

I. General provisions

1. These Terms and Conditions of Delivery apply to supplies and services provided by DI MATTEO Förderanlagen GmbH & Co. KG (hereinafter referred to as the "Supplier"), unless deviating agreements have been made in individual cases. All deliveries, services and offers of the Supplier are provided exclusively on the basis of these General Terms and Conditions of Delivery. These are an integral part of all contracts the Supplier concludes with his contractual partners (hereinafter also referred to as the "Buyer") for the deliveries and services offered by him. The offer, the acceptance of the offer, the order confirmation or the sales of any delivery items are subject to these Terms and Conditions of Delivery (hereinafter referred to as the "Contract").
2. Terms and conditions of the Buyer do not apply, even if the Supplier does not separately object to their validity in individual cases. Even if the Supplier refers to a letter that contains or refers to terms and conditions of the Buyer, this does not constitute acceptance of the validity of the terms and conditions.

II. Offer, Contract conclusion and offer documents

1. All offers of the Supplier are subject to change and non-binding unless they are expressly marked as binding or contain a specific acceptance period. Orders submitted by the Buyer shall only be deemed accepted by the Supplier if they have been accepted in writing by the Supplier within 12 days from submission.
2. The legal relationship between the Supplier and the Buyer shall exclusively be governed by the contract concluded in writing, including these General Terms and Conditions of Delivery. This contains in full any agreements between the parties concerning the delivery item. Verbal commitments of the Supplier before conclusion of this Contract are legally non-binding and verbal agreements of the parties are replaced by the written Contract, unless it is expressly stated therein that they will continue to be binding in each case.
3. Quantity, quality and description as well as possible specification of the delivery item correspond to the offer of the Supplier (if accepted by the Buyer) or the order of the Buyer (if accepted by the Supplier). All sales documents, specifications and price lists are to be kept strictly confidential and may not be made accessible to third parties.
4. The Supplier reserves the ownership or copyright to all submitted offers and cost estimates as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and auxiliary materials provided to the Buyer. Without explicit approval of the Supplier, the Buyer may not as such or in their contents make them accessible to third parties, disclose them, use or copy them himself or by third parties. At Supplier's request, the Buyer shall return to the Supplier these objects completely and destroy any copies made, if they are no longer required by him in the proper course of business or if negotiations do not result in the conclusion of a contract. Excluded thereof is the storage of electronically provided data for the purpose of usual data backup.

III. Contract Price and terms of payment

1. The Contract Price applies to the agreed scope of service and delivery. Additional or special services are invoiced separately. Unless otherwise agreed, the Contract price is quoted in EURO and "ex works" (delivery plant Beckum) according to Incoterms 2010, excluding packing and - as far as provided for in the Contract - excluding commissioning, test and training as well as plus value-added tax at the legally applicable rate.
2. Unless otherwise agreed, the Buyer has to pay the Contract Price without deduction within 30 days after receipt of the invoice.
3. Payments shall only be made by bank transfer.
4. The Buyer has only the right to the retention of payments insofar as his counterclaims are undisputed or have been ascertained as legally binding.
5. The Buyer has only the right to the offset with counterclaims insofar as they are undisputed or have been ascertained as legally binding.

IV. Time of delivery and delay in delivery

1. The delivery time is based on the agreements of the parties. Its compliance by the Supplier is subject to the clarification of all commercial and technical questions between the parties and that the Buyer has fulfilled all obligations he is responsible for, e.g. provision of the necessary official certificates or approvals or the provision of a down payment. If this is not the case, the delivery time shall be extended accordingly. This shall not apply if the Supplier is responsible for the delay.
2. The Supplier shall notify any anticipated delays as soon as possible.
3. Terms and deadlines for deliveries and services announced by the Supplier are always deemed to apply approximately, unless a fixed period of time or a fixed deadline has explicitly been confirmed or agreed.
4. Notwithstanding his rights arising from delay of the Buyer - the Supplier may demand from the Buyer an extension of delivery and service periods or a postponement of delivery and service deadlines for the period during which the Buyer fails to comply with his contractual obligations towards the Supplier.
5. If the Supplier is in delay for reasons he is responsible for and the Buyer thereby incurs a damage, the Buyer shall be entitled to claim for liquidated damages for delay at a rate of 0,5 % for each full week of delay, however, maximal limited to 5 % of the value of such part of the delivery item, which cannot be used in time or in accordance with the Contract as a result of the delay.
6. If the Buyer sets the Supplier - taking into account the legal exceptions - a reasonable period of time for the service after the due date and the deadline is not met, the Buyer shall be entitled to terminate the Contract within the framework of the legal provisions. He commits himself at Supplier's request to declare within a reasonable period of time, whether he makes use of his right of termination.

