

General Terms and Conditions for the Purchase of Hardware
of DESKO GmbH, Gottlieb-Keim-Straße 56, 95448 Bayreuth

Object of these Terms and Conditions is the transfer of the hardware referenced in the offer. The application of any General Terms and Conditions of the customer is expressly excluded.

§ 1 Object of agreement

- (1) The customer purchases from DESKO the devices described in the offer. The offer is a component of the contract.
- (2) There is no user documentation for the hardware that is the object of agreement.
- (3) Unless otherwise agreed in writing, the purchaser can fully or partially rescind the contract subject to the following cancellation fees:
 - 1 - 14 calendar days prior to the delivery date ex works = 100 % of the corresponding contract value
 - 15 - 30 calendar days prior to the delivery date ex works = 50 % of the corresponding contract value

§ 2 Delivery

- (1) Unless otherwise agreed, delivery of the good is ex works DESKO, Bayreuth, Germany.
- (2) Deadlines are binding only when they have been expressly confirmed in writing as binding by DESKO. The deadline is met if the good has left the distribution warehouse prior to its expiration or DESKO has notified the customer of its readiness to perform. Unforeseen circumstances and events as for example *force majeure*, government measures, non-issuance of official permits, labour disputes of all kinds, sabotage, shortage of raw materials, non-culpable late deliveries, war, riots etc. delay the delivery date correspondingly even if they occur during an already existing delay.
- (3) If DESKO exceeds a binding delivery deadline by seven (7) calendar days and an additional delay is not tolerable for the customer, it can assert further rights upon the occurrence of the delay after sending a warning letter and setting a reasonable grace period. In this event, a damage claim of the customer is precluded unless the delay is attributable to the intentional or grossly negligent behaviour of DESKO or its statutory representative or agents. If the customer is in default in acceptance, DESKO is entitled to reject performance of the contract and to demand damages after expiration of a grace period set by it. In the alternative, DESKO can otherwise dispose of the good and deliver to the customer within a new reasonable period.
- (4) If DESKO sends the object of contract at the wish of the customer, this occurs on the account of and at the risk of the customer. For all deliveries, the risk of loss of the good is transferred to the customer upon handing over to the shipper, to the freight forwarder or to other persons specified to perform the shipment.

§ 3 Prices, Payment, Set-off

- (1) The prices referenced in the offer are applicable. Any kind of deduction (e.g. discounts, deduction of bank fees etc.) is not permissible.
- (2) Delivery and transport costs will be invoiced separately.

(3) All prices are in addition to the statutory value added tax. Payments may be made to DESKO only or to persons authorized by it in writing.

(4) The customer is only entitled to set off receivables that are legally binding or undisputed.

(5) The pre-notification is shortened by one day in the case of SEPA direct debits. Costs which arise due to non-redemption or chargeback of the direct debit are borne by the customer.

§ 4 Warranty

(1) DESKO provides a warranty as follows:

(1.1) Unless otherwise herein agreed, DESKO provides a warranty for 12 months. The warranty period begins upon delivery ex works (DESKO GmbH, Bayreuth, Germany) to the customer.

(1.2) The customer must examine the delivered good without delay for defects and notify DESKO in writing of obvious defects within a period of two weeks as of receipt of the good; otherwise the assertion of the warranty claim is precluded. Timely sending is adequate to preserve the warranty claim.

The customer bears the entire burden of proof for all claim requirements, in particular for the defect itself, for the time of the finding of the defect and for the timely notification of the defect.

Notification of defects that are not obvious and which become apparent only over time is to be provided by the customer without delay within the time periods referenced above. Otherwise the customer loses all rights based on these defects.

(1.3) Defect notifications will be recognized by DESKO only if they have been provided in writing. Defect notifications made to field staff or carriers or other third parties do not represent a timely notification with regard to form or time.

(1.4) In the event of a defect, the necessary return of the good to DESKO can be made only with its prior consent. Returns made without prior consent need not be accepted by DESKO. In this event, the customer bears the cost of the return.

