

General terms of supply (ALB) of devedem GmbH, status March 2006 for use in business transactions with commercial enterprises

I. General

The contractual provisions negotiated separately for each individual contract and our General Terms of Supply apply exclusively to our deliveries. We do not recognise any other general terms of business – even if goods are supplied without reservation. In the event of long-standing business relations or general agreements, these present General Terms of supply also apply to all future supply relations until new terms of supply take effect. The purchaser expresses his consent to our terms by accepting our goods, if not before. All agreements must always be made in writing. If, after a contract has been made or goods supplied, it is found that the purchaser is not, or is no longer, creditworthy, we are entitled to rescind the contract or to require immediate payment of the goods supplied. Any assignment of claims is subject to our consent.

II. Advice

We provide all forms of advice, whether verbal or written, to the best of our knowledge and on the basis of our experience. Data and information on the suitability and application of our goods are not binding and do not exempt the purchaser from performing his own tests and trials. The purchaser is responsible for complying with legal and public authority requirements when using our goods.

III. Offer, Calling, Offer Documents

We can accept orders within 6 weeks. Our offers are without commitment, inasmuch as our confirmation of order does not state anything to the contrary. Call orders can be placed for a maximum of 12 months and call dates and quantities must be specified when orders are placed. We reserve the ownership rights and copyrights to all written material that we supply. Such material must not be revealed or passed on to third parties without our written consent. If no order is placed, all the written material must be returned immediately on request. The purchaser's written material can be made accessible to third parties with whom we intend to place orders for supplies or services. Purchase orders should always be placed in writing; telephone orders will be performed at the purchaser's risk.

IV. Prices, Price Alterations

1. All our prices are quoted ex works, not including value-added tax at the rate applicable on the date of supply, customs, freight, packaging and insurance costs. Value-added tax will be shown separately in the invoice. Prices apply for each individual order and not with retro-active effect or for future orders. Repeat orders are deemed to be new orders.
2. We reserve the right to increase our prices to a reasonable extent if price rises - due, in particular, to wage settlements, market cost prices or material price increases - occur after contracts have been made. Evidence of the same will be provided to the purchaser on request.

V. Scope of Supply, Measuring Methods, Industrial Property Rights, Data Protection

Our confirmation of order constitutes the criterion for the content and scope of the contract. Partial deliveries are permitted inasmuch as no disadvantages for use are produced thereby. They will be considered as performance of separate contracts and must be paid separately. In the event of default on payment for a partial delivery, we have the right to refuse further performance of the order. On production grounds, we reserve the right to supply more or less than the ordered quantity within the limits customary in trade, but not exceeding 10% more or less than the agreed purchased quantity. Technical changes are permissible if they prove necessary for production reasons, due to product updating, as a result of legal requirements or for other reasons. When the purchaser learns of changes, he shall notify us immediately if he considers them to be inadmissible. If certain temperatures, times and other measuring or control values are to apply to tests, measuring methods must be stipulated and recognised by both sides before the start of supply. If no such stipulations are made, our measuring methods will be deemed to apply. Orders based on drawings, sketches or other data supplied to us are performed at the purchaser's risk. If we infringe industrial property rights by performing such orders, the purchaser shall hold us harmless in relation to claims made by the holders of such industrial property rights. Any further damages will be paid by the purchaser. We have the right to process data in compliance with the Federal Data Protection Act.

VI. Supply Period

1. The supply period begins no earlier than on dispatch of the confirmation of order. The supply period we have quoted will not begin until all technical matters have been settled. This supply period can only be observed subject to punctual receipt of all written material to be supplied by the purchaser and of the necessary licences and releases as well as punctual clarification and approval of plans, compliance with the agreed terms of payment and other obligations, together with punctual supply of the items to be supplied by the purchaser. If this is not the case, the supply period will be extended by a reasonable term. The supply periods we quote are approximate. Although the required care will be taken in arranging congruent cover transactions, the supply period is specified subject to correct and punctual supply to us. For compliance with our supply obligations, we require punctual and due performance of cooperation obligations by the purchaser.
2. The supply period is deemed observed if the consignment is dispatched within said period or if notification of readiness for shipment has been given. If delivery is delayed for reasons for which the purchaser is responsible, the supply period is deemed observed if notification of readiness for shipment is given within the agreed period. Calls under call orders must always be timed so that the final delivery is made no later than one year after our receipt of the order.
3. War, civil war, export or trading restrictions due to changes in political conditions, strikes, lock-outs, operational disruptions, operational restrictions, supply restrictions imposed by public authorities or agencies similar to public authorities, such as the FDA, and similar events which make contractual performance impossible or unreasonable for us will be considered to be force majeure and release us from our duty to supply in due time. In such cases, we have the right to either, at our discretion, lengthen the supply period for as long as such force majeure continues to apply or to rescind the contract in whole or in part. The purchaser has no claim to compensation for damages thus incurred.

VII. Deliveries to USA/Canada

If we supply to purchasers outside of USA/Canada and said purchasers then export the supplied products to USA/Canada, they shall take out and maintain a product liability insurance policy with minimum coverage of 5 million euros.

