General Terms and Conditions of Sale and Delivery of Deutz AG

§ 1 Scope of Terms, Exclusion of Conflicting Terms and Conditions

(1) Our General Terms and Conditions of Sale and Delivery (hereinafter referred to as “GTC”) shall apply to all of our deliveries and services, unless we expressly apply to entrepreneurs according to Section 14 German Civil Code, legal entities under public law or an asset under public law (hereinafter referred to as “Customer”).

(2) Our GTC shall apply exclusively. We shall not accept different General Terms and Conditions of Sale and Delivery of the Customer, unless we have expressly agreed to them.

(3) Our GTC shall also apply when we carry out deliveries to the Customer without reservation while being aware of conflicting or different terms of the Customer.

(4) Within a permanent business relationship, our GTC shall also apply to all our future deliveries, deliveries and services relating to the Customer without requiring any further reference or agreement.

§ 2 Conclusion of Contract, Scope of Delivery, Prohibition of Assignment

(1) As a general rule, our offers are free of charge and non-binding, unless agreed upon otherwise in writing. Any deal or agreement requires our written acceptance of order or delivery of the goods. The same shall apply to any amendments

(2) Unless agreed upon otherwise, the contract is subject to the reservation of correct and timely self-supply by our suppliers. This only applies if we are not held to be responsible for the non-delivery, particularly if we have entered into a transport agreement with a carrier in a sufficient manner.

(3) Our offers shall be binding for 30 days. If the Customer does not make an order within this period, we shall be entitled to declare the offer void at our discretion.

(4) All offers, documents, plans, drawings, estimates, documents and data – also in the electronic form - remain our property and may neither be retained nor modified nor copied or otherwise reproduced or made available to third parties by the Customer.

(5) If at the time of delivery, the item is not set aside due to the non-fulfilment of the contract or the delivery item is set aside. This shall also apply if we have provided additional services such as loading, transport or unloading. If the performance is delayed due to reasons caused by the Customer, the risk of accidental or accidental loss shall pass with the notification of the delivery of the item.

(6) If the risk of accidental or accidental loss shall pass to the Customer at the latest when the delivery item is dispatched or handed over to the representative of the shipping company without or at the place of dispatch. If the delivery is delayed due to reasons caused by the Customer, the risk of accidental or accidental loss shall pass to the Customer. The Customer is entitled to store the products at the risk and expense of the Customer and to charge as delivered. After the grace period for accepting the delivery is exceeded, we are entitled, at our discretion, either to remedy the defect (supplementary performance), to replace the delivery item or to withdraw from the contract after a reasonable grace period to provide such services has expired; further statutory rights remain unaffected hereof. The Customer shall be liable for all damages incurred by us as a result of the defect.

(7) Upon delay of payment of our Customer, suspension of payment or the opening of an insolvency proceeding with respect to the Customer’s assets, all our claims become immediately due for payment. This also applies in the event of agreed terms of credit or if the claim is not yet due for payment for some other reason. Furthermore, this shall apply irrespective of a term of a draft which we have accepted.

(8) The Customer may only offset reimbursable due to us with counter claims, if such counter claims are indisputable or compellingly established in court.

(9) Cheques and/or drafts will not be accepted as means of payment.

(10) All payments shall be made in EUR exclusively to us. Any exchange rate risks shall be borne by the Customer.
§ 8 Intellectual Property Rights and Defects of Title

1. Unless agreed upon otherwise, we shall only deliver products in the Federal Republic of Germany that are not infringing any intellectual property rights and copyrights of third parties (hereinafter collectively referred to as "Intellectual Property Rights"). If the third-party owner asserts any justified claims against the Customer based on the infringement of Intellectual Property Rights, concerning any correctly used deliveries by us, we shall be liable to the Customer as follows:

2. We will, in our opinion and at our expense, either obtain a right of use for the corresponding delivery, change it in such a way that the Intellectual Property Rights are not infringed or will exchange them. If none of the above measures is feasible at reasonable conditions, the Customer shall have the statutory rights to withdraw from the contract or to reduce the contract price.

3. Our obligation to pay damages is governed by § 9.

4. The aforementioned obligations shall only apply, if the Customer has immediately informed us about any such third-party claims in writing, did not acknowledge an infringement and has reserved all defensive measures and settlement negotiations to us. If the Customer refuses to use the delivery due to reasons of minimizing the damage or due to other reasons, the Customer shall inform the third party that the suspension of use does not represent any acknowledgment of an infringement of Intellectual Property Rights.

5. Any claims of the Customer are excluded if and to the extent the Customer is responsible for the infringement of the Intellectual Property Rights.

6. Furthermore, any claims of the Customer are excluded if the infringement of Intellectual Property Rights is caused by special requirements of the Customer, through any use which was not foreseeable or due to the fact that the delivery is changed by the Customer or used together with products which were not delivered by us.

7. In case of other defects in title, the provisions of § 7 shall apply accordingly.

8. Furthermore, any other claims of the Customer against us other than those set out in § 9 and § 7 are excluded.

§ 9 Liability

1. Our liability for damages, out of which legal reasons whatsoever, is limited to:
   a) our acts of intent or gross negligence including acts of our legal agents and vicarious agents;
   b) culpable injury of life, body, health;
   c) culpable breach of contract;
   d) if we have intentionally misrepresented the defect by silence or if we have guaranteed the absence of defects;
   e) to the extent we are liable for personal and material damages with respect to privately used items under the German Product Liability Act.

