

General terms and conditions (GTC)

§ 1 Scope of the general terms and conditions

- These general terms and conditions apply to all sales and deliveries of products, services and production of works of any kind of DESOL GmbH (hereinafter referred to as „DESOL“) in favour of the customer, partner, purchaser or distributor (hereinafter referred to as „Customer“).
- The deliveries, services and offers of DESOL are exclusively based on these general terms and conditions, which are part of all contracts, which DESOL concludes with its Customers for the deliveries or services offered by it. They also apply to all future deliveries, services or offers to the Customer, even if they are not separately agreed. Terms and conditions of the Customer or third parties do not apply, even if DESOL does not separately object to their application in individual cases. References of the Customer to his terms and conditions of business or purchase are hereby disputed, even if DESOL refers to a letter which contains or refers to general terms and conditions of the Customer or a third party.
- In case of any inconsistency between the various contractual documents forming part of the contract, the following order of precedence shall apply (in descending order): (i) Master Agreement (if any), (ii) Order Confirmation, (iii) Quotation, (iv) General Terms and Conditions.

§ 2 Offers and conclusion of contract

- Offers contained in brochures, advertisements, etc. are subject to change and non-binding, also with regard to price quotations. DESOL can accept orders within fourteen days after receipt. A contract is only validly concluded by the transmission of an order confirmation by DESOL.
- Statements in offers and/or order confirmations of DESOL, which are based on an obvious error, namely a spelling or calculation error, do not oblige DESOL. Rather the obviously intended statement is valid.
- Information provided by DESOL on the subject matter of the delivery or service (e.g. weights, dimensions, utility values, load capacity, tolerances and technical data) as well as the representations of the same (e.g. drawings and illustrations) are only approximately authoritative, unless the usability for the expressly contractually agreed purpose (if any) requires exact conformity. They are not guaranteed characteristics of quality, but descriptions or identifications of the object of the delivery or service. Deviations that are customary in the trade and deviations that occur due to legal regulations or represent technical improvements, as well as the replacement of components with equivalent parts are permissible, as long as they do not impair the usability for the expressly contractually agreed purpose (if any).
- DESOL reserves the ownership or copyright of all offers and cost estimates made by it as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids provided to the Customer. The offer documents, drawings, descriptions, samples and cost estimates of DESOL may not be passed on, published, duplicated or otherwise made accessible to third parties without their permission. Upon request, the documents are to be returned without withholding copies. Any copies made are to be destroyed if they are no longer required in the ordinary course of business or if negotiations do not lead to the conclusion of a contract.

§ 3 Prices and price changes

- Prices do not include the statutory sales tax, which is shown separately. All prices shall be invoiced in the Euro currency. All invoices are to be paid in the Euro currency.
- The prices do not include the costs for packaging and freight as well as customs duties, fees and other public charges.
- If a cost element within the price-forming total costs demonstrably increases (e.g. personnel costs or hourly rates, operating and production costs e.g. due to rising energy costs or demonstrably third party-related material costs), DESOL reserves the right to adjust the price, but only proportionally with regard to the corresponding changed cost element and - insofar as this is reasonable for the Customer. DESOL will inform the Customer immediately about this, explaining the respective changed cost elements. The new price resulting from this will apply from the first of the calendar month following receipt of the written notification. This price change clause does not apply if the delivery of the delivery item and/or the performance of the service has to be fulfilled within four months from the conclusion of the contract.

