

General Terms and Conditions of Purchase

DESKO GmbH, Gottlieb-Keim-Str. 56, 95448 Bayreuth, Germany

1. General Information and Scope of Validity

The conditions specified below apply to all offers, deliveries and services from purchasing, rental and other agreements, including those from future business transactions and continuing obligations. The Supplier's terms that oppose or deviate from these terms are not acknowledged unless we had expressly agreed in writing to their validity. These General Contractual Terms also apply if we unconditionally accept a Supplier's delivery knowing that the latter's terms oppose or deviate from our terms.

All agreements entered into between us and the Supplier for this contractual execution must be laid down in writing in this Contract.

The validity of the Supplier's general terms and conditions of business is expressly excluded.

Our General Terms and Conditions of Purchase apply only towards companies acc. to Section 310 Paragraph 4 of the German Civil Code (BGB).

We shall not remunerate or reimburse for visits or the preparation of offers, projects, etc.

2. Offers and Offer Documentation

2.1

The Supplier commits himself to accept our order within a 2-week period.

2.2

We retain the rights of ownership and copyrights on images, drawings, calculations and other documents; they may not be made accessible to third parties without our express written approval. They must be used exclusively for production owing to our order; after execution of the order, they must be returned to us unrequested. They must be kept secret from third parties; Section 5.4 of these Terms applies in addition.

3. Prices

3.1

The price stated in the order is binding. If there is no deviating written agreement, the price includes free delivery as well as packaging, freight, insurance and other incidental costs. The return of the packaging and other means of transport (e.g. pallets) needs a special agreement.

3.2

Statutory V.A.T. is included in the price.

3.3

At our option, we pay either with a check for deposit only or by transfer to the Supplier's bank or postal checking account. Our determined quantities, weights or other units on which the calculation is based on are decisive for payment.

3.4

If down- or advance payments are made, the ownership of the corresponding portion of the goods or service in terms of value is transferred to us, irrespective of possibly further statutory rights, when the Supplier receives the payment.

3.5

We can only process invoices if, according to the requirements in our invoice, they indicate the order number shown therein. The Supplier is responsible for all consequences resulting from non-compliance with this obligation if he does not prove that he is not responsible for it.

3.6

Unless otherwise agreed upon in writing, we pay the net purchasing price within 45 days after receiving the invoice.

3.7

We are entitled to offset and retention rights already after asserting them in writing, even if the Supplier disputes these claims.

3.8

Invoices are only payable if the order PO number and the number of every single item are indicated. If these details are missing, invoices are not payable. Invoice copies must be identified as duplicates.

3.9

Payments do not imply acknowledgment of the deliveries or services as being contractually made.

4. Delivery and Transfer of Risk

4.1

On all shipping papers and delivery notes, the Supplier commits himself to exactly indicate our order number; if he omits it, then processing delays for which we are not responsible are unavoidable.

4.2

The delivery time indicated in the order is binding, just as the quantities, weights and number of pieces that we specified.

4.3

The Supplier commits himself to notify us immediately in writing when circumstances occur or become recognizable to him that make the required delivery time impossible to comply with. An extension of deadlines is not associated with this. If this occurs, the Supplier cannot claim unexpected or extraordinary events, especially official interventions, breakdowns, measures taken as part of labor disputes (such as a strike and lockout), in all delivery delays of auxiliary materials or spare parts accessories, especially with upstream suppliers.

If the delivery delay hinders our purchase commitment in an unreasonable way for us, we are entitled to withdraw immediately from the Contract.

4.4

If the Supplier delays the delivery, he must compensate us for the damage, even in case of simple carelessness. This also applies to damages caused by contractually atypical – and therefore unforeseeable – delays.

The Supplier's compensation for the delay is not limited. He commits himself to fully replace the damage actually occurred within statutory limits. We are especially entitled, after a fruitless expiration of a reasonable time period, to demand damage compensation instead of the service and withdrawal. If we demand damage compensation, the Supplier is entitled to prove that he was not responsible for his breach of duty.

The Supplier must compensate for the actual amount of the damage in addition to and/or instead of the service even in case of simple carelessness. We do not need to set a grace period.

4.5

Even with a partial delivery delay or a partial service impossibility, we are also entitled to demand damage compensation instead of the service or to withdraw from the entire Contract.

4.6

Unless otherwise agreed upon in writing, the delivery must be free.
Therefore, the risk of accidental loss is transferred to us only when the item is delivered to us.

5. Reservation of Ownership, Provision of Materials and Tools

5.1

If we provide tools to the Supplier, we reserve the ownership on them. The Supplier processes or reshapes them for us. If our reserved goods are processed with other items that do not belong to us, then we acquire the co-ownership on the new item in proportion to the value of our item with regard to the other objects at the time of processing.

5.2

If the item we provided is inseparably mixed with other objects that do not belong to us, then we acquire the co-ownership on the new item in proportion to the value of the reserved item (purchasing price plus V.A.T.) with regard to the other mixed objects at the time of processing. If the mixing takes place so the Supplier's item is considered as the main item, then it is deemed to have been agreed that the Supplier proportionately transfers the co-ownership to us; the Supplier keeps the sole ownership and the co-ownership safely for us.

5.3

The Supplier commits himself to insure, at his own expense, the above-mentioned items belonging to us for the original value against fire, water and theft damages.

At the same time, the Supplier already assigns to us now all compensation claims from this insurance; we hereby accept the assignment.

He commits himself to perform possibly necessary maintenance and inspection work in due time and at his own expense. He must immediately notify us about any disruptions; if he culpably omits this, then damage compensation claims remain unaffected.

