

Conditions of Sale and Delivery

DESTACO Europe GmbH

I General

1. These Conditions form part of all agreements entered into by us unless otherwise expressly agreed in a particular case.
2. We may revise these Conditions of Sale and Delivery. We shall only make revisions for valid reasons such as, in particular, due to new legislation and changes in judicial decisions or other similar reasons. Within this scope, we will consider that the contractual balance between the Parties is not significantly disturbed.
3. General terms and conditions of the Buyer shall only apply upon our express agreement.

II Offers

1. Unless otherwise expressly agreed, our offers are always non-binding. Customer orders are not binding for us. Contracts are only concluded on basis of and with the content of our order confirmations. In case of catalog orders or orders via the internet the contract may be accepted together with the issued invoice and the delivery. Obvious errors, such as spelling, calculation and prices are not binding on us and do not entitle the Buyer to any claim.
2. We reserve the title and copy right to all physical and non-physical -including electronic- models, quotations, drawings and similar items. Such information may not be used for any purpose beyond the scope of the contract, not copied and must not be passed on to any third parties without our previous explicit approval.
3. All documentation, such as drawings, specifications and the like shall remain the property of the Buyer. If these documents are a binding part of our offer, the Buyer has to submit any subsequent amendment in writing before placing his order.
4. We provide documentations for our products which can be downloaded from our website www.destaco.com at no cost.

III Prices and Terms of Payment

1. Our prices are net prices, plus value-added tax in its current legal amount and, unless otherwise agreed, excluding packing, freight and insurance and all other fees and charges ex works or ex warehouse.
2. Payment of the purchase price shall be effected within the payment term shown on our order confirmation or our invoice by bank transfer to one of our accounts, irrespective of the receipt of the goods and notwithstanding the right to notification of defects.
3. Unless otherwise separately stated, all payments shall be made within 30 days of the invoice date without deduction. The Buyer is obliged to pay all claims in connection with the contract without offset, counterclaims, deductions or retentions of any kind, if not agreed otherwise in writing or mandatorily specified by law.
4. In the event of default of payment and irrespective of any further rights, we may charge default interest of 9% above the respective valid base rate of the European Central Bank.
5. All our receivables shall become due immediately regardless of the term of discounted and credited bills if the conditions of payment are not complied with or if circumstances come to our knowledge which in our view are likely to impair the credit standing of the Buyer. This shall not apply if the Buyer is not responsible for the payment delay or for the circumstances which, in our view, are likely to impair his/its credit standing. The creditworthiness is impaired in particular if it comes to our knowledge that the Buyer has failed to meet other payment obligations or the institution of insolvency proceedings on his/its assets may be impending or such proceedings have already been instituted. We shall also be entitled to effect outstanding deliveries only against payment in advance and to cancel the agreement after allowing reasonable extra time or to claim damages. Apart from that we may, without cancelling the agreement, prohibit the resale and processing of the goods delivered and demand return of the goods at the Buyer's expense or take possession of them, without the Buyer being entitled to a right of retention or any similar right. For the purpose of repossession of the goods the Buyer already hereby permits us to enter its plant or storage place and other premises and/or plots of land as far as necessary for repossession. We shall be entitled to realize the repossessed goods by way of sale by private contract for the purpose of setting off against the outstanding purchase price claim.
6. We shall be entitled to set off all our receivables from the Buyer against all of his/its receivables.

IV Foreign Trade Restrictions

1. The Buyer must comply with all national and international applicable laws and all other provisions of foreign trade legislation, such as regulations of export control and trade embargos. In any case of resale or passing on of the delivered goods to a third party, the Buyer must observe the export and re-export control provisions of the Federal Republic of Germany, the European Union and the United States of America.
2. The Buyer agrees to provide us with all necessary information pertaining to the particular end user, the final destination and the intended use of the delivered goods to conduct export control checks.
3. The Buyer indemnifies us from all claims, asserted against us by authorities and other third parties for failure to comply with export control regulations to their full extent and is obliged to compensate for all damages and costs incurred by us in connection therewith.

