

**diondo GmbH, Hattingen**

**General Terms and Conditions (revised: March 2021)**

**I. General information**

(1) These General Terms and Conditions ("GTC") apply for all offers, deliveries, installations, repairs, consultations and other services provided by diondo GmbH ("diondo"), even if we do not expressly refer to them in the future. We do not accept any other terms and conditions, unless these are expressly agreed to in writing between us and the customer. The customer shall not assert its own terms and conditions of purchase. Such terms and conditions shall also not become part of the contract implicitly or through our delivery. Even after cancelling the entire business relationship or terminating individual orders, the General Terms and Conditions continue to apply for the wind-up and within the scope applicable for the wind-up activities.

(2) The conditions only apply for entrepreneurs as defined by Section 14 of the German Civil Code (BGB) and legal entities under public law as defined by Section 310(1) of the BGB.

**II. Validity of the offer**

(1) Offers are essentially non-binding, unless a commitment period is expressly confirmed in the offer.

(2) The order or orders based on our offer only take effect upon our written confirmation.

(3) Verbal ancillary agreements, contractual amendments or addenda only become legally valid upon our written confirmation.

**III. Documentation**

(1) With the exception of documents intended for advertising purposes, we reserve the unrestricted rights of use to all other technical information and documents in relation to our products under the law on proprietary rights and copyright law. The documents must not be used or copied, reproduced, disseminated or disclosed to third parties without our express written approval.

Documents that are intended for advertising purposes may only be used, forwarded or disclosed to third parties with unmodified content.

All industrial property rights to these documents in our favour remain in place even if we transfer these documents to the customer.

Illustrations, catalogues, photos, drawings, dimensions, weight and dimension specifications, etc., which we provide in printed or electronic form are based on approximate information on our relevant products and are non-binding, unless we expressly confirm their binding nature in writing.

We reserve the right to make modifications, provided that these modifications are not of a fundamental nature and the contractual purpose of the delivery is not unreasonably restricted for the customer.

Reasonable modifications particularly include modifications that

(1) are based on a change in the state of the art in science and technology or statutory regulations,

(2) are due to new findings on material properties or

(3) do not materially change the contractual object in appearance nor in its technical design.

Documents and records on which our offer is based, such as drawings, illustrations, descriptions, weights and dimensions are only part of the contractual agreement to the extent that this is expressly agreed in writing.

#### **IV. Dispatch and packaging**

(1) Dispatch requires all technical questions to be clarified in advance. We reserve the right to send the goods in relevant partial shipments, as soon as these are ready for dispatch.

(2) Our order confirmation submitted in writing or text form or, if none has been provided, our offer is decisive for the scope of the delivery and service.

(3) Packaging takes place in consideration of the usual technical and commercial aspects. If the packaging regulations require us to accept the return of the packaging, the customer bears the costs for the return transport of the used packaging.

(4) If the goods are shipped in in-house or hired containers (collicos), this packaging must be returned to us carriage paid within 5 days of delivery. Hired packaging is charged separately.

#### **V. Delivery period**

(1) The delivery period is based on the agreements between the contracting parties.

(2) The agreed delivery period is a target delivery period, unless otherwise expressly agreed in writing.

(3) The "Ex Works" (EXW Hattingen, Incoterms 2020) delivery period is deemed to have been complied with if the purchased item is selected and ready for dispatch within the agreed period and this has been communicated to the customer. In the event of a sale by dispatch, the delivery period is deemed to have been complied with if the purchased item has been transferred to the forwarding agent within the agreed period or was ready for transfer and could not be transferred through no fault of our own.

(4) If the customer is in default of acceptance, the risk transfers to the customer and we are entitled to claim the additional costs (incl. storage fees) incurred by us as a result in the delay of the execution of the order/contract. If the delay lasts for more than 3 months, we are free to withdraw from the order/contract, in which case the customer is not entitled to claim any damages. In addition, we reserve the right to claim damages from the client due to a default of acceptance.

