

# General Terms and Conditions of Sale, Delivery and Payment

## DIESEL TECHNIC SE · Wehrmannsdamm 5-9 · 27245 Kirchdorf · Germany

### 1. Scope, use of objects

- (1) All deliveries made by Diesel Technic SE (referred to in the following as: "DT") shall be made on the basis of the following General Terms and Conditions of Sale, Delivery and Payment (referred to in the following as: "GTC"). These shall provide the foundation for all offers made by DT, acceptances and agreements and shall be viewed to have been recognised on placing of order or acceptance of the delivery by the Purchaser for the duration of the entire business relationship.
- (2) The General Terms and Conditions of Business of the Purchaser shall only apply to the extent that DT has explicitly approved such. The GTC shall also apply even if DT executes a delivery to the Purchaser unconditionally in the ignorance of contrary or deviating Terms and Conditions of the Purchaser.
- (3) The GTC shall apply towards buyers in their capacity of entrepreneurs. Under Section 14 German Civil Code (BGB), an "entrepreneur" is 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.
- (4) Any verbal agreements shall be viewed as not agreed.
- (5) Any parts supplied by DT may only be installed by trained staff in specialised workshops using the special tool intended and in accordance with the installation and service regulations of the respective vehicle manufacturer.

### 2. Offer and entering into agreement, product description, reservation of the right to make changes

- (1) Insofar as an acceptance period is not explicitly determined in the offers made by DT, the offers shall be non-binding price information. An agreement shall first come about once an order is accepted by written confirmation of order, unconditional delivery or invoicing by DT.
- (2) In existing business relationships, the buyer is bound by his order or his other contractual offer for four weeks, unless he expressly makes a different provision.
- (3) Unless otherwise agreed, the contractually owed quality of the object of sale is primarily determined according to the product description agreed in text form between DT and the purchaser.
- (4) We shall reserve the right to make design or formal changes, deviations in the colour shade or changes to the scope of delivery by the manufacturer during the delivery period which must be accepted by the Purchaser insofar as the changes or deviations are reasonable under consideration of the interest of both parties and, in particular, those of the Purchaser.
- (5) Insofar as a spare part, its packaging, the respective offer pages or the corresponding catalogues or sales documents contain a notice that this spare part incorporates a registered design whose owner is not DT, the buyer warrants to use it exclusively for the purpose of enabling the repair of a complex product in order to restore its original appearance and also to ensure any downstream users that they do not intend to use the spare part for any other purpose.z

### 3. Prices

Insofar as nothing else may be determined from the confirmation of order, the prices shall apply ex-factory exclusive of transport packaging; the latter shall be charged separately by DT. The statutory rate of value added tax is not included in the prices; it shall be stated separately in the statutory amount on the invoice on the date of invoicing.

### 4. Terms of payment, payment default

- (1) The purchase price shall fall due for payment in full on delivery or collection without deduction in cash less any down payment made. The granting of discounts must be based on a separate agreement. Non-cash payments shall be made merely on account of performance. Bills of exchange shall only be accepted after prior written agreement.
- (2) The Purchaser shall default without any further declaration on the part of DT 14 days after delivery of the object of purchase insofar as the Purchaser has failed to pay.
- (3) DT shall reserve the right to use payments to settle the oldest due invoice items plus any accrued default interest and costs, in the order of costs, interest, main receivables.
- (4) The Purchaser shall only be entitled to offset or to a right of retention if his claim has been determined res judicata, is undisputed or has been recognised by DT.

