diebold
Goldring - Werkzeuge

Helmut Diebold GmbH & Co. Goldring-Werkzeugfabrik TERMS AND CONDITIONS OF DELIVERY AND PERFORMANCE

As of: 01. February 2022

I. Validity and conclusion of contract

1. Our terms of delivery, performance and assembly (hereinafter referred to as "GTC") apply to all our offers, deliveries and services. Our GTC apply only to companies within the meaning of § 14 of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB), a legal entity under public law or a special fund under public law (hereinafter referred to as the "Customer"). In addition, our applicable charge rates apply respectively at the time of the conclusion of the contract.

2. Our GTC and charge rates apply without renewed express reference to future offers, deliveries and services to the Customer.

3. Subject to contractual agreements, solely those regulations listed under Section I.1. apply. Other regulations do not become part of the contract, even if we do not explicitly contradict them.

4. Our offers are non-binding. A contract is only concluded through our written order confirmation or through our delivery. The scope of our services is conclusively determined through our written order confirmation together with its written annexes or, if no order confirmation exists, through our offer.

5. Collateral agreements and modifications shall only become effective with our written confirmation. This also applies to the termination of these GTC.

6. Our performance of the contract, with respect to those service areas that are covered by state export regulations, is subject to us being granted the required permits.

7. The documents transmitted and the information provided by us, such as illustrations, drawings, information on weights and measurements, are only binding insofar as we expressly list these as part of the contract or explicitly refer thereto.

8. We reserve our ownership rights and copyright to all information and transmitted documents (e.g. samples, cost estimates, drawings, documentation), including in electronic form. They may be neither withheld nor copied nor otherwise duplicated by the Customer, nor may they be made accessible to third parties without our prior written consent.

9. The written form can be substituted via fax, however it cannot by replaced electronically according to § 126a of the German Civil Code or through text form according to § 126b of the German Civil Code.

II. Prices and payment

1. Our prices apply DAP (Delivery at Place), Incoterms 2020, plus VAT in the respective statutory amount, packaging and loading as well as other incurred costs.

a) For services within the European Union, the Customer must provide its VAT identification number in good time before the contractually agreed delivery date as proof of its exemption from value added tax. In the event that the timely and complete notification has not been made, we reserve the right to charge the applicable sales tax.

b) For services outside the European Union, we are entitled to recalculate the statutory sales tax if the Customer does not send us an export certificate within one month of the respective dispatch.

2. Cost estimates are binding only in writing.

3. The minimum order value is €150.00 gross; lower order values will be charged with a handling fee of €25.00.

4. For custom-made products or projects the Customer must make payments as follows:
- 30% payment in advance upon receipt of the order confirmation,
- 60% upon the performance or notification of the delivery/acceptance readiness in terms of the main parts,
- 10% upon transfer of risk.

5. Repairs and other services shall be billed at the current respective charge rates, which can be requested from us. Additional fees shall be charged for work outside of normal working hours. Travel and waiting times are deemed to be working hours.

6. In case of late payment, we are entitled to make further deliveries depending on the full payment of the receivables in default.

7. The Customer can only offset against the grounds and the amount in accordance with undisputed or legally established counterclaims, or by exercising a right of retention.

8. Payments by the Customer are due upon receipt of our invoice and are to be made without any deductions to one of our accounts within 30 days. The Customer shall be in default without further warning 30 days after receipt of the invoice, unless other reasons for delay have been agreed upon (for example, a payment reminder or a shorter agreed-upon payment period or a fixed-date payment period).

9. The prices of the offer apply only upon ordering the full scope of offered services.

10. In case of custom-made products, we are entitled to deliver and invoice up to 10% more or less than the agreed quantity.

11. In case of wrong order by the Customer and return of the goods accepted by us, we will issue a credit note with deduction of 10% of the order value for storage costs. But at least we will retain €25.00 net plus any necessary costs of reworking. If measuring or test equipment is returned it must be checked and recalibrated. These costs will also be deducted from the credit note.