§ 4 Delivery, delivery time and force majeure

- Unless otherwise agreed, delivery ex works is agreed (Incoterms 2020). With the handing over of the delivery item to the forwarding agent, carrier or collector, or in the case of transport with DESOL's means of transport, however at the latest when leaving DESOL's warehouse or the manufacturer's warehouse, the risk is transferred to the Customer.
- Delivery dates or deadlines, which can be agreed bindingly or non-bindingly, must be stated in writing. Binding force is only given if an explicit declaration to this effect has been made by DESOL. Insofar as shipment has been agreed, delivery periods and delivery dates refer to the time of hand-over to the forwarding agent, carrier or other third party commissioned with the transport.
- The adherence to performance or delivery dates and deadlines or delivery periods is subject to the condition that DESOL is supplied on time by suppliers or that the materials required for the fulfilment of the order can be procured on the market at all. In the case of delayed or non-delivery DESOL has the right to withdraw from the contract and is thereby released from its obligation to perform. DESOL is obliged to inform the Customer immediately and will refund any consideration already paid by the Customer in case of withdrawal.
- The binding nature of performance or delivery dates and deadlines or delivery periods presupposes that the Customer provides DESOL with documents and other required information in good time and is not in default with his cooperation or with his other essential contractual obligations, in particular the payment obligations.
- In cases of force majeure, the party affected thereby shall be released from its obligation to perform to the corresponding extent and for the duration of the effect. An event of force majeure occurs if it is beyond the control and influence of the party affected by it, it could not reasonably have been foreseen at the time of the conclusion of the contract and the effects could not reasonably have been prevented or overcome by the affected party. Cases of force majeure shall be deemed to include in particular
 - War or comparable acts of war, large-scale military mobilisation, civil war, riot, rebellion and revolution, military or other seizure of power, insurrection, act of terrorism, sabotage or piracy;
 - Currency and trade restrictions, embargoes, sanctions;
 - Lawful or unlawful official acts, compliance with laws or government orders, expropriation, confiscation of works, requisition, nationalisation;
 - Epidemics, pandemics, natural disasters or other extreme natural events such as floods;
 - Explosion, fire, destruction of equipment, prolonged failure of transportation, telecommunication, information systems or power;
 - General labour unrest such as boycotts, strikes and lockouts; go-slow strikes; occupation of factories and buildings.
- The affected contractual partner shall inform the other party immediately of the event and its effect. If performance of the contract is delayed by more than one month for one of these reasons, each contracting party shall have the right - without entitlement to compensation from the other contracting party - to terminate the contract in writing for the quantities affected by the interruption in performance of the contract or to withdraw from the contract.
- DESOL is entitled to make partial deliveries if
 - the partial delivery is usable for the Customer within the scope of the contractual purpose,

- the delivery of the remaining ordered goods is ensured, and
 - the Customer does not incur significant additional expenses or costs, unless DESOL agrees to bear these costs.
- If DESOL culpably defaults on a delivery or service or if a delivery or service becomes impossible, regardless of the reason, DESOL's liability for damages is limited in accordance with § 8 of these general terms and conditions.

§ 5 Place of performance, shipment and transfer of risk

- Place of performance for all obligations arising from the contractual relationship is 36148 Kalbach, unless otherwise specified. If DESOL is also responsible for the installation, the place of performance is the place where the installation has to take place.
- The method of shipment and the packaging are at the discretion of DESOL.
- The risk is transferred to the Customer as soon as the consignment has been handed over to the person carrying out the transport or has left DESOL's works for the purpose of shipment. If the shipment is delayed or not carried out at the instigation of the Customer, the risk is transferred to the Customer with the notification of readiness for shipment.
- At the request of the Customer, deliveries shall be insured in his name and for his account.
- Storage costs after transfer of risk are borne by the Customer. In the case of storage by DESOL, the storage costs amount to 0.25 % of the invoice amount of the delivery items to be stored per expired week. DESOL reserves the right to claim and prove further or lower storage costs.

§ 6 Non-acceptance of goods and return of goods

- In case of non-acceptance of goods by the Customer, DESOL is entitled to a fixed compensation claim of 30% of the purchase price, without DESOL having to prove a special damage, unless the Customer proves that DESOL has suffered a lesser damage. DESOL is allowed to prove a higher damage.
- Goods may only be returned with the prior consent of DESOL. In case of an unauthorised return, the Customer will be charged for the costs incurred. Goods that are not defective will not be taken back or only in exceptional cases without acknowledgement of a legal obligation and as a gesture of goodwill if the goods are in perfect original condition. In the case of such a goodwill return, a discount of 10% of the value of the goods, but at least 20 euros, will be charged. Goods returned carriage forward will not be accepted. The return shipment is at the risk of the Customer.