### 5. Handing over of the object of purchase/delivery/delay in acceptance on the part of the Purchaser

- (1) Deliveries shall be made ex DT factory Kirchdorf unless the parties explicitly agree to the contrary.
- (2) If it has been agreed to deliver the object of purchase, the costs of sending the object of purchase ex DT factory Kirchberg shall be borne by the Purchaser in the absence of any agreement to the contrary unless the costs exceed an appropriate relationship to the value of the object of purchase. The risk shall pass to the Purchaser on sending the object once the object has been given to the person executing transport or to the collecting Purchaser or once the goods have left the DT warehouse for the purposes of sending.
- (3) DT shall take up transport insurance solely at the wish of the Purchaser, which has been communicated in good time, and at his expense.
- (4) On collection by the Purchaser or by the transport company commissioned, agreed deadlines must be observed punctually. In the case of failure to observe the collection date for goods reported to be ready for dispatch, DT is entitled to dispose of the material on the next day. The Purchaser shall bear all costs arising from the late collection or provision of means of transport. If in the case of orders for the delivery of several part quantities, the agreed delivery periods and dates are not observed by the Purchaser, DT is entitled after the fruitless expiry of the period set to deliver the remaining goods, withdraw from that part of the order which has not yet been satisfied or to demand damages instead of performance. If DT demands damages instead of performance, this shall amount to 15 % of the purchase price. The damages must be set higher or lower if DT is able to prove a higher or the Purchaser lower damages. The duty to accept the object of purchase is a main contractual duty of the Purchaser.
- (5) Partial performance by DT is admissible insofar as the Purchaser can be reasonably expected to accept such.

(6) Delivery periods stated in the confirmation of order are not basically binding delivery dates but only state the expected delivery date. Therefore, exceeding the expected delivery date does not constitute delivery default. An appropriate setting of date by the orderer is necessary for this. Any fixed delivery date or a binding delivery period desired by the orderer must be stated as such explicitly by the orderer in written form on ordering and must be confirmed by DT in the confirmation of order. Otherwise, a fixed delivery date on acceptance by DT shall be viewed not to have been agreed.

(7) The start of the delivery period specified by DT in the confirmation of order always requires clarification of all technical questions with the orderer. The observance of the delivery duty by DT requires the punctual and correct satisfaction of the duties on the part of the orderer and, in particular, with respect to duties to cooperate.

(8) DT is not obliged to take back goods which are free from defect after delivery and to reimburse the purchase price which has already been paid. If perfect merchandise is taken back at the request of the Purchaser completely or in part, this shall purely be based on pure good will on the part of DT and shall not substantiate any claim of the Purchaser in regular business relationships and/or in the case of frequent taking back to future acceptances and reimbursements. Any statutory duties to take back, in particular in the case of contestation, shall remain unaffected insofar as and to the extent that these rights of the Purchaser are not precluded by a different agreement.

### 6. Reservation of ownership

- (1) The object of purchase shall remain the property of DT up to the satisfaction of all claims arising from the purchase price which are attributable to DT against the Purchaser from the business

relationship. In the event of a loss of, damage to or destruction of the object of purchase, the Purchaser here and now assigns any damage claims against third parties to DT.

(2) The Purchaser shall be committed to resell the object of purchase only during the ordinary course of business and only on the condition that payment of the counter value of the object of purchase is made to the Purchaser. The Purchaser must also agree with his customer that the customer acquires ownership only on this payment.

(3) In the event of resale, the Purchaser shall here and now assign all claims in the amount of the final invoice amount (including turnover tax) attributable to him from the resale against his customers or third parties to DT irrespective of whether the respective object of purchase has been resold without or after processing. DT shall hereby accept the respective assignment. The Purchaser is obliged to mark the assignment to DT by corresponding indications in his business accounts.

(4) The Purchaser shall remain authorised to collect claims against his customers or third parties also after the assignment. The authority of DT to collect the claims itself shall not be affected by this. DT shall not collect the claims insofar as and for as long as the Purchaser satisfies his payment commitments in accordance with the terms of the agreement and has not filed any application for the initiation of insolvency proceedings. If one of the last mentioned circumstances has arisen, the Purchaser must on request provide all information necessary to collect the assigned receivables and, in particular, provide the corresponding documents and to advise the debtors concerned (third parties) of the assignment.

(5) The purchaser shall notify DT immediately, in text form, of attachments or other impairments of the reserved goods and/or the claims assigned to DT.

### 7. Delivery default

If DT is temporarily prevented as a result of force majeure, in particular strike, lockout, operational disturbances through fire, severe weather or water, or war, sovereign decree or other circumstances for which DT is not responsible, to supply the object of purchase at an agreed date or within an agreed period, the delivery dates and periods shall be extended by the time of above mentioned event or its effects.

### 8. Material defects

(1) The period of limitation for claims and rights due to defects in the deliveries - irrespective of the legal basis, with the exception of the cases regulated by Sections 445b, 478 BGB - is one year.

