

General Terms & Conditions

1. General

- 1.1. These General Terms & Conditions constitute an integral part of all purchase contracts entered into by Deutsche Einkaufsfinanzierer GmbH (“DEF”) with its Customers (“Customer”) in respect of the delivery of marketable goods carried as current assets (“Goods”). They will also apply to all future deliveries even if not expressly agreed again. Terms and conditions of the Customer or third parties will not be accepted even if DEF does not specifically object to them in an individual case. Even if DEF makes reference to a letter that contains or refers to terms and conditions of the Customer or any third party, this will not constitute acceptance of any such terms and conditions.
- 1.2. The Customer will be informed (possibly in electronic form) of any changes in these Terms & Conditions at least two months before such changes go into force and effect. Such changes will be considered to have been accepted unless the Customer objects to them in writing within six weeks after notification. The Customer's objection will be considered to be in compliance with this requirement if sent on a timely basis. DEF will notify the Customer separately of the effect of consent at the time of notification of the changes.
- 1.3. The current version of the Terms & Conditions of Purchase is available for inspection at any time at www.einkaufsfinanzierer.com.

2. Purchase Price / Conditions of Payment

- 2.1. The purchase price is a fixed price. Unless agreed otherwise, the purchase price includes all costs associated with DEF's fulfillment of its obligations (including, but not limited to, freight, packaging, transport insurance, customs duties and import value-added tax).
- 2.2. The purchase price corresponds to the purchase price that the Supplier invoiced DEF without taking into account any discount for prompt payment unless
 - (i) the Supplier has granted DEF a prompt payment discount in excess of the Standard Discount (“Standard Discount”) in the table of fees pursuant to Appendix 1 to the Master Agreement, in which case the purchase price will be reduced by an amount equal to the difference between the prompt payment discount granted to DEF by the Supplier and the Standard Discount, and DEF will show the difference separately as a bonus in the calculation of the purchase price;
 - (ii) the Supplier grants DEF no discount for prompt payment or a discount that is lower than the Standard Discount, in which case the purchase price will be increased by an amount equal to the difference between the prompt payment discount and the Standard Discount, and DEF will show the difference separately as a debit in the calculation of the purchase price.
- 2.3. In the event it should prove impossible to settle the Supplier's invoice by the due date set by the Supplier for qualification for the prompt payment discount for reasons beyond the control of DEF, 2.2 (ii) will apply accordingly. This will also apply if DEF cannot claim a discount for prompt payment because the due date to qualify for the prompt payment discount occurs less than seven days from the day of receipt of the Supplier's invoice.
- 2.4. DEF will invoice the Customer for the Goods on the basis of the agreed term of payment as soon as delivery takes place and the Customer has confirmed the conformity of the shipment and the invoice of the Supplier. In the case of shipment from a country outside the EEA and delivery in the form of a bill of lading, DEF will invoice the Customer on the basis of the agreed term of payment after payment of the Supplier's invoice.
- 2.5. The Customer agrees to pay the purchase price to the account designated by DEF in the invoice. Payments made directly to the Supplier by the Customer will not be credited towards amounts due DEF.
- 2.6. DEF reserves the right to determine the mode of payment, but will take into account the wishes of the Customer whenever possible. DEF will not in any case accept payment by check.
- 2.7. The term of payment of the purchase price agreed in the table of fees pursuant to Appendix 1 to the Master Agreement will commence upon delivery of the Goods or, in the case of partial shipments, as of delivery of the first partial shipment (“Payment Extension Period”). In the case of shipment from abroad, the Payment Extension Period will commence upon payment of the Supplier's invoice by DEF. DEF will inform the Customer accordingly without delay.
- 2.8. The Customer may pay the purchase price in full at any time. The Customer will have automatically used one day of the Payment Extension Period if no payment is made on that day. Payments will be credited with effect as of receipt by DEF.
- 2.9. The Payment Extension Period will end with immediate effect
 - (i) if the Customer receives proceeds from the resale of the Goods (also after they have been processed or combined or inextricably mixed with other goods), in which case the Customer must inform DEF accordingly without delay;
 - (ii) the Customer sells the corresponding receivable due from the purchaser or purchasers (factoring), in which case the Customer must inform DEF accordingly without delay;
 - (iii) DEF terminates the Payment Extension Period. DEF reserves the right to terminate the Payment Extension Period under circumstances pursuant to sections 1.4 and 1.5 of the Master Agreement.

