

# **General Terms and Conditions of Sale of DEGO-HYDRAULIK GmbH**

## **§ 1 Scope, form**

(1) These General Terms and Conditions of Sale (GTCS) apply to all our business relationships with our customers ("Buyer"). The GCS only apply if the Buyer is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law.

(2) The GCS apply in particular to contracts for the sale and/or delivery of movable goods ("Goods"), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers (§§ 433, 650 BGB). Unless otherwise agreed, the GCS in the version valid at the time of the Buyer's order or in any case in the version last notified to him in text form shall also apply as a framework agreement for similar future contracts without our having to refer to them again in each individual case.

(3) Our General Terms and Conditions shall apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of the Buyer shall only become part of the contract if and to the extent that we have expressly consented to their application. This requirement of consent shall apply in any case, for example even if the Buyer refers to his General Terms and Conditions within the scope of the order and we do not expressly object to this.

(4) Legally relevant declarations and notifications by the Buyer with regard to the contract (e.g. setting of deadlines, notification of defects, withdrawal or reduction) must be made in writing. Written form in the sense of these GCS includes written and text form (e.g. letter, e-mail, fax). Legal formal requirements and further proof, in particular in the event of doubts about the legitimacy of the person making the declaration, shall remain unaffected.

## **§ 2 Conclusion of contract**

(1) Our offers are subject to change and non-binding. This also applies if we have provided the buyer with catalogues, technical documentation (e.g. drawings, plans, calculations, calculations, references to DIN standards), other product descriptions or documents - also in electronic form - to which we reserve ownership and copyrights.

(2) The order of the goods by the buyer is considered a binding contract offer. Unless otherwise stated in the order, we are entitled to accept this contractual offer within 3 calendar weeks of its receipt by us.

(3) Acceptance can be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the buyer.

## **§ 3 Delivery period and delay in delivery**

(1) The delivery period shall be agreed individually or stated by us upon acceptance of the order.

(2) If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (non-availability of the service), we shall inform the Buyer of this without delay and at the same time inform him of the expected new delivery deadline. If the service is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall immediately refund any consideration already paid by the Buyer.

A case of non-availability of the service in this sense shall be deemed to be, in particular, the failure of our supplier to deliver on time if we have concluded a congruent hedging transaction, neither we nor our supplier are at fault or we are not obliged to procure in the individual case.

(3) The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder by the buyer is required. Subscribe to DeepL Pro to translate larger documents. Visit [www.DeepL.com/pro](http://www.DeepL.com/pro) for more information.

(4) The rights of the Buyer pursuant to § 8 of these GCS and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

(5) Serious events, such as in particular force majeure, industrial disputes, riots, pandemics, war or terrorist conflicts, which entail unforeseeable consequences for the performance of services, shall release us from our performance obligations for the duration of the disruption and to the extent of its effect, even if we should be in default. An automatic termination of the contract is not connected with this. We are obliged to notify the Buyer of such an impediment and to adjust our obligations to the changed circumstances in good faith.

#### **§ 4 Delivery, Transfer of Risk, Acceptance, Default of Acceptance**

(1) Delivery is made ex warehouse, which is also the place of performance for the delivery and any subsequent filling. At the request and expense of the buyer, the goods shall be shipped to another destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, we shall be entitled to determine the type of shipment (in particular transport company, shipping route, packaging) ourselves.

(2) The risk of accidental loss and accidental deterioration of the goods shall pass to the buyer at the latest upon handover. However, in the case of sale by delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall already pass upon delivery of the goods to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment. If acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services shall also apply mutatis mutandis to an agreed acceptance. The handover or acceptance shall be deemed to have taken place if the Buyer is in default of acceptance.

(3) If the buyer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the buyer is responsible, we are entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs).

#### **§ 5 Prices and terms of payment**

(1) Unless otherwise agreed in individual cases, our current prices at the time of conclusion of the contract shall apply, ex warehouse, plus statutory value added tax.

(2) In the case of a sale by delivery to a place other than the place of performance (§ 4 para. 1), the Buyer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the Buyer. Any customs duties, fees, taxes and other public charges shall be borne by the buyer.

(3) The purchase price is due and payable within 30 days of invoicing, unless otherwise agreed. However, we are entitled at any time, even within the framework of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. We shall declare a corresponding reservation at the latest with the order confirmation.

(4) Upon expiry of the aforementioned payment deadline, the Buyer shall be in default. During the period of default, interest shall be charged on the purchase price at the statutory default interest rate applicable at the time. We reserve the right to claim further damages caused by default. Our claim to the commercial due date interest rate (§ 353 HGB) remains unaffected vis-à-vis merchants.

(5) The Buyer shall only be entitled to rights of set-off or retention to the extent that its claim has been established by a final court decision or is undisputed. In the event of defects in the delivery, the Buyer's counter rights shall remain unaffected, in particular pursuant to § 7 para. 6 sentence 2 of these GTC.

