

General Terms and Conditions of Sale and Delivery De Dietrich Process Systems GmbH, Mainz, Germany in effect as of 07.04.09

1. General Provisions
 - 1.1 The following General Terms and Conditions (hereinafter called the "Terms") of De Dietrich Process Systems GmbH, Mainz shall only apply to entrepreneurs (§ 14 German Civil Code [Bürgerliches Gesetzbuch]). They shall also apply to all future transactions with the Customer. Customer's terms and conditions that contradict or deviate from these Terms shall be invalid and shall not be deemed as having been agreed.
 - 1.2 De Dietrich Process Systems may process the personal data of customers and prospective customers subject to the limitations imposed by the German Federal Data Protection Act [Bundesdatenschutzgesetz].
 - 1.3 All agreements made by and between De Dietrich Process Systems and the Customer for the purpose of implementing this contract are to be set forth in writing in this contract or in an amended contract.
 - 1.4 If individual provisions of the purchase contract or of these Terms violate the statutory provisions or are invalid for other reasons, this shall not release the Customer from the Customer's obligation to take delivery of the remaining goods ordered or from compliance with the other provisions.
 - 1.5 These Terms shall also apply to any negotiations conducted prior to the conclusion of a contract.
2. Offers and Conclusion of a Contract
 - 2.1 Offers made by De Dietrich Process Systems shall always be non-binding. De Dietrich Process Systems reserves the right to correct errors and omissions. Initial offers not involving any engineering costs are free of charge as a matter of principle.
 - 2.2 Documentation relating to an offer, such as illustrations, drawings, data on weights and dimensions, process flow charts or diagrams together with the relevant descriptions, etc., shall be regarded as being applicable only within the customary tolerances, unless expressly described by De Dietrich Process Systems as being binding. Such documentation shall be returned without delay on request. De Dietrich Process Systems retains title and copyright to all of the offer documents. Such documents are confidential; disclosure to third parties is not allowed; any such disclosure will lead to claims for damages by De Dietrich Process Systems, where appropriate.
 - 2.3 If further documentation (sketches, blueprints, plans, drawings, stability calculations, etc.) is requested by the Customer and provided by De Dietrich Process Systems, but does not lead to De Dietrich Process Systems receiving the order, De Dietrich Process Systems shall be entitled to charge a fee on the basis of the rates in force at that time.
 - 2.4 The Customer is responsible for ensuring that any implementation documents submitted by the Customer do not infringe any third-party industrial or intellectual property rights. The Customer shall indemnify De Dietrich Process Systems against all legal claims asserted by third parties against De Dietrich Process Systems due to an infringement of such property rights.
 - 2.5 Declarations of acceptance and all orders must be confirmed in writing or by facsimile by De Dietrich Process Systems in order to be legally valid. The same shall apply to additions, amendments or supplements to an agreement. Oral supplements or oral affirmations that go beyond the content of the written contract must be confirmed in writing to become valid.
3. Pricing
 - 3.1 Prices shall be denominated in EUR ex-works and shall not include packing, freight, postage, customs tariffs, other fees, insurance or the statutory value-added tax, which shall be added to and shown separately in every invoice, unless a specific agreement to the contrary has been made.
 - 3.2 The Customer shall pay the packing costs. The minimum order value shall be EUR 125.00.
 - 3.3 Insofar as the goods are supplied in crates or boxes and such crates or boxes are returned to De Dietrich Process Systems promptly and in undamaged condition, two-thirds of their cost shall be credited to the Customer.
 - 3.4 De Dietrich Process Systems shall be entitled to bill supplementary charges to cover increases in the costs of material or in wage rates pursuant to collective bargaining agreements occurring prior to the goods being dispatched or declared ready for shipment, if the order was dated at least four (4) months earlier. In the event of a cost increase of more than five percent (5 %) after the conclusion of the contract, De Dietrich Process Systems shall also have the right to withdraw from the contract.
 - 3.5 Any installation or commissioning/start-up work shall be charged in accordance with De Dietrich Process Systems's terms for installation or commissioning/start-up work on the basis of man-hours and materials actually required and in compliance with the working hours specified by law or by collective wage agreements. De Dietrich Process Systems's current terms can be found in the Internet under www.qvf.de. Terms may be requested at any time from De Dietrich Process Systems.
