

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

**§ 1 Scope of application**

(1) These General Terms and Conditions are an integral part of every contract for the purchase of hardware concluded between DESKO GmbH (hereinafter: DESKO) as seller and a contractual partner (hereinafter: Customer) as buyer, provided that the Customer is an entrepreneur (§ 14 para. 1 German Civil Code, "BGB"), a legal entity under public law or a special fund under public law.

(2) The validity of any general terms and conditions of the Customer is excluded. This shall also apply in the event that DESKO refers to a letter from the Customer that contains or refers to third-party terms and conditions without expressly objecting to their validity.

(3) If the Customer requests customization services from DESKO for the integration of the hardware into his own system environment, these are to be agreed separately as services and do not fall within the scope of these General Terms and Conditions.

**§ 2 Subject matter of the contract**

(1) The Customer acquires the hardware specified in the offer from DESKO. The offer is part of the contract.

(2) There is a data sheet for the hardware, which describes the respective hardware.

**§ 3 Prices; payment; offsetting**

(1) The prices stated in the offer shall apply. Unless otherwise stated, all prices are in euros plus the applicable statutory VAT; this does not apply to foreign transactions. If costs are incurred for the shipment of the hardware, they will be calculated and specified separately.

(2) Payment shall be made net in euros within two weeks from the invoice date and receipt of the invoice for payment. Any kind of deduction (e.g. cash discount, deduction of bank charges, etc.) is not permitted. Payments may only be made to DESKO or to persons authorized by DESKO.

(3) In the case of SEPA direct debits, the pre-notification period shall be reduced to one day. Costs incurred due to non-payment or reversal of the direct debit shall be borne by the Customer.

(4) The Customer is only entitled to offset claims that have been legally established or are undisputed.

**§ 4 Cancellation by the Customer**

The Customer may withdraw from the contract in whole or in part at any time before the delivery date without giving reasons. If the Customer exercises this right of withdrawal, it shall be obliged to reimburse DESKO for expenses in accordance with the following provisions:

- Receipt of the declaration of withdrawal in the period 1-14 calendar days before the delivery date ex works = 100 % of the agreed purchase price
- Receipt of the declaration of withdrawal in the period 15-30 calendar days before the delivery date ex works = 50% of the agreed purchase price

## **§ 5 Delivery; default of acceptance; transfer of risk**

(1) The hardware is delivered ex works (DESKO GmbH, Bayreuth, Germany).

(2) If DESKO ships the hardware at the Customer's request, the Customer shall bear the shipping costs. The costs of shipment shall include, in particular, freight costs, handling costs in the amount stated in the offer as well as any export and import duties incurred. In the event of shipment to the USA, DESKO shall pay the import duties incurred there; the Customer shall bear the remaining costs of shipment.

(3) Delivery dates are only binding if they have been confirmed by DESKO in writing or in text form.

(4) Unforeseen temporary circumstances and events, such as force majeure, government measures, failure to obtain official permits, labor disputes of any kind, sabotage, shortage of raw materials, delayed delivery through no fault of DESKO, war, riot, etc., shall postpone the delivery date for the duration of the period during which the delivery is delayed by the unforeseen circumstances and events, plus a reasonable start-up period, even if they have occurred during an already existing delay. In the event of unforeseen circumstances and events that are not merely temporary and make it significantly more difficult or impossible for DESKO to fulfill the contract, DESKO may withdraw from the contract.

(5) The delivery date is met if the hardware has been handed over to the shipping agent or courier service by its expiry or DESKO has made the hardware available to the Customer at the outgoing goods warehouse for collection and has provided the necessary data for the organization of collection by the Customer (i.e. packing data, collection location, collection time, collection reference).

(6) If DESKO does not meet the delivery date and DESKO is not responsible for the delay, the Customer may only withdraw from the contract due to the delay if the delay has already lasted at least seven calendar days, a reasonable grace period subsequently set for delivery has expired unsuccessfully and the Customer cannot reasonably be expected to wait any longer.

(7) If the Customer is in default of acceptance, DESKO may withdraw from the contract and claim damages after the unsuccessful expiry of a reasonable grace period to be set for acceptance. Alternatively, DESKO may dispose of the hardware elsewhere and supply the Customer within a new reasonable period.

(8) The risk of accidental loss and accidental deterioration of the hardware shall pass to the Customer at the latest when the hardware is handed over to the Customer. If the Customer is in default of acceptance, this shall be deemed equivalent to handover. If the hardware is shipped to the Customer, the risk shall pass to the Customer upon handover to the shipping agent, carrier service or other persons designated to carry out the shipment. This shall also apply in the case of partial deliveries.

## § 6 Warranty

(1) DESKO provides a warranty for twelve months. The warranty period shall commence upon delivery of the hardware to the Customer.

