

General Terms and Conditions of Delivery and Service of devolo AG

for use in business transactions with entrepreneurs

As at: 14.12.2015

1. Area of application

1.1 Our goods and services, as well as related offers shall be provided solely on the basis of these General Terms and Conditions of Delivery and Service (hereinafter called "Delivery Conditions" for short). We shall not accept conditions of the purchaser, which run contrary to or differ from our Delivery Conditions, unless we have expressly approved them in writing. Our Delivery Conditions shall also apply if we supply the goods or services to the purchaser without reservation in the knowledge of conditions of the purchaser, which run contrary to or differ from our Delivery Conditions.

1.2 Our Delivery Conditions shall only apply towards entrepreneurs, legal entities under public law and special public assets.

1.3 Our Delivery Conditions shall also apply to all future goods and services supplied to the purchaser.

2. Conclusion of contract

2.1 Our offers shall be subject to confirmation and shall be non-binding. A contract shall only come about when the purchaser receives our order confirmation in writing, by fax or in electronic form. A contract shall also come about when we supply the goods or services after placement of the order without separate confirmation.

2.2 The information which is contained in brochures or similar documents and relates to an offer, e.g. diagrams, drawings, descriptions, measurements, weights, performance data, consumption figures, information regarding the usability of products, shall only apply approximately, unless they are expressly designated as binding. Minor deviations from the description of the offer shall be deemed to have been approved and shall not affect fulfilment of the contract if the deviation is reasonable for the purchaser. This provision shall apply, in particular, to changes and improvements in the interest of technical progress.

2.3 We shall only be liable for public statements by manufacturers, by their agents or in another way in advertising if they are proved to have been instigated by us and the advertising has actually influenced the purchase decision by the purchaser.

3. Software

3.1 The valid licence conditions for the related software shall also apply to the delivery of software, including software which is handed over for use as part of a product or for services in connection with software; these licence conditions can be found on the relevant product

webpages which are published in our website www.devolo.de. On request, we shall also send the purchaser the licence conditions for the particular software.

3.2 Unless otherwise stipulated in the licence conditions, we shall grant the purchaser a non-exclusive, non-transferable and non-sublicensable right to use the software in question for the agreed purpose. Unless otherwise agreed, this right of use shall apply in the country containing the delivery location for the product. The right of use shall apply indefinitely.

3.3 The software shall be transferred in machine-readable form. The purchaser shall have no right to receive the source code.

3.4 The purchaser shall only be entitled to make one copy of the software which may be used solely for backup purposes (backup copy).

3.5 The utilisation conditions for open source software shall apply to open source software and shall take precedence over the provisions of § 3. We shall only hand over and make the source code available to the purchaser if this is necessary according to the utilisation conditions for the open source software. We shall draw the purchaser's attention to the existence and utilisation conditions of supplied open source software; we shall make the utilisation conditions available to the purchaser or, if required under the utilisation conditions, shall transfer them to him. We shall reserve the right to charge the purchaser a reasonable amount for the costs which we incur in handing over the source code for the open source software.

3.6 We shall be free to supply software either by sending the purchaser a program copy of the software on machine-readable data carriers and the number of copies of the operating instructions agreed in the contract or the operating instructions in electronic form, or by making the software and operating instructions ready for download in an electronic form in a network and informing the customer accordingly. If the operating instructions are supplied electronically, the purchaser shall receive them either on the same data carrier as the program copy of the software or on another data carrier. Alternatively, the operating instructions shall be made available ready for download in a network and the purchaser shall be notified accordingly. If the software is made available ready for download via a network, we shall pay the costs in this respect. The purchaser shall be responsible for paying the download costs.

4. Documents

We shall reserve ownership rights and copyright to texts, diagrams, drawings, calculations and other documents which we provide or make available. This provision shall also apply to documents which are marked as "confidential". The documents which we provide or make available may only be used, without our prior written approval, for the purpose we have stipulated or the purpose agreed with the purchaser. The purchaser may not hand over these documents to third parties free of charge or for a consideration either for a specific or an unlimited period of time, nor may he change, reproduce, distribute or make these documents available to the general public.