(5) Delivery periods are essentially indicated subject to the contractual cooperation by the customer, particularly compliance with the terms of payment and the timely receipt of all documents, approvals and releases to be supplied by the customer. We reserve the right to use non-compliance with the contract as a defence.

(6) Correct and timely self-delivery remains reserved. We shall immediately inform the customer of the non-availability of the delivery item and, in the event of cancellation, immediately refund the relevant consideration to the customer.

(7) In the event of force majeure, in particular, but not exclusively, riot, strike, war, flooding, lock-out, fire, epidemics, seizure, boycott, legal or official orders and restrictions or other, external, unforeseeable, uncontrollable, extraordinary events, which cannot be prevented even with the utmost care, and which affect us or our suppliers, unreasonably impede our delivery and performance

obligations, or make such obligations impossible, and for which we are not responsible, the delivery and performance obligations shall be extended by the duration of the cases or events with an adequate restart period, provided that we are not able to meet our delivery or performance obligation despite taking reasonable measures.

(8) In the event of a delay in performance, in cases of intent or gross negligence, we are liable in accordance with the statutory provisions. Any fault on the part of our representatives or vicarious agents is attributable to us. In all other cases of delays in performance, our liability for damages in addition to performance shall be limited to 5% and for damages instead of performance to 10% of the value of the delivery. However, in the event of a culpable breach of material contractual obligations, liability is limited to the foreseeable damages typical of the contract. Further customer claims, including after the expiration of a set performance deadline, are excluded. The above limitation does not apply for mandatory liability due to death, physical injury or damage to health. The above regulations are not associated with any change in the burden of proof.

## **VI. Force majeure**

(1) We are entitled to suspend the fulfilment of our contractual obligations, if this fulfilment is made impossible or complicated by the following circumstances: Labour disputes and all circumstances beyond the control of the parties, such as fire, natural catastrophes, war-like disputes, mobilisation, riot, flooding, sabotage, epidemics, restrictions of energy consumption, government instructions and similar cases, embargoes, rejection of any approvals, licences and/or necessary authorisations as well as incorrect or delayed deliveries by our suppliers due to the aforementioned circumstances.

(2) We shall immediately inform the customer of the occurrence of this type of force majeure. If the disruption has lasted for more than 5 consecutive months or as soon as it turns out that the disruption will last at least 5 consecutive

months, every contract partner is entitled to withdraw from the order in part or in full, without being liable for any damages in relation to the other contract partner.

## **VII. Transfer of risk, returns**

(1) Sofern nicht abweichend schriftlich vereinbart, ist jeweils eine Lieferung „Ex Works“ (EXW Hattingen, INCOTERMS 2020) vereinbart.

(2) The risk of the accidental loss and accidental deterioration of the delivery items transfers to the customer with the notification of readiness for dispatch and once the purchased item has been sorted out for the customer. This also applies if we have taken on additional services, such as loading, transport or unloading, if we bear the shipping costs or provide partial deliveries.

(3) Unless another supply agreement in line with INCOTERMS 2020 was reached, the risk of accidental deterioration or accidental loss of a purchased item transfers to the customer no later than upon the dispatch of the delivered item or the transfer to the transport company ex works or ex place of dispatch.

(4) If we take over the transport services for the customer, we are responsible for the nature of the packaging and shipping of the objects, unless a written agreement to the contrary has been reached.

(5) We shall insure deliveries against the usual transport risks at the customer's request and expense.

(6) If an agreement has been reached that we shall bear the risk of the accidental loss and accidental deterioration of the delivered items, the customer is obliged to immediately inspect the shipped goods for external transport damage upon receipt of the goods and in the presence of the haulier. The customer is obliged to notify the haulier of outwardly apparent losses or damage to the delivery item no later than upon delivery, ensuring that the loss or damage is marked

with sufficient clarity, and the customer must immediately inform us of this in writing. We must be notified in writing of losses or damage that are not outwardly apparent within 5 calendar days.