2. Further claims for damages are excluded.

3. A contractual obligation shall be material if its fulfillment is a precondition for the proper performance of the contract and on the observance of which the contract's performance and value essentially depend.

4. In the event of a culpable breach of a material contractual obligation, our liability is limited to those reasonably foreseeable and typical for this kind of contract.

5. The foreseeable loss typical for this kind of contract shall generally be the amount of the contract value of the particular performance.

§ 10 Repairs and Services

1. The repairs mentioned in this § 10 refer to repairs which are not covered by our warranty obligation for material defects.

2. Repairs will be affected in the manner that the item under repair becomes fully functional once again. Defective parts will be renewed if it is necessary for proper functioning.

3. If the Customer wishes to obtain a cost estimate prior to performance of the repair, the Customer shall expressly request so. The cost estimate is subject to the change according to our current hourly rate.

§ 11 Software Usage

1. If software is included in the scope of delivery, we grant the Customer a non-exclusive right to use the supplied software including the associated documentation. The use of the software on more than one system is prohibited.

2. The Customer may only use the software to the legally permissible extent. The Customer shall not remove the manufacturer specifications—including the copyright mark—nor modify them without our prior written consent.

3. All other rights to the software and the documentation including copies thereof are reserved by us or the software supplier. It is not permitted to grant sublicenses.

§ 12 Installation and Commissioning

1. If an installation and commissioning is subject of the Agreement, our prices are based on the condition that a smooth installation process is ensured to us due to the following circumstances, we shall invoice to the Customer at the installation rates as applicable at a time unless we are responsible for the insufficiency of such additional costs:
   a) completion of the installation so that new arrivals and departures become necessary;
   b) the chaining with devices which are not within the scope of delivery;
   c) air and electric supply of the equipment;
   d) waiting and travel costs;
   e) necessary works which have to be effected onsite or on Customer’s side which have not been executed in time or incorrectly;
   f) equipment which is not prepared or not tidied up;
   g) if parts or components of the equipment cannot be unloaded at the installation site in time or as agreed upon.

2. The Customers shall place additional workers (assistants) at our disposal, as far as it is necessary for the installation work.

§ 13 Terms for Preliminary Acceptance and Final Acceptance

1. If a preliminary acceptance is agreed upon at our works, this shall occur in consultation with the Customer. The result of preliminary acceptance shall be recorded in a written preliminary acceptance protocol.

2. If a preliminary acceptance cannot take place due to reasons the Customer is responsible for, our internal acceptance protocol shall be deemed to be the preliminary acceptance protocol.

3. If a final acceptance is agreed or if a final acceptance is necessary in accordance with the statutory requirements, the following provisions of this § 13 apply.

4. The final acceptance is made in consultation with the Customer at the Customer’s plant.

5. The Customer shall be required to accept our works performed upon our notification of their completion and, if applicable, after any contractually agreed testing has been conducted.

6. The Customer shall inform us about any deviations from the specifications or the agreed characteristics immediately upon their discovery in test form. The notification shall contain a sufficiently precise description of the observed deviation in order to allow us to identify and eliminate the deviation.

7. The Customer may not refuse the final acceptance due to minor defects. Such defects shall be remedied within the scope of our warranty obligations.

8. Substantial defects shall be rectified as soon as possible and shall be submitted to the Customer for acceptance; the new acceptance test shall be limited to the assessment of the removal of the defects. Minor defects shall be documented in the acceptance protocol in writing and shall be remedied within the scope of our warranty obligations.

9. Should the Customer refuse acceptance without justification or without giving any reasons, we reserve the right to set a 14 days period of time for acceptance. The acceptance shall be deemed to have been granted if the Customer has not accepted the work within this period of time or if the Customer hasn’t specified any substantial defects in writing.

10. In any case, the work result shall be deemed accepted if the Customer is using it or could use it productively. From that moment, the warranty period shall start and we have a claim for payment of the outstanding balance.

11. The Customer is not entitled to refuse the final acceptance due to disruptions during the final acceptance for which we are not responsible.

12. The Customer shall provide skilled operating personal necessary for the final acceptance due time and free of charge.

13. If partial agreements are accepted, the limitation period begins with the acceptance of the last performance.

14. Our liability for obvious defects ceases to exist upon final acceptance unless the Customer has explicitly revoked the right to assert a claim for a defect known to the Customer.

§ 14 Customer’s Right of Termination

1. If we owe the delivery of a movable, non-fungible item to be manufactured or produced, the Customer is entitled to terminate the contract at any time until the completion of the work. We are entitled to request the agreed remuneration in case of termination by the Customer; however, the value of any savings in expenses as a result of the termination of the contract as well as the value of what we acquire through other use of our labor force or maliciously failed to acquire shall be deducted therewith. Section 649 of the German Code of Obligations (BGB) remains unaffected hereby.

§ 15 Place of Performance, Place of Jurisdiction, Applicable Law

1. For all claims arising out of the business relationship between the Customer and us, the place of performance shall be our company’s registered office.

2. The exclusive place of jurisdiction for all claims resulting from the business relationship including claims from cheques and drafts shall be the place of performance if the Customer is a merchant, a legal entity under public law or an asset under public law. We are also authorized, however, to sue our Customer at its general place of jurisdiction.

3. All disputes arising from contracts to which these GTC apply and all disputes arising from business relationship between us and the Customer shall exclusively be governed by German law excluding the rules of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and international private law.

§ 16 Final Clauses

1. Should one or another provision of these GTC be or become fully or partly invalid, the validity of the remaining provisions shall remain unaffected hereby.

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