

General terms of supply for products and services of the electronics industry

DINSE G.m.b.H. is a supplier under the general terms of delivery of the German electronics industry (ZVEI) and the supplementary agreement on disposal of electrical and electronics equipment (EAR). The registration number is: WEEE-Reg.-No. DE36216260

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I. General regulations

1. For the handling of deliveries or services (hereafter: deliveries) the written declarations from both sides apply. However, general business conditions of the person/company ordering only apply insofar as the deliverer or service provider (hereafter: deliverer) have expressly agreed to them in writing.
2. As regards cost estimates, drawings and other documents (hereafter: documents) the supplier reserves his proprietary rights and copyright exploitation rights without restriction. The documents may only be shared with a third party with the prior consent of the supplier and, if the contract is not awarded to the supplier, must be immediately returned to the supplier upon request. Paragraphs 1 and 2 apply accordingly to the documents of the person/company ordering; these documents may, however, be made accessible to such third parties to whom the supplier has made deliveries as permitted.
3. As regards standard software, the person/company ordering has the non-exclusive right to use the software with the agreed features in its unmodified form on the agreed equipment. The person/company ordering may make a backup copy without express consent.
4. Partial deliveries are permitted, as long as the person/company ordering finds them to be reasonable.

II. Prices and terms of payment

1. The prices are understood as ex factory, excluding the packaging, plus any applicable, lawful sales taxes.
2. If the supplier has undertaken the setup or assembly and nothing else has been agreed upon, then the person/company ordering will bear all required incidental costs in addition to the agreed remuneration, such as travel costs, shipping costs for the hand tools, costs for personal luggage and accommodation allowances.
3. Payments are to be made from the pay office of the supplier.
4. The person/company ordering can only balance those claims, which are undisputed or legally set.

III. Reservation of proprietary rights

1. The objects of delivery (goods subject to retention of title) remain the property of the supplier until all claims made by him against the person/company ordering have been satisfied. If the value of all of the security interests that the supplier is entitled to assert exceeds the amount of all of the secured claims by more than 20 %, the supplier will float a corresponding portion of the security interests upon request of the person/company ordering.
2. For as long as the proprietary rights are reserved, the person/company ordering is forbidden to make any pledges or transfers of security. Resale is only permitted for resellers in the usual course of business and only under the condition that the reseller receives payment from his customer or makes the proviso that the property is only transferred to the customer if the customer has fulfilled his obligation to pay.
3. In the event of garnishments, confiscations, court orders or other intervention by a third party, the person/company ordering must immediately notify the supplier.
4. If the person/company ordering fails to satisfy his obligations, particularly in regard to a delay in payment, the supplier is entitled to a withdrawal or return of the goods after an appropriate grace period set by the person/company ordering has elapsed; the legal regulations governing the dispensability of setting a grace period remain unaffected. The person/company ordering is obliged to publish.

IV. Delivery periods; delays

1. The prerequisites for complying with the delivery periods are the timely receipt of all documents, required approvals and authorizations that are to be supplied by the person/company ordering, in particular, plans and compliance with the agreed terms of payment and other obligations by the person/company ordering. If these prerequisites are not met in a timely manner, the periods are appropriately extended. This does not apply if the supplier is the cause of the delay.
2. If the non-compliance with the deadline is due to force majeure, e.g. mobilization, war, unrest or similar events, e.g. a strike or a lock-out, the deadlines are appropriately extended.
3. If the supplier is the cause of the delay, the person/company ordering can demand compensation for each complete week of the delay, insofar as he can prove that he has suffered damages, in the amount of 0.5 %, up to a maximum of 5 % of the price for the part of the deliveries that could not be put into useful operation due to the delay.
4. Both the person's/company's ordering claims for compensation due to the delay (and claims for compensation in lieu of the service that go beyond the limits stated in No. 3) are ruled out in all cases of delayed delivery, even after a deadline set by the supplier has elapsed. This does not apply in cases where liability is compulsory due to an intentional act, gross negligence or due to harm to life, limb or health. The person/company ordering may only withdraw from the contract within the scope of the legal regulations, insofar as the supplier is the cause of the delay in delivery. A change in the burden of proof to the disadvantage of the person/company ordering is not connected to the aforementioned regulations.
5. The person/company ordering is obligated, upon request by the supplier and within an appropriate period of time, to declare whether he is withdrawing from the contract due to the delay in delivery, or whether he will wait for the delivery.