(2) The Customer must carefully inspect the hardware for defects immediately after delivery. If the Customer discovers a defect, it must notify DESKO of this in text form within two weeks of delivery. If a defect only becomes apparent later and was not already recognizable upon delivery as part of a careful inspection, it must be reported by the Customer immediately in text form within two weeks of its discovery. If the Customer does not report a defect in good time, the hardware shall be deemed to have been approved in this respect, so that the Customer shall lose all warranty rights due to this defect. The deadline shall be deemed to have been met if the notification of defects is sent in good time.. Sales representatives are not authorized to accept notifications of defects, nor are carriers or other third parties.

(3) If the hardware is defective and the Customer has notified DESKO of the defect in good time, the Customer shall first set DESKO a reasonable deadline for subsequent performance, unless the setting of a deadline is dispensable due to a case regulated by law. Subsequent performance shall be effected at DESKO's discretion either by delivery of defect-free hardware (replacement delivery) or by rectification of the defect (subsequent improvement). DESKO's right to refuse subsequent performance for statutory reasons shall remain unaffected.

The provisions on the delivery date shall apply accordingly to the replacement delivery. DESKO shall send the defect-free hardware to the Customer at its own expense.

The rectification of defects shall be carried out at DESKO's discretion at DESKO's registered office or at a service center authorized by DESKO. DESKO shall be granted a reasonable period of three to six weeks (depending on the defect and the circumstances of the individual case) from the notification of the defect. DESKO shall send the reworked hardware to the Customer at its own expense.

(4) If the Customer demands subsequent performance, it shall bear the costs incurred for the return shipment. The defective hardware must be sent by the Customer in the original packaging or in packaging that is at least equally safe for transportation. The defective hardware may only be returned with the prior consent of DESKO. Returns made without prior consent need not be accepted by DESKO. In this case, the Customer shall bear the costs of the return shipment. If the defect reported by the Customer cannot be determined after an inspection, the Customer shall bear the costs of the inspection and the return shipment to him.

(5) If the first attempt at subsequent performance fails, DESKO has the right to carry out a new attempt at subsequent performance within a reasonable period of time. The above provision on the right to choose shall also apply in this case. The Customer shall only be entitled to further warranty rights if the second attempt at subsequent performance has also failed or the reasonable period for subsequent performance has expired.

(6) The warranty does not apply to defects which are due to the fact that the Customer has had additional equipment not approved by DESKO attached or has had work carried out by persons not authorized by DESKO, or that the contractual items have been modified or extended by the Customer himself, unless the Customer proves that such modifications and extensions are not the cause of the defect. Furthermore, the warranty does not apply to defects that have arisen after the transfer of risk as a result of incorrect or negligent handling,

excessive use, unsuitable operating materials and chemical, electrochemical, electrical and atmospheric influences.

(7) If DESKO has assumed a guarantee for a certain type of quality of the hardware sold over a specified period of time, the above provisions on the obligations to inspect and notify defects and the number of attempts at subsequent performance shall not apply.

## **§ 7 Limitations of liability**

(1) Insofar as fault is involved, DESKO shall be liable to the Customer for damages in the event of gross negligence and intent on the part of its organs, legal representatives, employees, auxiliary agents and vicarious agents.

(2) Unless the law prescribes a more lenient standard of liability, DESKO shall only be liable to the Customer in the event of slight negligence for damages resulting from injury to life, body or health of persons as well as for damages due to the not insignificant breach of a material contractual obligation. In this second case of liability, compensation is limited to damages that were foreseeable at the time the contract was concluded and are typical for the contract. For these damages, the obligation to pay compensation is limited to EUR 10 million per insured event and a total of EUR 20 million per insurance year.

(3) The above limitations of liability shall not apply in the event that DESKO has assumed a guarantee for a certain type of quality of the hardware sold over a specified period of time, that DESKO has fraudulently concealed a defect or that the Customer asserts claims under the Product Liability Act.

(4) The above limitations of liability shall also apply if the Customer demands reimbursement of its expenses instead of compensation for damages.

## **§ 8 Retention of title; notification obligations of the Customer; advance assignment in the event of resale**

(1) The delivered hardware shall remain the property of DESKO until full payment of all claims of DESKO against the Customer resulting from the business relationship (extended retention of title). Disposals by the Customer of the hardware subject to retention of title prior to full payment of the secured claims are only permitted insofar as they are part of the Customer's ordinary course of business and do not constitute a transfer by way of security or a pawn to third parties.

(2) In addition, the Customer shall have the following obligations in particular:

(a) The Customer must treat the hardware with care for the duration of the retention of title in favor of DESKO and insure it adequately at its own expense against fire, water and theft damage at replacement value.

(b) If the Customer files an application for the opening of insolvency proceedings, he must inform DESKO immediately.

