

General Terms and Conditions

DELO Industrial Adhesives LLC, 10/2014

1. Scope

- 1.1 Without limitation to the foregoing, these General Terms and Conditions ("Terms and Conditions") shall apply to all sales, deliveries, advice, offers, services and performances provided by DELO Industrial Adhesives, LLC. (hereafter referred to as "DELO", "Seller" or "us"), and shall govern all future business relationships between us and you ("our Customer" or "Purchaser") even if they are not explicitly agreed to subsequently. There are no other written agreements between the parties which apply to this transaction. These Terms and Conditions and all benefits and obligations hereunder apply only as between you and us and are not transferable or assignable in whole or in part without DELO's prior written consent.
- 1.2 Any Customer purchasing conditions which conflict with any portion of our Terms and Conditions or the legal regulations in whole or in part are herewith expressly rejected unless DELO has expressly agreed to their validity in writing. The Supplier hereby expressly objects to and expressly rejects any counter-confirmation of the Customer whereby reference is made to the Customer's own general terms and condition.
- 1.3 If our Customer is given an offer without details of our Terms and Conditions, or if these are only given to him at a later date, they will apply nevertheless, as he will be deemed to know them or have known them from previous business dealings.
- 1.4 These General Terms and Conditions may only be amended, modified or superceded with the explicit and prior written consent of an authorized representative of the Supplier.

2. Offer

- 2.1 Our offers are always provisional and subject to change not binding and are understood to be dependent on supply from our suppliers. An order is only accepted and a contract only comes into effect when a written confirmation accepting our Customer's order is provided by DELO, or, in the event no confirmation has been received, when the delivery is received by the Customer.
- 2.2 Descriptions, specifications, measurements and/or other work performance data are merely for illustrative purposes and shall only be binding if they are expressly jointly agreed in writing.

3. Prices

- 3.1 All prices quoted are in USD and exclude shipping (freight), packaging, postage and transport insurance and any applicable sales tax.
- 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 price 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 price of materials).

4. Delivery and performance dates/force majeure

- 4.1 Dates and deadlines given by us are not binding unless agreed otherwise and stated explicitly in writing. Unless so agreed in writing, delivery dates are merely estimates and may be altered or revised without notice. DELO shall not be liable to Customer for any loss or damages suffered directly or indirectly as a result of any delay or change in estimated delivery date or terms.
- 4.2 All delivery dates are subject to correct supplies being obtained on time. We will not be held liable for delayed deliveries and/or performances due to unforeseen circumstances and obstacles resulting from a force majeure and/or due to any events making its performance significantly more difficult, or impossible, including for example and without limitation, Acts of God, elements, war, acts of belligerence, blockade, insurrection, riot, terrorism, disorder, political disturbance, act of government, fire, flood, break down of machinery, shortages, difficulties in acquiring materials, non-delivery or delayed delivery by suppliers of materials to DELO, operational problems, lack of transportation facilities, strikes, lockouts, the non-issuance of official permits or any other similar circumstance or other cause beyond our control, even if deadlines and/or dates have been fixed. This applies even if these events incur when Seller is in default. This applies similarly if any such circumstance occurs in the operational spheres of our suppliers or their subcontractors. Such delayed deliveries and/or performance will entitle us to postpone any delivery and/or performance by the duration of the restraint. Seller will take all reasonable steps to keep Customer informed and to make their performance under the new state of affairs. If delivery becomes lastingly impossible for DELO as a result of one of the mentioned reasons or a similar one, 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.
- 4.3 DELO retains the right to make and charge for partial deliveries.
- 4.4 If, due to reasons the Supplier is responsible for, the Supplier fails to meet firm and binding deadlines or performance schedules, the Customer may claim the following as liquidated damages: 0.5 per cent of the invoice value for each completed week of delay. The maximum possible compensation will be 5 per cent of the invoice value related to the deliveries and/or performance affected by the delay. Any further claims are barred without prejudice to any compulsory liability for acts of malice or gross negligence on the part of the Supplier.
- 4.5 DELO reserves the right to refuse to make delivery of any order (or any part thereof) if and as long as Customer has failed to make any payment due, whether under this or any other order.

