

# GTC

## General Terms and Conditions of Sale and Delivery

07/2020



## 1. General information

1.1 These General conditions of sale and delivery (hereinafter referred to as „General Terms and Conditions“ or „Terms and Conditions of Business“) shall apply insofar as the contracting parties have not explicitly agreed otherwise in writing, for all deliveries and services of DIETZEL GmbH (hereinafter referred to as „DIETZEL“). The details of such deliveries and services as well as the associated regulations are described in individual contracts („individual contracts“).

1.2 All offers made by Dietzel are at all times subject to change without notice. The individual contract only comes into effect upon written confirmation by DIETZEL or upon delivery. All individual contracts are subject to the Terms and Conditions.

1.3 DIETZEL explicitly reserves the right to make design and form changes to the subject of the contract in accordance with technical progress without prior notice.

1.4 Assurances, subsidiary agreements and amendments to the contract require a written statement in order to be effective. This requirement cannot be waived.

1.5 Amendments to the General Terms and Conditions shall become legally valid for all present and future business relations between the customer and DIETZEL as of the beginning of the month one month after the subsequent month following the customer's notification of such amendment, unless DIETZEL has received a written objection from the customer by that time.

## 2. Prices and Terms of Payment

2.1 In the absence of any agreement to the contrary, all prices of DIETZEL shall be quoted per unit or warehouse respectively excluding VAT. A freight allowance of € 500.00 to a delivery address delivered free of charge and unloaded shall apply for Austria. For orders of less than € 500.00 in value, a flat rate of € 50.00 will apply for transport costs. For Germany, a freight allowance of a limit of € 1,000.00 applies to a delivery address at no extra charge apart from unloading costs. For an order value of below € 1,000.00, a flat rate of € 120.00 for transport costs will apply. Delivery by crane lorry is possible on request and will be calculated according to hours and labour actually done. Unless otherwise agreed, the prices are calculated according to the prices valid on the day of the order.

2.2 The prices quoted include customary packaging. Any packaging required in addition to this will be charged in accordance with work actually done. DIETZEL is a licensee of ARA as well as Intersroh and is thus exempt from taking any returned packaging back, with the exception of reusable packaging (wire mesh boxes, folding troughs, drums, etc.) which is provided upon delivery. If such reusable packaging is not returned to a DIETZEL warehouse in due time, it shall be invoiced in accordance with DIETZEL's current prices. We shall not charge a fee for rental barrels for the first three months; from the 4th month onwards, € 100.00 rent per barrel and month shall be invoiced.

2.3 Unless otherwise agreed, invoices shall be payable within 14 days from the date of the invoice in the full amount.

2.4 Upon request, the customer may pay DIETZEL reasonable instalments in accordance with the progress of performance even if this is not expressly stipulated in the individual contract.

2.5 The customer shall not be entitled to offset claims against DIETZEL. The only exception applies to claims which have been legally established or acknowledged by DIETZEL in writing. The same shall apply to the assertion of a right of retention by the customer.

## 3. Default of payment

3.1 The customer's compliance with the agreed payment dates shall be an essential prerequisite for DIETZEL's (further) fulfilment of the contract. If the customer is in breach of the agreed payment or other services, DIETZEL shall, in particular, be entitled to:

- postpone the fulfilment of its own obligations until payments in arrears or other services have been effected,
- make use of a reasonable extension of the delivery period,
- subject to the assertion of a greater actual damage caused by default, demand default interest at the rate of 8% p.a. from the due date, and
- withdraw from the contract by setting a reasonable period of extension.

3.2 In any case, the customer is required to reimburse the fines as well as all costs, in particular pre-litigation costs incurred by the creditor protection association, collection agency or lawyer.

## 4. Delivery and service execution

4.1 A set delivery period shall only be binding for DIETZEL if this has been expressly agreed as binding in the individual contract. Such a period shall commence upon conclusion of the contract but not before receipt of any down payment which may have been agreed. DIETZEL's compliance with the delivery period shall in any case be subject to the customer's fulfilment of his/her contractual obligation.

4.2 The delivery period shall be deemed to have been complied with if DIETZEL has handed over the delivery item to the customer, brought it to dispatch or notified the customer that it is ready for dispatch by the time of its expiration. Subsequent change or supplement requests by the customer result in an extension of the delivery period accordingly. The same shall apply in the event of unforeseeable hindrances, insofar as such hindrances demonstrably influence the completion or delivery of the object of performance, such as, in particular, delays due to force majeure, industrial disputes, strikes, lockouts, delays in the delivery of essential raw materials, materials or parts. The same shall apply if the aforementioned circumstances occur with DIETZEL's sub-suppliers. If delivery is impossible due to such circumstances, DIETZEL shall be entitled to withdraw from the contract without the customer being entitled to any claims whatsoever. This shall also apply if the aforesaid circumstances occur during an already existing delay.