12. Unless otherwise agreed upon in writing, we shall be entitled to adjust the prices and/or freight rates accordingly, provided that there is an increase to our costs in terms of wages and salaries, raw or operating materials, energy costs, freight charges and customs duties or other materials. This right also applies to deliveries and services from a continuing obligation.

13. If terms of payment are not respected, or if circumstances become known or apparent which arouse justified doubts about the creditworthiness of the Customer based on our obligatory commercial judgement, including those facts that had already existed at the time of the conclusion of the contract but were not known to us or had to be made known to us, without prejudice to any further legal rights in these cases we shall therefore be entitled to discontinue further work on current orders or deliveries, and to request advance payment or the provision of sureties for outstanding deliveries and, upon the unsuccessful lapse of a reasonable grace period for the provision of such collateral, to withdraw from the contract without prejudice to any other statutory rights. The Customer is obliged to compensate us for all damages caused by non-execution of the contract.

14. All our receivables shall be due immediately in case of any default in payment by our Customer, the cessation of payments, or upon an application for opening insolvency proceedings with regard to the Customer's assets. This also applies if payment terms are agreed upon or insofar as the receivables are not yet due for other reasons.

III. Performance, transfer of risk, acceptance

1. The agreed delivery date is a target delivery date, unless expressly agreed otherwise in writing.

2. The agreed delivery date begins at the earliest with the conclusion of the contract, and presupposes the clarification of all commercial and technical issues. The start of the delivery date presupposes that the Customer has provided all the necessary documents or permits, and has made any advance payments that have been agreed upon.

3. The observance of a delivery date is subject to the correct and timely self-delivery.

4. We reserve the right to reasonable partial services.

5. Incoterms 2020 are deemed as agreed. Deliveries are carried out DAP (Delivery at Place), unless otherwise agreed, ex place of manufacture to delivery address customer.

6. The regulations on the transfer of risk also apply if partial services are performed or if additional services are to be provided by us.

7. If the delivery or the acceptance is delayed or omitted due to circumstances that are not attributable to us, the risk shall pass to the Customer from the day of notification of readiness for delivery or readiness for acceptance. We undertake to conclude the insurance requested by the Customer at its expense.

8. The Customer may not refuse receipt of the service on account of insignificant defects and quantity deviations, without prejudice to its rights under Section VIII.

IV. Retention of ownership

1. The ownership of delivery items shall be transferred to the Customer only after the complete payment thereof. Insofar as the validity of the retention of ownership is tied to special conditions or special formal requirements in the country of destination, the Customer shall bear the responsibility for their fulfilment.

2. The Customer may neither pledge, nor sell nor assign as security the delivery item prior to the transfer of ownership. In the event of seizure, confiscation or other dispositions by third parties, the Customer must point out our property and has to notify us immediately.

3. The Customer is obliged to treat the retained goods with care; in particular, it is obliged to adequately insure these at replacement value and at its own expense against damages due to fire, water and theft. If maintenance and inspection works are required, the Customer must perform these in a timely manner and at its own expense.

4. An application for the opening of insolvency proceedings over the assets of the Customer entitles us to withdraw from the contract and to request the immediate return of the delivery item. The same applies if the Customer does not duly fulfil its obligations under this contract, in particular its payment obligations.

5. If the Customer headquarters are based within the Federal Republic of Germany, the following also applies:

a) Notwithstanding Section IV.1., we reserve the ownership of the delivery items until all our receivables against the Customer are satisfied from the current business relationship.

b) Notwithstanding Section IV.2., the Customer is entitled under the following conditions to resell or to process delivery items which are subject to the reservation of ownership in the ordinary course of business. It may resell the delivery items only subject to reservation of ownership, if the delivery items are not paid in full immediately by an acquiring third party. The right to resell shall cease to apply if the Customer is in default of payment. The Customer shall assign to us, upon the conclusion of the contract, all receivables arising from a resale or from other legal grounds. In the case of co-ownership, the assignment shall include only the share of receivables corresponding to our co-ownership.