(7) In the event that the return of goods has been agreed, such a return must take place in line with our shipping instructions, in which case the customer must provide reasons for the return as well as the date and number of our invoice. The customer must essentially return all goods carriage paid in their original packaging. We shall only accept the returned goods if we have authorised the customer to return the goods, i.e. the customer has received an RM (return material) number and clearly noted this on all parcels.

#### **VIII. Prices**

(1) Billing takes place at the prices applicable on the order confirmation date, unless a separate agreement has been reached in this respect.

(2) If, for call or make-and-hold orders, only part of the agreed quantity is accepted within the agreed period, we are entitled, at our discretion, to either charge the price applicable for this lot size for the delivered part or to deliver and bill the outstanding quantity. The value added tax applicable on the invoice date is invoiced separately.

(3) The prices are net prices, unless otherwise indicated, based on EXW Hattingen in line with INCOTERMS 2020.

(4) In case of contracts with an agreed delivery period of more than 12 months, we reserve the right to increase or decrease the prices in accordance with any changes in costs, especially due to collective agreements or material price changes. If the increase exceeds 5% of the agreed price, the customer is entitled to dissolve the contract (right of termination and withdrawal).

(5) Unless otherwise indicated, ancillary costs such as packaging costs, transport costs, insurance charges, customs, postage and any bank and payment transaction costs are not included in the prices.

#### **IX. Payment**

(1) If our offer does not contain any separate terms of payment, payment must be made as follows: 40% of the order value upon conclusion of the contract, 50% of the order value upon notification of readiness for dispatch, 10% of the order value after delivery, however within no more than 3 months of notification of readiness for dispatch. Payment is due immediately upon receipt of the invoice without any deduction. The invoice is issued on the day of delivery, partial delivery or readiness for delivery. The customer enters into default no later than 14 days after the provision of the complete service and receipt of the invoice without requiring any additional written reminder.

(2) Payment is only deemed to have been made once the amount has been irrevocably credited to us, without deducting additional costs, in the agreed, freely convertible currency by a first class German bank.

(3) After the due date, default interest of 6% above the relevant base rate p.a. is charged. We reserve the right to claim additional damages due to default. Further contractual or statutory rights remain unaffected.

(4) All letters of credit drafted in our favour must be prepared by first class banks in consideration of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce and valid on the date that the contract enters into force.

(5) The customer is only entitled to offsetting measures, if we have recognised the counterclaim or it has been established by law.

(6) We only accept cheques and/or bills of exchange as a means of payment if we have previously agreed to such methods of payment in writing. In this case, all costs that we incur as a result of this type of payment shall be borne by the customer.

#### **X. Reservation of title**

(1) All delivered goods, including the technical documentation, remain our property until the complete satisfaction of all claims to which we are entitled from the business relationship with the customer, including all accessory claims.

(2) In the event that the goods subject to the reservation of title are combined or processed with other items that do not belong to us, we shall acquire joint ownership of the new item. The share of joint ownership is based on the ratio of the invoice value, including value added tax, of the item delivered by us to the value of the remaining combined or processed item. The customer shall store the item for us, free of charge, with the diligence of a prudent businessman.

(3) The customer is entitled to resell the goods subject to the reservation of title in the ordinary course of business, in return for immediate payment or subject to the reservation of title. The customer is not entitled to other disposals, in particular to assignment as security or pledging. The customer hereby assigns its receivables from the resale of the goods subject to the reservation of title (resale price, including value added tax)—including the relevant receivables from bills of exchange—with all ancillary rights to us. We accept this assignment.

(4) The customer remains authorised to collect these receivables, even after assignment, until this is revoked. We are entitled to revoke this authorisation, in particular if the customer is in default of payment or an application for the opening of insolvency proceedings or composition proceedings has been filed in relation to its assets. In

addition, we are also entitled to revoke the collection authorisation at any time, if our security interest is placed at risk and objective reasons justify the revocation.