V Force Majeur

Force majeure shall be circumstances which are beyond the control of the Parties.

1. Events of force majeure shall entitle us -also within a period of delay- to postpone delivery for the duration of the obstruction and a reasonable starting period or to cancel the agreement, in whole or in part, regarding the portion not yet completed if the events of force majeure are apparently not of a temporary nature only. Force majeure is equal to strikes, lock-outs, war, blockades, export and import bans, shortage of raw materials, fire, attacks on our IT systems, despite the usual care of appropriate safeguard precautions, denial of official permits, other acts or omissions of authorities or embargos or other sanctions, traffic stoppages affecting our plant or that of our supplier or subcontractor unless they are beyond our, the supplier's or subcontractor's control, transport disruptions, natural disasters or other circumstances beyond our control insofar as they were not foreseeable by us and make delivery unreasonably difficult or impossible for us.
2. The party affected by a force majeure shall promptly advise the other party about such an occurrence and its corresponding obligation.

VI Delivery Periods/Delays/Liquidated Damages

1. Delivery times and delivery dates shall not start to apply or become effective until all details of execution have been clarified by the Buyer and until any required certifications have been obtained by the Buyer. If the Buyer is obliged to make a down payment, the delivery period shall not to apply until after we have received such down payment. This shall not apply if the Buyer is a consumer.
2. Any post-contractual changes to order or contract extensions require a reasonable extension of the delivery time.
3. Delivery times and delivery dates shall, if the Buyer is not a consumer, be subject to our further reservation of obtaining correct, flawless, complete and timely supplies. We will provide up-to-date information to the Buyer about interferences with our obtaining supplies as soon as we learn about them.
4. If we enter into delivery default pursuant to the Conditions stated above, the Buyer must grant a suitable extension of the delivery period. If we are not able to keep the extension period, the Buyer is entitled to withdraw from the contract within the scope of the statutory provisions. If the Buyer sustains a damage caused by a delay for which we are full responsible, then, under the conditions set forth in clause XII hereinafter, he is entitled to claim compensation for the delay. The compensation amounts for every entire week 0,5% but to a maximum of 5% of the merchandise value which is behind schedule and which therefore can neither be used contractually nor in due time. It may exceed under no circumstances to a maximum of 5% of the contractually agreed price.
5. The Buyer may require us to state whether we wish to cancel the agreement or effect delivery within a reasonable period. If we fail to make a statement, the Buyer may cancel the agreement. A right of cancellation to which we are entitled shall relate only to the portion of the agreement not yet completed unless the part-performance rendered so far is of no interest to the Buyer.
6. The Buyer shall also be obliged to accept part-performance as far as he/it can reasonably be expected to do so. Acceptance shall be effected as soon as we have advised completion of our contractual performance.
7. If shipping is delayed for reasons for which the Buyer is responsible, we shall be entitled to either claim for reimbursement of all reasonable additional costs and expenses, which are caused by the delay, or dispose of the goods otherwise and to supply the Buyer with a correspondingly prolonged period.
8. Any further or other claims and rights of the Buyer due to delay are excluded, unless expressly otherwise agreed or mandatorily required by law.

VII Impossibility

1. If the performance which we are contractually obliged to effect becomes impossible for us or any other party, the Buyer shall not be obliged to perform its contractual obligation. Our incapacity to effect performance is equal to our performance entailing costs which, taking account of the subject matter of the obligation and the rules of good faith, is grossly disproportionate to the Buyer's interest in our performance. A factor to be taken into account in the determination of the effort we may reasonably be expected to make is whether we are responsible for the circumstances preventing performance.
2. If we already effected part performance, the Buyer's obligation to effect counter-performance shall be reduced proportionately.
3. If the circumstance due to which performance has become impossible for us or we may refuse to effect performance taking into account the aforesaid details owing to a gross disproportion to the interest in performance shall be solely or predominantly due to circumstances within the Buyer's control or such circumstance occurs at a time when the Buyer is in default of taking delivery, then the Buyer shall be bound to provide consideration. We must, however, accept to be charged for what we save in consequence of our performance release or acquire elsewhere or maliciously fail to acquire.
4. If it is impossible for us to affect our contractual performance or if we may refuse to effect it because effecting the performance entails costs which, taking into account the subject matter of the obligation and the rules of good faith, is grossly disproportionate to the Buyer's interest in performance, whereby when determining the effort involved which we may be reasonably expected to make, it also has to be taken into account whether we are responsible for the circumstances preventing performance, the Buyer may in addition cancel the agreement without fixing a time-limit. If we already effected part performance, the Buyer may only cancel the entire agreement only if the Buyer is not interested in the part-performance. Cancellation of the agreement shall be precluded if the Buyer is solely or predominantly responsible for the circumstances having rendered performance impossible for us or performance would entail costs which under the aforesaid conditions is grossly disproportionate to the Buyer's interest in performance, or if the Buyer was in default of taking delivery at the

