

General Terms and Conditions for the Sale of Products

DIESEL TECHNIC (M.E.) FZE · P.O. Box 17051 · Jebel Ali Free Zone, Dubai · UAE

1. Scope, Use of Objects

These General Terms and Conditions shall apply exclusively to any current or future sale of any products (the "Products") by DIESEL TECHNIC (M.E.) FZE ("DTAE") to customers in their capacity as entrepreneurs, i.e. a natural or legal entity or a partnership with legal capacity acting in exercise of their commercial or independent professional activities in the conclusion of a legal transaction. Enterprises in this sense are equivalent to legal entities under public law and public law special assets ("Customer").

Differing or contradicting terms of the Customer shall not apply unless expressly agreed to in writing by DTAE. Failure of DTAE to object to any provision contradictory to this Agreement contained in any order or other writing of Customer shall not be construed as a waiver of the terms and conditions under this Agreement or part of them nor shall it be construed as an acceptance of any terms and conditions proposed by the Customer insofar as these differ from this Agreement. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, and acceptance of offer, invoice or other document of information issued by DTAE shall be subject to correction without any liability on DTAE's part. This Agreement may not be varied unless expressly agreed to in writing by duly authorized representatives of DTAE and the Customer.

2. Offer & Order Confirmation

a) Any offer and quotation issued by DTAE to the Customer shall be non-binding and subject to change unless clearly stated otherwise in writing in the offer or quotation. Customer shall place purchase orders with DTAE in written form either via facsimile, post, courier or email or as otherwise agreed in writing between DTAE and the Customer. The Customer shall be bound by his purchase order for four weeks starting from the date of receipt of the purchase order by DTAE.

No purchase order of the Customer whether based on a quotation or offer by DTAE or not shall be deemed to be accepted by DTAE unless and until expressly confirmed in writing by DTAE. Any acceptance of a purchase order shall be at the sole discretion of DTAE. Upon acceptance of the purchase order by DTAE a binding purchase contract for the ordered Products has been concluded between the Parties and DTAE will immediately start sorting, picking and packaging the purchased Products for delivery to the Customer. Any request of the Customer for changes to a purchase order already accepted by DTAE shall be considered as a new, additional purchase order. It shall be the Customer's responsibility to specify the technical data, quantity requirements and other specifications exactly and in a detailed manner so that DTAE can offer and deliver the correct Products and prices to the Customer.

b) DTAE reserves the right to make changes to the design, form and colour shade of the Products as well as to the scope of delivery by the manufacturer during the delivery period and the Customer shall be obliged to accept such changes insofar as these changes or deviations are reasonable and consider the interests of both parties and in particular the interests of the Customer.

3. Prices & Payment

- In the absence of any written agreement to the contrary, DTAE's valid prices at the time of conclusion of the contract of sale shall apply.
- The prices for sale of the Products are to be understood Ex Works Jebel Ali Free Zone, Dubai, (as per the Incoterms 2010 of the International Chamber of Commerce, hereinafter referred to as the "Incoterms") without packaging and net, excluding all other fees such as taxes, customs duty, transport, insurances etc. unless otherwise stated in the respective contract between the Customer and DTAE. Such additional costs shall be borne by the Customer unless agreed otherwise in writing.
- Save as otherwise agreed upon, payments shall be made before delivery to DTAE's bank account without any deduction and free and clear of any fees or charges. Cheques (including post-dated cheques) as well as any other non-cash payments are made merely on account of performance and will not be deemed to constitute payment until cashed and credited to the bank account of DTAE.
- In case a payment has not been effected by the Customer on its due date, the remaining total outstanding amount of all subsequent payment instalments at that date shall become due. In the event of a default in payment by the Customer, DTAE is entitled to charge interest on the amount outstanding at the rate of at least 9 % (nine percent) above the respective basic interest rate of the German Central Bank but not more than a maximum interest rate of 12 % (twelve percent) per year from the time the payment is due.
- Customer shall only be entitled to claim any rights of set-off or retention if his counterclaim is based on the same contractual relationship, is undisputed or has been granted in an enforceable ruling or has otherwise been recognized and accepted in writing by DTAE. The Customer shall not be entitled to assign any claims of any kind arising from his business relationship with DTAE to third parties.
- Any payment made by the Customer shall be used to first settle the oldest invoice due plus any default interest and costs accrued with regard to the respective invoice. The order in which the payment shall be used shall be 1. costs, 2. default interest and 3. principle claim of the respective invoice.