(6) If, after conclusion of the contract, it becomes apparent (e.g. by filing for insolvency proceedings) that our claim to the purchase price is jeopardised by the Buyer's inability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture. In the case of delivery of unjustifiable items (custom-made products), we can declare the withdrawal immediately; the legal regulations on the dispensability of setting a deadline remain unaffected.

## **§ 6 Retention of title**

(1) Until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims), we retain title to the goods sold.

(2) The goods subject to retention of title may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The buyer must inform us immediately in writing if an application is made to open insolvency proceedings or if third parties (e.g. seizures) have access to the goods belonging to us.

(3) In the event of breach of contract by the Buyer, in particular in the event of non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand surrender of the goods on the basis of the reservation of title. The demand for return does not at the same time include the declaration of withdrawal; we are rather entitled to demand only the return of the goods and to reserve the right of withdrawal. If the buyer does not pay the due purchase price, we may only assert these rights if we have previously set the buyer a reasonable deadline for payment without success or such a deadline is dispensable according to the statutory provisions.

(4) Until revoked in accordance with (c) below, the Buyer shall be entitled to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition.

(a) The retention of title extends to the products resulting from the processing, mixing or combining of our goods at their full value, whereby we are deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co ownership in proportion to the invoice values of the

processed, mixed or combined goods. In all other respects, the same shall apply to the resulting product as to the goods delivered under reservation of title.

(b) The Buyer hereby assigns to us by way of security any claims against third parties arising from the resale of the goods or the product in total or in the amount of our possible co-ownership share in accordance with the preceding paragraph. We accept the assignment. The obligations of the buyer mentioned in paragraph 2 shall also apply with regard to the assigned claims.

(c) The buyer remains authorized to collect the claim in addition to us. We undertake not to collect the claim as long as the Buyer meets his payment obligations towards us, there is no deficiency in his ability to pay and we do not assert the retention of title by exercising a right pursuant to para. 3. If this is the case, however, we may demand that the Buyer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. Furthermore, in this case we are entitled to revoke the buyer's authority to further sell and process the goods subject to retention of title.

(d) If the realisable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the request of the purchaser.

## **§ 7 Claims for defects of the buyer**

(1) The statutory provisions shall apply to the rights of the Buyer in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly/installation or defective instructions), unless otherwise stipulated below. In all cases, the special statutory provisions on the reimbursement of expenses in the case of final delivery of the newly manufactured goods to a consumer (supplier's recourse pursuant to §§ 478, 445a, 445b or §§ 445c, 327 para. 5, 327u BGB) shall remain unaffected, unless an equivalent compensation has been agreed, e.g. within the scope of a quality assurance agreement.

(2) The basis of our liability for defects is above all the agreement reached on the quality and the presupposed use of the goods (including accessories and instructions). All product descriptions and manufacturer's specifications which are the subject of the individual contract or which were made public by us at the time of the conclusion of the contract shall be deemed to be an agreement on quality in this sense. Insofar as the quality has not been agreed upon, it is to be judged according to the legal regulation whether a defect exists or not (§ 434 para. 3 BGB). Public statements made by the manufacturer or on his behalf, in particular in advertising or on the label of the goods, shall take precedence over statements made by other third parties.

(3) In the case of goods with digital elements or other digital content, we only owe the provision and, if applicable, updating of the digital content insofar as this expressly results from a procurement agreement in accordance with Paragraph 2. In this respect we do not assume any liability for public statements of the manufacturer and other third parties.

(4) As a matter of principle, we shall not be liable for defects of which the Buyer is aware at the time of conclusion of the contract or is not aware due to gross negligence (§ 442 BGB). Furthermore, the buyer's claims for defects presuppose that he has fulfilled his statutory obligations to inspect and notify (§§ 377, 381 HGB). In the case of building materials and

other goods intended for installation or other further processing, an inspection must in any case take place immediately before processing. If a defect becomes apparent during delivery, inspection or at any later time, we must be notified of this in writing without delay. In any case, obvious defects must be notified to us in writing within three working days of delivery and defects which are not apparent on inspection must be notified to us in writing within the same period of time from their discovery. If the purchaser fails to carry out the proper inspection and/or to give notice of defects, our liability for the defect not reported or not reported in time or not reported properly shall be excluded in accordance with the statutory provisions. In the case of goods intended for incorporation, attachment or installation, this shall also apply if the defect only became apparent after the corresponding processing as a result of the breach of one of these obligations; in this case, the Buyer shall in particular have no claims for reimbursement of corresponding costs ("removal and incorporation costs").

(5) If the delivered item is defective, we may initially choose whether to provide subsequent performance by eliminating the defect (rectification) or by delivering an item free of defects (replacement). If the type of subsequent performance chosen by us is unreasonable for the Buyer in the individual case, he may reject it. Our right to refuse subsequent performance under the statutory conditions remains unaffected.