5. Prices, price adjustment and payment terms

5.1 Unless otherwise stipulated in the contract, our prices shall apply ex our warehouse in Aachen (EXW Aachen, Incoterms 2010). Any costs incurred during installation, set-up, instruction, training or other incidental services shall be charged separately to the prices in our currently valid price list.

5.2 Statutory VAT shall not be included in our prices. VAT shall be shown separately at the statutory rate on the date of the invoice.

5.3 If the delivery or service date is later than three months after the conclusion of the contract, we shall be entitled – after promptly informing the purchaser and before supplying the goods or services – to adjust the price of the goods or services to the extent required on account of the general price development outside our control (e.g. exchange rate fluctuations, currency regulations, changes in customs duties, marked rise in material costs or production costs) or on account of a change in suppliers. In the case of goods or services within three months, the price valid on the date of conclusion of the contract shall always apply. In the case of framework contracts containing price agreements, the three month period shall commence on the date of conclusion of the framework contract.

5.4 Unless otherwise expressly agreed, payment shall be made without deduction as soon as the invoice is received. Payments by bills of exchange or cheques shall require our express approval.

5.5 If the customer fails to pay on time, also in regard to earlier goods or services, or if we become aware of circumstances which, in accordance with sound commercial judgement, indicate a serious deterioration in the purchaser's financial situation, we shall be free to request either immediate payment or securities from the purchaser.

5.6 The purchaser shall only be entitled to carry out offsetting if his claims are final and absolute, are undisputed or have been acknowledged by us. The purchaser shall not be entitled to exercise a right of retention in connection with counterclaims which are based on other contracts.

6. Deliveries or services and delays in their provision

6.1 The start of the delivery or service period we have stipulated shall depend on clarification of all commercial and technical questions. Compliance with our delivery and service obligation shall also depend on the purchaser duly fulfilling his obligations in good time. We shall reserve the right of the defence alleging non-performance of the contract.

6.2 If and as long as we are waiting for cooperation or information from the purchaser, or we are not supplied or are not supplied on time or correctly, or are prevented from supplying goods or services due to strikes or lockouts in external companies or our own company, official intervention, legal bans or other circumstances through no fault of our own, the delivery and service periods shall be deemed to have been extended by the duration of the delay and a reasonable lead time after the end of the delay. It shall also be deemed that no obligation was infringed for the duration of the down time. We shall inform the customer immediately about these delays and their likely duration. If the delay lasts continuously for longer than three months, both parties shall be released from their delivery and service obligations.

6.3 Partial deliveries shall be permitted to the extent that is reasonable for the purchaser.

6.4 If an agreed delivery date or service date is exceeded due to reasons for which we are responsible, the purchaser shall grant us a reasonable period of grace in writing to either supply the goods or services. This period of grace shall be at least two weeks. If the goods or services are not supplied after the period of grace has expired and the purchaser therefore wants to withdraw from the contract or demand compensation instead of performance, he shall be obliged to inform us accordingly beforehand in writing with an express request for goods or services together with another reasonable period of grace. In response to our request, the purchaser shall be obliged to state within a reasonable period of time whether he is withdrawing from the contract due to the delay in delivery or service, or whether he is demanding compensation instead of performance, or whether he is insisting on delivery or service.

6.5 Every withdrawal from the contract shall be effected in writing.

6.6 If we have to pay compensation as a result of late supply of goods or services, thus infringing an obligation for which we are responsible but which was not intentional or grossly negligent, the compensation claim accruing to the purchaser shall be limited at most to 5% of the part(s) of the particular goods or services affected by the delay if they cannot be used in time or according to the contract on account of the delay.

7. Passing of risk, transport insurance

7.1 Even in the case of freight free delivery to the purchaser, risk shall pass if

- a) the goods were dispatched, selected or collected without set-up or installation,
- b) the goods were dispatched, selected or collected with set-up or installation on the date of acceptance in the purchaser's own company or, if agreed, after a successful trialrun.

7.2 Risk shall pass to the purchaser if dispatch, delivery, the start or implementation of set-up or installation, acceptance in the purchaser's own company or a trial run are delayed due to reasons for which the purchaser is responsible or if the purchaser delays acceptance for other reasons.

7.3 If the purchaser so requests, we shall take out transport insurance for the goods delivery; the costs incurred in this respect shall be paid by the purchaser.