4. Delivery

a) The estimated required time for delivery will be stated in DTAE's offer and will be based on suppliers' manufacturing capacities, subcontractor delivery dates and other conditions. Delivery times even if mentioned in a contract between Customer and DTAE are approximate only without engagement by DTAE. Therefore DTAE retains the right to amend delivery dates at any time unless expressly agreed otherwise in writing. All deliveries of Products sold to the Customer shall be executed Ex Works, Jebel Ali Free Zone, Dubai, as per the Incoterms unless expressly agreed otherwise in writing. The Customer shall provide DTAE with the relevant export documentation which proves that the Products have been exported from the Jebel Ali Free Zone. The Customer shall immediately, but latest within 5 working days, accept and take delivery of the Products when they are ready for shipment unless expressly agreed otherwise in writing.

DTAE shall be entitled to execute partial deliveries or partial performance as far as this may be reasonably expected under the prevailing circumstances. DTAE reserves the right to invoice these partial deliveries separately. The occurrence of a delay in delivery shall be determined in accordance with the applicable laws. If DTAE is in default in delivery, the Customer shall be entitled to demand compensation for the delay as set out below, after having notified DTAE of the late delivery and given a respective notice for performance with a reasonable notice period; the compensation for damages based on late delivery shall be limited to 0.5 % of the invoice value of the delayed Product (or part thereof) per each full week of delay, but shall in no event exceed a total of 5 % of the invoice value of that portion of the Products which as a result of the delay could not be used in time or in conformity with the contract. DTAE reserves the right to prove that the delay in delivery caused no or only minor damage. In this case DTAE shall only be liable to compensate the actual damage sustained by the Customer.

- In case delivery of Products is postponed at the request of the Customer or if the Customer fails to take delivery of the Products on an agreed date, the Customer shall pay all actual expenses accruing as a result of storage beginning one week after notification that Products are ready for shipment. Irrespective of the aforesaid, DTAE may withdraw from the respective sales contract and dispose of the Products (without prejudice to any other remedies available to DTAE under the applicable law), after DTAE has given adequate notice in writing of such intention to the Customer and the Customer fails to take delivery of all or part of the Products within one week of serving the notice. In this case Customer shall be liable to pay 15% of the purchase price as liquidated damages to DTAE in addition to any actual cost incurred by DTAE as a result of storage of the Products. The liquidated damages shall be considered a fair compensation of losses incurred by DTAE in such event and shall not be considered as penalty.
- Compliance by DTAE with any delivery date confirmed by DTAE in its order confirmation or elsewhere requires clarification of all technical questions of DTAE by the Customer. DTAE shall only be obliged to abide by its duty to deliver the Products if the Customer fulfils its contractual obligations on time and in a correct manner, including without limitation its obligation to cooperate with DTAE.

5. Passing of Risk

Save as otherwise individually and expressly agreed in writing, the transfer of risk of loss and damage to Products sold by DTAE to the Customer shall take place upon delivery of the Products to the Customer in accordance with Art. 4 of this Agreement, even if shipment is made in parts or if the parties have agreed to extend the performance of DTAE, e.g. by covering shipping charges, effecting delivery to the Customer site, or supplying erection/ installation or other services. In those exceptional cases where DTAE has undertaken to effect shipment, the risk of accidental loss or accidental deterioration of the Products shall pass to the Customer at the time of their delivery to the forwarder, carrier or other person or organisation appointed to carry out such shipment. Partial shipments shall be permitted to the extent to which they are reasonably acceptable to the Customer. If the Customer fails to take timely delivery of the Products the risk shall pass to the Customer at the time on which the Customer should have taken delivery of the Products from DTAE at the premises of DTAE in Jebel Ali Free Zone, Dubai, or as otherwise explicitly agreed in writing by the parties. The Incoterms shall apply for the passing of risk as far as they are not inconsistent with the conditions subject to this clause 5 or written agreements.