 - 3.6 Work outside the scope of a contract, in particular but not limited to such work required ahead of time to prepare the installation or the supplementary work afterwards, is not included in the price and shall be billed on the basis of the man-hours recorded at the daily rates then in effect. The same shall apply to any waiting time for which the customer is responsible.
4. De Dietrich Process Systems's Obligations
 - 4.1 Drawings shall only be supplied to the extent necessary for the operation and maintenance of the parts and/or machinery and/or complete plants supplied. In the case of complete plants, these shall normally include:
 - Final flow diagram, taking one fundamental revision into account
 - Final layout plan, shown two-dimensionally, with parts list and weight data and one correction discussed and agreed with the Customer
 - Parts lists for plants, machines and individual units, complete with installation, operation and maintenance instructions
 - Two copies of all documents in German or in English.
 - 4.2 De Dietrich Process Systems will also provide the following for an additional charge:
 - Further revisions of the flow diagram and layout plan, to the extent that such revisions are not caused by De Dietrich Process Systems
 - Isometric presentation of the piping
 - More than two copies of the documentation and/or in other languages
 - Pre-printed forms and other printed matter that deviates from De Dietrich Process Systems's
 - standards identification of components, e.g. by means of different parts-list numbers or other designations
 - Documentation on data carriers
 - Calculations of rigidity or static forces unless such calculations are officially prescribed and required
5. Delivery Period
 - 5.1 The delivery period shall commence with the day on which the order confirmation is dispatched, but not before the Customer has provided all agreed documentation, licences, approvals, etc., and not before any agreed advance/total payment has been received. The delivery date shall be deemed to have been met if the goods are reported to be ready for dispatch or have been shipped on or prior to the agreed delivery date.
 - 5.2 Information pertaining to delivery periods or delivery dates, respectively, is supplied as a matter of principle under the proviso that the Customer fulfils its contractual obligation to co-operate. A prerequisite for De Dietrich Process Systems's compliance with its delivery obligation is the timely and proper fulfilment of the Customer's obligations.
 - 5.3 The agreed delivery period shall be prolonged by such length of time as the Customer may be in default of performance of its obligations.
 - 5.4 If De Dietrich Process Systems does not receive supplies, even though De Dietrich Process Systems has placed corresponding covering orders with reliable suppliers, De Dietrich Process Systems shall be released from its performance obligation and may withdraw from the contract.
 - 5.5 If the agreed date can not be complied with due to circumstances beyond De Dietrich Process Systems's control or beyond the control of De Dietrich Process Systems's suppliers, the delivery period shall be extended for an adequate period of time. Acts of God or force majeure shall entitle De Dietrich Process Systems to postpone delivery until the impediments resulting from such events have been completely removed.
 - 5.6 If as a result of any such event the delivery or any part thereof becomes impossible, De Dietrich Process Systems may refuse performance after giving the Customer due warning. The same shall apply to any other circumstances that might make the delivery substantially more difficult or impossible, so long as De Dietrich Process Systems does not commit gross negligence.
 - 5.7 If the impediments continue to last one (1) month after the expiry of the agreed delivery period, either party may withdraw from the contract. Other claims for non-compliance with the delivery period for reasons over which De Dietrich Process Systems has no control shall be excluded.
 - 5.8 If the stipulated commencement or continuation of work is delayed with respect to deliveries with installation or commissioning work for reasons beyond De Dietrich Process Systems's control, the following shall apply:
 - 5.8.1 The Customer shall bear the risk of accidental loss of, and damage or deterioration to any parts already delivered or work already carried out. The limitation of actions for liability for defects of quality (see Sec. 9.11 below) shall commence on the date on which the delay starts; the pro-rated value of the scope of delivery and of the work performed shall be due for payment.
 - 5.8.2 The agreed dates for the completion of the work shall be postponed accordingly, while taking into consideration an additional period of time for the resumption of work and postponement of work, if necessary, to an unfavourable time of the year. De Dietrich Process Systems shall inform the Customer without delay of the additional time required. If De Dietrich Process Systems fails to do so, De Dietrich Process Systems shall only have a claim to have such circumstances taken into consideration, if they were obvious to the Customer.
