

**General Terms of Sale and Delivery (GTSD) 08/2005**  
of  
**di-soric Industrie-electronic GmbH & Co. KG**  
and  
**di-el Industrie-electronic GmbH**

**1 General Provisions**

- 1.1 Our deliveries and other contractual performances shall solemnly and exclusively be governed by our General Terms of Sale and Delivery (GTSD) in their latest version. General terms and conditions of Purchaser, whether diverging from, opposing to or supplementing these terms and conditions, shall not apply unless such being agreed upon individually, explicitly and in writing.
- 1.2 In the course of an ongoing business relationship, our GTSD shall also apply to our future supplies and deliveries irrespective of such being explicitly agreed upon.
- 1.3 All titles, other property rights, rights of exploitation and copyrights concerning cost estimates, drawings or other documents (for example in the context of individual client based solutions) shall be reserved in our name. Such documents may only be made available to third parties with our express, prior and written consent and shall be returned to us, should the order in question not be placed with us.
- 1.4 Purchaser agrees to the digital storage and processing of his own details and the details of the purchase contract in accordance with the provisions of the German Federal Data Protection Act (Bundesdatenschutzgesetz (BDSG)).

**2 Offer**

- 2.1 Our offers shall solemnly be made subject to confirmation and shall only be construed as an invitation to treat.
- 2.2 References made directly or indirectly in our offers, to technical details, which refer to data contained in printed or electronic media, such as measures, weights, performance or physical or material quality, shall constitute mere guidelines within the usual limits in the trade, unless where explicitly stipulated otherwise in writing in the offer.
- 2.3 Technical alterations to the goods to be delivered or alterations to their respective design engineering shall be deemed accepted, except where the alteration is unreasonable or reduces the usage property.

**3 Conclusion of Contract, Call-Off Orders, Samples**

- 3.1 Purchaser's offers shall be valid and binding for a period of fourteen days, calculated from the day of receipt of the order.
- 3.2 A binding and valid contract requires either our written confirmation of the respective order or our respective delivery or other contractual performance, the first of these alternatives to take place forming the relevant event.
- 3.3 Call-off orders for a particular overall quantity of goods require Purchaser to call such quantity off in one or more single quantities within the agreed time, otherwise within twelve months from the conclusion of the contract. Should Purchaser not call off the overall quantity within the call-off time period, we shall no longer be under an obligation of performance in advance; instead we shall be entitled to deliver the remaining quantity in direct exchange for immediate payment. This provision shall not limit any possible rights to withdraw from the contract or any possible claims for damages.
- 3.4 In Germany, sample deliveries shall be deemed a sale on approval, unless explicitly stipulated otherwise. Deliveries of samples for export purposes shall be available as a sale for a reduced price. Sample equipment delivered in Germany shall be returned to us undamaged and with the original packaging within two weeks after the date of dispatch and at the expense of the person ordering, unless that person pays the invoice attached to the sample within this period of time. Samples sent abroad shall not be returned. Title to and ownership of samples shall rest with us until the full payment of the invoice has been effected and we have received this payment.

**4 Prices**

- 4.1 Our prices shall cover delivery Ex Works (EXW Incoterms 2000) including packaging of the equipment, unless explicitly stipulated otherwise. The transport packing, the costs of transport and the costs of transport insurance shall be invoiced separately on the basis of a lump-sum. The statutory Value Added Tax on the due day shall be invoiced separately.
- 4.2 Deliveries made without specific pricing agreement shall be invoiced according to the official prices valid at the day of delivery.
- 4.3 The minimum value of each order shall be 50,00 € per German order and 250,00 € per foreign order. Smaller orders shall be processed only at a separate service charge of 25,00 €.
- 4.4 Should the time period between the conclusion of the contract and the date of delivery exceed four months, we shall be entitled to adjust the contractual prices accordance with an actual raise of wages or of costs of material in the meantime; such raise shall be excluded, though, in cases of call-off orders under Clause 3.3, should fixed pricing be guaranteed.
- 4.5 Partial deliveries, including such deliveries in the context of call-off orders under Clause 3.3, shall be invoiced separately.