c) The Customer shall remain authorised even after the assignment to collect the receivables assigned to us, as it complies with its payment obligations to us pursuant to the contract. We may at any time request that the Customer disclose to us the assigned receivables as well as their debtors. In such cases, the Customer must provide us with all the information necessary for the collection, hand over the necessary documents and inform the debtor of the assignment.

d) The processing of reserved goods shall always be carried out by the Customer for us. If the reserved goods are mixed, blended, combined or processed with other delivery items that are not part of our property, we shall acquire the (co-)ownership of the new goods in proportion of the invoice value of the reserved goods to the other processed objects at the time of processing. If our goods are mixed, blended, combined or processed with other moveable objects into a single article, and the other article is to be considered as the main component, it is agreed that the Customer shall assign ownership to us proportionately, insofar as the main component belongs thereto. The Customer shall store the property or the co-owned property for us. For the article resulting from mixing, blending, combining or processing, the same applies for that matter as for the reserved goods.

e) The right of the Customer to dispose of the reserved goods, to process these or to collect the assigned receivables becomes defunct without express revocation, when insolvency proceedings are opened with regard to the assets of the Customer, or if it is declined due to lack of assets, upon suspension of payments, upon the filing of an application for the opening of insolvency proceedings by the Customer or a third party, or in the event of insolvency or over-indebtedness. In these cases, we have the right to withdraw from the contract after the lapse of a reasonable time period, with the result that we may take back the reserved goods. The Customer is obliged to hand over the reserved goods. The proceeds of every utilisation of the reserved goods shall be credited to the Customer—less the costs of utilisation—onto its obligations towards us.

f) We undertake to release the securities we are entitled to insofar as their invoice value exceeds not just temporarily our outstanding (residual) receivables by more than 20%.

V. Performance deadline

1. Compliance with the agreed-upon performance deadline presupposes that all commercial and technical questions between us and the Customer have been clarified, and that the Customer has fulfilled all its obligations. If this is not the case, the performance deadline shall be extended appropriately. This does not apply if the delay is to be attributable to us.

2. Compliance with the performance deadline is subject to correct and timely self-delivery. We shall notify of any recognisably imminent delays.

3. The performance deadline is deemed as met if readiness for delivery is communicated up until its expiration date. Insofar as an acceptance has to take place, the acceptance date is authoritative, alternatively our notification of readiness for acceptance.

4. If non-compliance with the performance deadline is due to force majeure, labour disputes, a delay in obtaining government permits or other events beyond our control, the performance deadline shall be extended appropriately. This also applies if we should be in default with the provision of our services. We shall notify of recognisably imminent delays.

5. If delivery or acceptance of the delivery item is delayed for reasons which are attributable to the Customer, the costs incurred by the delay shall be charged thereto. The assertion of further compensation for damages remains reserved.

6. If the Customer is in default of acceptance or is otherwise responsible for a delay of the dispatch, we can store the products at the risk and expense of the Customer, and calculate as delivered ex Works. After the setting and the unsuccessful expiry of a grace period for the acceptance of the products, we can withdraw from the contract and request compensation for damages instead of the service performance. Further rights remain unaffected. It is not necessary to set a grace period if the Customer seriously and finally refuses acceptance or if it is obvious that it is not in the position to pay

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the purchase price or to accept the delivery, even within the grace period. The amount of 20% of the order value shall be applicable as damages. The damage shall be settled with an advance payment, where appropriate. The parties are free to prove that the damage was in fact higher or lower.

VI. Performance delays, impossibility of performance

1. In the case of partial impossibility of performance, the Customer can only withdraw from the Contract if the partial performance is proven to be without interest for the Customer. If that is not the case, the Customer must pay the contract price attributable to the partial performance. Otherwise, Section IX applies. If the impossibility of performance occurs during the default of acceptance or through the fault of the Customer, it shall remain bound to a service in return.

