

General Terms of Business

of DELO Industrial Adhesives, DELO-Allee 1, 86949 Windach, Germany – as of 1 January 2021

1. Scope of application

- 1.1 The following General Terms of Business of DELO shall apply exclusively for all debt relationships commencing from the 1st of January, 2002. Contradictory General Terms of Business or such deviating from those of DELO shall not be recognized, unless DELO expressly agrees to their validity in writing. DELO's General Terms of Business shall also apply even if DELO carries out delivery without reservation in knowledge of contradictory terms or such deviating from these General Terms of Business.
- 1.2 The following General Terms of Business of DELO shall apply exclusively to merchants, legal entities of public law and public law special assets.

2. Quotation, conclusion of contract

- 2.1 Quotations from DELO shall be non-committal.
- 2.2 A Customer's order shall be a binding offer which DELO can accept within 4 weeks by written confirmation of order or dispatch of the goods.

3. Prices

- 3.1 If there is no specific agreement, the prices shall apply in EURO. The statutory Value Added Tax at the time in question shall be added. The prices are exclusive of all taxes, duties, fees and insurance. Unless otherwise agreed, all taxes, duties and fees in connection with the delivery shall be borne by the customer or refunded to DELO.
- 3.2 To the extent that DELO's price lists contain sales prices, these shall be recommended prices which are non-committal until the order is confirmed by DELO. In the event of delivery only taking place more than 3 months after conclusion of the contract by agreement with Customer or for reasons for which DELO is not answerable, DELO reserves the right to charge Customer not the sales prices stated in the DELO price lists, but, instead, the prices increased in accordance with the increase in costs occurring since conclusion of the contract (in particular as a result of tariff agreements and increases in prices of materials).

4. Delivery and fulfillment period

- 4.1 Delivery periods shall only be binding upon express agreement and shall commence no earlier than receipt of the written order confirmation from DELO by Customer.
- 4.2 In delays of delivery and performance on account of obstacles unforeseeable for DELO as a result of force majeure (e.g. monetary, commercial or other sovereign measures, strike or legal lock-outs, civil war, acts of terror, unrests, natural catastrophes, pandemics), the agreed delivery periods shall be extended by the duration of the obstacle. If delivery becomes lastingly impossible for DELO as a result of the force majeure, albeit no less than a period of 3 months, it shall be released from its obligation to supply. In such a case, Customer shall be entitled to withdraw from the contract.
- 4.3 The provisions of 4.2 shall furthermore be expressly applicable in cases, where DELO can prove that, (a) the continued performance of its contractual duties has become excessively onerous due to an event beyond its reasonable control which it could not reasonably have been expected to have taken into account at the time of the conclusion of the contract (e.g. failure of plant and equipment, non-availability of raw material, unpunctual delivery); and that (b) it could not reasonably have avoided or overcome the event or its consequences.
- 4.4 If DELO is responsible for the delay, the Customer's claim for damages due to DELO's delay shall be limited to 0.5% for each completed week of delay, but not more than a total of 5% of the net order value of the delayed part of the delivery. This limitation shall not apply in cases of intent or gross negligence.
- 4.5 If a delivery date is exceeded, the Customer shall be entitled to set DELO a reasonable extension of time with a threat of rejection. If DELO's obligation to deliver remains unfulfilled until expiry of the extension period, the Customer shall have the right to withdraw from the contract, provided that DELO is responsible for exceeding the delivery date. Withdrawal must be declared a) in writing b) at the latest within 2 weeks after expiry of the extension period. After expiry of the aforementioned period for withdrawal, the Customer shall only be entitled to withdraw after setting and expiry of a further reasonable extension if DELO is responsible for exceeding the delivery date.

5. Dispatch, passage of risk

- 5.1 Unless otherwise agreed in writing, delivery shall be EXW DELO, Windach in accordance with the Incoterms® 2020 of the International Chamber of Commerce. Dispatch, freight and packaging costs shall be charged additionally. DELO reserves the right to impose a low volume surcharge for smaller volumes as determined in the quotation or order confirmation.
- 5.2 Risk shall pass to Customer with handing over of the objects of delivery to the forwarder, freight carrier or collector (also in transport with Customer's means of transport), at the latest when they leave DELO's warehouse. DELO shall insure the consignments of goods at Customer's expense in a way customary in the trade. DELO shall be free in the choice of the mode of dispatch. The transfer of control from Customer to End-Customer for tax purposes shall be at End-Customer's permanent establishment.
- 5.3 If Customer is in arrears with acceptance of the delivery for reasons for which it is answerable or gives/sends back the delivery without justification, DELO can demand damage after the fruitless expiry of a subsequent period set by Customer. It shall amount to 20% of the net amount of the goods if DELO cannot prove higher damage or Customer cannot prove lower or a lack of existence of damage on the part of DELO.
- 5.4 The Customer shall not refuse acceptance of the delivery due to insignificant defects.
- 5.5 The Customer shall bear the risk of transport for the return shipment, irrespective of whether this takes place in connection with subsequent performance, after withdrawal, in case of return on a goodwill basis or for other reasons.