3. Payment Extension and Late Fees

- 3.1. The Customer agrees to pay the agreed fee to DEF for each day of the Payment Extension Period or any fraction thereof.
- 3.2. DEF will compute the extension fees every 30 days in the course of the Payment Extension Period and, for the final time, upon receipt of payment in full of the purchase price. Extension fees will be due and payable one banking day after receipt of the respective (written or electronic) statement.
- 3.3. In the event the Customer exceeds the Payment Extension Period, the Customer agrees to pay to DEF late interest on the amount in arrears as specified in the table of fees pursuant to Appendix 2 to the Master Agreement, not, however, to exceed a maximum of 5.0% of the amount in arrears. The Customer may, however, provide evidence to the effect that DEF incurred no such loss due to arrears or only a loss that was significantly lower than the flat amount.
- 3.4. In the event of arrears, DEF reserves the right to claim damages in excess of that amount.

4. Acceptance, Inspection and Duty to Give Notice of Defects

- 4.1. The Customer agrees to accept delivery at the agreed time of delivery. The Customer agrees to hold DEF harmless from any claims brought by the Supplier in connection with any refusal to accept delivery. This will not apply if the Customer refuses to accept a delivery which is non-conforming or incomplete.
- 4.2. In its own interests and that of DEF, the Customer must inspect the Goods after delivery without delay and as soon as reasonably practical in the normal course of business and notify the Supplier without delay of any defect in its own name and on behalf of DEF pursuant to § 377 of the German Commercial Code (Handelsgesetzbuch – HGB). The Customer must without delay notify DEF of any defects and independently of whether or not DEF has already forwarded a partial invoice and confirmation of delivery to the Customer.

- 4.3. In the case of the later appearance of any defects that could not be detected upon a proper initial inspection, the Customer must notify the Supplier in its own name and on behalf of DEF without delay when such defects appear and also inform DEF accordingly.

5. Passage of Title and Risk

- 5.1. The passage of title to the Goods to the Customer is subject to the condition contained in Appendix 8 to the Master Agreement ("**Retention of Title**").
- 5.2. The Customer hereby warrants in respect of each drop shipment that no purchase of Goods by it has been prefinanced by a third party and that the Goods have not been and will not be encumbered by any rights of third parties. The right to dispose of the Goods in compliance with the agreed retention of title clause will remain unaffected.
- 5.3. The risk of accidental loss, destruction or deterioration in respect of the Goods will pass directly from the Supplier to the Customer pursuant to the delivery conditions agreed by DEF and the Supplier.
- 5.4. The Customer agrees to insure the Goods against the aforementioned risks for their new value at its own expense or – if this should prove impossible for insurance reasons – at market value.
- 5.5. Upon execution of this Master Agreement, the Customer assigns all rights from existing and future insurance contracts in respect of the Goods and claims against any third parties and their insurers to DEF, which accepts such assignment. DEF may at any time require proof of payment of the insurance premium from the Customer. In the event the Customer should fail to fulfill any of the above obligations, DEF may (but will be under no obligation to) obtain appropriate insurance for the respective Goods at the expense of the Customer.

6. Warranties

- 6.1. The Customer's warranty rights will be contingent upon fulfillment of the Customer's duty to inspect the Goods and notify DEF of any defects.
- 6.2. DEF warrants to the Customer that the Goods are free from defects in quality and title and hereby irrevocably assigns to the Customer, who accepts such assignment, its warranty rights against the Supplier and any further guarantee claims against the Supplier or other third parties or, if this should prove impossible, irrevocably authorizes the Customer to enforce such rights in its own name. The Customer will have no further warranty rights against DEF other than such assignment or authorization. DEF must be notified of any enforcement of the above warranty rights without delay.
- 6.3. In the event the Customer has duly notified the Supplier and DEF of the existence of a defect (see section 4.2 above) and the Supplier refuses to cure the defect (repair or replacement), the Customer may withhold payment of the purchase price from DEF as of the day of notification of the defect if the Customer brings legal action without delay, but no later, however, than six (6) weeks after the date of notification.
- 6.4. In the event the Customer cancels the purchase contract, the Customer will no longer be under any obligation to pay the purchase price if the Supplier agrees to such cancellation or is compelled to accept cancellation by a legally enforceable decision of a court of law. In the event the Supplier does not agree to cancellation of the purchase contract, the Customer may withhold payment of the purchase price from DEF as of the day of notification of cancellation if the Customer brings legal action without delay, but no later, however, than six (6) weeks after the date of notification. If the Customer fails to bring legal action in a timely manner, the Customer may not withhold payment of the purchase price until such time as legal action is taken.
- 6.5. If, in the event of a reduction of the purchase price, the Supplier has refunded part of the purchase price to DEF, the Customer must pay only the commensurately reduced purchase price to DEF without any further deductions (including, but not limited to, a prompt payment discount). In the event the Supplier is not in agreement with the reduction of the purchase price, the Customer may withhold payment of the respective share of the purchase price from DEF as of the day of notification if the Customer brings legal action without delay, but no later, however, than six (6) weeks after the date of notification. If the Customer fails to bring legal action in a timely manner, the Customer may not withhold payment of the purchase price until such time as legal action is taken.
- 6.6. The Customer may not exercise any rights to withhold payment pursuant to 6.3, 6.4 and 6.5 if DEF has already paid the purchase price to the Supplier. The rights to withhold payment pursuant to 6.3, 6.4 and 6.5 will become void retroactively if the legal action of the Customer proves unsuccessful. The Customer will in any such case place DEF in the same situation as would have been the case had the Customer taken full advantage of the Payment Extension Period and thereafter fallen into arrears.
- 6.7. In the event the Customer can claim interest from the Supplier on the basis of rights assigned by DEF, such interest will inure to the Customer insofar as it pertains to the period during which the purchase price had been paid to and not refunded by DEF. The Customer must also claim interest from the Supplier for DEF on the basis of rights assigned to the Customer. The Customer will be liable towards DEF for the resultant loss in the event of its intentional or negligent failure to bring such claim.

