

# General purchasing terms and conditions of Dietzel GmbH

Version September 2020

## 1. Scope of application

1.1 The general purchasing terms and conditions apply for all transactions of Dietzel GmbH (hereinafter referred to as "Dietzel") with suppliers or other contractors (hereinafter referred to as "supplier"), even if they are not referred to specifically in later contracts. They also apply in the case that a supplier does not refer to them when accepting the order or confirming it, or if the supplier refers to its own terms and conditions. The supplier's terms and conditions do not form a part of the contract, even if Dietzel does not explicitly reject them, except where this is explicitly confirmed in writing.

1.2 In the case that individual parts of a contract are in conflict, the following priority applies:

- a) Special agreements, provided they were confirmed in writing by Dietzel,
- b) The present general purchasing terms and conditions (version September 2020),
- c) The relevant technical guidelines and norms, as amended,
- d) The relevant general legal provisions.

## 2. Quote and order

2.1 An order is only deemed issued when it has been drafted in writing and signed by Dietzel. Orders created directly through electronic data processing require no signature. Orders issued verbally are only binding on Dietzel once they are confirmed by an authorised representative by subsequent sending of a written or electronic order. Designs prescribed by Dietzel on a case-by-case basis, including any tolerance specifications, are binding. By accepting the order, the supplier recognises that it has informed itself of the type of execution and scope of performance by assessing the designs. Dietzel is not bound by any evident mistakes or typing or calculation errors in documents it provides. The supplier is obligated to immediately inform Dietzel of such errors so that the order may be corrected and renewed.

2.2 Acceptance of the order must be notified to Dietzel through signing a copy of the order or through a separate contract confirmation within five business days from the order; otherwise Dietzel is entitled to revoke it at any time.

2.3 Deviations in quantity and quality from the order, and contractual changes, are only deemed agreed if Dietzel has confirmed them explicitly in writing. Deviations from the designs on which the order was based are only permissible following prior notification by the supplier and written confirmation by Dietzel.

2.4 Drawings, tools, designs, models, brands and presentations or similar, as well as finished products and semi-finished products, that are provided by Dietzel or manufactured under contract for Dietzel remain Dietzel's property and may only be supplied or transmitted to third parties following an explicit written agreement.

2.5 All supplier quotes are free of charge, regardless of any required preparatory work.

## 3. Delivery schedules

3.1 The agreed delivery deadlines and schedules are binding. If no delivery schedule is stated, quick delivery is deemed agreed. The goods must be received at the provided delivery address by the agreed delivery date. If delays are expected, the supplier must inform Dietzel immediately and of its own accord and must obtain Dietzel's decision regarding the maintenance of the contract. In any case, the supplier must notify Dietzel immediately as soon as it realises that it will not be able to deliver on time, and must provide a justification as well as the expected length of the delay. In the event of early delivery, Dietzel reserves the right to return the goods to the supplier at the supplier's expense. Should Dietzel accept the goods early, the payment terms only begin on the originally agreed payment date. Should Dietzel accept goods earlier than what was agreed, Dietzel reserves the right to charge the supplier for the associated costs (e.g. storage rent).

3.2 Contractual penalty: if the supplier is in arrears, Dietzel has the right – regardless of culpability – to request a contractual penalty of 0.5% of the net order value per started calendar day, at most 15% of the net order value and/or of the delivery, and/or to withdraw from the contract after a grace period of 8 business days. The supplier shall indemnify and hold harmless Dietzel for any damages arising from its delayed delivery, as well as for any additional costs to cover a short-term replacement purchase from an alternative supplier. Dietzel is entitled to request this contractual penalty alongside or in addition to fulfilment. If the contract was explicitly concluded as a fixed-date transaction, and this is stated in the order, neither a declaration of withdrawal nor the setting of a grace period is required. Rather, the withdrawal is deemed declared if Dietzel does not immediately inform the supplier after entry into the contract that it demands fulfilment.

## 4. Delivery/packaging

4.1 Delivery is at the supplier's expense, free of charge to the named receiving station (DPU Dietzel GmbH; Incoterms® 2020). When in exceptional cases Dietzel bears the shipping costs, the supplier must select the shipping option prescribed by Dietzel or the cheapest one.

4.2 Risk and ownership are transferred to Dietzel only upon acceptance of the goods by Dietzel's receiving station. Every acceptance is conditional.

