

terms & conditions of sale detectomat GmbH

1 General – Controlling Provisions

1. No terms and conditions other than our Terms and Conditions of Sale contained herein shall apply unless expressly approved in writing by us. Our Terms and Conditions of Sale shall also apply in the event we make delivery to the customer without objection although aware of the existence of terms and conditions of the customer that differ from our Terms and Conditions of Sale.
2. All agreements made between us and the customer in connection with the execution of this agreement are contained herein in writing. This agreement may not be altered, supplemented or amended unless agreed to in writing.
3. Our Terms and Conditions of Sale shall apply to transactions with businessmen (“Unternehmer”) in the sense of Section 14 German Civil Code, legal entities and public institutions.
4. Our Terms and Conditions of Sale shall also apply to all present and future commercial relations with the customer.

2 Acceptance of Orders

1. Our offers are subject to change. We reserve the right to make reasonable technical changes or changes in design, color and/or weight.
2. In the case of orders pursuant to Section 145 German Civil Code (BGB), we may at our option accept such orders within 2 weeks of receipt.
3. Unless specified otherwise in these Terms and Conditions of Sale or in our written confirmation, the INCOTERMS shall apply in the version effective as of the date of this agreement.
4. Delivery is contingent upon correct and timely delivery of necessary materials or merchandise to us (“Obtaining supplies oneself clause”). We will inform the customer without delay in the event of non-availability and promptly refund any payment received.
5. All rights to illustrations, drawings, calculations and other documents shall remain our property. This shall also apply to any written materials designated as “confidential”. The customer shall obtain our express approval in writing before making any such materials available to other parties.

3 Prices – Terms of Payment

1. Unless specified otherwise in our written confirmation, our prices are “ex works” (exw) and exclusive of packing, which will be invoiced separately.
2. We reserve the right to modify our prices accordingly in the event of increases or decreases in costs, including but not necessarily limited to increases or decreases due to wage agreements or changes in the prices of materials. We will document any such changes at the customer’s request.
3. In the event delivery is to be made more than four months from the date of acceptance of the order or cannot be made earlier for reasons for which the customer is exclusively responsible, we reserve the right to invoice the appropriate price as of the date of delivery instead of the original price agreed upon.
4. Our prices are exclusive of applicable value added tax (VAT). Applicable value added tax will be included separately in the invoice on the billing day.
5. Unless specified otherwise in our written confirmation, the customer shall pay the net purchase price (with no deductions) within 10 days of receipt of the invoice, at which time the invoice shall become due and payable. Legal remedies shall apply in the case of past due accounts.
6. The customer may offset amounts due to the customer only if the corresponding counterclaims are unappealable or undisputed or recognized by us. In addition, the customer may exercise the right to withhold payment only in the case of counterclaims in connection with the same transaction.

4 Delivery – Delayed Acceptance – Delayed Delivery

1. Delivery dates are subject to timely receipt by us of all documentation to be supplied by the customer, required permits and approvals, including but not necessarily limited to plans, and are also subject to performance of other obligations by the customer. If these conditions are not fulfilled in due time, delivery shall be delayed accordingly. This shall not apply in the event of delays for which we are responsible.
2. Our obligation to make delivery is contingent upon timely and proper performance of the customer’s obligations. We reserve the right at our option to consider failure to perform (Section 320 German Civil Code - BGB) and impairment of performance (Section 321 German Civil Code - BGB) as events of default.
3. We may make partial delivery if no undue convenience is caused to the customer.
4. In the event delivery or shipment is delayed by the customer by more than one month from the date of announcement to the effect that the merchandise is ready for delivery or shipment, we may invoice the customer for storage charges in the amount of 0.5% of the price of the respective merchandise per month or any fraction thereof, in which case such charges may not exceed a total of 5%. The parties to the agreement may claim higher or lower storage costs if any difference can be documented.
5. In the event the customer delays acceptance or fails to perform other obligations, we may at our option claim reimbursement for any related damages sustained by us, including but not necessarily limited to reimbursement for additional expenses, without prejudice to further claims.
6. In the event of a situation pursuant to Section 5 above, risk of loss or damage shall pass to the customer upon the occurrence of any such delay or default on the part of the latter.
7. All acts of God (e.g. mobilization, war, insurrection, strikes, lockout or similar events) beyond our control shall release us from performance of our contractual obligations for the duration of any such occurrences. We will immediately inform the customer of our inability to perform our obligations under the agreement and promptly refund to the customer any corresponding payment received by us. In the event the duration of such an occurrence exceeds a period of three months, we may cancel the agreement.
8. In the event delivery is delayed by us, our liability is limited to that prescribed by law if the underlying purchase agreement specifies a firm delivery date in the sense of Section 286 (2) 4 German Civil Code (BGB) or Section 376 German Commercial Code (HGB) pertaining to non-fulfillment. We are also liable as prescribed by law in the sense that the customer may claim that it is no longer interested in further performance due to a delay in delivery caused by us.
9. We are also liable as prescribed by law for any delivery delay due to breach of the agreement due to willful or gross negligence. We assume responsibility for acts of negligence on the part of our representatives or agents. In the event the delivery delay is not due to breach of the agreement through willful negligence by us, our liability is limited to claims for damage that normally could have been anticipated.
10. We are also liable as prescribed by law in the event delivery is delayed through breach of a material obligation under the agreement through negligence. In such cases, however, liability is limited to claims for damages normally could have been anticipated.
11. In addition, we are liable for a flatrate penalty for delayed delivery in the amount of 0.5% of the price of the respective merchandise per entire week, which penalty may, however, not exceed a total of 5%.
12. Any other legal rights and remedies the customer may have shall remain in effect.