time of impossibility or accrual of costs, which under the aforesaid conditions is grossly disproportionate to the Buyer's interest in performance.

5. If, pursuant to the relevant statutory provisions, the Buyer is entitled to a claim for damages because performance has become impossible for us or already was impossible at the time the agreement was made or because we failed to perform our obligations under the agreement or failed to perform them as we are obliged to perform them, particularly if our performance was delayed, clause XII. of these Conditions shall apply.

VIII Packaging

1. The packaging material we use fulfills the requirements to ensure a proper recycling. The Buyer is obliged to dispose of the packaging in accordance with the legal requirements and upon our request provide us with details of the type and quantity of packaging material forwarded to recycling. He shall confirm to us in writing that this recycling obligations has been met. We are entitled at any time during business hours to supervise the compliance with all requirements of the Packaging Act or packing regulations on-site.

2. If the Buyer does not want not dispose the packaging material, we must be informed in writing before the delivery of the products. If he meets this condition, he is entitled to send back the packaging material on his own costs.

3. Reusable packaging remains our property and must be returned by the Buyer on his own costs.

IX Shipment and Transfer of Risk

1. Shipping and transfer of risk shall pass EXW pursuant to Incoterms 2010 respectively in their currently applicable form.

2. If shipment or acceptance is delayed or omitted due to circumstances within the Buyer's control, the risk shall pass to the Buyer as from the date of notice of readiness for shipment or acceptance insofar as he/it is not a consumer.

3. The conditions of the carrier and insurance company used for shipment shall also apply to the Buyer insofar as he/it is not a consumer.

X Reservation of Title

1. The goods delivered by us shall remain our property until the purchase price for those goods has been paid in full.

2. Upon conclusion of the contract the Buyer authorises us to report or register the reservation of our property rights in the public registers, books or similar records, which are kept by the competent authorities of the respective countries and to complete the necessary formalities at the Buyer's cost.

3. If the Buyer is a businessman or a legal entity under German law operating in the territory of the Federal Republic of Germany the following additional stipulations shall apply:

(a) All goods shall remain our property until settlement of all claims, based on any cause whatsoever, including claims arising in future or conditional claims, also under agreements entered into simultaneously or later. This shall also apply if payments are effected towards specifically designated claims. In the event of a current account being maintained, the reserved property shall be deemed to secure the current account balance claim.

(b) Processing and conversion for us as manufacturers shall apply as defined in Section 950 of the BGB (German Civil Code) without putting us under any obligation. The converted goods constitute reserved goods as defined in the aforesaid provision. If reserved goods are converted or inseparably intermingled with other items not owned by us, then we will acquire co-ownership in the new chattel in the ratio of the invoiced value of the reserved goods to the invoiced value of the other goods used at the time of conversion or intermingling. The co-ownership rights so created shall constitute reserved goods for the purposes of these Conditions. If our goods are joined together with other movable chattels to form a uniform chattel or if they are inseparably intermingled with them and if the other chattel is to be regarded as the principal chattel, then the Buyer shall hereby transfer proportionate co-ownership to us insofar as the principal chattel belongs to the Buyer. Moreover, the same shall apply to the chattel created by conversion, combination and intermingling as applies to reserved goods.

