

General Terms and Conditions of dematek GmbH & Co. KG

These General Terms and Conditions apply to our business relationships with our customers. These terms and conditions apply only in business dealings with companies, legal entities under public law and public law special funds.

1. General provisions

1. 1. These terms and conditions apply to deliveries of goods in accordance with the contract concluded between dematek GmbH & Co. KG and the customer. They also apply to all future business relationships, even if the validity of these terms and conditions is not expressly referred to or agreed upon.

1. 2. Our terms and conditions apply exclusively; conflicting or differing from our terms and conditions of the customer are not binding even if they were not expressly contradicted. This approval requirement applies in any case, even if we carry out the delivery without reservation in knowledge of the terms and conditions of the customer, for example.

1. 3. All agreements made between us and the customer in relation to the contract and all legal declarations are in writing d. H. in written or text form (eg letter, e-mail, fax). Verbal collateral agreements are only effective if and insofar as these are confirmed in writing or in writing. The termination of the written or text form must also be in writing.

1. 4. We reserve the right of ownership and copyright exploitation rights to cost estimates, drawings and other documents.

1. 5. Insofar as standard software and firmware are included in the scope of delivery, the customer is granted a non-exclusive right to use them.

2. Offers and conclusion of contract

2. 1. Unless otherwise agreed in writing, our offers are non-binding. This shall also apply if we provide the buyer with catalogs, technical documentation (eg drawings, plans, calculations, calculations or similar), other product descriptions or documents - including in electronic form - in which we own property and copyrights Reserved.

2. 2. An order by the customer represents a binding offer, which we can accept within 14 days by sending an order confirmation. The acceptance can also be explained by delivery of the goods to the customer.

2. 3. The content of the order confirmation is decisive for content and scope of delivery of the contract. Additions and changes to an order require written confirmation from us to be binding; Confirmation is also the receipt of the delivery note by the customer or the execution of the delivery.

3. Delivery time and delivery delay

3. 1. The specified delivery dates are not binding, unless otherwise agreed in writing.

If a delivery date has been agreed upon and if it is necessary for it to be complied with by the customer, the agreed delivery time shall be extended by the duration which the customer does not fulfill his obligation to cooperate.

3. 2. In cases of force majeure or other events that make the delivery considerably more difficult or impossible, the delivery time is extended by the duration of the delay.

3. 3. The delivery period is met if the goods within the agreed period segregated and ready for shipment and this has been communicated to the customer. In the case of the dispatch purchase the delivery period is then kept, if the thing was handed over within the term to the forwarding company or was ready for transfer and could not be handed over without our fault.

3. 4. We are entitled to partial deliveries.

3. 5. As long as the customer is in arrears with the payment of previous deliveries from current business relations, we are entitled to the refusal of all outstanding deliveries.

4. Delivery and transfer of risk

4. 1. We deliver EXW (Incoterms 2010). Also a possible dispatch takes place from stock or our work on risk of the customer also with freight-free delivery and also if we take over the dispatch. Insurance only takes place if the customer expressly requests this in writing and assumes the costs for this.

5. Prices and terms of payment

5. 1. The prices are quoted ex works / warehouse excluding packaging and plus applicable VAT.

5. 2. In the case of delivery ex works, we are entitled to submit the invoice as of readiness for delivery. In the case of a consignment purchase, this entitlement occurs at the time of handover to the carrier.

5. 3. If the order confirmation does not regulate otherwise, payments for customers from Germany are due immediately and payable within 30 days of the invoice date. If you pay within 14 days, we grant 2% discount on the value of the goods. The statutory provisions for delay apply.

For customers outside the FRG the delivery takes place in advance or by appointment.

5. 4. The customer is entitled to exercise the offsetting and the right of retention only with his undisputed or legally binding claims.