(5) If this collection authorisation expires, regardless of the reasons, at our request, the customer is obliged to provide us with a precise list of its outstanding receivables with the name and address of the buyers, the amount of the individual receivables, invoice date, etc., and supply us with all the information necessary to collect the assigned receivable and also surrender the associated documents. In this case, the customer is also obliged to disclose the assignment to its buyers (third parties) and permit us to audit the status of the assigned receivable by an agent appointed by the customer based on the accounts.

(6) We must be notified of the attachment of the purchased item, indicating the attachment and transfer order and the pledgee, in writing. The same applies for any other interventions by third parties. In case of a danger in delay, the notification must take place by phone in advance.

(7) The customer must insure the goods subject to the reservation of title against fire, theft as well as water and other risks. The customer hereby assigns its associated compensation claims, to which it is entitled in relation to insurance companies or other parties obliged to pay compensation, to us. We accept this assignment.

(8) If the realisable value of this security (Section X) exceeds the total amount of all receivables to be secured by more than 10%, we shall release the security to this extent, at our discretion.

(9) The reservation of title and return of the goods do not impair our other rights under these General Terms and Conditions or the underlying law. If the reservation of ownership is invalid in the country to which the goods are shipped, we are entitled to such rights as are related to the aforementioned provisions.

## **XI. Material defects**

We guarantee that the delivered item has the agreed quality upon transfer of risk. This is exclusively based on the specific agreements on the properties, features and performance characteristics of the delivered item concluded in writing between the parties. We accept no obligation (warranty) above and beyond the quality agreement. Given the diverse possible applications over which we have no control, we are not able to provide a warranty for the service life of our products.

The customer must fully familiarise itself with the operating and maintenance instructions enclosed with the delivery, prior to initial commissioning and comply with these instructions during operation, to ensure operational safety and reliability.

We are liable for material defects as follows:

(1) All the parts or services that display a material defect within the limitation period (irrespective of the service life) must be repaired, re-delivered or re-provided, at our discretion, unless its cause already existed at the time of transfer of the risk.

(1) All the parts or services that display a material defect within the limitation period (irrespective of the service life) must be repaired, re-delivered or re-provided, at our discretion, unless its cause already existed at the time of transfer of the risk.

(3) The customer must immediately notify us of material defects in writing, no later than within 14 days of delivery, but, in any case, before combination, processing or installation.

(4) We must immediately be notified of concealed defects in writing, within no more than 14 days of discovery.

(5) Goods for which a complaint has been lodged must be returned to us within a period of four weeks.

(6) We must first always be given the opportunity of supplementary performance within an adequate grace period.

(7) The customer must, in consultation with us, give us the necessary time and opportunity to carry out all the supplementary performance measures or replacement deliveries that appear necessary. The customer only has the right to rectify defects itself or commission third parties to rectify the defects and demand compensation for the necessary expenses from us in urgent cases that pose a danger to operational safety or to prevent disproportionately large losses, in which case we must immediately be notified.

(8) If the supplementary performance fails, the customer may withdraw from the contract or reduce the remuneration, notwithstanding any claims for damages. The customer cannot demand any reimbursement for futile expenses.

(9) Compensation claims do not exist in the event of a purely minor deviation from the agreed quality, in the event of a minor impairment of usability, in the event of natural wear or damage that arises after the transfer of risk as a result of incorrect or negligent handling (e.g. breach of our operating regulations or VDE provisions), unsuitable or inappropriate use, excessive loads, inappropriate operating materials, the use of unapproved accessories, deficient construction work, unsuitable foundations or due to certain external influences not defined under the contract. If inappropriate modifications or repair activities are carried out by the customer or third parties, no claims for defects exist for these and the resulting consequences. We only accept liability for procedural functions as well as for the suitability of the delivered item for the intended purpose specified by the customer, which differs from the usual intended purpose, if this has been additionally agreed in writing.

(10) Customer claims due to necessary expenses for the purpose of supplementary performance, especially transport and travel costs, any import and export fees, as well as labour and material costs, are excluded, provided that the expenses are increased by the fact that the object

of the delivery/service was moved to a location other than our registered office.

(11) The customer only has a right of recourse against us to the extent that the customer has not reached any agreements above and beyond the statutory claims for defects with its buyer.

