

General Terms and Conditions

deister electronic GmbH



1. General

All of our services and deliveries, including all future services and deliveries shall be governed by these general terms and conditions, regardless of whether express reference is made to the same. We expressly reject any deviation or additions made to the same. In particular, any other terms and conditions are rejected. All amendments or additions made to these terms and conditions have to be made in writing (§ 126 German Civil Code).

2. Formation of Agreement

2.1 All offers made on our part shall be subject to confirmation and non-binding. Any purchase order made by a customer shall be legally deemed to be an offer, which we shall be entitled to accept by means of a confirmation of the purchase order or by means of due performance pursuant to the terms of purchase order. In the event of confirmations of purchase orders with amendments, these shall be deemed to be accepted at the latest when the delivery is accepted on the part of the customer.

2.2 Our obligations as to delivery shall be subject to the pre-condition that we also receive timely delivery of the necessary pre-products. An agreed upon dateline for delivery shall be correspondingly delayed in the event that we cannot be reasonably expected to source for an alternative replacement delivery of pre-products. In the event that a delivery of pre-products fails and in the event that we duly notify the customer of this failed delivery in a timely manner, we shall be entitled to rescind from our agreement with the customer.

3. Price

3.1 Our prices are exclusive of shipping and transportation costs as well as exclusive of statutory VAT.

3.2 We reserve the right to make a price adjustment in commercial transactions to the extent that price factors beyond our control, such as price increases or decreases in raw materials or prices from suppliers, change after the conclusion of the contract. In this way, we only pass on the actual proportional price increases or price reductions. Furthermore, in commercial transactions, we also reserve the right to make a price adjustment to the extent that labor costs increase or decrease to a market-appropriate extent, regardless of the other factors mentioned.

4. Delivery / Time for Delivery

4.1 We shall be entitled to make partial deliveries insofar as the customer is not unreasonably prejudiced by the same. All delivery datelines and periods shall be deemed to be non-binding, except when the same is expressly confirmed to be a binding dateline.

4.2 In the event of force majeure, including in particular events such as strikes, lock-outs, unexpected operational disturbances, shortage in raw materials and the same, the delivery date-lines shall be correspondingly extended for the period of the duration of the force majeure. The customer shall be entitled to rescind the agreement insofar as he is unreasonably prejudiced. However, the customer shall still be obliged to make corresponding payment for all services and deliveries already made.

4.3 In the event of delay in delivery, the customer shall be entitled to claim compensation for damages suffered, which shall be limited to 0,5% of price of the relevant part of service per week. The customer shall not be entitled to claim more than 10% of the price of the relevant service in total. The aforesaid shall not apply in cases of intentional action or gross negligence.

5. Transfer of Risk

The risk of accidental destruction or accidental deterioration shall pass to the customer at the point of time that we inform the client that the relevant goods are ready to be sent/collected or alternatively at the time when the goods are transferred to the person responsible for the shipment of the goods. The aforesaid shall apply even when that we have agreed to under-take transportation costs or the costs for transportation insurance.

6. Payment

6.1 All invoices shall be paid without any reservation or deduction. All spare or replacement parts shall only be delivered on "a cash on delivery" basis.

6.2 All payments shall be made into the bank account set out in the relevant invoice. Cheques would be accepted on account of performance and the contractual price would only be deemed to be paid when the amount of the contractual price is credited without any caveat.

6.3 Upon partial delivery, we shall be entitled to issue partial invoices corresponding to these partial deliveries.

6.4 In the event of instalment payments, the whole of unpaid debt would become immediately due and payable in the event that the customer is delay of an instalment payment by more than a week.

6.5 The customer shall only be entitled to set-off or retain any part of payment when his claim against us is not contested or when such claim has been confirmed by a court of law.

7. Quality

7.1 The specifications contained in the offers or in the confirmation of purchase order shall be authoritative with regards to quality. We shall only be liable to ensure that the product is suitable for the purposes contained in the contract when this is expressly agreed. Any representation contained in catalogues or descriptions shall be deemed to be examples only.

7.2 Significant characteristics, the lack of which would entitle the customer to rescind the agreement, shall be those, which are specified as guaranteed characteristics.