6. Payment

- 6.1 Invoices from DELO shall become due for payment without deduction upon the invoice reaching Customer. For payments within 10 days of date of invoice, DELO shall grant 2% discount insofar as and provided there are no due claims against Customer. Discount shall be ruled out in offsetting of credits.
- 6.2 Orders to pay, cheques and bills of exchange shall only be accepted on account of payment, bills of exchange further only after specific agreement and calculation of all collection and discount expenses. Incoming payments from Customer shall be offset against due claims existing against it in the following order: costs, interest, damage, claims from deliveries of goods. If a number of claims exist simultaneously, the one for which the least security exists shall be redeemed first, if there are a number equally secured, then the elder/ eldest of them.
- 6.3 If Customer gets into arrears with payment, DELO shall be entitled to demand default interest to the amount of 9 percentage points p. a. above the basic interest rate.
- 6.4 Customer shall not be entitled to withhold payment on account of counter-claims or to offset them against counter-claims, unless the counter-claims are undisputed or have been finally established by a Court of law.
- 6.5 If the consideration for deliveries is stayed by DELO on the basis of a contractual agreement or if there is an open account agreement, the entire open balance of due claims shall be settled immediately by Customer if default in payment occurs with Customer, there is a culpable breach of a contractual agreement on the part of Customer or jeopardy to or injury of conditional commodities, deterioration of the economic situation of Customer, stoppage of payment, lack of discountability of bills of exchange, protests on cheques or bills or enforcement measures against Customer exist.
- 6.6 Upon DELO's request, the Customer shall be obliged to provide an Entry Certification and other necessary information in writing for tax purposes, in particular the correct tax id.

7. Retention of title

- 7.1 Until fulfillment of all claims accruing to DELO from the entire business relationship with Customer, DELO shall reserve the following securities, which shall be released pro rata at the discretion of DELO as soon as their realizable values lastingly exceed the claim against Customer by more than 20%. In open account, these securities shall serve to secure the balance claim.
- 7.2 The commodities supplied shall remain property of DELO until complete payment. Customer shall not be entitled to pledge the commodities delivered by DELO or to transfer them by way of security. If a third party nevertheless acquires rights to the goods secured, Customer here any now cedes all its rights to the secured goods accruing to it to DELO. DELO accepts the cession.

8. Further obligations of the Customer

- 8.1 Written or illustrated technical instructions and recommendations provided by DELO are non-binding. The customer shall be responsible for examining the delivered products with regard to their suitability for the purpose intended by the customer. This shall also apply if the product is generally recommended for a specific purpose. In this case, the Customer shall likewise be obliged to check the delivered product with regard to its suitability for the specific purpose intended by the Customer as well as the conditions of use given by the Customer prior to use. DELO shall not be liable, irrespective of the legal reason, if damage results from a violation of the aforementioned test obligation of the Customer. In this context, Clause 9.2 shall apply in particular.
- 8.2 The Customer agrees not to use or disclose any confidential information or data, materials or services received from DELO in connection with the cooperation or order processing without the prior written consent of DELO. The Customer shall protect such information in the same way as he would protect his own confidential information. The Customer further agrees not to disclose any received information, of which he is aware the disclosure would adversely affect DELO's interests as defined by DELO. The foregoing confidentiality obligations shall not apply to (i) information which is publicly accessible through no fault of the Customer, (ii) information which was previously and lawfully known to the Customer prior to disclosure by DELO, (iii) information which the Customer received from third parties without any obligation to maintain confidentiality, or (iv) disclosure of information pursuant to a court order, subpoena or administrative order with reasonable prior notice to DELO by the Customer.
- 8.3 The customer is obliged to comply with any industrial property rights of third parties, e.g. patents or utility models, and statutory provisions when processing the products supplied.