6. If, upon request by the person/company ordering, the shipping or delivery is delayed by more than a month after the notification of readiness to ship, the person/company ordering can be charged for storage for the start of each month in the amount of 0.5 % of the price of the delivered objects, but only up to a maximum of 5 %. The parties to the contract may provide proof of higher or lower storage costs at their discretion.

V. Passing of risk

1. The risk for a freight paid delivery is also passed to the person/company ordering as follows:
 - a) for deliveries without setup or assembly, if they have been dropped off for shipping or picked up. Upon request and at the expense of the person/company ordering, the supplier will insure the deliveries against the usual shipping risks;
 - b) for deliveries with setup or assembly on the day of acceptance in the person's/company's ordering own place of business or, if agreed upon, after a successful test run.
2. If the shipping, delivery, start-up, setup, assembly, acceptance in the person's/company's ordering own place of business or the test run are delayed due to actions of the person/company ordering or if the person/company ordering experiences a delay in the acceptance for any other reason, the risk is passed to the person/company ordering.

VI. Setup and assembly

The following regulations apply to the setup and assembly unless otherwise agreed in writing:

1. The person/company ordering, at his own cost, must perform the following in a timely manner:
 - a) all ground work, construction work and other incidental work outside of his sector, including providing the necessary experts and workers, construction materials and tools,
 - b) the objects and materials required for the assembly and start-up, such as scaffolding, hoisting gear and other devices, fuels and lubricants,
 - c) power and water at the operating site, including the connections, heating and lighting,
 - d) at the assembly site, sufficiently large, suitable, dry and lockable areas for storing the machine parts, fixtures, materials, tools, etc. For the assemblers, appropriate work areas and break areas including sanitary facilities that suit the circumstances. In addition, the person/company ordering must take measures toward protecting the property of the supplier and the assembly personnel on the construction site equal to the protection that he would afford his own property.
 - e) any protective clothing and protective equipment that is required as a result of special circumstances at the assembly site.
2. Before the assembly work commences, the person/company ordering must provide the necessary specifications regarding the layout of any hidden power, gas or water lines or similar systems and the required statistical specifications without being prompted.
3. Before the setup or assembly commences, any provisions or objects that are required for performing the work must be present at the setup or assembly site and all preliminary work must be sufficiently advanced before beginning the setup as to allow the setup or assembly to be started and carried out without interruption according to the agreement. All approaches to the site and the setup/assembly site itself must be leveled and cleared.
4. If the setup, assembly or commissioning are delayed due to circumstances not caused by the supplier, the person/company ordering must bear any reasonable costs for the waiting period and additional required travel on the part of the supplier or the assembly personnel.
5. Once a week, the person/company ordering must attest in writing to the supplier the duration of the work time of the assembly personnel and the cessation of the setup, assembly or commissioning work.
6. If the supplier requires acceptance of the delivery after it has been finalized, the person/company ordering must do so within two weeks. If this does not take place, the acceptance will be regarded as concluded. The acceptance is also regarded as concluded if the delivered system has been put to use – after concluding an agreed test phase, if applicable.

VII. Acceptance

The person/company ordering may not refuse acceptance of deliveries due to negligible deficiencies.