7.3 We shall only be liable to ensure the compatibility of our products with the customer's current technical solutions when the same is expressly agreed upon. We shall not be liable to verify the technical accuracy soundness of the client's specifications, unless specifically instructed to do so.

8. Warranty

8.1 The customer shall be obliged to inspect the delivered goods and to make a sample test with regards to functionality. All other obligations shall be governed by § 377 German Commercial Code.

8.2 In the event that the customer makes timely and justified notification of defect, we shall be obliged to either replace or repair the defective products. We shall be entitled to have three opportunities to either repair or replace the defective products unless the customer is unreasonably prejudiced by the same.

8.3 If the improvement or replacement does not lead to the rectification of the defect/s, the customer is entitled to make a statutory warranty claim for defects within the time limit specified in 8.4. Defects shall only be deemed to be significant defects leading to the right of recession in the event that these defects significantly affect any identified characteristic or lead to a complete function failure. In addition, the costs of rectification must amount to a minimum value of 20% of the value of the defective goods.

8.4 Warranty claims against corporate customers expire in 12 months, others in accordance with statutory provisions. Excluded from this reduction in the statutory limitation period for claims for damages under the warranty are: injury to life, body and health, as well as damages due to gross negligence or intentional damage on the part of ourselves or our agents.

9. Liability

9.1 We shall be liable for all intentional and grossly negligent acts as well as all cases of bodily injury pursuant to statutory regulations without any limitation. This also applies to any statutory guarantees against defects or other breaches of our main contractual obligations.

9.2 In all cases falling outside statutory guarantees against defects (breaches of contractual secondary obligations), we shall only be liable to all reasonably foreseeable damage at the time of the conclusion of the agreement. Such reasonably foreseeable damage would include damages, whose basis and extent would have been covered by a industrial and product liability insurance containing normal market terms and conditions.

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10. Co-operation on part of the Customer

The customer shall be liable cooperate with us for the due proceeding of the purchase order. In this regard, he shall be obliged to furnish us with all information necessary for execution of the process order and to warrant all necessary assistance and support. The client's cooperation in this regard is a condition precedent for our due performance.

11. Retention of Title

11.1 We shall retain title in all products until such time that receive full payment of all outstanding debts arising from both current deliveries as well as future business relations. Insofar as the delivered goods are combined or mixed with other goods, we shall become co-owners of the new product to proportion of the value of our products as compared with the other goods.

11.2 The customer shall be entitled to re-sell the delivered products as well as newly manufactured goods within the normal course of business. However, the customer hereby assigns all his claims arising from such sales to us as security and we hereby accept such assignment. The customer remains entitled to enforce his claims from his clients. This right shall extinguish at such time that the customer fails to make timely payment of his debts owing to us. In the event that the customer is no longer entitled to enforce his claims, he shall be obliged to notify all relevant third parties that the rights relating to his claims have been duly assigned to us. We shall release the assignment made in our favour when the value of the secured goods has a value which exceeds the value of our total claim, including interest for late payment, by more than 20%.

12. Entrusted Software

12.1 The customer shall be obliged to utilize all software, which we may entrust to him, only for the purposes set out in the relevant documents. The customer shall refrain from handing over the software or making the same available to any third party. All interference, translation, backward engineering, de-compilation and de-assembly of the software or any attempt of the same is prohibited. The customer is only entitled to reproduce the software only once and only for the purpose of producing a second copy for security. All accompanying documents shall not be reproduced, translated, modified or publically reproduced.

12.2 All licenses granted to the customer may not be assigned to any third party. These licenses shall automatically cease in the event that the customer does not duly perform his contractual obligations.

12.3 In the event of a breach of the obligations contained herein and/or of the terms and conditions of the license, we shall be entitled to claim a lump sum compensation in the amount of 10.000 EUR for any damages suffered or to claim for a higher amount which has to be proved in detail. In contrary the customer shall be entitled to prove that no or less damages has been suffered.