(12) In all other respects, Section XII. (Other liability for damages) applies. Additional customer claims against us and our vicarious agents due to a material liability, or claims different to those regulated in this provision, are precluded.

#### **XII. Other liability for damages**

(1) Customer claims for damages, regardless of the legal basis, particularly due to a breach of contractual obligations and tortious liability, are precluded.

(2) This does not apply in case of mandatory liability, for example under the German Product Liability Act, in cases of intent, gross negligence, for physical injury, due to the assumption of a guarantee for the existence of a characteristic or a breach of material contractual obligations. However, the compensation for a breach of material contractual obligations is limited to the foreseeable damages typical for the contract, unless intent or gross negligence exists or for physical injury or in the event of liability due to the assumption of a guarantee for the existence of a characteristic. The above regulations are not associated with any change in the burden of proof to the detriment of the customer.

(3) If our liability is precluded or limited, this also applies for the personal liability of our employees, workers, representatives and vicarious agents.

#### **XIII. Burden of proof**

(1) We bear the burden of proof for the existence of the conditions of the exclusions of liability specified in V, XI and XII.

#### **XIV. Industrial property rights, defects of title**

(1) We accept responsibility for ensuring that the delivered goods, as such, are free of third-party industrial property rights in all the countries around the world (except the USA and Japan). If third parties raise justified claims, we shall either establish a licence for the delivered goods as such or replace the goods with goods that are free of industrial property rights or reclaim the goods in return for the price charged to the customer, at our discretion and expense. The above obligations only exist to the extent that the customer immediately informs us, in writing, of the claims raised by third parties, does not acknowledge an infringement and we remain entitled to take all defensive measures and enter into settlement negotiations.

(2) For goods manufactured in accordance with the information supplied by the customer, we accept no liability for any breach of third party industrial property rights. This also applies if we cooperated with the development or developed the goods in accordance with the information supplied by the customer.

(3) Our obligation to pay compensation is based on Section XII.

(4) In the event of other defects of title, the provisions in Section XI. apply accordingly.

(5) Additional customer claims against us and our vicarious agents due to a defect of title, or claims different to those regulated in Section XIV., are precluded.

(6) The customer shall not remove any manufacturer information, especially copyright notices, and shall not make any modifications without our express prior consent.

#### **XV. Software**

(1) If the scope of supply includes software, the customer receives the non-transferable and non-exclusive right to use the contractual software, including its documentation, on the relevant delivered item. Any use of the software on more than one system is prohibited.

(2) The software supplied by us may only be reproduced, modified, translated or converted from the object code to the source code within the scope permitted by law (Section 69(a) et seq. of the German Copyright Act (UrhG)). Any disclosure to third parties is not permitted without our prior written consent. Consent shall essentially only be refused for good cause.

(3) The customer shall ensure that none of its employees or other third parties use the software supplied by us for anything other than the contractually agreed purposes.

(4) We are not obliged to meet our warranty obligations if the software is modified without our express written approval. The warranty obligation also expires if the customer uses the software in a hardware or software environment other than the one approved by us, in the event of improper operation and/or if the defect is due to other processes outside our area of responsibility.

#### **XVI. Preliminary acceptance, set up, commissioning and acceptance**

(1) If the preliminary acceptance of the delivered item in our plant has been agreed, this takes place in consultation with the customer. The result of the preliminary acceptance is documented in a pre-acceptance report.

(2) If preliminary acceptance does not take place on time for reasons for which the customer is responsible, our internal acceptance report shall replace the pre-acceptance report.

(3) If the object of the contract includes the set-up of the system, the indicated prices are based on the condition that a smooth assembly process is ensured. If we incur additional expenses due to the following circumstances, the customer shall be invoiced for these expenses at the applicable assembly rates, unless we are responsible for these circumstances:

- Overtime;
- Disruption to the set up necessitating additional travel;
- Concatenation with installations that are not included in our scope of supply;
- Erection of foundations and work on the foundation;
- Supply of air and electricity to the installations;
- Waiting times;
- Necessary work to be completed by the customer, which are not completed on time or are executed incorrectly;
- Workplace has not been prepared or tidied;
- If components, machines or system fittings cannot be unloaded at the system's installation location on time or as agreed.