**5 Payment, Late Payment, Exclusion of Set-Off**

- 5.1 Our invoices shall be payable within ten days at a cash discount of 2 percent or within thirty days strictly net and always free point of payment as indicated; alternatively by irrevocable and confirmed letter of credit (or bank guarantee) issued by a West European bank. Furtheron, we shall also be entitled to ask for advance payment.
- 5.2 All and every payments shall only be made in EURO.
- 5.3 Means of payment other than cash or bank transfer of monies shall only be accepted if so stipulated in advance and, even if so stipulated, only as conditional payment. Provision of cheques or bills of exchange shall only constitute payment, if and when the last bill of exchange has been honoured. Acceptance of a bill of exchange shall only be deemed to constitute a prolongation of payment, if and when explicitly agreed upon in writing; Purchaser shall bear the interest as well as any costs and expenses.
- 5.4 Rebates or cash discounts shall only be deducted, if and when explicitly agreed upon in writing. Furtheron, any deduction of rebate shall

only be admissible if we receive all payments within the respective rebate time period.

- 5.5 Should Purchaser delay payment, we may charge a default interest of 8 percentage points above the base lending rate pursuant to sec. 247 of the German Civil Code (BGB) (so-called Basiszinssatz under German Law), without prejudice to our claims for actual damages exceeding the aforementioned amount.
- 5.6 Purchaser shall only set off claims against us which have been adjudicated by non-appealable judgement, are not in dispute or have been acknowledged by us.
- 5.7 Should Purchaser delay payment for more than four weeks, should payment by cheque or bill of exchange be protested or should execution be imposed on Purchaser's assets, we may make further deliveries to Purchaser, whether owed under separate orders or under call-off orders, conditional upon advance payment.
- 5.8 Purchaser may only exercise a right of retention, should his counterclaim be based on the same (single) order in question or, in a case of a call-off order, the same (single) call-off in question.

**6 Time of Delivery, Impossibility of Performance**

- 6.1 Any agreed delivery times (that is both delivery times and delivery dates) shall only be binding, if Purchaser has given any and all information, clearances, approvals of plans and such alike and has provided any and all construction drawings agreed upon, materials to be provided by him and testing equipment (hereinafter: assistance tasks) in a way that puts us in a position to achieve the respective goal (hereinafter: assistance goal); furtheron, that we are in receipt of any advance payments agreed upon; otherwise, the delivery time shall be postponed until or prolonged by such time until even the last of the before-said requirements has been fulfilled.

Agreements about delivery times shall require execution in writing in order to be valid and binding. A delivery time shall be met if either the goods to be delivered have left our place of business or we have given notice of readiness for dispatch in due time.

- 6.2 Correct and punctual deliveries by our own suppliers shall be reserved (so-called Selbstbelieferung under German law).  
In the event of industrial actions, in particular strike and lock-out, force majeure or other unforeseeable obstacles, which are beyond our control, any delivery times agreed upon shall be prolonged or postponed by such time period reasonably necessary, as long as such obstacles have an impact on the production or delivery of the goods to be delivered. Such obstacles include seizures, bans on exports or imports, embargos and other official interventions.  
Should any of the before mentioned circumstances render our commenced commitment to the order unreasonable, we shall be entitled to cancel the contract.
- 6.3 Purchaser shall be responsible for the compliance with and the application of all relevant foreign trade and payments regulations (import licences, foreign exchange transfer etc.) and any other applicable law valid outside Germany, save where expressly stipulated otherwise.
- 6.4 Should we be responsible for a delay of delivery, Purchaser may cancel the contract after a reasonable extension of time to be granted to us has elapsed; should the delivery become impossible, granting of an extension of time shall not be required.

Any claims for damages on the basis of a delay of delivery (including compensation for consequential loss) as well as any claims for reimbursement of expenses pursuant to sec. 284 of the German Civil Code (BGB) shall exclusively be governed by Ciper 9 (Liability).