§ 7 Warranty and liability for defects

- The warranty period shall be one (1) year from delivery or, if acceptance is required, from acceptance.
- The delivered items are to be carefully examined immediately after delivery to the Customer or to the third party designated by him. They are deemed to be approved if DESOL has not received a written notification of defects with regard to obvious defects or other defects which were recognisable during an immediate careful inspection within seven working days after delivery of the delivery item, or otherwise within seven working days after the discovery of the defect or the point in time at which the defect was recognisable for the Customer during normal use of the delivery item without closer inspection. Transmission by telefax is sufficient to comply with the written form requirement; otherwise, transmission by telecommunication, in particular by e-mail, is not sufficient. At the request of DESOL the rejected delivery item is to be returned to DESOL carriage paid. In case of a justified complaint, DESOL will reimburse the costs of the most favourable shipping route; this does not apply if the costs increase because the delivery item is located at a place other than the place of intended use.
- In case of material defects of the delivered items, DESOL is obliged and entitled to choose between rectification of defects or replacement delivery within a reasonable period of time. In case of failure, i.e. impossibility, unreasonableness, refusal or unreasonable delay of the rectification or replacement delivery, the Customer can withdraw from the contract or reduce the purchase price appropriately.
- If a defect is based on the fault of DESOL, the Customer can demand compensation under the conditions specified in § 8.
- In case of defects of components of other manufacturers, which DESOL cannot remove for licensing or factual reasons, DESOL will, at its option, assert its warranty claims against the manufacturers and suppliers for the account of the Customer or assign them to the Customer. Warranty claims against DESOL exist in case of such defects under the other conditions and according to these general terms and conditions only if the legal enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful, or for example due to insolvency, is futile. For the duration of the legal dispute, the limitation of the relevant warranty claims of the Customer against DESOL is inhibited.
- The warranty does not apply if the Customer modifies the delivery item or has it modified by a third party without the consent of DESOL which makes the rectification of defects impossible or unreasonably difficult. In any case the Customer has to bear the additional costs for the removal of defects caused by the modification.
- If the Customer is a company and if he or another buyer in the supply chain as a company has fulfilled claims of the consumer due to defects in newly manufactured goods delivered by DESOL, which were also delivered as newly manufactured goods to a consumer, the limitation of claims of the Customer against DESOL from §§ 437, 478 Para. 2 BGB (German Civil Code) comes into effect at the earliest two months after the point in time at which the Customer or the other buyer in the supply chain has fulfilled the consumer's claims as a company, unless the Customer could have invoked the defence of limitation against his Customer. The statute of limitations of the Customer's claims against DESOL because of defective goods delivered by DESOL occurs in any case, as far as the claims of the Customer's buyer against the Customer because of defects of the goods delivered by DESOL to the Customer are statute-barred, but at the latest five years after the time when DESOL has delivered the respective goods to the Customer.
- A delivery of used items agreed with the Customer in individual cases shall be made to the exclusion of any warranty.

§ 8 Liability and limitation of liability

- Claims for damages due to (pre-)contractual breach of duty and from tort, with the exception of such damages which have occurred to the delivery item itself, exist only:
 - in case of intentional breach of duty by DESOL;
 - in case of grossly negligent breach of duty by DESOL or in case of intentional or grossly negligent breach of duty by one of DESOL's legal representatives or vicarious agents.
- These limitations of liability do not apply in the case of culpable injury to life, body and health and in the case of violations of essential contractual obligations (so-called cardinal obligations), which arise from the nature of the contract and whose violation endangers the achievement of the purpose of the contract. In this respect DESOL is liable for any degree of fault and for any kind of damage. Likewise DESOL is fully liable according to the regulations of the product liability law or in case of defects which have been fraudulently concealed or whose non-existence has been expressly guaranteed by DESOL.
- In case of violation of essential contractual obligations DESOL is only liable for the contract-typical, foreseeable damage, if this was caused by simple negligence, unless it concerns claims for damages of the Customer from an injury of life, body or health.

General terms and conditions (GTC)

- The restrictions of paras. 1 2 and 3 shall also apply in favour of the legal representatives and vicarious agents of the contractual partner if claims are asserted directly against them.
- The provisions of the Product Liability Law shall remain unaffected.

§ 9 Property rights

- DESOL guarantees in accordance with this § 9 that the delivery item is free of industrial property rights or copyrights of third parties. Each contracting party will immediately notify the other contracting party in writing if claims are asserted against it due to the infringement of such rights.
- In case that the delivery item infringes an industrial property right or copyright of a third party, DESOL will, at its discretion and at its expense, modify or replace the delivery item in such a way that no third party rights are infringed, but the delivery item continues to fulfil the contractually agreed functions, or procure the right of use for the Customer by concluding a licence agreement. If it does not succeed in doing so within a reasonable period of time, the Customer shall be entitled to withdraw from the contract or to reduce the purchase price appropriately. Any claims for damages by the customer are subject to the limitations of § 8 of these General Terms and Conditions.
- In case of infringement of rights by products of other manufacturers delivered by DESOL, DESOL will, at its discretion, assert its claims against the manufacturers and pre-suppliers for the account of the Customer or assign them to the Customer. Claims against DESOL exist in these cases in accordance with this § 9 only if the judicial enforcement of the aforementioned claims against the manufacturers and pre-suppliers was unsuccessful, or for example due to insolvency, is futile.