6. Retention of Title

- Notwithstanding any delivery of the Products and the passing of risk of the Products or any other provisions of this Agreement, until all amounts owed by the Customer to DTAE, no matter on what grounds, are settled in full, DTAE retains full title to the Products purchased by the Customer and the Customer undertakes not to sell or otherwise dispose of the Products as long as they are under retention of title subject to clause 6. d) below. The Customer shall be responsible for any deterioration of the Products sold from the time of delivery to him.
- If third parties take up steps to attach or otherwise dispose of the Products, the Customer shall immediately notify DTAE in order to enable DTAE to seek a court injunction to prevent such action. If Customer fails to do so in due time the Customer shall be held liable for any damages caused. Customer shall indemnify DTAE for any damages and losses if the Products are successfully attached or otherwise disposed of by a third party.
- In case payments for the Products are made by instalments and due to the fact that DTAE retains full title to the Products until all amounts owed by the Customer to DTAE are settled in full, the Customer undertakes to effect and pay for insurance coverage in the joint names of the Customer and of DTAE to provide indemnity against any risks and liabilities until all payments owed to DTAE are settled in full. In case of injuries, losses, claims of third parties, expenses or damages whatsoever, incurred or suffered by DTAE as a result of non-compliance of Customer with the above mentioned obligation, the Customer shall fully indemnify and hold DTAE harmless from any and all such injuries, losses, claims, expenses or damages arising out of such non-compliance.
- The Customer shall be entitled to sell the Products in his ordinary course of business, except if he is in default of payment. The Customer shall be obliged to agree on retention of title to the Products with his customer until he has received the full purchase price agreed with his customer. For this case of resale of the Products, the Customer hereby assigns all claims arising out of such resale to DTAE, irrespective of whether the Products have been processed or not. If such assignment of a future claim is invalid for any reason whatsoever, the Customer herewith undertakes to assign to DTAE the respective claim resulting from the resale of the Products and to undertake any action and sign any document required to give effect to such assignment. Notwithstanding DTAE's right to claim direct payment, the Customer shall be entitled to receive the payment on the assigned claims. To this end, DTAE agrees not to demand payment on the assigned claims to the extent the Customer complies with all its obligations for payment and does not become subject to an application for insolvency. In these events, however, the Customer shall disclose to DTAE the assigned claims and the respective debtor and provide DTAE with all information and documents necessary for debt collection and notify the debtors (third parties) of the assignment.