- 6.5 The limitation of liability under Ciphers 6.4 and 9 (Liability) shall not apply to mercantile contract of sale with an absolutely fixed delivery date pursuant to sec. 376 German Commercial Code (HGB) (so-called Fixhandelskauf under German law).

**7 Consignment and Passing of Risk**

- 7.1 Partial delivery shall be allowed.
- 7.2 We shall deliver „Ex Works“ (EXW Incoterms 2000), save where expressly stipulated otherwise. Should dispatch be part of our duties, we may chose the dispatch type sequence, the mode of dispatch and the carrier, save where expressly stipulated otherwise. Ordered modes of dispatch shall not be subject of any warranty.
- 7.3 The risk of accidental loss of or accidental damage to the goods shall pass over to Purchaser at the latest with the picking up of the goods by Purchaser or otherwise with dispatch to the carrier, irrespective of whether it is a partial or complete delivery or whether we have accepted other duties, such as the bearing of costs of dispatch or home delivery.
- 7.4 The risk of accidental loss of or accidental damage to the goods shall also pass over to Purchaser in the event of a default in taking delivery or after ten days after Purchaser received notice of readiness for dispatch. We shall insure the goods upon written order of Purchaser to that effect at his own expense.
- 7.5 Should Purchaser be responsible for late delivery, we may charge for any actual costs of storage starting ten weekdays after the default in delivery or after having given notice of readiness for dispatch; storage in our own facilities shall be charged for at a rate of 0,5 percent of the net value of the goods stored per month or part thereof. Alternatively, we may, after having granted reasonable respite, make other use of the goods and deliver to Purchaser goods of the same kind within duly and reasonably prolonged period of time.
- 7.6 Without prejudice to any warranty claims, Purchaser shall take delivery, even if the goods delivered should show defects of minor nature.

**8 Responsibility for Defects, Custom-Made Products**

- 8.1 Our goods fulfil all requirements under the technical rules and regulations applicable in Germany. The before-said shall also apply regarding any foreign technical rules and regulations, if explicitly agreed so in writing.

- 8.2 With regard to deliveries of custom-made products produced according to specifications of an order that deviates from our product catalogue, Purchaser shall accept any consequential quantitative differences to the order customary in the trade up to a limit of 5 % above or below the quantity ordered.
- 8.3 Purchaser shall inspect any goods delivered immediately upon receipt for identity, quality or quantity deviations; notice of any obvious defects shall be given in writing within three days. Notice of hidden defects shall be given immediately after discovery. Should notice not be given in due time, the goods shall be deemed accepted by Purchaser.
- 8.4 Defects of goods shall require more than just a minor deviations from the contractual quality or fitness for usage, according to one's best judgement, which result from circumstances antecedent to the passing of the risk, as there are in particular faulty design, materials or workmanship.
- 8.5 In particular, we shall not be liable for any consequences of failure to observe our operating instructions, security instructions or data sheet, the instructions regarding the assembly, connection and putting into operation or the technical data; we shall neither be responsible for faulty servicing or cleaning, inappropriate or unprofessional use, natural wear and tear, influences of not permitted chemical, electrochemical, electrical or physical nature (i.a. fluids) nor for modifications or repair work by Purchaser or third parties, which had not been authorized by us in advance.

- 8.6 We shall remedy defects as follows:  
Defects appearing within twelve months after the passing of risk shall be remedied at our choice either by repair or by delivery of a replacement (supplementary performance). We may refuse to remedy a defect for as long as Purchaser is in default with payment of such part payment equalling the part of the delivery free from defects.

Purchaser shall give us the time and the opportunity necessary for remedying the defect according to one's best judgement. Such shall include an analysis of the cause of the defect, if necessary on site. Should a notice of a defect prove incorrect, because we are not liable for the cause of the defect, Purchaser shall be charged for the relevant servicing, in particular any tests and on-site services.

Only in urgent cases of danger to the operating safety, if disproportionately high damages need to be avoided or if we should be delayed with remedying a defect, Purchaser may, if he gives us advance notice of such circumstances and such intention without delay, remedy the defect himself or have it remedied by a third person.

