

General terms and conditions for deliveries and other services (version: November 2018)

Sec. 1 General / scope

- (1) These terms and conditions of service apply to all transactions of DSI Underground Austria GmbH including all affiliated companies. Terms and conditions of the customer that contradict or deviate from these terms and conditions shall not apply, unless we have explicitly agreed to their validity in writing. Our terms and conditions of service also apply if we carry out the delivery to the customer without reservation in the knowledge that the terms and conditions of the customer contradict and/or deviate from our terms and conditions of service.
- (2) All agreements that we have entered into with the customer for the purpose of fulfilling the contract, to which these terms and conditions of service apply, or upon conclusion of the contract, shall be set out in writing in this contract. Any amendments or additions to the contract must be in writing. This also applies to deviations from this written form requirement.
- (3) These terms and conditions of service shall only apply to entrepreneurs within the meaning of the law.
- (4) These general terms and conditions shall also apply exclusively to future contracts between the contracting partners until a newer version is included.

Sec. 2 Quote / quote documents

- (1) Our quote is non-binding, unless it is specifically designated as binding.
- (2) If the order qualifies as a quote within the meaning of the law, we can accept this within 2 weeks.
- (3) Plans, sketches and technical documents, as well as samples, catalogues, brochures, figures etc. shall always remain our intellectual property; the customer shall not be granted any exploitation or usage rights of any kind. This also applies to written documents that are designated as "confidential". The customer requires our express written consent before passing them on to third parties.

Sec. 3 Prices / terms of payment

- (1) Unless otherwise stated in the order confirmation, our prices are given ex stock/works, excluding the costs for packaging, rust protection and shipping.
- (2) Statutory value added tax is not included in our prices; it shall be stated separately on the invoice at the statutory rate on the day the invoice is created.
- (3) The deduction of any discounts requires a separate written agreement.
- (4) Prices are stated in Euros. If payment in a foreign currency is agreed, the customer shall settle any exchange rate differences we accrue from the date of the order confirmation. This adjustment shall be due at the same time as the purchase price payment.
- (5) At our request, the customer must provide adequate securities for our claims from this contract at its own expense, e.g. liens on properties, collateral or assignment of claims.
- (6) Unless otherwise stated in the order confirmation, the net purchase price shall be due for payment (without deduction) on the 15th day after the invoice date. Legal provisions on arrears apply. If the customer is in arrears, commercial interest rates according to sec. 456 Austrian Commercial Code (UGB), currently 9.2% above the basic interest rate of the Austrian national bank per year, shall be charged. If the customer is in arrears, we are entitled to demand a flat rate of EUR 40.00 from the business customer as compensation for any processing costs. The customer shall be fully liable, including to consumers, for further damages caused by the late payment by the customer, particularly costs for extrajudicial enforcement and collection measures.
- (7) Should an individual case reveal that we have incurred appreciably larger damage, we are entitled to claim compensation for damages at a flat rate of 25% of the contract value after an adequate period of grace has expired.
- (8) If the customer is in arrears by more than EUR 1,500.00, we are entitled to make the processing of all orders of the customer dependent on advance payment or provision of securities or refuse further fulfilment after an adequate period of grace has expired. All other claims owed by the customer shall be due immediately, regardless of any received bank drafts.
- (9) Delivery promises of any kind, in particular for call-off orders, are subject to deliveries being made without exceeding the maximum credit as agreed or determined by us.
- (10) If, after entering into the contract, our claims are jeopardised by a deterioration in the customer's financial circumstances, or the customer jeopardises security rights due to us by transferring securities, assigning claims or any other action, we are entitled to demand advance payment or provision of securities or to withdraw from the contract – without prejudice to our other legal claims.
- (11) The customer only has the right to offset if its counterclaims have been legally established, are undisputed and/or recognised by us. The customer may only exercise a right of retention if its counterclaim is based on the same contractual relationship.
- (12) We are entitled to offset claims from the customer against our claims.
- (13) We are also entitled to offset claims from the customer against claims from other companies that the latter are entitled to from business relationships with the customer or other claims against the supplier. The companies entitled to do so shall be determined by the last financial report published at the time of entering into the contract.