(c) The Customer shall inform DESKO immediately of any damage to or loss of the hardware subject to retention of title.

(d) In the event of seizure of the hardware subject to retention of title at the Customer, the Customer is obliged to inform DESKO immediately by sending a copy of the enforcement protocol and an affidavit. Insofar as the third party is not in a position to reimburse DESKO for the judicial and extrajudicial costs of an action pursuant to § 771 ZPO, the Customer shall be liable for the resulting loss.

(e) In the event of seizure of a claim assigned to DESKO, the Customer must immediately send the seizure and transfer order to DESKO.

(3) Until revoked, the Customer may resell the hardware subject to retention of title in its regular business transactions for the duration of the retention of title. In this case, the Customer hereby assigns to DESKO as security all claims arising in this respect. DESKO accepts the assignment. With regard to the advance assignment of the claim (extended retention of title), its assignment by the Customer to a third party, in particular to a financial institution, is contrary to the contract and inadmissible. If the Customer's claim has been included in a current account, the Customer hereby assigns its claim from the current account against its Customer to DESKO as security. DESKO accepts the assignment. In any case, the assignment shall always be limited to the amount that DESKO has invoiced to the Customer for the resold hardware (including VAT and plus any transportation costs incurred). A resale of the hardware subject to retention of title to third parties who exclude the assignability of the purchase price claim or make it dependent on their approval is prohibited.

(4) The Customer is authorized to collect the assigned claim in addition to DESKO as long as he duly meets his payment obligations towards DESKO. If the Customer is not or no longer authorized to collect, it shall be obliged vis-à-vis DESKO to disclose the assigned claims and their debtors upon request in text form, to provide all information necessary for collection, to hand over the associated sales documents and/or to notify the debtors of the assignment. DESKO is entitled at any time to check the Customer's sales documents and to inform its customers of the assignment.

(5) If the realizable value of the claims assigned to DESKO as security exceeds the amount of DESKO's outstanding claims against the Customer secured thereby by more than 10%, the Customer shall be entitled to demand the release of securities from DESKO to the extent of the excess. The selection of the securities to be released is at the discretion of DESKO.

## **§ 9 Infringement of intellectual property rights**

(1) If claims arising from the infringement of German intellectual property rights by the hardware supplied by DESKO in accordance with the contract are asserted against the Customer, DESKO shall reimburse the Customer for all legally imposed costs and damages if DESKO is notified immediately of such claims, DESKO receives all necessary information from the Customer and the Customer complies with its general obligations to cooperate so that DESKO can make the final decision as to whether the claim is defended or settled and if DESKO is at fault with regard to the infringement of the industrial property rights.

(2) If it is legally established that further use of the hardware supplied by DESKO in accordance with the contract infringes third-party property rights or if there is a risk of an action for infringement of property rights, DESKO may, unless liability is waived, at its own expense and at its own discretion, procure for the Customer the right to continue using the hardware, replace the hardware, modify the hardware in such a way that there is no longer any infringement, or reimburse the Customer for the value of the hardware by taking it back and deducting compensation for use for the use made up to that point. Compensation for use is calculated on the basis of an assumed depreciation period of three years, so that 1/36 of the price is payable for each month of use.

(3) DESKO shall be entitled to provide the Customer with a replacement if and to the extent that the hardware delivered in accordance with the contract cannot (or can no longer) be used by the Customer due to the infringement of third-party property rights and the state

of infringement of intellectual property rights cannot be remedied by making changes to the hardware. DESKO shall bear the costs for this.

## **§ 10 Assignment**

The Customer may only assign claims against DESKO arising from this contract with DESKO's prior consent in text form.

## **§ 11 Text form**

All amendments and supplements to the purchase contract shall only be effective if they are agreed by DESKO and the Customer in text form (according to § 126b BGB). Any amendment to the above text form requirement must also be made in text form.

## **§ 12 Severability clause**

(1) Insofar as individual contractual provisions are invalid or the contract contains a loophole, this shall not affect the validity of the contract as a whole or the remaining contractual provisions.

(2) In this case, DESKO and the Customer undertake to agree on an arrangement that best meets the interests of both parties, taking into account the agreements made.

## **§ 13 Place of performance; place of jurisdiction; applicable law**

(1) The place of performance for all obligations arising from the contractual relationship is the registered office of DESKO.

(2) The exclusive place of jurisdiction for all disputes arising from this contract and concerning its validity shall be, at DESKO's discretion, either the registered office of DESKO or the registered office of the Customer, unless an exclusive place of jurisdiction is established by law. DESKO may exercise the right of choice at any time. It must be exercised within two weeks of being requested to do so by the Customer in text form. If no choice is made within this period, the statutory place of jurisdiction shall apply.

(3) The law of the Federal Republic of Germany shall apply. The provisions of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 (CISG; UN Sales Convention) shall not apply.