEHN may store the delivered Products at the Customer's cost for the duration of the delay in acceptance. DEHN may use a freight forwarding company for storage purposes. The Customer must bear the costs incurred for storage for the duration of the delay in acceptance.
- 8.2. If the Customer refuses acceptance after expiration of a reasonable period of grace granted to it, or the Customer declares in advance that it refuses to accept delivery of the Products, DEHN may rescind the Contract and claim compensation. DEHN may demand a lump sum of 20% of the agreed price as compensation. DEHN reserves the right to assert a claim for compensation for greater losses, just as the Customer is entitled to prove that no damages were actually incurred or that the damages incurred were substantially less than the fixed amount claimed.

9. CLAIMS DUE TO DEFECTS

- 9.1. DEHN does not assume any warranty for unsuitable or improper use or use contrary to the intended use, faulty assembly or faulty commissioning by the Customer or third parties, normal wear and tear, faulty or negligent handling, unsuitable equipment, replacement materials, wear and tear, defects in construction work initiated by the Customer, unsuitable building ground, chemical, electrochemical or electrical influences. Sentence 1 also applies if the requirements in DEHN's operating instructions were not complied with during installation or operation. DEHN is also not liable for defects which only insignificantly reduce the value of the Products or their suitability for their designated purpose. A defect is deemed to be insignificant if it disappears on its own after a short time, corrects itself or if it can be remedied by the Customer itself with minimal effort.
- 9.2. DEHN shall have the option to remedy a defect by replacement of the defective Products or repair the defect free of charge. If the remedy fails, the Customer's right to reduce the purchase price or to rescind the contract remains unaffected.
- 9.3. The Customer shall, after communication with DEHN, allow DEHN the required time and opportunity to undertake all repairs and replacement of parts or Products which DEHN, in its reasonable discretion, considers necessary. This also includes making the rejected Products available to DEHN for examination purposes or – where the Products are assembled or installed in a fixed manner – grant DEHN access to the site.
- 9.4. In the event of unjustified notices of defect, DEHN may demand reimbursement from the Customer of all costs incurred by DEHN due to the unjustified request (e.g. costs for assembly and disassembly, inspection, transport, storage and travel costs), but at least a lump sum of EUR 65 per unjustifiably notified product plus all external costs.
- 9.5. DEHN shall have title to all parts replaced pursuant to its warranty obligations.

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- 9.6. Defects of title or the infringement of know-how or intellectual property rights of a third party ("**Third Party Rights**") shall also constitute a "**defect**" within the meaning of this clause 9. In addition, the following applies: (i) Customer shall inform DEHN without undue delay in writing if a third party asserts claims against it based on infringement of these rights; (ii) claims arising from infringement of Third Party Rights are excluded if the infringement is attributable to an instruction or specification issued by the Customer, a modification initiated by the Customer or the use of the Products by the Customer in a manner which is inconsistent with the Contract and (iii) DEHN will modify or replace the Products as DEHN sees fit, including work arounds which do not affect the quality and functionality of the Products, or procure that the Customer is granted the right to use the Products by concluding a licence agreement.
- 9.7. All claims based on a defect become time-barred one year after delivery (i.e. delivery or collection) of the Product and / or completion of the Services. This time limit does not apply if a longer period is prescribed by statute pursuant to section 438 (1) no. 2 German Civil Code (Bürgerliches Gesetzbuch). The statutory special provisions regarding end delivery of Products to a consumer (suppliers' recourse) also remain unaffected thereby. DEHN's mandatory statutory liability pursuant to 10 also remains unaffected.
- 9.8. This does not apply to any statutory claims of the Customer for damages or reimbursement of expenses, unless they are excluded or limited by clause 10.