(2) The existence of such an identified and properly notified defect establishes the following rights of the customer:

(2.1) In the event of defectiveness, the customer has the initial right to demand rectification from DESKO. At the option of DESKO, rectification is performed either through a new delivery (subsequent delivery) or repair (reworking). Upon the occurrence of a defect, DESKO will either repair the rejected object of contract at the registered office of DESKO or in an authorized Service Center at the option of DESKO. The customer bears the cost of shipment to DESKO or to one of its Service Centers (Bring-In-Warranty) as well as of the packaging. It will send the defective object to DESKO in the original packaging at its own cost.

In the event that a substitute delivery is made due to a justified defect notification, the provisions on the delivery time apply accordingly. As a rule, a removal of a defect through repair is completed within fourteen (14) calendar days. However, DESKO is to be granted a reasonable period of at least six (6) weeks.

(2.2) In addition, DESKO has the right to a renewed rectification within a reasonable period of time in the event of a failed attempt to rectify. The above option provision also applies in this case. Only when the repeated rectification fails does the customer have the right to withdraw from the contract or to reduce the purchase price. The setting of a grace period is not required if the setting of a grace period is dispensable due to special circumstances (e.g. §§ 323 (2), 326 (5), 636 Code of Civil Law (BGB)).

(2.3) The customer can demand indemnity for damages or reimbursement of futile expenses only in the event of gross negligence or intentional breach of our obligation to deliver defect-free goods. It must

prove the reasons for the damage incurred as well as the amount of the damage. The same applies to futile expenses. § 9 is applicable with regard to the limit on the amount of the damages.

(2.4) The customer bears the burden of proof for the existence of a defect.

(3) The defect warranty does not apply to damages which arise after the transfer of risk as a result of faulty or negligent treatment, excessive use, inappropriate operating materials and chemical, electrochemical, electrical and atmospheric factors.

(4) Damage claims of the customer for a defect expire after one year as of delivery of the good. This does not apply if DESKO can be accused of gross negligence as well as in the event of an imputable injury to the life, health or body of the customer.

(5) The warranty lapses with regard to such defects that are attributable to the customer of DESKO attaching unapproved additional devices or to work performed by persons who are not authorized by DESKO, or the object of contract has been altered or extended by the customer itself unless the customer proves that such alterations and extensions are not the cause of the defect.

(6) If the defect notified by the customer cannot be found after an examination, the customer bears the costs of the examination.

(7) If claims are asserted against the customer on the basis of a violation of German industrial property rights for objects delivered or licensed in accordance with these Terms and Conditions, DESKO will indemnify the customer for all legally binding costs and damage payment amounts imposed on it if DESKO is immediately informed in writing of such claims, all necessary information is received from the customer, the customer satisfies its general obligations to cooperate, DESKO can make the final decision on whether to defend against or settle the claim and DESKO is to blame for the violation of the industrial property rights.

If a legally binding finding is made that continued use of objects of contract violates German industrial property rights of a third party or in our opinion there is a danger of a lawsuit based on the industrial property rights, DESKO can, to the extent that the liability does not lapse, at its own cost and at its own option, either provide the customer the right to continue using the objects of contract or to exchange or alter the objects so that there is no continuing violation or, upon taking back the object of contract, to indemnify the customer for its value after deducting a use compensation for the use made up to that time. Use indemnification is calculated on the basis of an assumed depreciation period of 3 years, so that for each month of use, 1/36th of the price is payable.

DESKO is entitled to make available a replacement to the customer at its cost if and to the extent the devices delivered under the contract cannot or can no longer be used by the customer because of the violation of the industrial property rights of a third party and the condition in violation of industrial property rights cannot be removed through alteration of the object of contract.

(8) DESKO is liable for damages which result from the defectiveness of the object only if this can be attributed to at least a grossly negligent violation of obligations on the part of DESKO, its statutory representative or its agents.

The above limitation does not apply if a culpable violation of an obligation on the part of DESKO, its statutory representative or agents substantiates liability for damages resulting from an injury to life, health or body.

If DESKO has assumed a warranty for a certain characteristic of the item sold over a fixed period of time, the above provisions on the inspection and notification obligations and the number of rectification attempts are not applicable.