7. Warranty

- The Customer shall examine the contractual Products forthwith upon delivery in the orderly conduct of business and advise DTAE in writing of any defect and incorrect quantity discovered, latest within 15 working days of delivery unless this time period is extended by mutual written agreement. Failure on Customer's part to meet this obligation shall be construed as approval of the delivery. Any obvious defect identified at a later date shall be excluded from rectification by DTAE on DTAE's costs and the defect shall be deemed to have been caused by the Customer. In case of any defect which cannot be detected by ordinary examination the Customer shall inform DTAE immediately upon discovery of such defect, latest within 3 working days of discovery and in no event later than 1 Year of the date of actual delivery. The Customer's rights with regard to implied warranty based on statutory law shall be excluded after expiration of such time periods and the respective defect shall be deemed to have been caused by the Customer.
- In case of the fulfilment of the duty of inspection and objection by the Customer as well as the above mentioned time periods, DTAE shall at its sole discretion repair or replace free of charge any Product which shows deficiencies in workmanship, material or title, provided that DTAE can be held liable for these deficiencies. DTAE shall not be liable for unsuitable or improper use, negligent handling, defective assembly, improper maintenance or unsuitable operation, storage, use, installation or operation of the Products by the Customer, its employees, directors or agents or any third party, or for normal wear and tear, chemical influences or damage due to force majeure.
- If the repair or replacement of the Product - subject to clause 7 b) - has failed, the Customer is entitled to either reduce the purchase price or to withdraw from the contract.
- The Customer shall have no further claims with regard to the defective Products other than the claims for implied warranty under statutory law mentioned in this clause 7. Furthermore, DTAE, including its managers, directors, employees, assistants and agents, shall subject to clause 8, not be liable for any consequential or indirect damages or losses which the Customer, its employees, directors or agents may incur including without limitation any loss of use, loss of profit and loss of any contract.
- Irrespective any implied warranty under the statutory law DTAE shall pass to the Customer any express warranty provided by the Manufacturer (Manufacturer's Guarantee) for the Products (if any) subject to the terms and conditions mentioned in the Manufacturer's Guarantee. For Products of the brand DT Spare Parts of Diesel Technic Group the Manufacturer's Guarantee shall apply. For these Products of Diesel Technic Group a 24-month Manufacturer's Guarantee applies subject to the terms and conditions mentioned in the Manufacturer's Guarantee. The Manufacturer's Guarantee commences from the date of DTAE's purchase of the Products from the Manufacturer. DTAE shall be informed by the Customer of any claim which may fall under the Manufacturer's Guarantee (if any) and DTAE shall forward such claim to the Manufacturer. For the avoidance of doubt, DTAE shall not be liable under the Manufacturer's Guarantee itself and shall only be responsible to handle such claims with the Manufacturer subject to the terms of the Manufacturer's Guarantee.
- DTAE is not obliged to take back Products which are free from defect after delivery and to reimburse the purchase price which has already been paid. If faultless merchandise is taken back at the request of the Customer completely or in part, this shall purely be based on pure good will on the part of DTAE and shall not substantiate any claim of the Customer for future redemption and/or reimbursement of the purchase price even if the parties are in a regular business relationships and/or if DTAE has repeatedly taken back immaculate Products and has reimbursed their purchase price to the Customer.

8. Liability for damages

DTAE shall only be liable for damages in case of intent, gross negligence, fraud and damages to life, body or health. In case of negligence DTAE shall only be liable insofar as it has infringed a duty which is of material significance for the achievement of the contractual purpose and its liability shall be restricted to the typically foreseeable damage. Any further liability shall be excluded. On no account shall DTAE be liable for any consequential or indirect damages or losses which the Customer, its employees, directors or agents may incur including without limitation any loss of use, loss of profit and loss of any contract. To the extent that the liability of DTAE is excluded under this clause 8, also the personal liability of its managers, directors, employees, assistants and agents shall be excluded.

9. Force majeure

Any incident or circumstances beyond DTAE 's control such as natural occurrences, war, strikes, lock-outs, shortages of raw materials and energy, obstruction of transportation, breakdown of manufacturing equipment, fire, explosion, or acts of government shall relieve DTAE from its obligations under this contract to the extent DTAE is prevented from performing such obligations. The same applies to the extent such incident or circumstance renders the contractual performance commercially impractical for DTAE over a long period or occurs with suppliers of DTAE. If the aforementioned occurrences last for a period of more than 3 months, DTAE is entitled to withdraw from the contract without the Customer having any right to compensation.

10. Governing Law and Jurisdiction

- The contract and any subsequent sale of the Products by DTAE shall be governed and construed in accordance with the material laws applicable in Germany excluding the application of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- If a dispute arises out of or in connection with these T&C or any purchase order DTAE and the Customer shall first seek to settle such dispute amicably.
- Each party agrees to submit to the jurisdiction of the courts having jurisdiction in Dubai, United Arab Emirates. DTAE shall also have the right to bring a claim before a court at the Customer's principal place of business or at its discretion before any other court being competent according to any national or international law.

11. Miscellaneous

- The Customer is not entitled to assign its contractual rights and / or obligations to any third party without DTAE's prior written consent.
- If any provision of this Agreement shall become invalid, the remainder of this Agreement shall not be affected. It shall be replaced with a valid clause economically closest to the intention of the parties.

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