2. If the impossibility of performance is not attributable by any contracting party, we are entitled to a corresponding part of the remuneration of our performed work.

3. Within the scope of statutory regulations, the Customer is entitled to withdraw if—taking into account the statutory exceptions—a reasonable time period set for us during our default elapses unsuccessfully in terms of performance provision.

4. Further receivables arising from default in delivery are governed exclusively by Section IX.

VII. Acceptance

1. If the Customer refuses acceptance without justification or without stating reasons, we can give it a period of 14 days in writing to explain the acceptance. The acceptance is deemed to have taken place provided that the Customer does not accept the work within this period or specifies in writing the major defects identified thereby.

2. The Customer is only entitled to refuse acceptance if the defect negates or considerably reduces the usual and/or contractually presumed use of the work and/or its value. If the work contains defects which do not entitle to a refusal of acceptance, the acceptance must take place subject to the removal of the defects.

3. Refusal of acceptance or reservations against acceptance must be made immediately in writing, stating and describing the apprehended defect.

4. The use of the delivery item by the Customer for production purposes is deemed as acceptance.

VIII. Claims for defects

1. In the case of material defects and defects of title, which already exist at the time of the transfer of risk in accordance with Section III, the following claims for defects are applicable to the Customer:

a) Claims for defects by the Customer presuppose that it has complied properly with the inspection obligation and the obligation to give notice of defects incumbent thereon under § 377 of the German Commercial Code (*Handelsgesetzbuch* – HGB).

b) At our discretion, we shall deliver a defect-free item or remedy any defects, provided that the delivery item was already demonstrably defective at the time of the transfer of risk in accordance with Section III. The Customer must notify of the defects immediately and report such in writing, stating and describing the apprehended defect. We reserve the right of ownership to parts replaced in the exchange procedure.

c) The limitation period of the Customer claims for defects is one year (subject to the following provisions of this lit. c), calculated from the statutory start of the limitation period. If we have fraudulently concealed a defect, the statutory periods are valid for any claims for damages. The statutory deadlines also apply to the statute of limitations of any claims for damages by the Customer due to defects if we are guilty of intent or gross negligence, or the claim for damages is based on injury to life, limb or health.

d) No claims for defects exist in particular in the following cases:
Natural wear and tear, excessive use, incompetently performed procedures or repair work by the Customer or third party, incomplete or incorrect information by the Customer, unsuitable or improper use, faulty operation, assembly or commissioning, faulty or negligent treatment, improper maintenance, use of unsuitable equipment/replacement materials, adverse environmental conditions unknown to us as well as chemical, electrochemical or electrical influences.

e) Furthermore, there may be no claims for defects if the Customer makes changes to the delivery item without our consent or allows such changes by a third party. This does not apply if the Customer proves that the defects in question have not been caused by changes made thereby or by a third party.

f) The Customer must grant us the time and opportunity required for rectification/supplementary performance. We shall not be liable for the resulting consequences if we are not granted this opportunity. Only in urgent cases of a threat to operational safety or to prevent excessive damage, whereby we have to be informed immediately, the Customer has the right to rectify the defect itself or have it rectified by a third party, and to request from us compensation for the necessary expenses.

g) In the case of rectification, we shall bear all necessary expenses for the purpose of remedying the defect, in particular transport, travel, labour and material costs. However, we shall only pay out for the transport costs from the location to which the purchased goods were delivered as intended, and maximally up to the amount of the purchase price. In the case of subsequent improvement, the statutory period of limitation for claims based on defects shall be extended by 3 months for replaced parts and shall expire at the earliest upon expiry of the original warranty period.

h) If a reasonable deadline set for us for the rectification of a defect elapses fruitlessly, the Customer can withdraw from the contract, taking into consideration the statutory exceptions. If there is only a minor defect, the Customer is only entitled to a reduction in the purchase price. The right to a reduction of the purchase price is otherwise excluded.