12.4 If the Customer acquires a license for Software without concluding the agreement for the Software Care Plan and the Customer does not conclude the SCP agreement at the time of purchase of the Software, but at a point in time after the expiry of 12 months from the point in time of the acquisition of the Software, the compensation for the first year of the agreement increases once by the amount that would have been paid if the SCP agreement had been concluded and maintained at the time of the acquisition of the Software. All subsequent annual fees will be billed as defined in the Software Care Plan Agreement. This compensation provision shall also apply if the Customer originally concludes the SCP agreement, but terminates it and concludes the SCP agreement again at a later point in time. The aforementioned compensation provision with regard to the first year of the agreement shall then apply to a new SCP agreement for the period beginning with the expiry of the terminated previous SCP agreement. If the Customer does not continuously maintain the SCP agreement after purchasing the Software, under certain circumstances, especially in the case of older hardware, there may be increased service requirements when setting up the hardware in order to work with the technical requirements of the updated Software. Such increased service costs are not encompassed by the compensation of this agreement.

13. Confidentiality

The customer shall be obliged to keep all information, which may be transferred to him as confidential and not to forward the same to any third party. This obligation shall remain, even in the event that such information has not been specified as confidential. In each event of breach, the customer shall be obliged to make payment of a contractual penalty amounting to 10.000 EUR. We retain the right to make all claims for compensation for damages suffered. A deduction of the contractual penalty on the basis of the claim for compensation for damages suffered is prohibited.

14. Protection of Models

The customer is prohibited from copying the products delivered to him or to participate either directly or indirectly on such copying activities. The customer is furthermore prohibited from either directly or indirectly engaging in the sale of such copied products. These obligations shall be owned by the customer, regardless of whether we maintain any industrial property rights in relation to the products. In the event that the customer breaches his obligations in this clause, he shall be obliged to make payment of a contractual penalty amounting to 10.000 EUR. Our right to claim compensation for further damages suffered shall not be affected. A deduction of the contractual penalty on the basis of the claim for compensation for damages suffered is prohibited.

15. Jurisdiction

The courts in Hannover shall have exclusive jurisdiction to hear all disputes arising in connection with these terms and conditions, which shall be governed by the laws of the Federal Republic of Germany. The application of the UN Convention for the International Sale of Goods is expressly excluded.

16. Further Conditions for Sales outside of Germany

In the event that the customer is domiciled outside of the Federal Republic of Germany, the following terms shall additionally apply:

16.1 The laws of the Federal Republic of Germany shall apply under the exclusion of the UN Convention for the International Sale of Goods. With regards to the issues relating to the inclusion of these terms and conditions as well as an assessment of the validity of these as well as all regulations relating to liability, the laws of the customer's domicile shall apply..

16.2 In the event that the customer delays in making due payment, we shall be entitled to demand for payment in advance for all future deliveries or alternatively, to demand for letters of credit. Until such time that these payments in advance are made or when letters of credit are furnished, we shall not be obliged to make any further payment.

16.3 With regards to retention of title, a retention of title shall be deemed to have been agreed upon, which would in turn comply with the applicable property laws of the customer's domicile or where applicable, of the place of delivery. In the event that any formal steps are required to be performed for such rights to arise, the customer shall be obliged to inform us of the same and to co-operate with us for due performance. Insofar as the customer fails in this obligation, he shall be obliged to compensate us for any damage we may suffer.

16.4 In the event that the contractual documents are in more than one language, the German version shall prevail and be authoritative. Otherwise, the English version shall prevail and be authoritative.

16.5 For the purposes of agreements on datelines, the Gregorian calendar shall be authoritative. All agreements as to time shall be pursuant to the time in our domicile, taking in consideration all daylight savings.

16.6 Insofar as not otherwise agreement, all payments shall be made in Euro. Any currency changes shall not affect the purchase price given in Euro and the obligation to make payment of the same. All customs, fees, duties, and other taxes payable for the performance of this agreement shall be paid and borne by the customer.

16.7 Unless expressly agreed upon, we shall not be liable to ensure that the products or software comply with the statutory regulations applicable at the place of delivery or to apply for any license which may be obligatory at the place of delivery. This applies in particular to product safety or environmental regulations.

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