 - 5.8.3 The Customer shall bear all of the costs incurred hereby.
 - 5.8.4 If performance is interrupted for more than three (3) months, the work already completed or the services already rendered shall be billed at the contract prices and all costs that De Dietrich Process Systems has already incurred and that were included in the contract prices for the work not yet carried out shall be reimbursed.
6. Customer's Obligations regarding Installation and Commissioning
 - The Customer shall perform the following services at the Customer's own expense and risk:
 - The Customer shall ensure that the installation site is clean and tidy and that all agreed material is readily available before De Dietrich Process Systems commences work, and shall also ensure that the installation site is suitably sheltered from the weather.
 - The Customer shall provide storage accommodations for the materials and equipment delivered by De Dietrich Process Systems that are dry, frost-free, protected against theft and damage, and air-conditioned in the case of measurement and control equipment - also during any interruption in the installation work - as well as the provision of suitable accommodation in the immediate vicinity of the site of use for the preparation and execution of the installation work.
 - The Customer shall arrange for auxiliary workers to be available to the extent required by De Dietrich Process Systems, and shall require such workers to follow De Dietrich Process Systems's instructions during the installation work. De Dietrich Process Systems shall have the right to reject unsuitable workers. The Customer shall bear legal liability for such employees who shall remain employed by the Customer, but De Dietrich Process Systems shall bear supervisory responsibility.
 - The Customer shall set up and later remove any necessary scaffolding, platforms, lifting gear, lighting, heating, ventilation, and air/fume extraction from the installation site, and shall provide fuel, water, electric power and compressed air that is free of oil and water, and/or all other required media, including their installation, up to the site of use.
 - The Customer shall be responsible for unloading any materials and any special equipment De Dietrich Process Systems has contracted to provide, and also to transport the same to the place of storage and/or site of use.
 - Any pre-structural work or materials supplied by the Customer shall comply with De Dietrich Process Systems's instructions which shall be provided to the Customer as required in individual cases.
 - The Customer shall arrange for overnight accommodations and meals for the deployed installation personnel in the vicinity of the place of work. If it is not possible to find overnight accommodations in the vicinity of the place of work, the Customer shall bear the cost of daily travel between the accommodations and the place of work.
 - The Customer shall provide suitable lockable rooms for such personnel, with lighting, heating, washing facilities and sanitary installations.

- The Customer shall also provide the supplies needed for commissioning the plant and checking its function.
- 7. Passing of Risk
 - 7.1 Under purchase contracts, the risk of accidental loss of and damage or deterioration shall pass to the Customer no later than the moment at which the parts are dispatched; this shall also apply in the case of partial deliveries. If the collection of the goods by the Customer or the dispatch by De Dietrich Process Systems is delayed at the Customer's wish or responsibility, the risk shall pass to the Customer with the notice that the goods are ready to be dispatched.
 - 7.2 If the order for goods is combined with an order for installation work, the risk of accidental loss, damage or deterioration shall pass to the Customer once the goods are delivered to the construction site.
- 8. Final Inspection and Acceptance
 - 8.1 Either of the parties to a contract for work can require the work to be formally inspected and accepted once it is finished.
 - 8.2 A written record of the results and of any defects or deficiencies shall be prepared and signed by both sides.
 - 8.3 Minor defects shall not entitle the Customer to refuse acceptance.
 - 8.4 If proof of performance has been agreed, the Customer shall have to take cognizance of such proof as soon as De Dietrich Process Systems offers such proof.
 - 8.5 After the successful proof of performance, the Customer shall accept the plant and/or machinery.
 - 8.6 If De Dietrich Process Systems's first attempt to prove the performance of the plant and/or machinery is not successful, and if the plant and/or machinery is brought into use nevertheless, the day on which it is first run shall be deemed to be the date of the inspection and acceptance, without De Dietrich Process Systems being released from the obligation to provide proof of performance.
 - 8.7 If the Customer fails to respond to De Dietrich Process Systems's request for final inspection and acceptance, even though no written complaint has been raised concerning any major defect or deficiency, the plant or machinery shall be deemed to have been accepted on the date when it was first started up, and in no case later than one (1) month after the request for acceptance. De Dietrich Process Systems shall point this legal consequence out to the Customer when requesting the final inspection.