7. Further rights and claims arising from delay in delivery are excluded or limited in accordance with clause VIII. of this Contract.

V. Transfer of risk and acceptance

1. The place of fulfilment for all obligations arising out of the Contract is Beckum, unless otherwise agreed. If the Supplier is also responsible for installation, the place of fulfilment shall be the place where the installation is to be effected.
2. The delivery method and packaging shall be subject to the due discretion of the Supplier.
3. The risk is transferred to the Buyer when the object of delivery leaves the works even in case of partial deliveries or the Supplier is responsible for the provision of other services, e.g. the shipping costs or delivery and installation. If an acceptance has to take place, this shall be decisive for the transfer of risk. Acceptance has to be carried out without delay on the acceptance date, alternatively after notification of the Supplier of the readiness for acceptance. The Buyer may not refuse acceptance in the event of an insignificant defect provided that the Supplier agrees in writing to remedy the insignificant defects. Acceptance shall also be deemed effected if the Buyer uses the delivery item commercially.
4. If dispatch respectively acceptance is delayed or does not take place for reasons the Supplier is not responsible for, the risk shall pass to the Buyer from the date of notification of readiness for dispatch respectively acceptance. The Supplier commits himself to provide the insurances requested by the Buyer at the expense of the Buyer.

VI. Retention of title

Notwithstanding the delivery and the transfer of risk or other provisions of these Terms and Conditions of Delivery, ownership of the delivery item shall not be transferred to the Buyer unless the Contract Price has been paid in full.

VII. Warranty/claims for defects

1. The warranty period is 12 months from the date of delivery or, insofar as an acceptance needs to take place, from acceptance. This assumes that the assembly/commissioning/test is carried out by the Supplier or under the supervision of the service personnel of the Buyer. If delivery or, if an acceptance is agreed, acceptance is delayed for reasons the Supplier is not responsible for, the warranty period shall end 24 months after notification of readiness for delivery at the latest.
2. The delivery item shall be inspected carefully immediately after delivery to the Buyer or to the third party designated by him and the Supplier shall be notified of any defects without delay in writing. If the Buyer fails to do so, the delivery item shall be deemed approved.
3. In case of defects of the delivery item which are proven to be based on bad material, faulty construction or bad workmanship the Supplier shall be at first obligated and entitled at his option either to repair or replacement delivery within a reasonable period of time. The Buyer has to grant the Supplier the time required and opportunity required to remedy. Replaced parts shall become the property of the Supplier. The Supplier shall bear - provided the complaint proves to be justified - the expenses necessary for remedial work. In the event of failure, i.e. impossibility, unreasonableness, refusal or unreasonable delay of the repair or replacement delivery, the Buyer shall be entitled to terminate the Contract (the "Wandlung") or reduce the Contract Price reasonably.
4. Only in urgent cases that endanger operational safety respectively to prevent unreasonably high damages, whereby the Supplier has to inform the Buyer without delay, the Buyer shall be entitled to remedy the defect himself or to have the defect remedied by third parties and to demand reimbursement of the necessary expenses from the Supplier.
5. Guaranteed characteristics are only those that have been expressly designated by the Supplier as such.
6. When a defect in a part of the delivery item has been remedied, the Supplier shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original delivery item for a period of 12 months. With respect to the remaining parts of the delivery item, the warranty period shall only be extended by the period during which the delivery item could not be used as a result of the defect.
7. If the Buyer has notified a defect and no defect is found for which the Supplier is liable, the Supplier shall be entitled to compensation by the Buyer for the costs he incurs as a result of such notice of defect.
8. The Supplier assumes no responsibility for the fact, that the delivery item is suitable for a specific purpose, unless he has expressly agreed to this responsibility.
9. The Supplier shall not be liable for defects of the delivery item arising from a description of goods or specification of the Buyer.
10. Excluded from the warranty are damages that are not demonstrably caused by faulty construction, bad material or bad workmanship. Likewise, the Supplier assumes no liability for damages due to normal wear and tear, improper maintenance, non-observance of operating regulations as well as for other reasons, for which the Supplier is not responsible.
11. The warranty claims of the Buyer are explicitly and finally regulated in this clause VII. Other and further claims are excluded. This does not apply in case of intent or gross negligence of the Supplier or insofar mandatory law provides otherwise.