4.3 The goods must be packaged by the supplier properly and in line with industry norms. For sea transport, the supplier must ensure appropriate seaworthy packaging. Upon request, particularly in the order, the packaging must be in accordance with Dietzel's instructions. The packaging will not be paid separately, and any ARA/EVA fees etc. will be borne by the supplier. If requested by Dietzel, the supplier will take back one-way packaging. The supplier is liable for damages due to improper packaging; this also applies if the supplier resorted to third parties (e.g. shipping companies).

4.4 Partial deliveries are only acceptable if they were agreed upon with Dietzel at the time of the order or subsequently in writing.

## 5. Documentation

5.1 Invoices, delivery bills and packing slips must be included in one copy with each shipment. These documents must contain:

- Order number and material number
- The department that initiated the order, name and date of the contract
- Exact company name and VAT number, ARA license number if applicable
- Bank details: Swift code and IBAN
- Quantity and units
- Gross, net, and, if applicable, calculation weight
- Article designation with current Dietzel article number
- Remaining quantity in the case of partial delivery
- If agreed, factory certifications and analysis certificates
- The delivery of hazardous goods, materials and preparations requires safety data sheets in accordance with the provisions of Regulation (EC) No. 1272/2008 (EC Regulation on Classification, Labelling and Packaging of Substances and Mixtures [CLP Regulation]) and Regulation (EC) No. 1907/2006 (EU Regulation on the Registration, Evaluation, Authorisation and Restriction of Chemicals [REACH]) as amended, as well as an information sheet pursuant to the hazardous materials regulations, together with concrete instructions regarding handling and storage.
- Any other information required for proper fulfilment of performance.

5.2 The supplier will bear the costs of any additional work and delays caused to Dietzel due to erroneous or missing information.

## 6. Prices

- 6.1. Unless explicitly agreed otherwise, the agreed prices are maximum amounts; in the event of changes, they will be adjusted to Dietzel's benefit. Duties, taxes, fees (in particular legal fees), transport costs, packaging, insurance or other costs not listed in the order are borne by the supplier.
- 6.2. The supplier will not grant Dietzel more unfavourable prices and conditions than to other comparable customers.

## 7. Invoice/payment

- 7.1. Invoices must be provided separately for every order. Payment will be made only after complete delivery of the goods, free of defects, including the comprehensive associated documentation (e.g. instruction manual, energy certificate) or comprehensive, defect-free performance and after delivery of a proper invoice in original copy. For partial deliveries, this applies analogously. Delays caused by incorrect or incomplete invoices do not affect the discount terms accorded to Dietzel. Unless other payment terms are explicitly agreed, payment is as follows:
- Up to 30 calendar days minus 5% discount
  - Up to 60 calendar days net.
- 7.2. The payment term begins upon receipt of the original copy of the invoice or of all documents associated with the delivery, provided that acceptance/delivery was in conformity to the contract.
- 7.3. Claims of the supplier may only be ceded to third parties with Dietzel's written agreement. Payments will only be made to the supplier. Dietzel is entitled to offset claims of Dietzel against the supplier against claims of the supplier.

## 8. Guarantee/warranty/complaints

- 8.1. The supplier shall ensure that the goods, including presentation and labelling, correspond to Dietzel's specifications, are complete and free of defects, and that the required documentation is provided to Dietzel in full. The order or contract is fulfilled in accordance with the state of the art. An obligation of Dietzel to notify of defects (§§ 377 et seq. Austrian Corporate Code – *Unternehmensgesetzbuch*, UGB) is excluded in every case. For the delivery of hazardous goods, the supplier shall additionally ensure that all relevant provisions regarding transport are observed.
- 8.2. Dietzel is in every case entitled to change the contract or parts thereof after a grace period of 14 business days to remedy deficiencies was not met, other legal rights and claims notwithstanding. The costs associated with remedying deficiencies (e.g. packaging, freight, disassembly and assembly labour cost, travel expenses and the execution of the remedy at Dietzel's premises) are borne by the supplier, as are the costs for returning goods in the event of a withdrawal from the contract.
- 8.3. The guarantee period begins with delivery (4.1) and ends after 24 months for movable goods and 36 months for immovable goods, provided that laws do not require a longer period. The supplier bears the burden of proof that the deficiency was not present at the time of delivery.
- 8.4. Unless otherwise specified, the guarantee is based on the legal provisions of the Austrian Corporate Code (UGB) and the Austrian Civil Code (*Allgemeines bürgerliches Gesetzbuch*, ABGB).
- 8.5. The supplier is obligated to investigate the stock range once a year together with Dietzel for so-called "non-moving goods" and if necessary to replace these goods with current stock.