Should remedying of the defect prove impossible or should have failed twice or should remedying of the defect or delivery of a replacement have occurred with delay due to our fault, Purchaser may choose between a reasonable reduction of the contractual price or the cancellation of the contract; the latter being excluded in cases of only minor deviation from the contract.

The right to reduce the contract price or cancel the contract shall be excluded, once the right to ask for a supplementary performance statute-barred.

## 9 Liability for Damages

- 9.1 We shall accept liability for damages or expenses (hereinafter: damages) as follows:

We shall accept liability for any fatal or physical injury and damage to health; furtheron, for wilful damage or gross negligence by the owners of our company, our representatives and executive employees; further for fraudulent non-disclosure of defects, on the basis of a guarantee and of the German Product Liability Act (Produkthaftungsgesetz).

Furtheron, we shall accept liability for damages in the event of a wilful or negligent breach of material duties, with this liability being limited to the predictable damage typical of this type of contract unless it is a case of wilful damage or gross negligence or of a fatal or physical injury or damage to health.

In the event of a wilful or negligent breach of a duty to provide information or of other secondary obligations, Ciper 8 and the preceding provisions shall apply mutatis mutandis.

Any further liability for damages shall be excluded.

- 9.2 The distribution of the burden of proof in a legal action shall not be influenced by the preceding provisions. The same shall apply regarding any right of recourse of the producer (so-called Herstellerregress pursuant to sec. 478 BGB).
- 9.3 Any of the preceding exemptions or limitations of liability shall extend to the personal liability of our employees, representatives and auxiliary personnel.

## 10 Retention of Title

- 10.1 Ownership of the goods delivered, that is both title in and right of disposal of, shall remain with us (hereinafter: retention of title) until full payment of all open accounts within the framework of our business relationship with Purchaser has been made. Neither entering of particular claims into an open or running account nor balancing of credit and debit sides and having the result confirmed by us shall affect the retention of title.
- 10.2 Purchaser shall be allowed to sell the goods under reservation in the regular course of business; Pledging or assignment as security shall not be permitted, though. Should his contingent right (so-called Anwartschaftsrecht under German law) be pledged or assigned as security, Purchaser shall point out the retention of title to the secured third party and shall inform us without delay about pledging or assignment as security. Purchaser shall do his best to secure our rights in the course of any resale on credit; he shall in particular pass on the retention of title.
- 10.3 Purchaser herewith already assigns to us his purchase-money claims from the resale of the goods under reservation up to an amount of our agreed purchase price; we herewith accept this assignment. Should the conditions of a resale exclude such assignment, such resale of the goods under reservation shall require our prior, express and written consent. The same shall apply, if Purchaser's claim were to be entered into an open or running account. Irrespective of a resale taking place unlawfully or with our consent, Purchaser herewith already assigns to us his claim for any credit balance in the amount of the invoice.
- 10.4 Irrespective of the above assignment and our right of direct collection, Purchaser shall remain entitled to collect the debt under a resale in his own name as long as he duly fulfils his obligations towards us and does not become insolvent. Upon a serious pecuniary deterioration of Purchaser – especially in connection with the formal application to start insolvency proceedings – his collection right shall cease, though.

Upon our request, Purchaser shall give us all information necessary for collection of the debt and shall further inform the debtor of the assignment. We may at any time, even if Purchaser is entitled to collection, request from Purchaser a signed declaration of assignment.

- 10.5 Any eventual processing or working-up shall be performed in our name and for our benefit, without resulting in any obligation for us, though. In the event of any processing, adjunction, mixture or combination of the goods reserved with other goods not belonging us, such proportion of the resulting joint ownership in the new product(s) shall vest in us, which is the equivalent to the ratio of the invoiced value of the goods under reservation to the value of the other goods at the time of the processing, adjunction, mixture or combination.

The Parties to this contract agree that in the event, Purchaser acquires sole ownership in the new product(s), Purchaser pass such proportion of this property right onto us as is the equivalent to the ratio of the invoiced value of the goods under reservation to the value of the other goods at the time of the processing, adjunction, mixture or combination; further that Purchaser stores the new product(s) for us free of charge.