7. Damages

- 7.1. The Customer will have no claims against DEF, its directors, officers and representatives and/or vicarious agents (hereinafter referred to collectively as "**DEF**") for damages or reimbursement of futile expenses, for whatever legal reason, including, but not limited to, claims arising from breach of contract and/or tortious conduct (hereinafter referred to as: "**Claims for Damages**").
- 7.2. This will not apply in the case of intentional misconduct or gross negligence on the part of DEF and/or breach of material contractual obligations. Material obligations are those obligations whose fulfillment is of the very essence for the proper performance of the contract and upon whose fulfillment the Customer will and may regularly rely.
- 7.3. In the case of a non-intentional breach of contractual obligations, including, but not limited to, material contractual obligations, liability will be limited to the foreseeable damage that is typical of contracts of this kind.
- 7.4. The limits to liability set forth above will not apply in the case of mandatory liability on the part of DEF, e.g., in the case of loss of life, bodily injury or illness.
- 7.5. For the purposes of clarity, the Parties explicitly agree that the Supplier is not an agent of DEF since delivery of the Goods by the Supplier takes place exclusively at the request of the Customer.
- 7.6. Claims for damages against DEF arising from breach of accessory contractual obligations will lapse after six months and other claims for defects after one year from the time of commencement of the period of limitation prescribed by law. This will not apply in the case of loss or damage due to intentional misconduct or gross negligence on the part of DEF or tortious conduct. Similarly, this will not apply in the case of claims brought under the Product Liability Act (Produkthaftungsgesetz – ProdHaftG).

8. Product Liability

The Customer will hold DEF harmless from any product liability claims brought by third parties. It will assume liability for all reasonable expenses incurred in connection with such claims, including the costs of legal action and legal counsel. In exchange, DEF hereby assigns to the Client, who accepts such assignment, any claims as may exist against jointly and severally liability third parties (§ 5 of the Product Liability Act in conjunction with § 426 of the German Civil Code (Bürgerliches Gesetzbuch – BGB)).

9. Receipt of Payment, Offset and Right of Retention

- 9.1. Payments received will be credited towards outstanding amounts arising from the business relationship between DEF and the Customer pursuant to the German Civil Code (§§ 366 and 367). Payments received will be credited to principal claims in compliance with the conditions of the credit insurer.
- 9.2. The Customer may offset outstanding amounts only against claims that are undisputed or legally enforceable.
- 9.3. The Customer may exercise a right of retention only in respect of claims arising from the same drop shipment.

10. Miscellaneous

- 10.1. DEF is under no obligation to take back (transport) packing materials to comply with any regulations governing waste disposal.
- 10.2. The Parties have not made any oral agreements. Amendments and additions to this Agreement must be made in writing in order to be effective. This will also apply in respect of any waiver of or change in this written form requirement.
- 10.3. In the event of any omissions in these General Terms & Conditions, such omissions will be filled by those legally valid provisions the Parties would have adopted on the basis of the economic intent of the contract and the purpose of these General Terms & Conditions if they had been aware of such omissions.

11. Jurisdiction and Applicable Law

The purchase contract will be construed and interpreted exclusively in accordance with the laws of the Federal Republic of Germany to the exclusion of the provisions of the U.N. Convention on the International Sale of Goods (CISG). The courts of Hamburg will have exclusive jurisdiction over any disputes arising out of or in connection with the purchase contract.