8. Reservation of ownership

8.1 We shall retain ownership to all supplied products (hereinafter called "reserved goods") until the purchaser has fully paid all claims from the business relationship. This provision shall also apply if payments are made for specially designated claims. These claims shall include claims from cheques and bills of exchange, as well as claims from current invoices or current accounts.

8.2 The purchaser shall be entitled, up to revocation by us at any time without stipulating reasons, to resell, process, mix or combine the reserved goods with other products during the normal course of business. Resale in this context shall also be equivalent to installation in ground and earth or in systems connected with buildings, or to use in order to fulfil other contracts.

8.3 Reserved goods shall always be processed, mixed or transformed for us as the manufacturer within the meaning of § 950 of the German Civil Code (BGB) with no obligation on our part in this respect. The processed goods shall be regarded as reserved goods within the meaning of these conditions. If the reserved goods are processed or inseparably mixed/combined with other goods not belonging to us, we shall acquire joint ownership of the new product in the ratio of the invoice value of the reserved good with the repurchase value of the other utilised goods at the time of processing or mixing/combining. If the reserved goods are combined or inseparably mixed with other goods not belonging to us in order to form a single product and this product can be regarded as a main product, the purchaser shall hereby assign to us proportionate joint ownership if the main product belongs to the purchaser. We shall hereby accept this assignment. The purchaser shall protect the ownership hereby created for us free of charge and with the diligence of a prudent businessman.

8.4 The purchaser shall adequately insure the reserved goods at the replacement value and at his own expense against all normal risks, especially risks due to fire, burglary and water. The purchaser shall also treat the reserved goods with care and store them properly. The rights from this insurance shall be assigned to us. We hereby agree to this assignment.

8.5 In the event of resale, the purchaser shall already hereby assign to us his purchase price claim against his customers arising from this sale, including all incidental rights and the statutory VAT. If the purchaser sells the reserved goods together with other goods not belonging to us, assignment shall only apply to the value of each sold reserved good shown on our invoice. In the event of resale of goods in which we have joint ownership shares according to § 8.3, assignment shall apply to the amount of these joint ownership shares. The assigned claims shall be used to the same extent for security as the reserved goods. If the assigned claim is included in a current invoice, the purchaser shall already now assign to us a balance from the current account corresponding to the amount based on this claim. We hereby accept the stipulated assignments.

8.6 Up to our revocation, which shall be permissible at any time and without stipulating special reasons, the purchaser shall be entitled to collect the claim assigned to us in his normal course of business; this right shall expire even without revocation as soon as the purchaser is in arrears with payment to us. In the case of a direct debit by the bank, the purchaser shall agree with the bank that the money received is not subject to the bank's lien and that he can fulfil his obligation towards us to transfer the proceeds. In response to a request by us, the purchaser shall inform his customers about prior assignment to us and shall provide us with the information and documents which are necessary to enforce the claim. Our entitlement to personally collect the claim shall not be affected. However, we shall not collect the claim as long as the purchaser fulfils his payment obligations from the collected proceeds, is not in arrears and, in particular, no application has been submitted to open insolvency proceedings and payments have not been stopped.

8.7 If the value of the securities accruing to us exceeds our claims overall by more than 10%, we shall release corresponding securities at our choice if requested to do so by the purchaser.

8.8 The purchaser shall have no entitlement to any other disposals of the reserved goods (pledges, assignments by way of security) or any other assignments of the claims stipulated in § 8.5. The purchaser shall make reference to our property in the event of pledges or seizures of the reserved goods and shall inform us immediately, also in writing, and hand over the necessary documents. If the third party is unable to reimburse us for the judicial and non-judicial costs of legal action according to § 771 of the German Code of Civil Procedure (ZPO), the purchaser shall be liable for the loss that we incur.

8.9 If the purchaser is in arrears, we shall also be entitled to take back the reserved goods after the fruitless expiry of a reasonable period of grace granted by us, provided we have not withdrawn from the contract. Enforcement of the reservation of ownership shall not be regarded as withdrawal from the contract, unless this was expressly stipulated by us. The legal regulations relating to dispensability of setting a deadline shall not be affected.

9. Obligations of the purchaser to cooperate and provide information

9.1 The purchaser shall provide us free of charge with all the information and documents which are required to supply the contractual goods and services.