- 9. Customer's Rights in the event of defects, Damages
 - 9.1 The Customer may not derive any rights from defects of quality which do not or only immaterially impair the value and fitness of the goods for the use recognizable by De Dietrich Process Systems.
 - 9.2 If the goods have a defect in quality at the time when the risk passes to the Customer, De Dietrich Process Systems shall be entitled and obligated to make supplementary performance ["Nacherfüllung"]. Such supplementary performance shall be effected at De Dietrich Process Systems's option by either removing the defect ["Nachbesserung"] or by a replacement delivery. The costs of such supplementary performance, in particular but not limited to transport, labour and material costs, shall be borne by De Dietrich Process Systems. If such costs comprise more than fifty percent (50 %) of the value of the delivery, De Dietrich Process Systems shall be entitled to refuse supplementary performance.
 - 9.3 If the supplementary performance fails, does not occur within a reasonable period of time set by the Customer or is refused, the Customer shall be entitled, at the Customer's option, to withdraw from the Contract, to demand a reduction in the purchase price corresponding to the value of the defect ["Minderung"] or - within the limits of the following provisions - demand damages in lieu of performance.
 - 9.4 If the defect in quality leads to loss or damage, De Dietrich Process Systems shall be liable in accordance with the statutory provisions, insofar as a personal injury is involved, the loss or damage falls under the German Product Liability Act [Produkthaftungsgesetz], the loss or damage is based on intent or gross negligence, or if De Dietrich Process Systems has assumed an express guarantee.
 - 9.5 In the event of a merely negligent breach of duty by De Dietrich Process Systems or by De Dietrich Process Systems's vicarious agents, De Dietrich Process Systems's liability shall be limited to the loss or damage typical of the contract and predictable.
 - 9.6 Any other contractual and tortious claims of the Customer shall be excluded. In particular, De Dietrich Process Systems shall not be liable for damage which was not incurred to the object of delivery itself or for loss of profits or other pecuniary loss on the part of the Customer.
 - 9.7 Sec. 478 German Civil Code shall remain unaffected by the foregoing Sections 9.1 through 9.5.
 - 9.8 The foregoing provisions of Sections 9.3 through 9.6 shall also apply to claims for damages due to other breaches of duty and tortious liability.
 - 9.9 In the event of a breach of a pre-contractual obligation or an impediment to performance that already existed at the time the contract was concluded, De Dietrich Process Systems's liability shall be limited to placing the customer in such a position in which the customer would be, if he had not relied upon the contract being valid ("negatives Interesse").
 - 9.10 Insofar as De Dietrich Process Systems's liability is excluded or limited, this shall also apply to the personal liability of any employees, workers, employee representatives or other vicarious agents acting on behalf of De Dietrich Process Systems.
 - 9.11 The limitation period for claims due to defects in quality shall be one year. Sec. 438 (1) No. 2, Sec. 634 a No. 2 German Civil Code shall remain unaffected hereby.
 - 9.12 Any ascertained defects are to be reported to De Dietrich Process Systems in writing within ten (10) days after such defects were noted; otherwise the right of the Customer in the event of defects to a rectification of the defect shall lapse.
- 10. Payment
 - 10.1 Purchase price payments are to be made within fifteen(15) working days after the receipt of the goods and of the invoice in cash or by bank transfer. Such payments shall be deemed made as soon as these moneys are freely available to De Dietrich Process Systems.
 - 10.2 There shall not be any offsetting with counter-claims of the Customer unless such counter-claims are uncontested or have been awarded by the court with final and absolute effect. A discount of one and a half percent (1.5 %) shall be granted for cash payments made within ten (10) days of the invoice date. Bills for engineering services, repairs and installation work shall be payable immediately after receipt without deductions.
 - 10.3 De Dietrich Process Systems shall be entitled to demand appropriate down-
- 11. Retention of Title
 - 11.1 De Dietrich Process Systems shall retain title and ownership to the goods delivered until all of De Dietrich Process Systems's claims against the Customer arising from the business relationship, including any future receivables from any contracts concluded simultaneously or subsequently have been paid in full. This shall also apply even if individual or all of De Dietrich Process Systems's receivables have been incorporated into a current account and a balance has been struck and accepted.