10. LIMITATION OF LIABILITY

- 10.1. Claims for damages are excluded irrespective of the grounds, unless the claim is based on an intentional or grossly negligent breach of duty by DEHN or one of its vicarious agents or legal representatives or on the breach of material contractual duties. Material contractual duties are those duties that are essential to execution of the Contract and on whose fulfillment the Customer ordinarily relies or can rely. In the event of a slightly negligent breach of material contractual duties, the amount of liability will be limited to the typical contractual losses foreseeable at the time the Contract was entered into.
- 10.2. Liability for losses resulting from injury to life, body or health, due to the assumption of a guarantee for the quality of the goods or the procurement risk by DEHN or insofar as DEHN fraudulently concealed a defect, remains unaffected by this. This also has no effect on any mandatory statutory liability, including without limitation under the German Product Liability Act (Produkthaftungsgesetz).
- 10.3. Any exclusion or limitation of the liability of DEHN will also cover the personal liability of its employees, partners, representatives and vicarious agents.

11. INFORMATION ON PRODUCT SAFETY MEASURES

- 11.1. The Customer must immediately inform DEHN in writing if an authority carries out measures for the Customer or against the Customer in connection with product safety requirements for the Products or Services of DEHN (e.g. product withdrawal or recall) or if the Customer intends to carry out such measures itself (e.g. reports to the official market surveillance authority).
- 11.2. The Customer will inform DEHN immediately if it becomes aware of any safety-related problems in connection with the Products or Services, it will support DEHN in rectifying such problems and cooperate with DEHN. This also includes support in the event of a recall or other measures, e.g. disclosing names of customers that could be affected. The parties agree that DEHN will decide whether a safety-related measure is to be carried out and which types of measures are to be taken, unless such measures are mandatorily required of the Customer by an authority.

12. EXPORT CONTROL

- 12.1. The Customer undertakes to refrain from the following transactions in any case:
- transactions with persons, organizations or institutions that are on a sanctions list under EC regulations or other applicable regulations and rules;
 - transactions with embargoed countries, which are prohibited under valid EC regulations, foreign trade regulations, or other applicable rules and regulations;
 - transactions for which the required authorization has not been obtained; and
 - illicit transactions that could take place in connection with nuclear, biological or chemical weapons or military end-uses for which there is no official authorization from the competent authority.
- 12.2. The Customer undertakes to provide all information and documents required for export, shipment and / or import. Delays due to export checks or approval procedures will suspend the deadlines and delivery times for the duration of the resulting delay. The Customer affirms that it will comply with all laws and regulations concerning it and the business relationship with DEHN, that it will not commit any acts and will refrain from acts that could lead to criminal liability for fraud or embezzlement, insolvency offences, offences against competition, granting of advantages or bribery of persons employed by DEHN or other third parties.

13. APPLICABLE LAW, PLACE OF PERFORMANCE, PLACE OF JURISDICTION

- 13.1. Place of performance for all Products is the registered office of DEHN, unless a different place of performance was agreed.
- 13.2. The Contract and the sale and / or delivery of Products and / or Services under this Contract are subject exclusively to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods is excluded.
- 13.3. Nuremberg (Germany) is agreed as the exclusive place of jurisdiction for all disputes arising from or in connection with these provisions or from the contractual relationship between DEHN and the Customer. DEHN is also entitled to file action at the registered office of the other contracting party.

14. GENERAL PROVISIONS

- 14.1. Should any provision or regulation of the Contract be invalid or unenforceable, the remaining provisions of the Contract will remain in full force and effect to the extent permitted by applicable law. In place of the invalid or unenforceable provision, or to close a loophole in the Contract, a valid and enforceable provision will apply which in the view of the parties comes closest in economic terms to the intended meaning and purpose of the invalid, unenforceable or omitted provision.
- 14.2. The provisions of the Contract take precedence over the provisions of these Terms and Conditions. However, should a provision of the Contract be invalid, and these Terms and Conditions regulate the respective circumstances, then these Terms and Conditions apply.
- 14.3. Unless otherwise agreed in writing, the Customer is not entitled to transfer rights under the Contract to third parties without DEHN's prior written consent.