The customer guarantees that the on-site system set up shall not be carried out under dangerous or unhealthy conditions and it shall take all necessary measures to protect our personal from any safety or health risks.

Furthermore, the customer guarantees that our personnel shall be correctly informed of the safety requirements at the site at which the system is to be installed.

The customer must make us aware of the statutory, official and other regulations that relate to the execution of the work as well as health and safety.

(4) If the commissioning of the delivered items is an integral part of the contract, we shall inform the customer of the completion of the commissioning. We shall verify the function based on the agreed specifications and/or the executed commissioning. If the customer's representative is not present on the specified test date, our technical staff shall start the commissioning activities in line with the usual conditions and consider these tests to have been performed even in the absence of the customer's inspector. The handover is confirmed based on the handover log signed by us and the customer.

(5) If the handover of the contractual objects is rejected for justified reasons, a detailed written report must be submitted to us within 10 days of the completion of the relevant commissioning, in which case our obligation is limited to ensuring the fastest possible rectification of the complaints and the acceptance parts subject to reservation are re-accepted within an adequate period, in compliance with the aforementioned procedures.

(6) If the acceptance report signed by the customer or a reservation for legitimate reasons has not been submitted to us within 10 days of the acceptance test, the commissioned contractual components are considered to have been accepted by the customer.

(7) Contractual components commissioned by the customer prior to acceptance are considered accepted contractual components.

(8) Minor errors, which do not materially impair the operation of the commissioned contractual components,

are described in the handover log, but do not result in any delay of the handover, provided that we rectify such errors as soon as possible.

## **XVII. Export control**

The validity of our offer and any resulting order is subject to the applicable export authorisation guidelines of the German and/or other relevant international authorities (incl. US re-export control), provided that such permits are or become necessary for the specific case. The customer expressly confirms that it is aware of the relevant guidelines or that it will familiarise itself with them and ensure their strict compliance. In certain cases, the relevant competent authority may also demand the submission of end user documents, incl. IC (International Import Certificate). Where applicable, the customer shall take responsibility for the proper submission of the associated documents in its relationship with us. In exceptional cases, the goods delivered by us may be considered "dual use" (EC Regulation No. 1334/2000) and may therefore be subject to a permit requirement if they are exported from the EC to certain third countries. The buyer must therefore check the permit requirement in the event of the intended resale and export of the goods delivered by us.

## **XVIII. Data protection, forum of jurisdiction and underlying law**

(1) diondo is authorised to process the customer's personal data and transmit these data to companies affiliated with diondo, to the extent that this is necessary to execute the transaction or to the extent that data subjects have provided their consent. Data subjects have the right to obtain information on the data processed concerning them as well as the purpose of the processing. Any requests for information or the assertion of other rights of data subjects must always be forwarded to diondo and are dealt with within the scope of the data protection provisions.

(2) The place of performance for all deliveries and services is Hattingen (D).

(3) If the customer is a merchant as defined under the German Commercial Code (HGB) or a legal entity under public law, the exclusive forum of jurisdiction for all legal disputes from the business relationship with the customer, including claims relating to bills of exchange and cheques, is Hattingen (D).

(4) The same forum of jurisdiction applies if the customer does not have a general domestic forum of jurisdiction, relocates their (usual) place of residence abroad after the conclusion of the contract or the (usual) place of residence is unknown at the time the action is filed.

(5) The law of the Federal Republic of Germany applies for all disputes from contracts for which these GTCs apply, including in the event of withdrawal, and for all disputes from the business relationship between us and the customer, to the exclusion of all other legislation. The UN Convention on Contracts for the International Sale of Goods (CISG) and international private law do not apply.

(6) If a provision of these GTCs is or becomes invalid, this shall not affect the validity of the remaining provisions.