Sec. 4 Delivery times

- (1) The start of the delivery time determined by us is subject to all technical questions having been clarified.
- (2) Furthermore, compliance with our delivery obligations is subject to the timely and correct fulfilment of the customer's cooperation obligation. We retain the right to object to the contract not being fulfilled.
- (3) An appropriate extension of the delivery time is granted if the delivery is delayed due to unforeseen or exceptional circumstances at our premises, a sub supplier or freight company without fault on our part. The same applies in case of strikes or lockouts. If this non-availability continues for more than a month, we are entitled to withdraw from the contract if the customer was immediately informed about the non-availability. We shall refund any payments already made by the customer.
- (4) If the customer delays acceptance of delivery or is liable for violating any other cooperation obligations, we are entitled to demand compensation for thus incurred damages including possible additional expenses. Goods that have been declared ready for dispatch at the agreed time must be retrieved immediately; otherwise we are entitled to store them at the customer's cost and risk. In this case, payment is due according to sec. 3 15 days after declaring readiness for dispatch. Storage is charged at a daily flat rate of 0.2% of the total order value from the start of delay in acceptance, however, up to a maximum of 5% of the total order value. Further claims or rights are reserved.
- (5) In case of a delay in delivery, we are liable according to the legal provisions if the delivery delay is due to an intentional or gross negligent violation of contract for which we are responsible. Our liability for damages is then limited to the foreseeable and typical damage with a maximum of 10% of the delivery value.
- (6) In case of delivery delays for which we are responsible, the customer is entitled to withdraw from the contract after an appropriate deadline set by the customer in writing has expired with the declaration that delivery will be rejected after the deadline expires, as long as the declaration reaches us before the goods have been produced.

- (7) The customer is liable for the proper loading, load securing and compliance with relevant legal provisions for transporting the goods. Therefore, the customer is particularly responsible for ensuring that the maximum permitted total weight of the mode of transport it provides is observed; this shall be confirmed in writing at our request. The customer shall bear the risk for providing an unsuitable mode of transport. We reserve the right to refuse loading at the customer's cost and risk if the maximum permitted overall weight has clearly been exceeded. The customer shall indemnify and hold us harmless in this respect.

Sec. 5 Warranty

- (1) The agreed deliveries and services shall be provided according to the quote and/or the specifications in the order confirmation.
- (2) Minor deviations from a sample and/or brochure that do not affect its intended purpose, which form the basis of the quote or the order confirmation (e.g. dimensions, size, quality, colour etc.) are insignificant defects and are deemed to be approved.
- (3) We expressly reserve the right to make changes and improvements to the agreed deliveries and services based on new experiences and/or new scientific results (state of technology).
- (4) The customer shall inspect the deliveries and services immediately after acceptance and notify us in writing of any identified defects, incorrect quantities or incorrect deliveries immediately but no later than within one week after acceptance of the deliveries and services, and notify us of any hidden defects within one week after they are identified. The complaint must be sufficiently justified and substantiated with evidence. Sections 377, 378 of the Austrian Commercial Code (UGB) apply.
- (5) Technical advice and recommendations we provide are based on appropriate testing but are beyond contractual obligations; in particular, assessing the suitability of the goods ordered or recommended by us for the contractual purposes intended by the customer is entirely the customer's responsibility.
- (6) Defects that occur due to improper and/or incorrect use of the goods shall not constitute a defect. The manufacturer's instructions on proper and correct use are to be observed in particular.
- (7) If the complaint about the defect is justified, we are entitled to choose whether to remedy the defect, supply any missing items and/or replace the goods within a reasonable period of time. We are permitted to make several improvements and replacement deliveries.
- (8) If the customer assert an existing warranty right, we are obligated to bear all necessary costs, in particular transport, travel, labour and material costs as long as these are not increased by the purchased item having been moved to a location other than the place of fulfillment.
- (9) The warranty period shall be a maximum of 12 months from the time the risk is transferred. The customer must prove that a defect exists. The presumption of defectiveness according to sec. 924 of the Austrian Civil Code (ABGB) (reversal of the burden of proof) as well as right of recourse according to sec. 933b of the Austrian Civil Code (ABGB) are excluded.
- (10) Defects to partial deliveries do not constitute rights regarding the remaining partial deliveries.
- (11) In any case, the customer shall lose its warranty claims if it or an unauthorised third party interferes with the goods and make and/or attempt to make repairs.

Sec. 6 Limitation of liability

- (1) Unless this conflicts with mandatory law or unless otherwise agreed, we shall only be liable for damages caused by our gross negligence or intent. In case of gross negligence, liability is limited to the value of the contract, however no more than the amount covered by our business liability insurance. These liability limitations do not apply to compensation for personal injuries.
- (2) We are not liable for indirect damages, lost profits, loss of interest, loss of savings, consequential damage and damage to property and damages from claims of third parties, as well as damages resulting from unsuitable or improper use, natural wear and tear, incorrect or negligent handling or storage.
- (3) Any liability for damages that has been excluded and/or limited also applies to the personal liability of our employees, workers, assistants, representatives and agents.
- (4) The right to rescind the contract due to laesio enormis according to sec. 924 of the Austrian Civil Code (ABGB) is excluded. This does not apply to consumers.