VIII. Material defects

The supplier is liable for material defects as follows:

1. Any parts or services that show signs of a material defect within a period of one year – without regard to the service life – are to be repaired, replaced or rendered again at the discretion of the supplier, insofar as their cause fell within the timeframe of the transfer of risk.
2. Claims for material damage are limited to a period of 12 months. This does not apply if the law (according to §§ 438 Para. 1 No. 2 (buildings and materials for buildings), 479 Para. 1 (right of recovery) and 634a Para. 1 No. 2 (construction deficiencies) of the BGB prescribes longer periods and in cases where there is harm to life, limb or health due to intentional or grossly negligent failure to meet an obligation on the part of the supplier and fraudulent concealment of a deficiency. The legal regulations regarding suspension of time limits and suspensions and restarts of the time periods remain unaffected.
3. The person/company ordering must critique the material deficiency immediately in a written letter to the supplier.
4. When there are letters of complaint, the person/company ordering may withhold payments to an extent which matches the appropriate ratio to the material deficiency. The person/company ordering can only withhold payments if there is no doubt as to the justification for the letter of complaint that enters into validity. If the letter of complaint was unjustified, the supplier is entitled to demand compensation from the person/company ordering for any expenses incurred.
5. First, the supplier must be given an opportunity to render any supplementary performance within an appropriate period.
6. If the supplementary performance falls short, the person/company ordering can – irrespective of any claims for compensation according to Art. XI – withdraw from the contract or reduce the remuneration.
7. Deficiency claims do not only exist for negligible deviation from the agreed condition, for impact on the usability that is only negligible, for natural wear or damages that occur after the transfer of risks as the result of erroneous or careless handling, excessive stress, unsuitable equipment, deficient construction work, unsuitable building ground or which occur due to special external influences, which are prerequisites under the contract and in the event of software errors that cannot be reproduced. If improper modifications or repair work is undertaken by the person/company ordering or a third party, no claims of deficiency exist for such work or for the consequences of that work.
8. Claims made by the person/company ordering because of the applications required for the purpose of supplementary performance, particularly shipping costs and tolls, work and material costs, are ruled out if the expenses increase because the object of delivery is later transferred to a location other than the affiliate of the person/company ordering, unless the transfer corresponds to its proper use.
9. The rights of recourse on the part of the person/company ordering against the supplier according to § 478 BGB (recourse of the contractor) only exist insofar as the person/company ordering has not made any agreements with his buyer that go beyond the legal claims of deficiency. For the scope of the right of recourse of the person/company ordering against the supplier according to § 478 Para. 2 BGB, No. 8 also applies accordingly.
10. For damage compensation claims, Art. XI (misc. damage compensation claims) also applies. Any other claims of the person/company ordering against the supplier and his assistants due to a material deficiency that go beyond the claims regulated in Art. VII are ruled out.

IX. Protective commercial rights and copyrights; defects of title

1. Insofar as not otherwise agreed, the supplier is only obligated to deliver the delivery in the country of the delivery destination free of any protective commercial rights and copyrights of any third party (hereafter referred to as: protective rights). Insofar as a third party makes justified claims against the person/company ordering due to violation of the protective rights by contractually used deliveries delivered by the supplier, the supplier is liable to the person/company ordering within the time period specified in Art. VIII No. 2 as follows:
 - a) The supplier, at his discretion and at his cost, will effect either a right of use for the deliveries in question or he will modify or exchange the deliveries in such a manner that the protective right is not violated. If this is not possible for the supplier under suitable conditions, the person/company ordering has the right to withdraw or the right to a reduction.
 - b) The supplier's obligation to pay damage compensation, is in accordance with Art. XI.
 - c) The aforementioned obligations of the supplier only exist insofar as the person/company ordering immediately notifies the supplier in writing about the claims made by the third party, a violation is not acknowledged and all defense measures and settlement negotiations remain reserved. If the person/company ordering adjusts the use of the delivery for reasons of mitigation of damages or other important reasons, he is obligated to point out to third parties that no acknowledgement of a violation of a protective right is connected to the adjusting of the use.
2. Claims on the part of the person/company ordering are ruled out insofar as he is responsible for the violation of the protective right.
3. Claims on the part of the person/company ordering are further ruled out insofar as the violation of protective rights is the result of special requirements of the person/company ordering, by a use that was not foreseen by the supplier or by the fact that the delivery is changed or is used together with products not supplied by the supplier.
4. In the case of violations of protective rights, the regulations of Art. VIII No. 4, 5 and 9 apply accordingly for the claims of the person/company ordering that are regulated in No. 1a).