9. Rights of Customer in defects

- 9.1 As a result of its own knowledge and experience according to the following provisions, DELO assures that the products fulfill the contractual requirements and statements of the QA test protocols possibly transmitted to Customer and are free of defects to this extent. Customer's individual specifications shall be applicable, provided that DELO and the Customer mutually agreed on the specifications in writing. If no specification is mutually agreed in writing, the DELO standard specification shall be applicable. Oral side agreements are not permitted. Agreements on product characteristics prevail over suitability for use. Advertising, public statements or promotions do not constitute an agreement on product characteristics.
- 9.2 The processing and use of the delivered products is beyond DELO's control and shall therefore be the sole responsibility of the customer. In particular before the first use of new product, in particular adhesives, Customer shall regularly hold adequate own tests and trial processing in order to monitor and to ensure the suitability of the products supplied for the processes and processing and use purposes intended. Any defects established in application or trial processing shall be notified to DELO without delay. At the same time, a sample of the goods giving rise to complaint shall be sent to DELO. Compliance with the obligation of inspection, notification and rejection in accordance with section 377 of the German commercial code (HGB) shall form the prerequisite for our liability for defects. If the customer fails to make the examinations and – if need be – the notifications to DELO, it shall lose the right accruing to it pursuant to Sections 9.4 and 9.6 on account of such defects which could have been established through such examinations. No rights shall accrue to Customer for defects caused by treatment of the products contradicting the contractual requirements or product directives by Customer or by third parties. The same shall apply for a processing or application of the products outside the application parameters stipulated by the contract, the product directives or manuals.
- 9.3 To establish any defects, Customer shall examine the object without delay following delivery and, if an apparent defect is seen, notify DELO thereof in writing within 1 week. Customer shall advise DELO of hidden defects within 1 year of delivery at the latest. If Customer fails to comply with the above mentioned exclusion periods, the object shall be deemed accepted, with the consequence that Customer loses its rights for defects pursuant to Sections 9.4 and 9.6.
- 9.4 If an object proves to be faulty, Customer can demand subsequent performance, i.e. rectification of the defect or supply of an object free of faults.
- 9.5 DELO can make subsequent performance dependent upon the fact that Customer pays a suitable part of the purchase price, taking the defect into account. DELO can reject the selected form of subsequent performance if it is only possible with disproportionate costs.
- 9.6 If reworking by DELO fails twice, if DELO rejects the subsequent performance or if DELO does not complete the subsequent performance within a suitable period set by Customer, Customer can reduce the purchase price or withdraw from the contract and demand payment of expenditure in vain or damage in lieu of performance. The rights of Customer to withdraw and to damage in lieu of performance shall be ruled out if the defect is only inconsiderable.
- 9.7 Claims of Customer on account of defects shall be barred by limitation 1 year after delivery of the object, unless otherwise determined in DELO's quotation or user manual.
- 9.8 A defect due to infringement of property rights of third parties, e.g. patents or utility models, shall not be deemed as such, if the infringement of property rights is caused by an application not foreseeable by DELO or by the delivery being modified by the Customer or being used together with products not delivered by DELO.

10. Liability

- 10.1 DELO shall be liable without limitation for intent and gross negligence.
- 10.2 DELO shall only be liable for simple negligence – except in cases of injury to life, limb or health – insofar as essential contractual obligations (cardinal obligations) are breached, limited to the damage typical for the contract and foreseeable, albeit to a maximum of 3 times the amount of the remuneration accruing to DELO from the contract in question.
- 10.3 Liability for direct and unforeseeable damage, loss of production and use as well as loss of income, impossibility of savings and damage to assets on account of claims of third parties shall be ruled out in the event of simple negligence.
- 10.4 Liability extending further than provided for in these General Terms of Business shall be ruled out – without regard for the legal nature of the claim being made.
- 10.5 The limitations and exclusions of liability pursuant to Sections 10.2, 10.3 and 10.4 shall not apply for liability dependent on culpability prescribed by law (e.g. according to the Product Liability Act) or from a guarantee dependent upon culpability taken on contractually.
- 10.6 Insofar as DELO's liability is ruled out or limited pursuant to Sections 10.2, 10.3 and 10.4, this shall also apply for the personal liability of its employees, workers, representatives, sub-suppliers and vicarious agents.
- 10.7 The above provisions shall not be construed as a change in the burden of proof to the disadvantage of the customer.

11. Applicable law, place of performance, venue, separability clause

- 11.1 All legal relationships between DELO and its Customers shall exclusively be governed by the law of the Federal Republic of Germany, excluding the provisions of the Convention on Contracts for the International Sale of Goods (CISG).
- 11.2 Exclusive place of performance for delivery and payment obligations shall be the registered office of DELO in Windach.
- 11.3 Exclusive venue for all disputes arising from the business relationship shall be Augsburg.
- 11.4 Should individual provisions of the General Terms of Business or parts thereof be or become totally or partly ineffective, the effectivity of the remainder of the General Terms of Business shall not be affected. The ineffective terms shall be replaced by effective regulations coming as close as possible to the entirety of the General Terms of Business and the other contractual agreements in a factual, legal and economic regard. The same mode of procedure shall apply if the General Terms of Business should be seen to manifest a loophole.