4.3 If it is not possible to send goods ready for shipment through no fault of DIETZEL's or if the customer does not wish to send the goods for whatever reason, DIETZEL shall be entitled to store the goods at the customer's expense, as a result of which the delivery shall be deemed to have been made. The agreed terms of payment shall remain unaffected thereby.

## 5. Customer collaboration

5.1 The customer shall ensure that all necessary or expedient provisions (e.g. information, documents, aids, technical prerequisites, etc.) and cooperation arrangements (e.g. specifications, approvals, etc.) of the customer shall be provided in due time, in the amount required, in full and free of defects, and free of charge to DIETZEL. DIETZEL shall not be obligated to check professional or customer-specific input for its logical content (appropriateness, completeness, etc.) and suitability.

5.2 The customer's cooperation and provision of input shall be essential tasks on the part of the customer. If the customer does not perform the agreed duties of cooperation, does not perform them on time, or does not perform them properly, the consequences resulting therefrom, such as delays and additional expenses, shall be borne by the customer.

## 6. Transfer of risk

6.1 In the absence of an agreement to the contrary, the goods shall be deemed sold „per works“ (readiness for collection). DIETZEL shall deliver uninsured and duty unpaid per works. Unless otherwise agreed, partial deliveries shall be permissible at DIETZEL's discretion.

6.2 Any risk shall pass on to the customer upon provision of the parts to be delivered at the factory, even if partial deliveries are made and DIETZEL also assumes other services, such as shipping costs or delivery and assembly.

6.3 In all other respects, agreed INCOTERMS shall apply according to the version valid on the date of conclusion of the contract

## 7. Retention of property and assignment

7.1 DIETZEL shall retain ownership of the contractual object until all financial obligations of the customer have been met in full.

7.2 The customer shall be entitled to sell the goods subject to retention of ownership in the ordinary course of business and only as long as he/she is not in default of payment. The customer shall not be entitled to dispose of the goods subject to retention of ownership in any other way (e.g. transfer by way of security, pledging). Any and all claims of the customer from the resale of the goods subject to retention of ownership shall be assigned to DIETZEL at the time they arise in the amount of the claims to which DIETZEL is entitled.

7.3 In the event of default of payment, imminent suspension of payment or in the event of execution against the customer, DIETZEL shall be entitled to dismantle and/or otherwise take back the goods subject to retention of ownership without this being equivalent to withdrawal from the contract. In such case, the customer shall be obliged to surrender the goods.

7.4 The customer shall provide DIETZEL with all requested information on the reserved goods at any time. DIETZEL shall be notified immediately of any seizure or other impairment of the goods subject to retention of ownership by third parties and DIETZEL shall be provided with the necessary

documents. At the same time, the customer shall inform the third party of DIETZEL's reservation of title. The customer shall bear all costs arising from third-party access.

7.5 Concerning the goods subject to retention of ownership, the customer shall be obliged to treat them with care and due diligence for the duration of the retention of ownership.

7.6 The customer explicitly agrees that all claims DIETZEL has against the customer may be assigned to third parties for any purpose. Any prohibitions of assignment shall only become legally effective in case of explicit agreement to that effect in the specific individual contract between the contracting parties.

## 8. Return of goods

8.1 Returns of goods are only possible if this has been explicitly agreed in writing beforehand. The goods shall be duly returned to a warehouse specified by DIETZEL. The goods must be part of DIETZEL's current active sales range, in new condition, and in their original packaging. In any case, DIETZEL shall charge a handling fee of 15 % for returns within 12 months after delivery. The handling fee may be increased for returns of goods from deliveries which are more than 12 months old depending on the actual work done.

## 9. Warranty

9.1 DIETZEL warrants that at the time of the transfer of risk (see point 6. above), the service is not subject to defects which cancel or reduce its suitability in relation to the agreed service description. Insignificant deviations from the service description shall not be taken into account. No warranty claims can be derived from the information contained in catalogues, brochures, advertising material and other written or oral statements that have not been explicitly included in the individual contracts.

9.2 The customer shall inspect DIETZEL's services to ensure that they are free of defects before making productive use of them. The customer may only invoke warranty rights if it has notified DIETZEL in writing of the defects which have occurred within a reasonable period of time and once he/she has provided DIETZEL with the information useful for identifying the defect. The customer shall bear the burden of proof for the existence of a defect at the time of the transfer of risk.