9.2 The purchaser has obtained information on the main functional characteristics of our contractual goods and services, and shall bear the risk as to whether they fulfil his needs and requests; if there are doubts concerning the functional characteristics of the products, the purchaser shall request us to provide supplementary information.

9.3 The purchaser shall thoroughly examine our goods and services for freedom from defects before they are used. This provision shall also apply to software which the purchaser receives within the framework of defect rectification and support.

9.4 The purchaser shall, as a material contractual obligation, back up data and programs at application-compliant intervals, but at least once a day, in machine-readable form and shall thereby ensure that these data and programs can be restored with justifiable expense.

9.5 If the purchaser does not expressly inform us beforehand, we shall assume that all the purchaser's data with which we may come into contact are backed up.

10. Right of return, sample deliveries

10.1 If we and the purchaser have jointly agreed the right to return products, the latter shall be obliged to treat them carefully in order to protect this option, and to return them to us in full and in a perfect condition in the original packaging free of charge prior to the agreed date. If the goods are returned, the purchaser shall pack them in a safe condition for transport and shall insure them at his own expense.

10.2 Unless otherwise agreed in an individual case, samples which we supply to the purchaser shall normally be sold with the right to return them to us within the agreed period.

If a specific period has not been agreed for the return of sample deliveries, they shall be sent back at our request within 2 weeks.

10.3 Unless otherwise agreed in an individual case, the purchase price for the products supplied with a right of return shall be paid immediately to us by the purchaser without any deduction after the end of the right of return. If no purchase price has been agreed for a product, the price applying to the product in our valid price list at this point in time shall be paid.

11. Material and legal defects

11.1 In accordance with the provisions of the international sale of goods, we shall furnish a warranty regarding the contractual quality of the goods and services, and also that their use by the purchaser according to the contractual scope is not impaired by third-party rights. However, the warranty for the freedom of the contractual goods from third-party rights shall only apply to the agreed country of destination in which the contractual goods are to be used. Without an express agreement, the warranty shall apply to the country in which the purchaser has his place of business.

11.2 In the case of material defects, we shall initially provide a warranty through reperformance. In the case of reperformance with software, we shall either provide the purchaser with a new, perfect software release or rectify the defect; the defect shall also be deemed to have been rectified if we show the purchaser reasonable ways to prevent the impacts of the defect.

11.3 In the case of legal defects, we shall initially provide a warranty through reperformance. For this purpose, we shall choose a method which enables the purchaser to use our goods and services in a legally acceptable way.

11.4 We shall be entitled to make reperformance dependent on the purchaser paying at least a reasonable part of the remuneration.

11.5 The purchaser shall be entitled to use a new software release if the contractual functionality is retained and its use does not lead to serious disadvantages.

11.6 If two attempts at reperformance fail, the purchaser shall be entitled to grant us a reasonable period of grace to rectify the defect. The purchaser shall expressly state in writing that he reserves the right to withdraw from the contract and/or demand compensation in the event of repeated failure.

If the rework also fails during the period of grace, the purchaser may withdraw from the contract, unless the defect is insignificant, or reduce the remuneration. We shall pay compensation or reimburse fruitless expenses due to a defect according to the limits stipulated in § 12. On expiry of a period of grace granted according to sentence 1, we may request the purchaser to exercise his rights resulting from expiry of the period within two weeks after receipt of the request. The right of choice shall pass to us on expiry of the period.

11.7 If, at the instigation of the purchaser, we supply services to find or rectify the defect without being obliged to do so, we may request remuneration for these services in accordance with our usual rates. This provision shall apply, in particular, if a defect cannot be

proved or is not attributable to us. We shall also be remunerated for the resulting additional expenses we incurred due to the purchaser's failure to duly comply with his obligations under § 9.

11.8 If third parties assert claims which prevent the purchaser from exercising his contractual utilisation rights, the purchaser shall be obliged to provide us immediately with written details. The purchaser shall hereby authorise us to solely take judicial and non-judicial action against third parties. If judicial or non-judicial action is taken against the purchaser, he shall be obliged to reach an agreement with us and only take legal steps, especially make confessions or reach settlements, with our approval. The purchaser shall support us in our judicial and non-judicial action by providing suitable assistance and information.

