

## 1. Scope of application

1.1 Our Terms and Conditions of Purchase shall apply exclusively. Deviating, conflicting or supplementary terms and conditions of the supplier shall not become an integral part of the contract, even if known, unless we have expressly agreed to their validity in a separate contract in writing. Our Terms and Conditions of Purchase shall also apply even if we accept the supplier's delivery without reservation, even though we are aware of the supplier's terms and conditions which contradict, supplement or deviate from our Terms and Conditions of Purchase.

1.2 Our Terms and Conditions of Purchase shall only apply vis-à-vis entrepreneurs (section 14 BGB (German Civil Code)), legal entities under public law and special funds under public law.

## 2. Conclusion of contract

2.1 The supplier must confirm receipt of our order in writing, stating our **INFRA-DEBA** order number, the ordered item, the quantity, the offer price and the delivery date.

2.2 If our order is not confirmed by the supplier within 5 days from the date of order, we shall no longer be bound by it.

2.3 Delayed or supplementary acceptance of our order shall be deemed a new offer and requires acceptance by us.

## 3. Prices/payment terms

3.1 The agreed prices are fixed prices for the duration of the agreement. The supplier's right to raise prices shall only be accepted if we have expressly agreed to them in writing.

3.2 All prices shall be understood to include the currently valid statutory value added tax, unless this is shown separately. Unless individually agreed otherwise, the price shall include all services and ancillary services of the supplier (e.g. assembly and installation) as well as all ancillary costs (e.g. proper packaging and transport costs including any transport and liability insurance).

3.3 Unless otherwise agreed in writing, the payment terms shall be 30 days with a 3% discount or 60 days net. The payment period begins after receipt of the goods by us and on the day on which we receive a verifiable invoice. In order for our payments to be considered on time, it is sufficient for our transfer order to reach our bank before expiry of the payment period.

3.4 The invoice is to be issued separately for each order after dispatch of the goods, stating our DEBA order number, the article, article number and quantity. If one or more of these specifications are not complied with and processing is delayed by us in the course of our normal business transactions, the payment periods stated in section 3.3 shall be extended accordingly.

3.5 We shall not owe any interest on maturity. In the event of default in payment, the statutory provisions shall apply.

3.6 We shall be entitled to rights of set-off and retention to the extent permitted by law.

3.7 The supplier may only invoke a right of set-off or retention if his claim is undisputed, recognised or legally established.

## 4. Delivery time

4.1 The delivery time stated in the order is binding.

4.2 The supplier is obliged to inform us immediately in writing if circumstances arise or become apparent to him which indicate that the stipulated delivery time cannot be met.

4.3 In the event of a delay in delivery, our rights – in particular with regard to withdrawal from the contract and compensation for damages – shall be governed by the statutory provisions.

4.4 If we are prevented from accepting the order by force majeure, industrial disputes, unrest or other circumstances for which we are not responsible and which lead to disruptions of our business operations, we are obliged to inform the supplier without delay. In these cases, we are entitled to postpone acceptance of the goods for the duration of the disturbance as long as we have complied with our obligation to provide information.

## 5. Delivery

5.1 Unless agreed otherwise, delivery will be made DDP (in accordance with Incoterms 2010 or the currently valid version).

5.2 The place of performance shall be at our place of business in Salzwedel (obligation to deliver), unless agreed otherwise.

5.3 Insofar as no other agreement has been made, the risk shall pass to us upon delivery of the goods at our place of business. Insofar as acceptance has been agreed, this is decisive for the passing of risk.

5.4 Partial deliveries may only be made with our express prior consent. If we agree to partial deliveries, the supplier shall bear the additional costs incurred in the case of partial deliveries.

5.5 The goods to be delivered shall be packed and insured in accordance with customary commercial practice and in a proper manner. In the event of insufficient packaging, we shall be entitled to refuse acceptance of the goods without being in default of acceptance.