## 9. Damage compensation

- 9.1. Regardless of the guarantee claims to which Dietzel is entitled, in the event that the supplier or its agents (e.g. shipping company) culpably causes damage, Dietzel is entitled to claim damage compensation in accordance with the legal provisions.
- 9.2. The supplier guarantees, for itself and its legal successors, that the delivered goods are free of defects pursuant to the Austrian Product Liability Act (*Produkthaftungsgesetz*, PHG) as amended in terms of construction, production and instruction. It guarantees that it was not aware of any defects at the time of marketing. The supplier will indemnify and hold harmless Dietzel in the event of any claims.
- 9.3. The supplier undertakes to maintain product liability insurance with adequate coverage for personal or property damage. Other compensation claims remain unaffected.

## 10. Copyrights

The supplier is liable for ensuring that its delivery and its exploitation or use by Dietzel does not violate any third-party copyrights (e.g. patent, brand, design and similar rights). It will indemnify and hold harmless Dietzel and its customers for all claims arising from the use of such copyrights. This does not apply in the event that the supplier has manufactured the delivered goods according to designs, drawings, models or descriptions of a similar nature provided by Dietzel and does not know or cannot know that the corresponding products it produces violate copyrights. The supplier bears the burden of proof regarding its lack of knowledge.

## 11. Force majeure

War, civil war, epidemics and pandemics, export restrictions or trade restrictions due to a change in political relations, and strikes, lock-outs, work stoppages, work restrictions and similar events that make it impossible or unreasonable for Dietzel to fulfil the contract are considered force majeure and release Dietzel for their duration from its obligation to accept delivery on time. The contracting parties are obligated to inform each other of such events and to adjust their obligations to the changed circumstances in good faith.

## 12. Custody/ownership

Provided materials remain the property of Dietzel. As such, they must be stored separately and may only be used for orders associated with Dietzel. The supplier is liable, even without culpability, for their loss of value or loss. The objects that are manufactured with the materials provided by Dietzel are the property of Dietzel in their respective state of completion. The supplier keeps these objects in custody free of charge. The purchase price includes the cost of custody for the objects and materials kept in custody for Dietzel.

## 13. Business secrets

The supplier is obligated to handle orders and all associated commercial and technical details of which it becomes aware as business secrets. If a separate confidentiality agreement has been agreed with the supplier, its provisions have priority in the event of doubt. All documentation provided to the supplier, as well as the documents prepared by the supplier based on Dietzel's specifications, remain in the ownership of Dietzel or become its property upon payment of the respective performance and may not be reproduced or made available to third parties by the supplier. The documents must be provided to Dietzel upon first request, completely and without undue delay. In the event of a breach of this duty of confidentiality, the supplier is also liable for immaterial damage, at the minimum paying a contractual penalty regardless of culpability in the amount of the respective total contract sums. Dietzel is entitled to request the contractual penalty alongside or in addition to other rights and claims to which it is entitled.

## 14. General provisions

- 14.1. Severability clause: should a provision be or become invalid, the remaining provisions of these general purchasing terms and conditions remain unaffected. The invalid provision shall be replaced by a provision that comes closest economically to the invalid provision.
- 14.2. Austrian law exclusively applies to all legal relations between the supplier and Dietzel, including when the supplier is headquartered abroad, under exclusion of the Vienna Convention on the International Sale of Goods and any legal conflict norms (IPRG – Austrian International Private Law Act, Rome Convention etc.).

- 14.3. The place of fulfilment is Vienna or Pezinok or another site of the Dietzel Group. Another place may be agreed for individual deliveries.
- 14.4. The competent court in Vienna has exclusive jurisdiction. However, Dietzel may also lodge a complaint at the place of the supplier's headquarters.
- 14.5. Corporate Social Responsibility (CSR): the supplier is obligated to ensure the observance of the minimum standards regarding its social and/or environmental behaviour (ideally through ISO 14001 certification, EMAS validation, or the European environmental label).