(c) The Buyer may only sell reserved goods in the ordinary course of business and as long as the Buyer is not in default, subject, however, to the proviso that the claim arising from the resale shall pass to us pursuant to clause X.3.d below.

(d) The Buyer's claims from the resale of reserved goods shall hereby be assigned to us. If the reserved goods are resold by the Buyer together with things not delivered by us, then the assignment of the claim from resale shall apply only in line with the values of the reserved goods sold as mentioned in our invoices. In the case of a resale of goods in which we hold co-ownership shares according to clause X. section 3.b., the assignment of the claim shall be to the extent of such co-ownership shares. The assigned claims shall serve as security to the same extent as the reserved goods.

(e) The Buyer shall be entitled to collect claims from resale until revocation by us which is admissible at any time. The Buyer shall only be entitled to assign claims with our prior written consent -including factoring to factoring banks. At our request, the Buyer shall be obliged to inform his/its buyers immediately about the assignment to us insofar as we do not do so ourselves and, in addition, shall furnish us with the information and records necessary for collection.

(f) If we raise a claim under the retention of title arrangement, then this shall only constitute a cancellation of the agreement if we expressly make a written statement to that effect. Section 449 (2) of the BGB shall not apply. The Buyer's right to have possession of the reserved goods shall lapse if the Buyer fails to meet its obligations under this or any other agreement. We shall then, without fixing a final deadline or

giving prior notice of cancellation, be entitled to claim recovery of possession of the reserved goods and, to that end, also to enter the plant premises of the Buyer and to take possession of the reserved goods ourselves and, without prejudice to the Buyer's payment and other obligations to us, to sell them on the open market or by way of auction at the highest possible price. The realization proceeds will, after deduction of the relevant costs, be applied against the Buyer's obligations.

(g) If the value of the security to which we are entitled exceeds the total claim against the Buyer by more than 20 per cent, we shall, upon the Buyer's request, be obliged to release the security at our option and to retransfer it.

(h) We shall be informed without delay about any attachment of, or other interference with, the reserved goods by third parties. The Buyer shall make available to us all records and information which are necessary to assert our rights. The cost of prosecution or taking legal action shall be borne by the Buyer. In the event of damage to or destruction of the goods, any insurance claims shall hereby be assigned to us.

XI Defects

1. The Buyer is obliged to examine the delivered goods upon receipt and shall immediately, to be received by us not later than 8 days, report any defects in writing. If the Buyer defaults on or delays in meeting this obligation, claims based on defects which are recognisable shall be excluded.

Any deviation from the specifications stipulated by us in the contract and already existing at the time of transfer of risk shall constitute a defect.

We shall not assume any warranty or any liability for defects by any or all of the following:

- in cases of natural wear and tear or excessive strain,
- deviations as a result of improper use,
- deviations as a result of inappropriate or improper use,
- incorrect assembly or line-up by the Buyer or third parties,
- inappropriate maintenance,
- deficiencies which do not significantly affect the customary use and function of the delivered goods.

2. We shall be entitled, at our choice, to remedy the defect or to replace a defective product. The Buyer must grant us a reasonable period and opportunity to eliminate defects. Only in urgent cases of jeopardy to the operational safety and to prevent disproportionate damages, after prior notice, the Buyer has the right to carry out the remedy himself or have it done by third parties and demand compensation for the necessary costs.

3. If a notice of defect is justified, we shall within the limit of our statutory obligations bear the necessary costs required to remedy defects and reimburse the Buyer for recourse claims in the supply chain.

4. The Buyer is entitled to withdraw from the contract provided he has granted us a reasonable period for remedy or replacement delivery and we have allowed as reasonable term to remove a defect to expire unsuccessfully. If the defect is only of a minor nature, the Buyer shall only be entitled to the right of reduction of the purchase price.

5. The limitation period for defect claims is 12 months. The period starts on the time of transfer of risk. The limitation period for re-performed products is 6 months after the date of re-performance, provided the initial limitation period for defect claims is expired. In any case the period for defect claims for re-performed products is 24 months after the beginning of the period of limitation for the original delivery of the products.

