

# General Terms of Business

of DELO Industrial Adhesives GmbH & Co. KGaA, DELO-Allee 1, 86949 Windach, Germany – as of 1 December 2017

## 1. Scope of application

- 1.1 The following General Terms of Business of DELO shall apply exclusively. Contradictory General Terms of Business or such deviating from those of DELO shall not be recognized, unless DELO expressly agrees to their validity in writing. DELO's General Terms of Business shall also apply even if DELO carries out delivery without reservation in knowledge of contradictory terms or such deviating from these General Terms of Business.
- 1.2 The following General Terms of Business of DELO shall apply exclusively and become an integral part of the contract at the latest on acceptance of the delivery of DELO.

## 2. Quotation, conclusion of contract

- 2.1 Quotations from DELO shall be non-committal.
- 2.2 A Customer's order shall be a binding offer which DELO can accept within 4 weeks by written confirmation of order or dispatch of the goods.

## 3. Prices

- 3.1 If there is no specific agreement, the prices shall apply in Yen or Euro. The statutory Value Added Tax at the time in question shall be added.
- 3.2 To the extent that DELO's price lists contain sales prices, these shall be recommended prices which are non-committal until the order is confirmed by DELO. In the event of delivery only taking place more than 3 months after conclusion of the contract by agreement with Customer or for reasons for which DELO is not answerable, DELO reserves the right to charge Customer not the sales prices stated in the DELO price lists, but, instead, the prices increased in accordance with the increase in costs occurring since conclusion of the contract (in particular as a result of tariff agreements and increases in prices of materials).

## 4. Delivery and fulfillment period

- 4.1 Delivery periods shall only be binding upon express agreement and shall commence no earlier than receipt of the written order confirmation from DELO by Customer.
- 4.2 In delays of delivery and performance on account of obstacles unforeseeable for DELO as a result of force majeure (e.g. strike or legal lock-outs, civil war, acts of terror, unrests, natural catastrophes, shortages, delays in material procurement for reasons for which DELO is not answerable, unpunctual delivery to us etc., also with suppliers of DELO), the agreed delivery periods shall be extended by the duration of the obstacle. If delivery becomes lastingly impossible for DELO as a result of the force majeure, albeit no less than a period of three months, it shall be released from its obligation to supply. In such a case, Customer shall be entitled to withdraw from the contract.

## 5. Dispatch, passage of risk

- 5.1 Delivery shall be FCA DELO Windach, Germany (Incoterms 2010). In dispatch, freight and packaging costs shall be charged additionally. DELO reserves the right to impose a low-volume surcharge for small volumes, as determined in the quotation or order confirmation.
- 5.2 Risk shall pass to Customer with handing over of the objects of delivery to the forwarder, freight carrier or collector (also in transport with Customer's means of transport), at the latest when they leave DELO's warehouse. DELO shall insure the consignments of goods at Customer's expense in a way customary in the trade. DELO shall be free in the choice of the mode of dispatch. The transfer of control from Customer to End-Customer for tax purposes shall be at End-Customer's permanent establishment.
- 5.3 If Customer is in arrears with acceptance of the delivery for reasons for which it is answerable or gives/sends back the delivery without justification, DELO can demand damage after the fruitless expiry of a subsequent period set by Customer. It shall amount to 20 % of the net amount of the goods if DELO cannot prove higher damage or Customer cannot prove lower or a lack of existence of damage on the part of DELO.

## 6. Payment

- 6.1 Invoices from DELO shall become due for payment without deduction upon the invoice reaching Customer. Payment periods specified in the quotation, confirmation of the order and/or in the invoice, in particular for the calculation of time limits for the deduction of discount, shall begin with the invoice date. Discount may only be deducted if expressly agreed and provided that no invoices already payable are still outstanding.
- 6.2 Orders to pay, cheques and bills of exchange shall only be accepted on account of payment, bills of exchange further only after specific agreement and calculation of all collection and discount expenses. Incoming payments from Customer shall be offset against due claims existing against it in the following order: costs, interest, damage, claims from deliveries of goods. If a number of claims exist simultaneously, the one for which the least security exists shall be redeemed first, if there are a number equally secured, then the elder/eldest of them.
- 6.3 If Customer gets into arrears with payment, DELO shall be entitled to demand default interest to the amount of 9 % p. a. above the basic interest rate.
- 6.4 Customer shall not be entitled to withhold payment on account of counter-claims or to offset them against counter-claims, unless the counter-claims are undisputed or have been finally established by a Court of law.
- 6.5 If the consideration for deliveries is stayed by DELO on the basis of a contractual agreement or if there is an open account agreement, the entire open balance of due claims shall be settled immediately by Customer if default in payment occurs with Customer, there is a culpable breach of a contractual agreement on the part of Customer or jeopardy to or injury of conditional commodities, deterioration of the economic situation of Customer, stoppage of payment, lack of discountability of bills of exchange, protests on cheques or bills or enforcement measures against Customer exist.
- 6.6 Upon DELO's request, the Customer shall be obliged to provide an Entry Certification and other necessary information in writing for tax purposes, in particular the correct tax id.