Sec. 7 Retention of title

- (1) We retain title to the purchased item until all payments from the business relationship with the customer have been received. In the event of cheque procedure, the retention is extended to the encashment of the accepted cheque by the customer and does not expire when we have credited the cheque.
- (2) If a current account exist between the customer and us, we retain title to the purchased item until all payments outstanding on the current account have been received. This retention relates to the acknowledged balance.
- (3) If the customer is in breach of the contract, particularly if it is in arrears, we are entitled to demand the surrender of the purchased item. The demand for the surrender of the purchased item shall also constitute withdrawal from the contract. After the purchased items has been recovered, we are entitled to offset the proceeds thereof against the customer's obligations – minus appropriate utilisation costs.
- (4) During the retention period, the customer must handle the purchased item with care. The customer is, in particular, obligated to adequately insure the goods at replacement value against fire and water damage and theft at its expense, and provide written confirmation thereof at our request. The customer must perform any required maintenance and inspections at its expense on time and to the necessary extent.
- (5) The customer must immediately inform us in writing of any pledges or other interference by third parties so that the assertion of our rights is ensured.
- (6) The customer is entitled to resell the purchased item in the regular course of business. However, it now assigns all receivables due from its buyers or third parties arising from resale to us in the amount of our final invoice (incl. VAT) amount regardless if the goods are sold without or after processing. The customer shall still be authorised to collect the receivables from resale. This does not affect our right of collection. However, we undertake not to collect the receivables as long as the customer meets its payment obligations from the proceeds received, does not fall in arrears, no settlement or insolvency proceedings have been filed and no suspension of payments exist. If this is the case, we can demand that the customer discloses to us the assigned claims and their debtors, provides all necessary information for the collection, supplies the relevant documents and informs the debtors (third parties) of the assignment. If we have a current account with the customer, the receivables assigned to us in advance by the customer shall also apply to the acknowledgment balance and, in the case of insolvency of the customer, to the then existing 'causal' balance.
- (7) Any processing or alterations of the purchased items by the customer are always performed on our behalf. If the purchased item is processed with goods that do not belong to us, we shall acquire co-ownership of the new item in proportion of the value of the purchased item (invoice end amount incl. VAT) to the other processed items at the time of processing. The same conditions that apply to the purchased item delivered subject to retention of title apply to the item obtained through processing.
- (8) If the purchased items is inseparably combined with goods that do not belong to us, we shall acquire co-ownership of the new item in proportion of the value of the purchased item (invoice end amount incl. VAT) to the other combined items at the time of combination. If the combination results in the customer's goods constituting the main part of the new item, then it is agreed that the customer assigns proportional ownership to us. The customer shall store the resulting solely or jointly owned item for us.

- (9) The customer shall assign any receivables due from third parties arising from the combination of the purchased items with a fixed property to us as security for our claims against the customer.
- (10) We undertake to release the securities due to us on the customer's request if the realisable value of our securities exceeds the secured claims by more than 20% and not only temporarily. We retain the right to decide which securities should be released.

Sec. 8 Foreign trade law

Our quotes apply under the condition that their fulfilment is not contradicted by German-European or US export control regulations in the form of prohibitions (US embargos only as far as they are allowed under EU law) or missing permits where permits must be obtained. The customer is obliged to provide us with all information and documents necessary for the export, import or delivery, such as the name and address of the end customer as well as the place and purpose of use of the goods. If the customer does not provide this information, the quote shall be invalid. Delays due to export control checks or permit procedures shall extend the delivery times and agreed terms accordingly. If permits are denied or other limitations on delivery exist, this quote shall be legally void and a contract that is entered into relating to these goods shall be deemed as not concluded. Any damage claim in connection with the denial or delay of permits or other export limitations is excluded unless this is caused by intent or gross negligence of DSI.

Sec. 9 Use of products

The customer shall be solely responsible for the use of the purchased items. It shall ensure compliance with all applicable provisions as well as relevant technical instructions and information. If we assign staff within the scope of use, we shall select suitable qualified staff. Staff we provide shall act in an advisory capacity only; we do not assume any liability for this.

Sec. 10 Place of jurisdiction / place of fulfilment / contractual language / arbitration

- (1) If the customer is a merchant, the place of jurisdiction shall be our registered place of business. However, we also have the right to file suit at the customer's general place of jurisdiction.
- (2) Unless contradicted by mandatory legal provisions, Austrian law shall apply exclusively to the exclusion of the principles of the conflict of laws under private international law (e.g. IPRG, Rome I-VO etc.) and the UN Convention on the International Sale of Goods.
- (3) Unless otherwise stated in the order, the place of fulfilment shall be our registered place of business.
- (4) The contractual language shall be exclusively German, unless otherwise expressly agreed in writing.
- (5) Furthermore, we are also entitled to have all disputes arising out of or in connection with this contract settled in an arbitrary proceeding according to the Rules of Arbitration of the International Chamber of Commerce (ICC) by three arbitrators appointed in accordance with these Rules. Such disputes are also exclusively subject to Austrian law with the exception of the valid version of referral norms. The application of the UN Convention on the International Sale of Goods is expressly excluded. The place of arbitrary proceedings is Vienna, Austria. The language of the proceedings shall be German.