5.6 The supplier is obliged to state our exact DEBA order number, material number and, in the case of printed materials, our printing code number on all shipping documents and delivery notes. If he fails to do so, we shall not be responsible for delays in processing.

5.7 Unless agreed otherwise, delivery shall be made on Euro pallets. The exchange criteria in the European pallet pool for Euro pallets of the European Pallet Association (E-PAL) must be complied with. In the event of non-compliance, we reserve the right to repack the goods at the supplier's expense.

## 6. Examination/complaint

Section 377 of the German Commercial Code (HGB) applies to our commercial duty to examine and give notice of defects with the following proviso: We will inspect the delivered goods immediately after receipt of goods with regard to type, quantity and obvious damage, in particular transport damage, and will immediately report any defects discovered. Defects discovered later must be reported immediately after their discovery. In any case, the complaint shall be deemed to have been lodged immediately and in due time if it is received by the supplier within a period of 10 working days from receipt of the goods or, in the case of hidden defects, from discovery.

## 7. Warranty/liability

7.1 The statutory provisions shall apply to our rights in the event of material and legal defects of the goods (including wrong or short delivery) and in the event of other breaches of duty by the supplier, unless otherwise stipulated below.

7.2 Pursuant to the statutory provisions, the supplier shall be liable in particular for the fact that the goods have the agreed condition upon transfer of risk to us and correspond to the current state of the art.

7.3 The Supplier warrants that the goods delivered by it comply with all relevant legal regulations.

7.4 The costs incurred by the supplier on account of having to check for and rectify defects (including any installation and dismantling costs) shall be borne by the supplier. In the event of an unjustified request for rectification of defects on our part, we shall

only be liable for damages if we have recognised or have not recognised through gross negligence that there was no defect.

7.5 If the supplier fails to comply with his obligation to remedy the defect within a reasonable period of time set by us, we shall be entitled to remedy the defect ourselves and demand reimbursement of the expenses incurred or a corresponding advance payment from the supplier. If the supplier refuses subsequent performance or if it is a fixed liability or if the subsequent performance by the supplier has failed or is unreasonable for us (e.g. due to special urgency, endangerment of operational safety or imminent occurrence of disproportionate damage), no deadline is required. The supplier must be informed immediately, if possible in advance.

## **8. Product liability/precautionary measures**

8.1 Insofar as the supplier is responsible for product damage, he shall be obliged to indemnify us against claims for damages by third parties on first demand, insofar as the cause lies within his sphere of control and organisation and he himself is liable in the external relationship.

8.2 Within the scope of its indemnification obligation as defined in section 8.1, the supplier is also obliged to reimburse us for any expenses that arise from or in connection with a claim by third parties. Other statutory claims remain unaffected.

8.3 The supplier is also obliged to bear the costs for precautionary measures as well as damages resulting therefrom, if the cause for the precautionary measures lies within the supplier's sphere of control and/or organisation and he himself is liable in the external relationship. Before implementing precautionary measures, we shall inform the supplier – as far as possible and reasonable – of the reason, type and scope of the measure and give him the opportunity to comment. Precautionary measures are measures that not only refer to individual defective products from us, but also to a large number of products from us, in particular recalls and conversions.

8.4 The supplier undertakes to take out and maintain a product liability insurance policy with an insured sum of at least €10 million per claim (flat rate). The supplier will send us a copy of the liability policy at any time upon request.

## **9. Third-party rights**

9.1 The supplier is responsible for ensuring that no rights of third parties are infringed in connection with his delivery. This applies in particular to property and industrial property rights.

9.2 If claims are asserted against us by third parties for violation of any rights, the supplier shall indemnify us upon written request and hold us harmless in other respects. This does not apply if the supplier is not responsible for the infringement.

9.3 The supplier's obligation to indemnify shall include all expenses necessarily incurred by us in connection with claims by a third party.