5.4

If we provide our own software or software from other companies, the Supplier commits himself to keep the Software strictly confidential. According to the Contract, the persons he has entrusted with working on or with the software must be contractually obligated to maintain confidentiality.

In this case, the Supplier is entitled to make a backup copy of the software we delivered to him and keep it in a safe place beyond third-party access. After work has been completed, the Supplier must delete this backup copy and solemnly assure us in writing that the backup copy was deleted.

5.5

The Supplier commits himself to maintain strict confidentiality over all received images, drawings, calculations and other documents and information. They may only be disclosed to third parties with our express permission.

The confidentiality obligation also applies after this Contract is executed. When requested, the contractual partner must return to us the images, drawings, calculations and other documents. As soon as the security rights that we are entitled to acc. to 5.1 and/or 5.2 exceed the purchasing price of all our still unpaid reserve goods by more than 10%, we are obligated, at our option, to release the security rights at the Supplier's request.

5a. Licenses

Unless otherwise expressly agreed upon in writing, we receive a simple, worldwide transferable right to use the procured software, including the processing.

6. Defect Inspection and Liability for Defects

6.1

The Supplier is responsible for seeing to it that all objects he delivers and all services he renders are in accordance with the latest scientific and technological advances, the relevant legal regulations within the European Union or the intended sales and application areas, the regulations and guidelines of the authorities, the employers' liability insurance associations and the trade associations as well as the functions and specifications that we stipulate.

Compliance with these regulations must be proven to us by showing the corresponding test reports or acceptance certificates.

Acceptance certificates of the employers' liability insurance associations or other technical testing offices must be provided free of charge if this is required for further product processing or marketing.

6.2

The Supplier must perform quality assurance appropriate to the type and scope and in accordance with the latest technical advances as well as prepare a documentation about all relevant production data and hand over a log of the quality checks to us together with the delivery.

In case of product damages or product liability claims raised against us, the Supplier must show us the corresponding documentation or other appropriate documents if we request them so he can prove a defective product. The Supplier ensures that business liability insurance with sufficient coverage amounts has been taken out and maintained and will provide proof if we request it.

6.3

We commit ourselves to check the goods for any quality and quantity deviations within a reasonable time period; the complaint is made in due time if the Supplier receives it within a time period of 10 working days from the receipt of goods or the discovery if the defects are hidden.

Any agreements made about examination or complaint obligations from a quality assurance agreement that we conclude with the Supplier remain unaffected.

6.4

We are entitled to the full statutory claims for defects; in any case, we are entitled to request from the Supplier, at our option, the elimination of the defect or delivery of a new item.

The right to damage compensation, especially to the latter instead of the service, remains expressly reserved.

6.5

We are entitled to eliminate the defects ourselves at the Supplier's expense if there is a risk in delay or special urgency.

6.6

The period of limitation is 36 months from the moment the risk is transferred.

7. Liability, Product Liability, Release, Liability Insurance

7.1

The Supplier is liable, to the full extent of the law, to compensate for damages that he, his legal representatives, employees or executives have caused.

7.2

As far as the Supplier is responsible for a damaged product, he must release us from a third-party damage compensation claim at first request, as the cause lies within his control and organizational area and he himself is liable in relation to third parties.

7.3

Acc. to Sections 683 and 670 of the BGB, the Supplier is also obligated within this framework to reimburse for any expenses resulting from or in connection with a recall that we carry out. As far as possible and reasonable, we will inform the Supplier about the content and scope of the recall actions and give him opportunity to issue his opinion. Other legal claims remain unaffected.

7.4

The Supplier commits himself to take out and maintain flat rate product liability insurance with a reasonably high coverage amount for each personal injury/property damage; if we are entitled to further damage compensation claims, then they remain unaffected.

7.5

Recourse claims towards the Supplier acc. to the legal product liability provisions lapse not earlier than our own obligations towards third parties.

8. Offset Right and Retention Right

We are entitled to offset, also with disputed claims.

We are entitled to exercise a retention right within the statutory extent.

9. Assignment Prohibition

The Supplier's rights from the business transactions concluded with us are not transferrable without our written approval.

10. Industrial Property Rights

10.1

The Supplier ensures that in connection with his delivery, no third-party rights are violated in the European Economic Area or in local export restrictions.

10.2

If a third party asserts claims against us, then the Supplier is obligated to release us from these claims at the first written request. We will immediately inform the customer about such exercise and leave it solely up to the Supplier to decide whether the claim should be acknowledged, disputed or compared. In case of a trial, we will announce the dispute to the Supplier.

10.3

The Supplier's release obligation refers to all expenses that necessarily arise to us out of or in connection with the assertion of a claim by a third party. They include, in particular, the costs of attorney representation.

10.4 The limitation period is 10 years from contractual conclusion.

11. General Information

11.1

The Contract remains binding even if individual points in its remaining sections are legally invalid. In this case, the parties commit themselves to replace an invalid provision with a valid one that comes closest to the commercial purpose of the invalid provision. This also applies to the closing of any loopholes.

11.2

Agreements that are added to or deviate from the preceding provisions are valid only in form of a written additional agreement to the Contract concluded by the parties, in which the amended provisions are referenced. The waiver of this written form requirement also needs to be in writing.

11.3

The place of performance for all obligations from this Contract is our head office. If the customer is a fully qualified merchant, a special estate under public law or a legal entity under public law or he has his head office abroad, the place of jurisdiction for all disputes from this Contract and its validity is our head office or the customer's.

11.4

Only the law of the Federal Republic of Germany applies to the contractual relationship. The validity of the UN Convention on the International Sale and Purchase of Goods is expressly excluded.

This also applies in case the Supplier has his head office abroad.