(6) We are entitled to make the subsequent performance owed dependent on the buyer paying the purchase price due. However, the buyer shall be entitled to retain a part of the purchase price in proportion to the defect.

(7) The buyer must give us the time and opportunity necessary for the subsequent performance owed, in particular to hand over the rejected goods for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective item to us at our request in accordance with the statutory provisions; however, the Buyer shall not have a claim for return. Subsequent performance does not include the dismantling, removal or disassembly of the defective item or the installation, fitting or assembly of a defect-free item if we were not originally obliged to perform these services; the Buyer's claims for reimbursement of corresponding costs ("dismantling and assembly costs") remain unaffected.

(8) We shall bear or reimburse the expenses required for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs and, if applicable, removal and installation costs, in accordance with the statutory provisions and these GTC, if a defect is actually present. Otherwise, we may demand reimbursement from the Buyer of the costs incurred as a result of the unjustified request to remedy the defect if the Buyer knew or was negligent in not knowing that there was actually no defect.

(9) In urgent cases, e.g. if operational safety is endangered or to prevent disproportionate damage, the Buyer shall have the right to remedy the defect itself and to demand reimbursement from us of the expenses objectively necessary for this purpose. We are to be informed immediately of such a self-remedy, if possible in advance. The right of self-execution does not exist if we would be entitled to refuse a corresponding subsequent performance in accordance with the statutory provisions.

(10) If a reasonable period to be set by the Buyer for subsequent performance has expired unsuccessfully or is dispensable under the statutory provisions, the Buyer may withdraw from the purchase contract or reduce the purchase price in accordance with the statutory

provisions. In the case of an insignificant defect, however, there is no right of withdrawal. (11) Claims of the purchaser for damages or reimbursement of futile expenses shall also exist in the case of defects only in accordance with § 8 and are otherwise excluded.

## **§ 8 Other liability**

(1) Insofar as nothing to the contrary arises from these GCS including the following provisions, we shall be liable in accordance with the statutory provisions in the event of a breach of contractual and non contractual obligations.

(2) We shall be liable for damages - irrespective of the legal grounds - within the scope of culpability in the event of intent and gross negligence. In the event of simple negligence, we shall only be liable, subject to statutory limitations of liability (e.g. care in own affairs; insignificant breach of duty), in the following cases a) for damages resulting from injury to life, body or health, b) for damages resulting from the breach of an essential contractual obligation (obligation, the fulfilment of which enables the proper execution of the contract in the first place and on the observance of which the contractual partner regularly relies and may rely); in this case, however, our liability is limited to the compensation of the foreseeable, typically occurring damage.

(3) The limitations of liability resulting from para. 2 shall also apply to third parties as well as to breaches of duty by persons (also in their favour) whose fault we are responsible for according to statutory provisions. They do not apply insofar as a defect was fraudulently concealed or a guarantee for the quality of the goods was assumed and for claims of the buyer under the Product Liability Act.

(4) Due to a breach of duty which does not consist of a defect, the Buyer may only withdraw from or terminate the contract if we are responsible for the breach of duty. A free right of termination of the buyer (in particular according to §§ 650, 648 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

## **§ 9 Limitation**

(1) Notwithstanding § 438 para. 1 no. 3 BGB, the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. Insofar as acceptance has been agreed, the limitation period shall begin with acceptance.

(2) If the goods are a building or an object which has been used for a building in accordance with its customary use and has caused its defectiveness (building material), the limitation period shall be 5 years from delivery in accordance with the statutory regulation (§ 438 para. 1 no. 2 BGB). Further special statutory regulations on the limitation period (in particular § 438 para. 1 no. 1, para. 3, §§ 444, 445b BGB) shall remain unaffected.

(3) The above limitation periods of the law on sales also apply to contractual and non-contractual claims for damages of the buyer based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. Claims for damages of the buyer in accordance with § 8 para. 2 sentence 1 and sentence 2(a) as well as under the Product Liability Act shall become statute-barred exclusively in accordance with the statutory limitation periods.

## **§ 10 Choice of law and place of jurisdiction**

(1) These GCS and the contractual relationship between us and the Buyer shall be governed by the laws of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in Gemünden am Main. The same applies if the buyer is an entrepreneur as defined by § 14 BGB (German Civil Code). However, we shall also be entitled in all cases to bring an action at the place of performance of the delivery obligation in accordance with these General Terms and Conditions of Sale or a prior individual agreement or at the general place of jurisdiction of the Buyer. Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.

(3) The invalidity of one or more provisions of these GTC shall not affect the validity of the remaining provisions. The parties are obliged to replace the invalid provision by a provision that comes as close as possible to the economic purpose in a joint agreement. The same shall apply to any loopholes in these GTC.

Gemünden am Main, 09.05.2022