## **10. Documents/confidentiality**

10.1 We reserve ownership rights and copyrights to illustrations, drawings, calculations as well as print data and other documents provided by us to the supplier. They may not be used for other purposes, duplicated or made available to third parties unless this is necessary for the fulfilment of the contract in individual cases or we have expressly agreed to this beforehand. They can be reclaimed by us at any time. At the latest after completion of the order, they are to be returned to us without being requested to do so, including any copies.

10.2 The supplier is obliged to treat all technical and commercial documents handed over in strict confidence and to oblige his employees and subcontractors accordingly. This applies in particular to documents that are marked as confidential. The obligation to maintain secrecy does not apply if the information is already generally known or if it can be proven that the supplier already had this information prior to us giving it to him. The same shall apply if the information becomes generally known after disclosure without a breach of contract, is shared with the supplier by third parties without such third parties violating a confidentiality obligation, if the information is acquired by the supplier

autonomously and independently of the information conveyed by us, or if it is disclosed by us in the public domain or has to be disclosed due to statutory regulations. Contraventions will result in an obligation to provide compensation.

## **11. Reference customer**

Our naming as a reference customer requires our prior written consent.

## **12. Acquisition of ownership**

12.1 The goods must be transferred to us without fail and regardless of the payment of the purchase price. If in individual cases we accept an offer by the supplier for transfer of ownership subject to payment of the purchase price, the supplier's retention of title shall only apply if it relates to our payment obligation for the respective products to which the supplier retains title. In this case, we shall also be entitled to resell the goods in the ordinary course of business even before payment of the purchase price under assignment in advance of the claim arising therefrom. Expanded, forwarded and extended reservations of title for further processing are excluded.

12.2 Goods paid for by us which remain at the disposal of the supplier must be marked as our property by the supplier.

12.3 Following handover, we may use, pledge, assign as security, install and process the delivered goods.

## **13. Limitation period**

13.1 The reciprocal claims of the contracting parties shall be time-barred in accordance with the statutory provisions, unless stipulated otherwise below.

13.2 In derogation from sections 438 para. 1 (3), 634 a para. 1 (1) BGB, the general limitation period for claims due to material or legal defects is three (3) years from the passing of risk. Insofar as acceptance has been agreed, the limitation period shall commence upon acceptance. Longer statutory limitation periods due to defects remain unaffected. This applies in particular to claims based on defects which exist in a right in rem of a third party on the basis of which the object of sale can be claimed or in any other right which is entered in the land register (section 438 para. 1(1) BGB) and for claims based on defects in a building or defects of products which have been used for a building in accordance with their usual use and which have caused the defectiveness of the building or work whose success consists in planning or supervision services for a building (sections 438 para. 1(2), 634 a para. 1 (2) BGB).

13.3 Insofar as we are entitled to recourse claims against the supplier on the basis of the regulations on the purchase of consumer goods (sections 478, 479 BGB), section 478 BGB shall apply for the limitation period for claims for recourse, but the limitation period shall not commence before expiry of the period provided for in section 13.2.

13.4 In the case of fraudulent concealment of a defect by the supplier (sections 438 para. 3, 634 a para. 3 BGB) and insofar as we are also entitled to competing contractual and/or non-contractual claims for damages due to a defect, the regular statutory limitation period (sections 195, 199 BGB) shall apply; the limitation period shall not, however, expire before the expiry of the period stipulated in section 13.2. The statutory limitation periods according to the Product Liability Act remain unaffected in any case.

## **14 Place of jurisdiction/applicable law/miscellaneous**

14.1 Insofar as the supplier is a merchant, a legal entity under public law or a special fund under public law, the place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our place of business in Salzwedel. However, we are also entitled to sue the supplier at his place of business.

14.2 The laws of the Federal Republic of Germany shall apply exclusively, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

14.3 We are entitled to assign our claims from the contractual relationship with the supplier. The supplier shall not be entitled to

assign his claims arising from the order without our express consent.

14.4 Should individual provisions of these Terms and Conditions of Purchase or a provision within the scope of other agreements be invalid, this shall not affect the validity of the remaining provisions.

**DEBA Badsysteme GmbH**  
**Date: February 2018**