6. Retention of title

6. 1. The delivered goods remain our property until the fulfillment of all our claims arising from the business relationship.
6. 2. The customer is entitled to resell the delivered goods in the ordinary course of business, as long as he is not in default. The resale must be made on the condition that either the reseller immediately receives payment from his customer or the delivery is made with the proviso that the ownership passes to the customer only after he has fulfilled his payment obligations.
6. 3. If the customer sells reserved goods, he assigns all future claims from the resale against his customers to us. Our customer is entitled until further notice to collect the claims against his customers. Our authority to collect the claim itself remains unaffected.
6. 4. The processing, mixing and connection of the reserved goods with other items by the customer is permitted.
6. 5. The processing takes place for us as a manufacturer. The customer keeps the new thing arising from the combination, mixing or processing for us with the care of a proper businessman. The new item is regarded as reserved goods; The regulations for the goods delivered under reservation apply to you.
6. 6. If the goods are combined or mixed with other goods that are not ours, then we agree that the new goods shall give us co-ownership equal to the share of the value of the goods connected or mixed Reserved goods to the value of the remaining goods at the time of the connection or mixing results. In this respect, the new item is considered reserved goods; The regulations for the goods delivered under reservation apply to you.
6. 7. The regulations on the assignment of claims under 6. 3. Apply also for the new thing. The assignment is made in the amount of the co-ownership share.
6. 8. In the event of breach of contract by the customer, in particular in the event of default in payment, we shall be entitled to take back the reserved goods after expiry of a period set by us. The customer is obliged to surrender. All costs of return and recovery shall be borne by the customer.
6. 9. The customer is obliged to treat the goods with care and to maintain them in perfect condition as long as the ownership has not been completely transferred. The customer must insure the goods at his own expense against loss, damage, theft, fire, water and similar cases and prove such insurance on request. If maintenance and inspection work is required, the customer must carry it out at his own expense in good time.
6. 10. We are entitled to assign the payment claims against the customer.

7. Warranty

7. 1. Claims for defects presuppose that the customer has duly fulfilled his obligation to inspect and to give notice pursuant to § 377 HGB. If there is a defect in the delivery, the examination or at a later date, we must notify us in writing without delay. This also applies if the customer resells the goods.

7. 2. Our service is provided in accordance with the contract if it complies with customary traffic tolerances.

7. 3. The warranty period is always one year from the transfer of risk unless the law provides for a longer period. If a defect occurs, we can choose whether we provide repair or replacement at our discretion. Our right to refuse supplementary performance under statutory conditions remains unaffected.

7. 4. We are entitled to make the owed supplementary performance dependent on the fact that the customer pays the due purchase price.

7. 5. The buyer must give us the time and opportunity required for the owed supplementary performance, in particular to hand over the rejected goods for inspection purposes. The supplementary performance does not include the removal or reinstallation, if we were originally not obliged to install.

7. 6. For used items the warranty is basically and completely excluded unless a liability for defects was expressly agreed in writing.

8. Limitation of Liability and Limitation

8. 1. For damages, we are liable, for whatever legal reason, in the context of fault liability in the case of intent and gross negligence. In the case of ordinary negligence we are only liable subject to a milder liability according to legal regulations

a) for damage resulting from injury to life, limb or health,

b) for damages resulting from a significant breach of a material contractual obligation, in which case our liability is limited to compensation for foreseeable, typically occurring damage.

8. 2. The limitations of liability resulting from paragraph 2 also apply to breaches of duty by or for the benefit of persons whose fault we are responsible for under statutory provisions. They do not apply if we fraudulently concealed a defect or assumed a guarantee for the condition of the goods and for claims of the customer under the Product Liability Act.

8. 2. Due to a breach of duty that does not exist in a defect, the customer can only withdraw or terminate, if we are responsible for the breach of duty. A free right of termination of the customer is excluded. Incidentally, the legal requirements and legal consequences apply.

8. 3. Deviation from § 438 Abs. 1 Nr. 3 BGB is the general limitation period for claims arising from material and legal defects one year from delivery. Insofar as acceptance has been agreed, the period of limitation begins with the acceptance.

8. 4. The above limitation periods of the purchase right also apply to contractual and non-contractual claims for damages of the customer, which are based on a defect of the goods, unless the application of the regular statutory limitation period would lead to a shorter limitation period in individual cases. Claims for damages of the customer acc. 8. 1. S. 1 and S. 2a) as well as after the product liability law expire however only after the legal regulations.

9. Final provisions

9. 1. For these terms and conditions and the contractual relationship between us and the customer, the law of the Federal Republic of Germany.

9. 2. Rottweil is agreed as the place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship.

9. 3. Should individual provisions of these terms and conditions be or become invalid, the validity of the remaining provisions shall not be affected. The parties undertake to replace the void provision with one that comes closest to the void provision, especially in economic terms.

As of: 01.07.2018