5. When other defects of title exist, the regulations of Art. VIII apply accordingly.
6. Any other claims of the person/company ordering against the supplier and his assistants due to a defect of title that go beyond the claims regulated in Art. IX are ruled out.

X. Impossibility; adaptation of the contract

1. If delivery is impossible, the person/company ordering is entitled to demand compensation for damages unless the impossibility is not the fault of the supplier. However, the damage compensation claim of the person/company ordering is limited to 10 % of the value of that part of the delivery, which cannot be put to its intended use due to the impossibility. This restriction does not apply in cases of malicious intent, gross negligence or if liability is compulsory due to injury to life, limb or health; any change to the burden of proof to the disadvantage of the person/company ordering is not connected to this. The right of the person/company ordering to withdraw from the contract remains unaffected.
2. If unforeseeable events (in terms of Art. IV No. 2) considerably change the economic significance or the contents of the delivery or considerably affect the supplier's operation, the contract will be adapted in good faith. If this is not economically feasible, the supplier has the right to withdraw from the contract. If he wants to exercise this right to withdraw, he must immediately inform the person/company ordering after the consequences of the event are known and even if an extension of the delivery deadline was previously agreed upon with the person/company ordering.

XI. Miscellaneous damage compensation claims

1. Claims of compensation for damages and expenses on the part of the person/company ordering (hereafter referred to as: damage compensation claims), for whatever reason, but particularly due to violations of responsibilities of the contractual obligation and due to unauthorized actions are ruled out.
2. This does not apply in cases where liability is compulsory (e.g. according to the product liability law) due to an intentional act, gross negligence or due to harm to life, limb or health, due to violation of essential contractual obligations. The damage compensation claim for the violation of essential contractual obligations is however limited to the foreseeable damages that are typically seen in contracts, insofar as there is no malicious intent or gross negligence or injury to life, limb or health. A change in the burden of proof to the disadvantage of the person/company ordering is not connected to the aforementioned regulations.
3. If the person/company ordering is entitled to damage compensation claims according to Art. XI, these claims are limited to the period of limitation that applies to the expiry of the material deficiency claims in accordance with Art. VIII No. 2. For damage compensation claims according to the product liability law, the legal limitation regulations apply.

XII. Address for service and applicable law

1. If the person/company ordering is a merchant, the sole address for service for all disputes resulting directly or indirectly from the contractual relationship is the registered office of the supplier. The supplier is also entitled however to put forth claims at the registered office of the person/company ordering.
2. For the legal relationships in connection with this contract, German material law applies to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

VIII. Obligation of the contract

Even in the event that individual clauses may lose their legal effectiveness, the remainder of the contract remains binding. This does not apply if rigidly following the contract would represent an unreasonable hardship for one of the parties.

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Supplementary agreement on the disposal of electrical and electronic equipment

1. The person/company ordering is obligated to properly dispose of the delivered goods after use at his own expense according to the legal regulations, particularly the electrical and electronic equipment law (ElektroG).
2. The person/company ordering releases the supplier from his obligations as per § 10 Para. 2 sentences 1 and 4 of the ElektroG (obligation of return and disposal) and any related claims of third parties.
3. The obligations of the person/company ordering according to sections (1) and (2) also apply in a case where the person/company ordering passes on the delivered goods to another contractor.
4. The claims of the supplier stemming from this supplementary agreement are limited to not prior to the lapsing of two years after the person/company ordering sends the supplier written notification regarding the final cessation of use of the delivered goods and, at the latest, 20 years after the goods have been delivered to the person/company ordering.

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