i) If the use of the delivery item leads to an infringement of intellectual property rights or copyright violation, in principle, we shall provide the Customer with the right for further use or modify the delivery item in a way that the intellectual property right infringement or copyright violation no longer exists. The parties are entitled to withdraw if this is not possible on economically reasonable terms or within a reasonable time-frame.

j) Subject to Section IX., our obligations mentioned in Section VIII.1.i. are conclusive in cases of intellectual property rights infringements or copyright violations.

k) A claim for supplementary performance due to intellectual property right infringement or copyright violation exists only if the Customer informs us immediately in writing, stating and describing the alleged intellectual property right infringements or copyright violations, the Customer does not admit the violation and supports us to the appropriate extent in the
defence of the asserted claims or, respectively, allows us to carry out the modification measures according to Section VIII.1.i., all defensive measures, including out-of-court regulations, remain reserved to us the intellectual property right infringement or copyright violation is not based on a Customer's instruction or specification, the intellectual property right infringement or copyright violation had not been caused by the fact that the Customer changed the delivery item on its own initiative, or used it in a way that was not in conformity with the contract.

2. When selling used goods, insofar as a liability is not compulsory by law, claims for defects are excluded.

IX. Liability

1. Regardless of the legal reason, we are only liable for damages

- insofar as we, our legal representatives or vicarious agents are guilty of intent or gross negligence,
- upon culpable violation of essential contractual obligations,
- upon culpable injury to life, limb and health,
- in the case of defects which we have fraudulently concealed or whose absence we have guaranteed,
- insofar as, pursuant to product liability law, there exists a liability for personal damages or property damages concerning privately used items.

We are not liable for further claims for damages.

2. An essential contractual obligation is a duty, the fulfilment of which enables the proper execution of the contract in the first place, and on whose compliance the contractual partner regularly relies on and may rely on.

3. However, in the case of a slightly negligent breach of essential contractual obligations (excluding intent and gross negligence), we are only liable restricted to reasonably foreseeable damages being typical for the contract.

4. The foreseeable damages being typical for the contract must be determined in the amount of the contract value of the service concerned.

5. Our liability for the destruction of data is limited to the cost that would be necessary for their reconstruction, if this data had been properly secured by the Customer.

X. Insurance contract claims

Insofar as we have direct claims—as a co-insured party—against the insurer of the Customer with regard to the delivery item, the Customer shall have already given us its consent to the assertion of these claims.

XI. General

1. All taxes, fees and charges in connection with the service outside the Federal Republic of Germany shall be borne by the Customer and, where appropriate, reimbursed to us.

2. Personal data is stored by us in compliance with the statutory requirements.

3. We do not refund the return transport costs of the packaging.

4. The Customer must procure at its expense the permits and/or export and import papers required for its use of the products.

5. Our headquarters are the place of performance and fulfilment for the obligations of the Customer towards us.

6. Should individual conditions of these terms and conditions or of the contract be or become wholly or partially ineffective, the remaining conditions shall remain unaffected.

XII. Applicable law, place of jurisdiction

1. The exclusive place of jurisdiction for all claims arising from the business relationship, including those arising from cheques and bills of exchange, is Hechingen, Germany, provided that the Customer is a businessperson, a legal entity under public law or a special fund under public law. However, we are also entitled to take action against the Customer at its general place of jurisdiction.

2. If the Customer is located outside of the Federal Republic of Germany, arbitration shall take place at the International Chamber of Commerce in Paris under the ICC Rules of Arbitration. The decision shall be final. It shall be made and justified by three judges. The participation of our insurer is possible according to the possibilities of participation in the ordinary legal process. We reserve the right to bring an action before a legal place of jurisdiction.

3. The law of the Federal Republic of Germany applies, excluding all conflict-of-law rules and the United Nations Convention on the International Sale of Goods (CISG).