5. Transport and risk transfer

- 5.1 Delivery shall be ex works DELO, Sudbury. In case of dispatch, freight and packaging costs shall be charged additionally.
- 5.2 Risk shall pass to Customer with handing over the objects of delivery to the forwarder, freight carrier or collector (also for transport with Customer's means of transport), at the latest when they leave DELO's warehouse. DELO shall be free in the choice of the mode of dispatch.

- 5.3 If transport is delayed or proves impossible through no fault of ours, the risk of loss is transferred to the Purchaser the moment they are notified that the consignment is ready to ship.
- 5.4 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 can not prove higher damage or Customer can not prove lower or a lack of existence of damage on the part of DELO.

6. No Warranties

DELO warrants that it has good title to the goods and that the goods will be free from defects in material and workmanship, which means conforming to the product specification set by supplier and to the statements of the QA test protocols possibly transmitted to the supplier, at the time of delivery or shipment. The warranty period shall be twelve months and begins with the transfer of risk. Any warranty is excluded for normal wear and tear. This limited warranty for goods delivered by the Supplier is not assignable; in particular, the Supplier is not liable for warranty claims from others than the Customer to whom the goods were directly supplied. The Supplier will not assume any warranty obligation for used goods or for goods transferred from the original Customer. Except as set forth above, this is the only warranty or representation, and the sole basis for liability respecting quality, performance, defects, repair and delivery of the goods. This undertaking by Seller is exclusive and is in lieu of all other warranties whether written, oral, express or implied, including any implied warranty of merchantability or of fitness for a particular purpose. Seller's liability arising out of the sale, use or operation of goods, whether on warranty, contract, negligence or otherwise (including claims for consequential damages) shall be strictly limited to the provisions of this Agreement. Seller shall not be liable to Purchaser for any loss, damage, claim, liability, expense, or penalty, or for any indirect, special, secondary, incidental, or consequential damages however or whenever the same may arise. Seller's liability shall not in any event exceed the cost of furnishing a replacement for the defective goods. The foregoing shall constitute Seller's sole liability to Purchaser or its vendees.

7. Security interest

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

8. Payment

- 8.1 Invoices from DELO shall become due for payment without deduction upon the invoice reaching Customer.
- 8.2 Despite Customer's provisions to the contrary, DELO is entitled to offset claims for outstanding invoices with payment for current invoices. If charges or interest have already accumulated, payment shall be offset with, first, charges and, second, interest and, finally, with the balance due.
- 8.3 Payment shall be deemed credited when the amount is at the Supplier's disposal. Payment by check shall be deemed credited when the check has been honored.
- 8.4 On default of payment by the Customer, DELO may charge interest at the current prime rate plus 9% for past due receivables including sales tax, as well as late fees, collection costs and reasonable attorneys' fees and expenses.
- 8.5 The Customer is only entitled to offset claims if we expressly agree to such offset.

9. Customer's data

The Customer herewith grants DELO his express agreement to the automatic electronic processing of data required for order processing which is relevant to the contractual relationship.

10. Applicable law / consent to jurisdiction and venue

The Agreement shall be construed and enforced according to the laws of the State of Massachusetts, without regard to its choice of law principles. Each of the parties hereto irrevocably submits to the jurisdiction and venue of any court (Federal or State) located within the State of Massachusetts.

11. No waiver

The failure of Seller to enforce any of its rights or to require performance under any of the provisions hereunder shall in no way be construed to be a waiver of such rights or provisions, nor in any way affect the validity of the Agreement or Seller's right to enforce any and all provisions of the Agreement.

12. Severability

If any provision of this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect the remaining provisions of this Agreement, and they shall be given effect without the invalid provisions if to do so would not substantially frustrate the expectations of the parties hereto.

13. Assignment

Buyer may not assign any of its rights hereunder without prior written consent of Seller.

14. Notices

Any notice hereunder shall be in writing and shall be deemed given if mailed by first class registered mail, return receipt requested, addressed to the parties at such addresses as they may provide. Notices mailed shall be deemed to be received on the third business day after mailing.