9.3 DIETZEL shall provide warranty primarily by rectification of defects. Rectification of defects shall be effected by eliminating the defect or by DIETZEL indicating ways to avoid the effects of the defect. Any substitute performance (= rectification of the defect by the customer or third parties commissioned by the customer) shall be excluded in any case.

9.4 If the defective goods or parts are returned to us for repair or replacement, the customer shall bear the costs and risk of the return transport. The defective goods or parts replaced in accordance with these provisions shall be exclusively available to DIETZEL.

9.5 DIETZEL shall have no warranty obligation in particular for such defects which are due to normal wear and tear or due to improper installation by the customer and persons attributable to the customer, improper maintenance, repairs or modifications by third parties carried out improperly or without DIETZEL's written consent.

9.6 DIETZEL's liability based on the special right of recourse pursuant to § 933b ABGB (Austrian Civil Code) shall in any event come to an end 2 years after performance of the service (see item 6. above). Moreover, this right of recourse shall be limited in amount to the price agreed between DIETZEL and the customer for the service giving rise to the right of recourse.

9.7 Item 10 shall apply to claims for damages.

## 10. Liability

10.1 DIETZEL shall only pay damages in the event of intent and gross negligence; liability for slight negligence shall be excluded. The customer shall be responsible for proving that DIETZEL has caused damage intentionally or by gross negligence. Any liability on DIETZEL's part shall be limited to the amount of the remuneration agreed with the customer for the service directly causing the damage.

10.2 The goods delivered by DIETZEL shall only offer the kind of security which can be expected on the basis of approval regulations, operating instructions, DIETZEL's regulations regarding the treatment of the object of purchase, and, in particular, with regard to any necessary inspections and other instructions which may be given.

10.3 In no event shall DIETZEL be liable for production stoppages, loss of profit, loss of use, anticipated but not incurred savings, indirect or consequential damages or for damages to or loss of data.

10.4 The customer shall create appropriate conditions in his/her area of responsibility so that damages are kept as minimal as possible.

10.5 Claims for damages shall become statute-barred within 12 months from the date of knowledge of damage and injuring party involved.

10.6 The present limitations of liability do not apply to claims for damages under the Product Liability Act (PHG) or for personal injury.

## 11. Third Party Property Rights

11.1 If the contractual use of the services supplied by DIETZEL infringes on the industrial property rights of third parties and if the customer is therefore banned from using such services in whole or in part by law or if such a prohibition is threatened at DIETZEL's discretion, DIETZEL shall, at its own expense and in consultation with the third party, either (i) procure the right of use for the customer or (ii) render the affected service free of protection or (iii) replace the affected service by others with corresponding performance which do not infringe any industrial property rights. If these measures prove to be unfeasible or uneconomical, DIETZEL shall reimburse the charge attributable to the affected service, excluding an appropriate user fee for the period until the termination of use; upon DIETZEL's request, the customer shall immediately cease using the respective service affected.

11.2 DIETZEL shall defend the customer against all claims arising from an infringement of an industrial property right through the customer's contractual use of the service provided by DIETZEL. DIETZEL shall assume any court costs and amounts of damages imposed on the customer (to the extent of the liability provision of item 10.) provided that the

customer notifies DIETZEL of such alleged claims immediately and in writing; furthermore, DIETZEL reserves the right to take all defensive measures and to enter into settlement negotiations, whereupon the customer for his/her part, supports DIETZEL accordingly and assigns or transfers the corresponding rights and claims necessary for legal prosecution. The customer shall not be entitled to acknowledge third-party claims of his/her own initiative.

11.3 For customer claims for damages against DIETZEL due to the infringement of third party property rights, item 10 shall apply accordingly.

## 12. Data protection/Confidential information

12.1 Both contracting parties shall observe the relevant data protection regulations.

12.2 The contracting parties shall be obliged to treat as confidential all knowledge, data, documents and other information obtained within the scope of the contractual relationship which has been made available to them or which has come to their attention. Confidential information may only be used for the purposes of the individual contract concerned. This obligation also exists after termination of the contract for an indefinite period of time.

## 13. Place of jurisdiction, applicable law, place of fulfilment

13.1 Exclusive place of jurisdiction for all disputes arising directly or indirectly from the contract shall be the responsible court at DIETZEL's registered office in Vienna.

13.2 Even if individual provisions of the contract are legally ineffective, the remaining parts of the contract shall remain binding. This shall not apply if adherence to the contract were to pose unreasonable hardship to one of the parties.

13.3 The contract shall be governed exclusively by Austrian substantive law to the mutually agreed exclusion of the UN Convention on Contracts for the International Sale of Goods and the (national and international) reference standards.

13.4 The place of fulfilment for delivery and payment shall be the registered office of DIETZEL in Vienna, even if the hand-over is carried out at a different location respectively.