VIII. Liability of the Supplier, exclusion of liability

1. The Supplier shall be liable for breaches of duties in the fulfilment of this Contract exclusively in accordance with the provisions of this Contract. The above does not apply to damages resulting from injury to body and life; insofar the legal claims apply in addition.

2. The Supplier shall not be liable for loss of profit, unsuccessful expenses, loss of production, loss of use, lost business opportunities or loss of orders or financing costs as well as consequential damages or indirect damages.
3. The parties agree that the Supplier's maximum liability, for whatever legal reason, will not exceed fifty percent (50 %) of the net price.
4. Limitations of liability and exclusions of liability shall not apply in case of intent or gross negligence of the Supplier or insofar mandatory law provides otherwise.

IX. Force majeure

- a) If the non-compliance in whole or in part with the Contract is due to force majeure such as mobilization, war, weather conditions, riots, pandemics or epidemics or other events not being avoidable in a reasonable manner, like strike or lockouts the Supplier shall be entitled to adjust the agreed deadlines.
- b) Should the effects of such events last more than 30 working days in total, the Buyer is obligated at Supplier's request to declare within a reasonable period of time as to whether he terminates the Contract due to delay in delivery or insists on delivery. In case of a continuation of more than 30 working days, the Buyer may terminate the Contract.
- c) Should such events significantly change the economic importance or the contents of the delivery and service or have significant effect on Supplier's operation, the Contract shall be adjusted appropriately in good faith. Insofar as an adjustment is economically unreasonable for the Supplier or an agreement on the adjustment cannot be reached, the Supplier has the right to terminate the Contract.

X. Applicable law, arbitration

1. The law governing the Contract shall be the Swiss substantive law. The United Nations Convention on Contracts for the International Sales of Goods of 11.04.1980 (CISG) applies to the Contract.
2. The parties will endeavour that any dispute or difference which may arise out of or in connection with this Contract will be settled amicably and in mutual agreement. Should a mutual agreement not be possible, any dispute or difference arising out of or in connection with this Contract or its validity shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by an Arbitration Tribunal of three Arbitrators nominated according to these rules. The arbitration tribunal shall meet in Zurich/Switzerland. The language for arbitration proceedings shall be English.

XI. Assembly

Insofar as an assembly or supervision of assembly has to be provided, the General Terms and Conditions for Assembly apply in addition.

XII. Miscellaneous

1. Amendments and additions to this Contract must be made in writing. This also applies to any waiver of the written form requirement.
 2. Any kind of assignment of rights and obligations arising out of this Contract to third parties as well as changes thereof shall be deemed null and void, unless agreed and confirmed in writing by both contractual parties.
 3. As far as software is part of the delivery item, the Buyer is granted the non-exclusive right for its use including its documentation. It is provided for use only on the delivery item for which it is intended. The use of the software on more than one system is not permitted. The Buyer may only duplicate or revise the software to the legally permissible extent. The Buyer commits himself not to remove manufacturer's data – in particular copyright notes - or to change them without prior explicit approval of the Supplier. Any and all other rights in the software and the documentation including copies remain with the Supplier and/or with the software supplier. The assignment of sublicenses is not permissible.
 4. The Buyer is entitled to demand changes in the scope, construction and design of the delivery item until the date of delivery of the delivery item. Immediately after having received a change request, the Supplier shall notify the Buyer whether and how the change can be carried out stating the resulting changes in the Contract price, deadlines and other contractual provisions.
- The Supplier shall not be obliged to carry out any changes requested by the Buyer until the parties have reached an agreement on the effects on the Contract price, the deadlines and other contractual provisions.
5. In case any provision of this Contract should be void or become invalid, this shall have no effect on the validity of the remaining provisions. In this case a provision which is closest to the legal and economic purpose of the invalid provision is deemed as agreed between the parties. Should these Terms and Conditions of Delivery contain a gap, a provision is deemed to be agreed, the parties would have agreed according to the meaning and purpose of the Contract if they had considered the gap in advance.