We shall be obliged to defend the claims at our own expense and release the purchaser from all costs and losses in connection with this legal defence, unless this is due to the purchaser's failure to perform his obligations. We shall also be entitled at our own discretion to satisfy the third party claim or replace the affected service by an equivalent service conforming to the contractual provisions if this is reasonable after taking account of the purchaser's interests.

11.9 Claims by the purchaser due to the expenses required for the purpose of reperformance, especially transport costs and travelling expenses, shall be excluded if the expenses increase because the delivery product was taken to a place other than the purchaser's place of business, unless transport corresponds to its intended use.

11.10 The purchaser may only derive rights from other infringements of obligations if he has sent us a written claim to this effect and has granted us a period of grace to remedy the defect. This provision shall not apply if remedial action is not applicable due to the nature of the infringement of the obligation. The limits stipulated in § 12 shall apply to compensation or reimbursement of fruitless expenses.

11.11 The limitation period for defect claims (except claims for compensation or expenses to which § 12 applies) shall be one year. In the case of delivery of second-hand products, the limitation period for defect claims shall be six months. The limitation periods shall commence each time when the products or services are supplied. The statutory limitation periods shall apply if we have maliciously concealed the defect.

11.12 The purchaser may only assert recourse claims against the supplier in accordance with § 478 of the German Civil Code (Recourse of the entrepreneur) if he has not concluded any agreements which go beyond statutory defect claims with his customers. § 11.9 shall apply analogously to the extent of the purchaser's recourse claims against us under § 478 (2) of the German Civil Code.

12. Liability for compensation and reimbursement of expenses

12.1 In accordance with legal regulations, we shall be liable for damage which was caused intentionally or through negligence, is the result of the lack of a guaranteed condition of the services, is due to a culpable infringement of material contractual obligations (so-called cardinal obligations), is the result of culpable injury to health, life or limb, or for which liability exists under the Product Liability Act.

12.2 Cardinal obligations shall be regarded as those contractual obligations whose fulfilment actually facilitates the proper performance of the contract and on whose compliance the contracting party may regularly depend. They are therefore obligations whose infringement would endanger attainment of the purpose of the contract.

12.3 In the event of infringement of a cardinal obligation, liability – if damage is merely due to slight or normal negligence and does not affect life, limb or health – shall be limited to damage which can be typically and foreseeably expected from contractual services during the supply of services.

12.4 Liability – for whatever legal reason – of both our agents and subcontractors shall be excluded.

12.5 If the purchaser suffers damage due to the loss of data or programs, we shall only be liable if the damage could not have been prevented by the purchaser backing up all relevant data and programs as described in § 9.4.

12.6 § 11.11 shall apply accordingly to the limitation period on condition that the statutory limitation period for claims under § 12.1 applies. The limitation period according to sentence 1 shall commence on the date stipulated in § 199 (1) of the German Civil Code. It shall start at the latest at the end of the maximum periods stipulated in § 199 (3) and (4) of the German Civil Code.

13. Final provisions

13.1 The place of performance for goods, services and payments shall be our principal place of business.

13.2 Our principal place of business shall be the place of jurisdiction if the purchaser is a merchant. However, we shall be entitled to also take legal action or assert other judicial claims against the purchaser at his principal place of business.

13.3 German law shall apply. The UN Convention on the International Sale of Goods shall not apply.

13.4 These Terms and Conditions and the related contract shall represent each time the entire agreement between the contracting parties. Amendments or additions shall be effected in writing in accordance with § 126 of the German Civil Code. This written form requirement may only be waived in writing. If a contract has to be effected in writing, text form according to § 126 b of the German Civil Code (e.g. fax and e-mail) shall be sufficient.

13.5 If one of the clauses of this contract is or becomes invalid, or contains an inadmissible deadline or a loophole, the legal validity of the other clauses shall not be affected. If invalidity is not due to infringement of §§ 305 et seq. of the German Civil Code (Validity of General Terms and Conditions), the invalid clause shall be deemed to have been replaced by a valid clause which comes as close as possible to the economic intention of the contracting parties. This provision shall also apply to a loophole. The extent permitted by law shall apply to an inadmissible deadline.