VIII. Cancellation Costs, Returns

1. If a purchaser cancels an order he has placed, we can require 10% of the sales price for costs incurred for processing the order and for loss of profits, this being without prejudice to a claim for higher damages if actually incurred. The purchaser has the right to provide evidence of lower damages.
2. The purchaser has no right to rescind the contract if he ordered customised articles, sterile products and implants.

IX. Packaging

If no other alternative agreement has been reached, we ourselves will stipulate the type and scope of packaging. Packaging will be chosen with the necessary care to the best of our knowledge. Disposable packaging becomes the property of the purchaser.

X. Passage of Risk and Transportation

1. Fundamentally, supply is always agreed to be ex works. The risk passes to the purchaser as soon as the consignment is delivered to the person performing transportation or as soon as it has left our warehouse for shipment. Even if prepaid delivery has been agreed, shipment is at the purchaser's risk. If shipment is delayed at the purchaser's request, the risk shall pass to said purchaser when notification of readiness for dispatch is given. If nothing has been agreed to the contrary in writing, we will specify the means and route of transportation. If goods are damaged or lost during transportation, preparation of a status report must be arranged and we must be notified immediately.
2. If dispatch or delivery is delayed at the instigation of the purchaser, we can claim a warehousing fee amounting to 1% of the invoiced amount for each month or part of a month but totalling no more than 5% of the net figure, this being subject to provision of evidence of higher damages. The purchaser has the right to provide evidence of lower damages.

XI. Violation of obligations

In the event of compensation due to violation of an obligation, our liability for slight negligence is limited to the damages which we have caused which are foreseeable and typically associated with the actual transaction. Apart from this, we are only liable for intent and gross negligence. This does not affect our liability for culpable injury to a person, to health or to body, including death.

XII. Payment Terms and Default on Payment

1. Invoices for deliveries of goods are payable net (without any deductions) within 30 days of the date of the invoice. All payments are to be made without charges. If paying by cheque or bill of exchange, the purchaser shall pay discount charges, collection fees and any other bank charges, even if this has not been expressly agreed. Payments will be credited to costs first, then to interest and then to the oldest principal debt.
2. In the event of default on payment, we can require default interest at a rate of 8 % p.a. above the then applicable basic rate under Section 247 of the Civil Code. Evidence of higher default damages can be provided. The purchaser only holds rights to offset our claim or to enforce a lien if his counter-claim is undisputed or has been legally established in a final form.
3. If we learn that the purchaser's bill of exchange has been protested, compulsory execution measures have been instigated against him or that some other deterioration in his assets has occurred, we can require immediate payment of debts not due and of receivables for which a bill of exchange or cheque has been presented. In such cases and if due invoices have not been settled despite reminders being sent, we can require prepayment or security for future deliveries.

XIII. Liability for Defects

1. A notice of defects under Section 377 of the German Commercial Code shall only be deemed timely if we receive it immediately - no later than within a period of 5 working days of receipt of the consignment. For concealed defects, this period applies as of the time of discovery of the defect. A notice of defects does not release the purchaser from his obligation to meet his payment obligations. If an item proves to be defective, we can, at our discretion, either remedy the defect or supply a replacement, this to be within a reasonable extension period to be specified by the purchaser. If we decide to remedy the defect, we will only pay costs amounting to no more than the remuneration agreed for the consignment. The purchaser has no right to remedy the supplied item himself without obtaining our prior written consent, even in urgent cases. If the defect is not successfully remedied or the item replaced, the purchaser has, at his discretion, the right to rescind the contract or reduce the price paid. Further claims by the purchaser are ruled out, unless we caused the defect with intent or through gross negligence or in cases of injury to life, body or health or of malicious concealment of the defect. Thus we are not liable, in particular, for damages consequential to defects which are incurred outside of the supplied item itself or for loss of profits or other financial losses suffered by the purchaser. In the event of gross negligence, our duty to render compensation is limited to typical, foreseeable damage.
2. As far as the nature of the goods is concerned, only the manufacturer's product description is deemed agreed. No defect claims for no more than minor deviations from the agreed nature of the goods will be accepted. Public statements, promotion or advertising by the manufacturer do not constitute contractual data on the nature of goods. We will only give the purchaser guarantees in the legal sense by special agreement. Data in product descriptions and product specifications does not represent a guarantee for the nature of the product or a guarantee that the product will retain a certain quality for a certain time, unless such data has been identified as describing the nature of goods as defined under Section 434 of the German Civil Code. Possible damages claims under Section 437 no. 3 of the German Civil Code are limited to our product liability insurance coverage of a maximum of 1 million euros and to the amount covered by our product recall insurance, namely a maximum of 0.1 million euros. This does not apply if liability is compulsory due to injury to life, body or health. Our compensation obligation for property damage in the event of negligent causing of damage is restricted to the compensation paid limited by our product liability insurance, which is a figure of no more than 1 million euros.
3. The purchaser only holds recourse claims against us under Section 478 of the German Civil Code if said purchaser has not made any agreement with his customer that go beyond statutory defect claims.
4. The limitation period for defect claims is 6 months, calculated from the time at which the product was handed over. This limitation period shall also apply to claims for compensation for damages consequential to defects, inasmuch as no claims resulting from tort are made and the claim is not based on injury to life, body or health.