§ 10 Retention of title

- DESOL reserves the right of ownership of the delivered goods (reserved goods) until the fulfilment of all current and future claims, which DESOL has against the Customer from the business relationship. The Customer will store the reserved goods free of charge for DESOL and will treat them with care. The Customer will insure the reserved goods against loss, damage and destruction; he hereby assigns his claims arising from such an insurance relationship to DESOL, who hereby accepts the declaration of assignment.
- The Customer is obliged to immediately notify DESOL in writing of any seizure of the reserved goods and to inform the pledgee of the retention of title. The Customer is not entitled to sell, give away, pledge or transfer by way of security the items delivered to him under retention of title - except in the cases of the following paragraphs.
- If the delivery is made for a business operation maintained by the customer, the items may be resold within the framework of proper business management. In this case, the Customer's claims against the buyer from the sale are already now assigned to DESOL. In case of resale of the items on credit, the Customer must reserve ownership towards his Customer. The Customer hereby assigns to DESOL the rights and claims arising from this retention of title towards his Customer, and DESOL hereby accepts this declaration of assignment.
- Any processing of the goods subject to retention of title by the Customer is carried out free of charge for DESOL. In case of processing, combination, mixing or blending of the reserved goods with other goods not belonging to DESOL, DESOL is entitled to the resulting co-ownership share of the new object in proportion of the factor value of the reserved goods to the other processed goods at the time of processing, combination, mixing or blending. If the Customer acquires sole ownership of a new item, the contracting parties agree that the Customer grants DESOL co-ownership of the new item in proportion to the factor value of the processed or combined, mixed or blended goods subject to retention of title, and that DESOL shall keep this co-ownership for the supplier free of charge.
- If the goods subject to retention of title are installed by the Customer or on his behalf as essential components in the real estate of a third party, the Customer already now assigns to DESOL any claims for remuneration arising against the third party or the party concerned with all ancillary rights, including the granting of a security mortgage, and DESOL hereby accepts this declaration of assignment.
- If the goods subject to retention of title are built into the Customer's property as essential components, the customer already now assigns the claims arising from a sale of the property or of property rights with all ancillary rights to DESOL, which hereby accepts this declaration of assignment.
- If the value of the securities existing for DESOL according to the above provisions exceeds the value of DESOL's claims - not only temporarily - by a total of more than 20 %, DESOL is obliged to release securities of its choice at the Customer's request.
- If the Customer does not fulfil his obligations towards DESOL or does not fulfil them punctually and/or if he acts in an inadmissible way on the objects delivered under retention of title, DESOL can demand the return of the objects, without prejudice to the claim to fulfilment of the contract to which it is entitled, provided that a reasonable period of time set for the Customer to fulfil his obligations has elapsed unsuccessfully. The demand for return of the delivered goods does not constitute a declaration of withdrawal by DESOL, unless this is expressly stated. At the request of DESOL, the Customer will, under the conditions of sentence 1, individually prove his claims assigned to DESOL, stating all necessary individualisation features, especially name and address of the debtor, amount of the claim, existence of securities; he will hand over the corresponding documents from DESOL free of charge. Furthermore the Customer informs his debtors about the assignment of the claims and requests them to pay only to DESOL. If the conditions of sentence 1 are fulfilled, DESOL is entitled to inform the customer's debtors and to collect the receivables. This right also exists in the case of an application to open insolvency proceedings on the Customer's assets.