§ 7 Liability for breach of obligations in other regards

(1) Irrespective of the provisions on the warranty as well as other special rules provided in these provisions, the following applies in cases where DESKO has breached an obligation:

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Managing Director
Werner Zahn

Legal Details
Legal Venue Bayreuth
No.: HRB 1844
VAT-No.: DE132358025

DESKO is liable for damages caused by its employees, representatives and vicarious agents to an unlimited extent, including ordinary negligence in the event of injuries to life, body or health of persons.

In addition thereto, DESKO is liable only within the following scope:

The customer must grant DESKO a reasonable period of time for rectification which may not exceed three (3) weeks. Only after unsuccessful expiration of the rectification period can the customer withdraw from the contract and/ or demand damages.

(2) The customer can assert damages only in the event of gross negligence or intentional breach of obligations by DESKO. Indemnity for damages is in any event limited to damages that were foreseeable and typical at the time of the conclusion of the contract; indemnity for damages is, however, limited to EUR 10 million per insured event, and in total to EUR 20 million per year. Atypical damages are not indemnified.

(3) If the customer is solely or predominantly responsible for the circumstances that would entitle it to withdraw or if the circumstances which entitle the customer to withdraw occur during a delay in acceptance by the customer, then withdrawal is precluded.

(4) The liability of DESKO for bad faith and in accordance with the Product Liability Act remains unaffected.

(5) The customer must accept responsibility for its contributory behaviour, e.g. inadequate cooperation (e.g. inadequate error notifications, organizational errors or inadequate data security).

§ 8 Purchase price and reservation of title

(1) Unless otherwise agreed, the purchase price as per the offer is payable in EURO within 14 days net as of the invoice date. Any type of deduction (e.g. discounts, deduction of bank fees etc.) is not permissible.

(2) Every good delivered by DESKO remains its property until full satisfaction of all receivables resulting from the business relationship (extended reservation of title). Any type of disposal of the good subject to a reservation of title by the customer is permitted only in the regular course of business of the customer. Under no circumstances, however, may the goods be transferred to third parties as security, even in the regular course of business. In the event of the sale of the good in the regular course of business, the paid purchase price takes the place of the good. At this time the customer assigns any receivables resulting from a disposal to DESKO. The customer is entitled to collect these receivables as long as it meets its payment obligations to DESKO. Considering the extended reservation of title (assignment in advance of the respective purchase price receivable) an assignment to a third party, in particular to a bank, is in violation of this contract and is impermissible. DESKO is at all times entitled to examine the sales documents of the customer and to inform its buyer of the assignment. If the receivable of the customer has been included in a current account, the customer herewith assigns at this time its receivable from the current account from its buyer to DESKO. The assignment occurs in the amount which DESKO invoiced the customer for the resold good subject to a reservation of title. In the event of an attachment of the good in possession of the customer, DESKO must be informed immediately by sending a copy of the enforcement record and an affirmation in lieu of an oath that the attached good concerns the good delivered by DESKO and subject to a reservation of title. If pursuant to the above paragraphs of this section, the value of the securities exceeds there hereby secured open receivables after deduction of security costs for a foreseeable period by more than 20 %, the customer is entitled to demand the release of securities by DESKO to the extent that an excess exists.

§ 9 Written form

(1) These General Terms and Conditions include all terms agreed to between the parties. No oral ancillary agreements have been reached.

(2) Otherwise the parties agree that all agreements affecting the contractual relationship are valid only when they are laid down in a document signed by both parties. An amendment to the above written form requirement must also be in writing.

§ 10 Severability

(1) If individual provisions of this contract are or become fully or partially invalid or the contract contains an omission, this does not affect the validity of the contract as a whole as well as the other contractual provisions.

(2) In this event both parties are obliged to agree to a provision which most closely corresponds to the mutual interests of the parties in light of the provisions of this contract.

§ 11 General provisions

(1) At the option of DESKO, the place of performance and venue for all disputes arising under this contract and regarding its validity is the registered office of DESKO or the registered office of the customer.

(2) The law of the Federal Republic of Germany is exclusively applicable. UN sales law on the international sale of goods is expressly excluded.

(3) The application of any General Terms and Conditions of the customer is expressly excluded.

(4) An assignment of rights against DESKO based on this contract is permissible only with the prior written consent of DESKO.