## 7. Retention of title

DELO shall retain a security interest in the goods until the purchase price has been paid in full and until all claims of DELO against the Customer have been satisfied.

## 8. Rights of Customer in defects

- 8.1 As a result of its own knowledge and experience according to the following provisions, DELO assures that the products fulfill the contractual requirements and statements of the QA test protocols possibly transmitted to Customer and are free of defects to this extent. Customer's individual specifications shall be applicable, provided that DELO and the Customer mutually agreed on the specifications in writing. If no specification is mutually agreed in writing, the DELO standard specification shall be applicable. Oral side agreements are not permitted.
- 8.2 In particular before the first use of new product, in particular adhesives, Customer shall regularly hold adequate own tests and trial processing in order to monitor and to ensure the suitability of the products supplied for the processes and processing and use purposes intended. Any defects established in application or trial processing shall be notified to DELO without delay. At the same time, a sample of the goods giving rise to complaint shall be sent to DELO. If the Customer fails to make the examinations and – if need be – the notifications to DELO, it shall lose the right accruing to it pursuant to Sections 8.4 and 8.6 on account of such defects which could have been established through such examinations. No rights shall accrue to Customer for defects caused by treatment of the products contradicting the contractual requirements or product directives by Customer or by third parties. The same shall apply for a processing or application of the products outside the application parameters stipulated by the contract, the product directives or manuals. The verbal and written advice given by the Seller on application techniques is without obligation and does not release the Customer from its own duty to examine the product for its suitability. The same applies if the product is generally recommended for a specific purpose; this does not constitute any assurance and does not found any warranty claim. If liability on the part of DELO should nevertheless be under consideration, the terms agreed on liability for defects apply mutatis mutandis.
- 8.3 To establish any defects, Customer shall examine the object without delay following delivery and, if an apparent defect is seen, notify DELO thereof in writing within one week. Customer shall advise DELO of hidden defects within one year of delivery at the latest. If Customer fails to comply with the above mentioned exclusion periods, the object shall be deemed accepted, with the consequence that Customer loses its rights for defects pursuant to Sections 8.4 and 8.6.
- 8.4 If an object proves to be faulty, Customer can demand subsequent performance, i. e. rectification of the defect or supply of an object free of faults.
- 8.5 DELO can make subsequent performance dependent upon the fact that Customer pays a suitable part of the purchase price, taking the defect into account. DELO can reject the selected form of subsequent performance if it is only possible with disproportionate costs.
- 8.6 If reworking by DELO fails twice, if DELO rejects the subsequent performance or if DELO does not complete the subsequent performance within a suitable period set by Customer, Customer can reduce the purchase price or withdraw from the contract and demand payment of expenditure in vain or damage in lieu of performance. The rights of Customer to withdraw and to damage in lieu of performance shall be ruled out if the defect is only inconsiderable.
- 8.7 Claims of Customer on account of defects shall be barred by limitation one year after delivery of the object, unless otherwise determined in DELO's quotation or user manual.
- 8.8 Nothing contained in DELO's product information or other information provided by DELO shall be construed to indicate the non-existence of any relevant patents or to constitute a permission, encouragement or recommendation to practice any development covered by any patents, without permission of the owner of this patent.

## 9. Liability

- 9.1 DELO shall be liable without limitation for intent and gross negligence.
- 9.2 DELO shall only be liable for simple negligence – except in cases of injury to life, limb or health – insofar as essential contractual obligations (cardinal obligations) are breached, limited to the damage typical for the contract and foreseeable, albeit to a maximum of three times the amount of the remuneration accruing to DELO from the contract in question.
- 9.3 Liability for direct and unforeseeable damage, loss of production and use as well as loss of income, impossibility of savings and damage to assets on account of claims of third parties shall be ruled out in the event of simple negligence.
- 9.4 Liability extending further than provided for in these General Terms of Business shall be ruled out – without regard for the legal nature of the claim being made.
- 9.5 The limitations and exclusions of liability pursuant to Sections 9.2, 9.3 and 9.4 shall not apply for liability dependent on culpability prescribed by law (e.g. according to the Product Liability Act) or from a guarantee dependent upon culpability taken on contractually.
- 9.6 Insofar as DELO's liability is ruled out or limited pursuant to Sections 9.2, 9.3 and 9.4, this shall also apply for the personal liability of its employees, workers, representatives and vicarious agents.

## 10. Applicable law, place of performance, venue, separability clause

- 10.1 All legal relationships between DELO and its Customers shall exclusively be governed by the law of Japan, excluding the provisions of the Convention on Contracts for the International Sale of Goods (CISG).
- 10.2 Exclusive place of performance for delivery and payment obligations shall be the registered office of DELO Japan.
- 10.3 Exclusive venue for all disputes arising from the business relationship shall be the competent court of jurisdiction in Tokyo.
- 10.4 Should individual provisions of the General Terms of Business or parts thereof be or become totally or partly ineffective, the effectivity of the remainder of the General Terms of Business shall not be affected. The ineffective terms shall be replaced by effective regulations coming as close as possible to the entirety of the General Terms of Business and the other contractual agreements in a factual, legal and economic regard. The same mode of procedure shall apply if the General Terms of Business should be seen to manifest a loophole.