6. In case of defects of title the following applies:

(a) If the defect of title consists in the fact that the product delivered by us infringes industrial property rights or copyrights of third parties in Germany, we shall re-perform by enabling the Buyer to use the object of sale and/or the work delivered by us without infringing the said rights of third parties or by exchange of the product infringing industrial property rights or copyrights of third parties in Germany for such a product which does not infringe industrial property rights or copyrights of third parties given comparable usefulness to the Buyer.

(b) If re-performance is not possible or possible only at a disproportionately high cost or necessitates expenses which, taking into account the subject matter of the obligation and the rules of good faith, are grossly disproportionate to the Buyer's interest in performance the Buyer may cancel the agreement without the fixing of a time-limit being required. A major factor also to be taken into account in the determination of the effort we may reasonably be expected to undertake is whether we are responsible for the circumstances which were preventing us from performance.

(c) We shall indemnify the Buyer against all claims which are undisputed or have been determined by a court of law by the respective owner of the property right.

(d) The above obligations shall only apply if the Buyer

- has informed us about any claims asserted by third parties immediately in writing and provide us with all information for clarifying the infringement issue,
- has not acknowledge infringement and all defensive measures are reserved to us,
- itself is not responsible for the infringement of industrial property rights,
- has not caused the infringement by an unauthorized modification of a delivered product and/or has not used a product in a non-contractual manner.

The subsequent provisions finally comprise our entire liability for a violation of property rights of third parties. Any other or further claims or purchaser's rights are excluded.

XII Limitation of Liability

1. For damages sustained by the Buyer, we shall pay compensation only in case of

- wilful intent,
- gross negligence of our officers and/or executive employees,
- culpable violation of life, limb and health,
- causation of the damage by a defect which we maliciously concealed
- causation of the damage by non-compliance with a warranty of quality of the object sold or work done given by us or liability under the Product Liability Act.

2. In the event of a violation of material contractual obligations, we shall also pay damages in case of gross negligence of non-executive employees and in case of ordinary negligence; in the latter case, however, our liability shall be limited to the damage typical of the type of contract and foreseeable when it was concluded.

3. In the event of damage caused by the defectiveness or unperformed warranty of quality of the object sold by us or the work done by us, the exclusion of claims for compensation shall only apply to consequential damage.

4. Further claims for damages for whatever legal reason shall be precluded.

5. This exclusion of liability shall not apply to any mandatory statutory provisions of the data protection laws.

XIII Secrecy

The Buyer shall treat all information and documents provided by us during the course of the business relationship strictly secret and shall not disclose such information and documents to any third party without our express permission. We are obliged to treat the documents of the Buyer also confidential. In case of special secrecy interest, we and the Buyer shall conclude a non-disclosure agreement.

XIV Data Protection

Please take notice of our data protection declaration on our website www.destaco.com.

The extent of our liability for compensation claims arising violation of the provisions of data protection laws is limited to willfull intent or gross negligence.

XV Limitation of Actions

All claims of the Buyer shall become statute-barred within 12 months from the date of delivery or purchase. Tortious liability claims shall lapse 12 months after the event giving rise to the damage. Exceptions to this are all mandatory statutes of limitation and all damages caused by wilful attempt.

XVI Applicable Law, Place of Jurisdiction

1. All legal relationships between us and the Buyer shall be governed exclusively by the law of the Federal Republic of Germany, which is the law governing legal matters between domestic parties. The provisions of the Hague Convention Relating to a Uniform Law on the International Sale of Goods as well as the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and all multilateral agreements shall be precluded.

2. The exclusive place of jurisdiction is the court responsible for our registered office. However, we shall also be entitled to take action at the general legal venue of the Buyer's headquarters.

XVII Miscellaneous

1. If any provision of these Terms and Conditions is found by a court of competent jurisdiction to be void or unenforceable, the remainder of these Terms and Conditions shall remain in full force and effect. Instead of the invalid provision, such reasonable provision shall apply which, as far as legally permissible, was intended in business terms according to its sense and purpose.

2. These Terms and Conditions are drafted in German and English language. In case of any doubt, the German version shall prevail.