(2) In the event of a replacement delivery as part of the statutory subsequent performance, the warranty period for the object delivered by way of replacement shall not commence anew, but rather the old warranty period shall remain. This shall also apply in the event of any repair.

(3) Except in the event of recourse by the Customer due to a claim by its customer, DT shall be entitled to choose the type of subsequent performance itself. DT shall be granted a reasonable period of time for subsequent performance in each case. The statutory cases of dispensability of the deadline shall remain unaffected.

(4) If subsequent performance fails, the Purchaser shall be entitled to reduce the price or withdraw from the agreement. The statutory cases in which it is not necessary to set a deadline shall not be affected by this.

(5) Information on properties and durability and other information from DT are only independent warranties if they have been explicitly agreed and described as such. In all other cases, these are merely agreements on properties pursuant to Section 434 German Civil Code (BGB).

(6) If products are manufactured in accordance with the design documents submitted by the Purchaser, DT shall merely be liable for correct execution. If DT is sued by third parties for damages (e.g. due to the infringement of copyrights, ancillary rights or product defects) the cause of which is not to be found in the production area of DT, but is to be attributable to the sphere of the Purchaser, the Purchaser is obliged to indemnify DT against these claims on first request.

### 9. Rescission

The Purchaser may only withdraw from the agreement within the framework of statutory provisions if DT is responsible for a breach of duty. In the case of breaches of duty, the Purchaser must declare within an appropriate period after request from DT whether he wishes to withdraw from the agreement due to the breach of duty or insists on the delivery. In the event of defects, the statutory provisions on the rescission shall apply, however.

### 10. Damages, liability restrictions and exclusions

(1) DT is liable for wilful intent, gross negligence and in the case of deceit without restriction. In the case of mild negligence, DT shall be liable insofar as it has infringed a duty which is of material significance to the achievement of the contractual purpose (cardinal duty), restricted to the foreseeable damage typical of the agreement. Irrespective of the reason for the claim, DT shall assume no further liability insofar as nothing to the contrary has been agreed between the parties.

(2) The above liability restrictions and exclusions shall not apply to claims based on the damage arising from the injury to life, limb or health and to claims based on the Product Liability Act. Insofar as the liability of DT is restricted or ruled out, the personal liability of the vicarious agents of DT shall similarly be restricted or ruled out.

### 11. Altered circumstances at the Purchaser

If the buyer has goods which DT has delivered under retention of title outside the ordinary course of business or if he dissolves his company, DT shall be entitled to make all claims due immediately, to repurchase bills of exchange at the buyer's expense and to continue delivery only against advance payment or provision of security.

### 12. Export control

The export of certain products, technical information or documentation which can be procured from DT, e.g. due to their nature or their purpose or final destination, are subject, where applicable, to the duty to approve according to the Foreign Trade and Payments Act of the Federal Republic of Germany. The Purchaser can obtain technical information and documentation for the products required for reviewing the relevant export regulations, in particular the legislation of the European Union (EU) and the relevant national provisions of the individual EU Member States, from DT insofar as this exists at DT. The Purchaser shall procure all licences and export documents at their own expense which are necessary for the resale of products procured from DT in third countries. The Purchaser furthermore undertakes to obligate all recipients of products and technical information procured from DT in the same manner and to inform them of the necessity to observe these laws and ordinances. The access to products, technical information and documentation on the website of DT may only be made if they comply with the aforementioned test and warranty; otherwise DT is not obliged to perform.

### 13. Miscellaneous

(1) Place of performance is Kirchdorf, Germany.

(2) The exclusive jurisdiction for all disputes arising from the contractual relationship irrespective of the legal reason and legal nature is the registered office of DT. DT shall be entitled, however, to take action against the Purchaser at its general venue as it so chooses.

(3) The agreement and the GTC are subject exclusively to German law, ousting the reference provisions of international private law and the provisions of the CISG.

(4) In the event of individual provisions of these General Terms and Conditions of Sale and Delivery being or becoming ineffective or impracticable, this shall not affect the efficacy of the remaining provisions. Ineffective or impracticable provisions shall be replaced by a provision which comes as close as possible to the financial content of the ineffective or impracticable provision.