In the event of a resale of the goods under reservation, after or without prior processing, adjunction, mixture or combination, the above anticipatory assignment shall only survive in the amount of our invoice regarding the goods under reservation, which are being sold on together with other goods.

- 10.6 Purchaser shall insure the goods under reservation against all typical risks, in particular against theft, fire and water damage, until he acquires full ownership; Furtheron, Purchaser shall, on demand, provide us with a confirmation by an insurance to that effect.

- 10.7 We shall, at Purchaser's request, release securities, if and insofar as the realistic achievable value of the securities provided by Purchaser exceeds the whole of the securities by more than 10 percent.

- 10.8 Purchaser shall secure and safeguard our title and right of disposal in accordance with the law and the statutory provisions of the country of destination of the goods under reservation and shall cooperate for that purpose in any way necessary. Should binding local law deny our retention of title the validity, Purchaser shall, on our request, provide us with other security of equally lasting value.

- 10.9 The retention of title shall not affect the passing of risk pursuant to Ciper 7.

## 11 Provision of material and documents

Should Purchaser provide parts or material for the production or for other usage in the context of the processing of the order, we shall not inspect such provided material upon receipt for hidden defects, unless otherwise expressly agreed upon. Should provided material prove unfit for the agreed processing or working-up, we shall inform Purchaser. It shall be Purchaser's responsibility to provide a solution. Possible additional costs shall be borne by Purchaser. Delivery times shall be deemed to be adequately prolonged.

## 12 Guaranties

References to technical regulations or other sources of the acknowledged rules of technology shall solemnly serve to describe the relevant goods, but shall not constitute a guarantee. A binding guarantee requires an express stipulation to that effect or an express representation to that effect in advertising or sale material. Under such guaranty we shall be liable as follows:

- Guaranties shall only refer to the absence of defects of the material.
- Liability under a guaranty shall require as a precondition the professional installation and operation in accordance with the operating instructions, security instructions or data sheet as well as an appropriate use of the goods.
- Liability under a guaranty shall be limited to the replacement of the defective goods free of charge; any additional costs and expenses or any damages shall not be borne by us.
- The statutory period of limitation shall start with the passing of the risk.

## 13 Industrial Property Rights and Copyright

- 13.1 Purchaser shall acknowledge and observe our industrial property rights, in particular but not limited to all titles and ownership of domains, names, trade marks and other similar rights, brands and title to and ownership of know-how. Each and any use of such shall only and exclusively be made in connection with our products and shall be limited to the use customary in the particular trade and within the framework of the applicable protective laws.

- 13.2 When Purchaser orders deliveries of custom-made products to be produced according to specifications deviating from our product catalogue, Purchaser shall solemnly be responsible and liable for the protection of any industrial property rights of third persons. Should a third party assert claims against us based on an infringement of industrial property rights (including claims for compensation for legal costs) with respect to such an order, Purchaser shall indemnify us from such claim upon our request and shall assist us in such matter using his best endeavours.

## 14 Severability Clause

Should any provision of these GTSD or any other term within the framework of other contracts between the parties be or become invalid, the validity of all other provisions and contracts remain unaffected. The Parties shall agree to replace such invalid provision or term by a valid one reflecting the originally intended economic aim as closely as possible.

## 15 Place of Performance, Jurisdiction and Venue, Applicable Law

- 15.1 Contractual place of performance regarding all and any deliveries and payments shall be at the seat of our company in Urbach, Germany.
- 15.2 Any and all disputes arising directly or indirectly under this contractual relationship shall be submitted to the German courts at our own venue. We shall be entitled, though, to bring legal actions against Purchaser at the courts having jurisdiction over Purchaser under the laws applicable at the seat of his company.
- 15.3 The entire agreement, its terms and all legal relationships between the parties shall be solemnly and exclusively governed by and construed in accordance with the law of the Federal Republic of Germany. The United Nations Convention On Contracts For The International Sale Of Goods (CISG) shall not be applicable.