XIV. Repair Work

Our liability for damage to items given to us for repair is limited to intent and gross negligence. In the event of slight negligence, we are only liable if there has been a breach of major contractual obligations. Our liability in such a case is limited to typical, foreseeable damage. This does not affect our liability for culpable injury to a person, to health or to body, including death.

XV. Contract Adjustment, Liability, Holding Harmless, Recourse Waiver

1. The contract shall be adjusted if unforeseen events lead to a major change in the business significance or content of the supplies or services or have a major effect on our operations. If such adjustment is not economically feasible, we have the right to rescind the contract.
2. Inasmuch as our liability for damages is excluded or restricted, this shall also apply to all claims by the purchaser for reason of culpa in contrahendo or breach of subsidiary obligations or any claims by the purchaser based on producer's liability under Section 823 of the German Civil Code. The same applies in the event of subsequent impossibility of performance. Inasmuch as our liability is excluded or restricted, this also applies to the personal liability of our employees, representatives, assistants and vicarious agents.
3. The purchaser shall hold us harmless in relation to claims made by third parties if there is no proof that damage was not caused by medical malpractice or some other type of error.
4. The purchaser shall arrange with his insurance company for a recourse waiver in favour of the supplier as under Sections 67 of the German Insurance Contract Act (VVG) and 4 1 1 of the German standard conditions of third party liability insurance (AHB).

XVI. Retention of Title

1. We reserve the title to the supplied product until all outstanding receivables have been paid that have been produced by the business relationship with the purchaser at the time at which the contract is made, including all receivables outstanding at said time as a result of follow-up orders, repeat orders or orders for replacement parts. If the value of all the security interests which we hold exceeds the total of all secured claims by more than 20%, we will release an equivalent part of the security interests at the purchaser's request.
2. If the purchaser fails to conform with the contract, especially if he is in default on payment, we have the right to repossess the products supplied. Repossession or attachment of supplies by us does not constitute rescission of the contract, unless we make an express written statement to this effect. We are authorised to sell the products and the proceeds of such sale will be credited to the purchaser's liabilities, with deduction of reasonable sales costs. The purchaser must treat the supplied products with due care. In particular, he must take out adequate insurance for the reinstatement value of the products in the event of losses through fire, water, storm and tempest, burglary and theft. Security claims held when such losses occur are to be assigned to us. If maintenance and servicing work is necessary, the purchaser must perform this promptly at his own expense.
3. The purchaser must neither pledge the supplied products nor assign them in security. In the event of attachment or other acts of possession by third parties, the purchaser must notify us in writing immediately so that we can file legal action under Section 771 of the Civil Procedure Code and must provide us with all the information and written material that we require to safeguard our interests. Law enforcement officers or other third parties are to be informed that we hold the title to products. If a third party is not able to pay us court and out-of-court costs for legal action under Section 771 of the Civil Procedure Code, the purchaser shall be liable for any losses we incur, subject to reservation of the right to assert further claims for reason of damage to the product itself or alteration or destruction of the same.
4. The purchaser has the right to resell or process the purchased product in the due course of business. He hereby assigns to us all claims equivalent to the final invoiced amount including value-added tax if he holds such claims against his customers or other third parties as a result of the sale of our products, this being irrespective of whether the item was sold with or without further processing. We accept this assignment. If the purchaser and his customer have an open account relationship, the claim assigned to us in advance by the purchaser also relates to the recognised balance or, in the event of bankruptcy of the customer, to the then existing "causal" balance. The purchaser still has the right to collect receivables after assigning them to us but this does not prejudice our authority to collect receivables ourselves. We will not collect receivables ourselves for as long as the purchaser meets his payment obligations from the proceeds he obtains, is not in default on payment and no application for the opening of insolvency proceedings has been filed.
5. Processing or conversion of the supplied product is always performed on our behalf. If the product is processed with other items not belonging to us, we obtain co-ownership of the new product, this being in the proportion of the value of the supplied product to the value of the other processed items at the time of processing. Apart from the above, the same terms apply to the item produced by processing as to the product supplied subject to reservation of ownership. If processing, mixing or combination is such that the purchaser's item is to be considered the main item, it is deemed agreed that the purchaser shall assign us proportionate ownership. The purchaser shall keep on our behalf the item thus produced to which we hold full or partial ownership rights.

XVII. Place of Jurisdiction, Place of Performance, Miscellaneous

1. The place of jurisdiction is in Tuttlingen. We also have the right to sue the purchaser at the court having jurisdiction for his seat of business.
2. Inasmuch as nothing to the contrary results from the contract or confirmation of order, the place of performance is also our seat of business.
3. Exclusively the law of the Federal Republic of Germany shall govern all legal issues arising between the purchaser – even if the latter's seat of business is in a foreign country – and ourselves, with exclusion of application of private international law and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
4. If any single provisions in these General Terms of Supply are invalid, the rest of the provisions are not affected thereby. Invalid provisions are to be revised in a way achieving their original business purpose.

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