

**General terms and conditions of
Diem Werke GmbH, Hörbranz, Austria**

Dated December 2016, Version 1.0

Section 1

General – Area of application

The following general terms and conditions shall apply to all (including future) transactions between us (Diem Werke GmbH) and the customer, even if this is not referred to explicitly. The version valid at the time the contract is concluded shall be applicable. Even if they are known, deviating, contradictory, or complementary general terms and conditions shall not be a component of the contract, unless they have been agreed to in writing to be applicable.

Section 2

Conclusion of the contract

- (1) Our offers are non-binding. Technical and other changes shall remain reserved within the scope of what is reasonable.
- (2) Upon ordering, the customer declares their binding contract offer; they shall be bound to this offer.
 - a) We shall record received orders thoroughly in an order list and provide this to the customer upon request. The customer shall always be obligated to check this order list and to claim any errors in writing immediately. Only these order lists shall be binding for us, and only these shall be a component of the contract.
 - b) If no order lists are created and provided to the customer, the contract shall be concluded upon shipping the goods.
 - c) Order confirmations shall only be created by us if the delivery to be executed by us deviates from the order made by the customer or if this is explicitly requested by the customer.
- (3) We shall be entitled at all times to decline acceptance of the order, e.g. after checking the creditworthiness of the customer, or to withdraw from the contract.
- (4) We shall be entitled to withdraw from the contract if our suppliers do not deliver in time or deliver incorrectly.

Section 3

Reservation of title

- (1) We reserve title to the delivered goods (especially to the machines, machine parts, and other accessories) until full payment of the purchase price.
- (2) The customer shall be obligated to treat the goods with care while the reservation of title remains enforced. Provided maintenance and inspection work is required, the customer must complete this regularly at their own cost.
- (3) The customer must inform us immediately in writing concerning all third parties, especially claim enforcement agencies and any possible damage to or destruction of the goods. Any change in ownership of the goods or change of address must be indicated to us immediately.
- (4) The customer must compensate all damages and costs to us resulting from any violation of these obligations or required intervention measures against access by third parties to the goods.

- (5) In case of behaviour on behalf of the customer that violates the contract, especially in case of late payment, we shall be entitled to withdraw from the contract and to demand return of the goods. We shall also be entitled in case any obligation is violated to withdraw from this contract and to demand return of the goods if adherence to the contract is no longer sensible.
- (6) The customer shall be entitled to resell the goods by way of a correct business transaction. They shall hereby assign all claims to us corresponding with the invoice amount resulting from resale to a third party and they shall be obligated to make a corresponding entry in their ledger or to indicate this on their invoices (accounting note). We accept this assignment. Following assignment, the customer shall be entitled to collect these claims. We reserve the right to collect the claim ourselves if the customer does not honour their payment obligations and enters arrears.
- (7) In case the goods are processed or altered by the customer, this shall always take place in our name and on our behalf. If the goods are processed, then we shall acquire joint ownership in relation to the value of the goods delivered by us. The same shall apply if the goods are processed or mixed with objects that do not belong to us.

Section 4 Price and invoice submission

- (1) The prices offered are daily prices and shall apply until withdrawn. Indicated prices are subject to change. The price includes the legal sales tax. In case of a delivery purchase, the complete freight costs shall be offset.
- (2) All payments shall be created and sent by us exclusively electronically.
- (3) The customer shall be obligated to pay the price without expenses and deductions within ten days. After expiry of this period, the customer shall be in arrears. The customer shall be obligated to cover all costs and expenses related to collecting the claims, e.g. collection agency expenses, etc. for purposeful legal prosecution.
- (4) The customer shall not be entitled to withhold payments. Offsetting applied by the customer regarding our claims with counterclaims shall be excluded.

Section 5 Place of fulfilment and transfer of risk

- (1) The place of fulfilment shall be the domicile of Diem Werke GmbH in Hörbranz, Austria (EXW Hörbranz). Any possible deliveries shall be made in the name and on account of the customer.
- (2) The risk of possible destruction or deterioration of the goods shall transfer to the customer upon handover, or in case of a delivery purchase, upon handover to the courier, freight driver, or any other person or institution assigned to ship the delivery to the customer.
- (3) The same shall apply to handover if acceptance by the customer is delayed.

Section 6 Guarantee

- (1) Companies must examine the goods within a period of two days for damages and indicate these to us in writing within one week after receipt of the goods, otherwise enforcement of guarantee and damage compensation claims and dispute of the contract due to errors or reduction by half shall be excluded.
- (2) In case of defective goods, we shall initially be permitted to honour our guarantee via improvement, replacement, or price reduction. A conversion shall be excluded.
- (3) Paragraph 1 shall also apply to concealed defects.
- (4) We do not provide our customers a guarantee in a legal context.

Section 7
Liability limitations and release

- (1) Our liability shall be limited to intent or gross negligence beyond the scope of application of the product liability act.
- (2) Liability for slight negligence resulting in property or asset damage, the replacement of subsequent damages and asset damages, unrealised savings, lost interest, and damages resulting from third-party claims against the customer shall be excluded.
- (3) Our liability shall be limited to the contractual value amount.

Section 8
Arrears

- (1) Delivery arrears: Delivery periods and deadlines shall be maintained by us as far as possible, however they shall be nonbinding and shall always be considered with regard to the tentative time of provision and handover to the customer, provided not explicitly agreed as otherwise. Withdrawal from the contract by the customer due to delivery arrears shall only be possible after setting an appropriate grace period of at least 4 weeks. Withdrawal must be validated via registered letter. The right of withdrawal shall only apply to the delivery or service relevant to the delay.
- (2) Acceptance arrears: Goods that are not accepted at the agreed deadline shall be stored for a period of six weeks at the customer's risk and cost, whereby a storage fee of €200.00 (euros) per commencement of each calendar day shall be invoiced. Simultaneously, we shall be entitled to insist on fulfilment of the contract or to withdraw from the contract after setting and appropriate grace period and to resell the goods. In case of resale, a conventional penalty of 20% of the invoice amount excluding sales tax shall apply as agreed.

Section 9
Final provisions

- (1) Austrian law shall apply
- (2) The sole jurisdiction for all direct and indirect disputes resulting from this contract shall be the legally responsible Austrian court at our domicile (Gerichtsbezirk Landesgericht Feldkirch, Austria).
- (3) Should individual provisions of this contract with the customer, including these general terms and conditions in full or in part, be or become invalid or unenforceable, then this shall not affect the validity of the remaining provisions. The full or partial provision shall be replaced by a provision that matches the commercial intent of the invalid provision as best as possible.