§ 11 Payment

- Unless otherwise agreed, DESOL's invoices are due and payable immediately after invoicing without deduction. All invoice amounts are to be paid in Euro currency. If the Customer does not pay on the due date, the outstanding amounts are subject to interest of 5% per annum from the due date; the assertion of higher interest and further damages in case of default remains unaffected.
- DESOL expressly reserves the right to refuse cheques or bills of exchange. Acceptance is always on account of performance only. Discount and bill charges are to be borne by the customer and are due immediately.
- If DESOL becomes aware of circumstances which question the creditworthiness of the Customer, in particular if the Customer does not honour a cheque or stops payments, DESOL is entitled to call due the entire remaining debt, even if it has accepted cheques. Furthermore DESOL is entitled in this case to demand advance payments or securities.
- If the customer finally stops his payments and/or insolvency proceedings over his assets or judicial or extrajudicial composition proceedings are requested, DESOL is also entitled to withdraw from the not yet fulfilled part of the contract.
- DESOL is entitled to offset payments against the Customer's older debts, despite other provisions in the Customer's general terms and conditions. DESOL will inform the Customer about this kind of offsetting. If costs and interest have already been incurred, DESOL is entitled to offset the payment first against the costs, then against the interest and finally against the main performance. Offsetting with counterclaims of the Customer or the withholding of payments due to such claims is only permitted if the counterclaims are undisputed or have been legally established.
- If the customer is in default of payment, DESOL is entitled to charge default interest of 8 percentage points above the basic interest rate (§ 247 BGB) from the point in time concerned. DESOL is allowed to prove that a higher damage has occurred.

- Invoices will be sent by e-mail. The Customer will provide DESOL with a valid e-mail address for this purpose.

§ 12 Prohibition of assignment

Without the express written consent of DESOL, the Customer may not transfer or pledge his rights and claims against DESOL arising from the contractual relationship or from its execution to third parties; § 354a of the German Commercial Code is not affected by this.

§ 13 Export control regime

- The performance of the contract remains subject to the reservation that there are no legal obstacles due to national or international regulations, in particular export control regulations as well as embargos or other trade and foreign trade law restrictions. The Customer undertakes to provide all information and documents required for the export, transfer or import.
- Delays in delivery due to necessary export inspections or approval procedures invalidate agreed delivery periods and dates. DESOL is obliged to inform the Customer immediately about the delay in delivery and its cause. In case of a delay in delivery of more than one month, the contracting parties are entitled to dissolve the contract to the extent affected by the delays in delivery by written declaration to that effect, whereby the other party would not be entitled to compensation.
- If required official (export) permits are not granted or if the fulfilment of the contract is not subject to approval or if the Customer violates his obligation to provide all necessary information and documents to obtain the required permits despite DESOL setting a reasonable deadline, DESOL is entitled to withdraw from the contract in the affected scope.

§ 14 Secrecy

- The contracting parties undertake to keep all confidential information, business transactions and documents of the respective other contracting party, which become known to them and their legal representatives, employees and other vicarious agents, secret towards third parties and not to make them accessible to third parties in any way.
- The duty of confidentiality shall not apply if the information is publicly known, was already known to the contracting party upon receipt, is made available to the contracting party by third parties without imposing a duty of confidentiality, must be made available to third parties in order to fulfil the contractual obligation (e.g. subcontractors) and these third parties were obliged to maintain confidentiality.

§ 15 Applicable law and place of jurisdiction

- These General Terms and Conditions and the entire legal relationship between DESOL and the Customer shall be governed by the laws of the Federal Republic of Germany without regard to its conflict of law provisions and to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- For merchants, legal entities under public law or special funds under public law, the place of performance and the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is the headquarters of DESOL. Mandatory legal provisions regarding exclusive places of jurisdiction remain unaffected by this regulation.

§ 16 Final provisions

- If a contractual partner has to process personal data within the scope of the contract, it shall comply with the Federal Data Protection Act and other provisions of data protection law, including the General Data Protection Regulation (Regulation (EU) No. 2016/679 of the European Parliament and of the Council of 27 April 2016) and coordinate any necessary data protection measures with the other contractual partner and enable the latter to verify compliance with the agreements made.
- If one or more provisions of these general terms and conditions or of the contract are deemed to be invalid, not legally effective or illegal in whole or in part, this shall not affect the validity, legal effectiveness and legality of the remaining provisions of the contract. In this case, the contracting parties undertake to replace the wholly or partially invalid, non-legally effective or illegal provision with retroactive effect by a new provision that comes closest to the provisions contained in the invalid, non-legally effective or illegal provision in a legally permissible manner from an economic and financial point of view.
- The Customer allows DESOL to have the contractual obligations commissioned to him partially or completely carried out by subcontractors.
- All obligations provided for in the contract or in the general terms and conditions, which by their nature continue beyond the termination of the contract, shall remain in force after the termination of the contract, in particular all financial obligations which one contracting party must fulfil under the contract for the benefit of the other contracting parties.

As of 03/2023