 - 11.2 In the event that the Customer is in breach of contract, in particular if the Customer is in arrears of payment, De Dietrich Process Systems shall be entitled to withdraw from the contract and to take back the goods. For the purpose of taking back the goods, the Customer shall herewith irrevocably permit De Dietrich Process Systems to enter the Customer's business and warehouse premises without hindrance.
 - 11.3 After taking back the goods, De Dietrich Process Systems shall be authorised to sell the goods and to apply the proceeds from the sale of the goods to the Customer's liabilities, after deducting reasonable realisation costs.
 - 11.4 The Customer is obligated to handle the goods with care; in particular, the Customer is obligated to insure such goods at the Customer's expense against damage or loss due to fire, water and/or theft.
 - 11.5 The Customer is entitled to sell or process the goods during the ordinary course of business. The Customer shall undertake such processing on De Dietrich Process Systems's behalf, without De Dietrich Process Systems being obligated hereby. In the event that goods subject to retention of title are processed, combined or mixed with other goods, De Dietrich Process Systems shall, as a matter of principle, acquire a co-ownership interest in the new goods, namely when processed, in the ratio of the value (invoice gross amount including ancillary costs and taxes) of the goods subject to retention of title to the value of the new goods; and when combined or mixed, in the ratio of the goods subject to the retention of title to the value of the other goods.
 - 11.6 The Customer herewith assigns to De Dietrich Process Systems all receivables accruing to the Customer against a buyer or against third parties from a sale of the goods subject to retention of title.
 - 11.7 The Customer shall remain authorised to collect such receivables even after said assignment. De Dietrich Process Systems's power to collect such receivables itself shall remain unaffected hereby; however, De Dietrich Process Systems shall not make any use of this right for as long as the Customer properly meets its payment and other obligations. The Customer shall be obligated to inform De Dietrich Process Systems on request of the receivables assigned and their debtors, to provide all of the information required for collection purposes, to surrender the documents pertaining hereto, and to notify debtors of such assignment.
 - 11.8 Insofar as and for as long as such retention of title exists, the Customer may neither transfer ownership as security nor pledge goods or goods made from such goods without De Dietrich Process Systems's consent. Conclusions of financing agreements (such as leasing agreements) which include the transfer of ownership to the goods which are subject to De Dietrich Process Systems's rights of retention, shall require De Dietrich Process Systems's prior written consent, insofar as the contract does not obligate the financing institution to pay the portion of the purchase price owed De Dietrich Process Systems directly to De Dietrich Process Systems.
 - 11.9 In the event of seizures in execution or other third-party encroachments, the Customer must inform De Dietrich Process Systems hereof in writing without delay. The Customer is prohibited from making agreements with its buyers, which could impair De Dietrich Process Systems's rights.
 - 11.10 De Dietrich Process Systems is obligated to release the collateral existing on its behalf on the Customer's demand and subject to the choice of De Dietrich Process Systems to the extent that the realisable value of such collateral exceeds the receivables to be secured by more than twenty percent (20 %) or the nominal value of such collateral by more than fifty percent (50 %).
 - 11.11 If De Dietrich Process Systems declares a withdrawal from the contract and if the goods are taken back, De Dietrich Process Systems shall be entitled to demand from the Customer damages for any expenses incurred and for loss of profit, as well as for a reasonable agent's commission of fifteen percent (15 %). However, the Customer may provide proof that De Dietrich Process Systems has not suffered any losses or has suffered a much lower loss.
- 12. Place of Performance, Place of Jurisdiction and Application of German Law
 - 12.1 The place of performance and jurisdiction shall be Mainz for both parties to the contract, including any action relating to bills of exchange or cheques. De Dietrich Process Systems shall also be entitled to sue the Customer at the Customer's general place of jurisdiction within the Federal Republic of Germany.
 - 12.2 The contractual relationship between the parties shall be subject solely to the laws of the Federal Republic of Germany; the United Nations Convention on International Sale of Goods (CISG) is expressly excluded.