5 Cancellation

1. The customer may cancel the agreement as allowed by law only in the event of culpable default by us. However, in the case of defects (Section 7 below), legal remedies shall apply.
2. The customer shall in the event of default by us inform us within a reasonable period after being asked to do so by us whether it intends to cancel the agreement due to the event of the default or whether it insists upon delivery.

6 Transfer of Risk of Loss or Damage

1. Unless specified otherwise in our written confirmation, our prices are understood to be "ex works" (exw).
2. We reserve the right to ship merchandise from locations other than the place of delivery. At the request of the customer, we will have the merchandise insured during transport, in which case the customer shall bear the corresponding costs.

7 Claims for defects

1. Claims for defects may not be made in the event of insignificant deviations from the agreed upon characteristics, insignificant impairment of functionality, normal wear and tear or damage resulting from improper or negligent treatment after risk of loss or damage passes to the customer, excessive use, unsuitable operating consumables, improper site preparation or unusual external factors not provided for in the agreement or in the event of intermittent software problems. In the event of improper modifications or maintenance by the customer, we can assume no responsibility for such modifications or maintenance or the ramifications thereof.
2. The customer's rights in the case of a defect are dependent upon proper inspection and notification in compliance with Section 377 German Commercial Code (HGB). Notification of defects must be made in writing. The customer shall bear the burden of proof in connection with all such claims, including but not necessarily limited to proof of the existence of the defect, the time of occurrence of the defect and timely notification of the defect.
3. In the event of notification of a defect, the customer may withhold payment only in a reasonable amount with respect to the extent of the defect. The customer may not refuse to accept delivery in the event of insignificant defects.
4. In the event of a defect, we may at our option repair the defective merchandise or deliver new merchandise free of defects to replace the original merchandise.
5. In the event the repair is unsuccessful, the customer may at its option cancel the agreement or request a reduction in price. In the event of negligible defaults, including but not necessarily limited to negligible defects, the customer may not cancel the agreement.
6. We are liable as prescribed by law for claims made by the customer based on willful or gross negligence on the part of our representatives or agents. In cases other than intentional breach of the agreement, our liability for damages is limited to claims for damages that normally could have been anticipated.
7. We are liable as prescribed by law in the event we commit a material breach of the agreement. In such cases, however, our liability for damages is limited to claims for damages that normally could have been anticipated.
8. We assume liability for injury to the life, body or health through negligence on our part. This also applies to compulsory liability pursuant to product liability legislation ("Produkthaftungsgesetz").
9. Any other form of liability not specified above is excluded.

10. Claims for defects must be reported within 12 months. In the event the newly manufactured product is a structure or is on the basis of its normal function used for a structure and has caused a defect in such a structure, an exception will be made and the period for reporting claims will be extended to 36 months. Our legal liability pursuant to Sections 6 and 8 and in the case of willful deceit shall not be affected.
11. The period for reporting claims pursuant to Sections 478 and 479 German Civil Code (BGB) shall not be affected and shall extend for a period of five years from the date of delivery of the defective item. Recourse against us pursuant to Section 478 German Civil Code – BGB – (recourse of customer) is only possible in the event the customer has not made any agreement with its customer that goes beyond legal liability for defects.

8 General Liability

1. Liability for damages other than that provided for in Section 7 is excluded, regardless of the legal nature of the claim, including but not necessarily limited to claims for damages due to negligence in connection with the acceptance of the order, other breaches of obligations or claims for damages to property pursuant to Section 823 German Civil Code (BGB).
2. The exclusion pursuant to Section 8.1 above also applies in the event the customer claims reimbursement for needlessly incurred expenses instead of damages.
3. Insofar as liability for damages is excluded or limited, this shall also apply to claims for damages against our employees, representatives and agents.

9 Usage of software and firmware – industrial property rights

1. The customer has the non-exclusive right to use the standard software and firmware, with the agreed performance characteristics, in an unmodified form and within the agreed devices. The customer may make a backup copy of the standard software without the need for an express agreement.
2. The goods supplied by us are subject to industrial property rights (e.g. patent rights, trademark rights and ownership rights). The customer shall, in the case of applying or using the goods, respect our industrial property rights, as well as the industrial property rights of third parties.

10 Retention of Title

1. We retain title to the merchandise until all payments from business with the customer are made in full. In the event the customer has an account with us, our reservation of title also applies to any acknowledged outstanding balance, and the same applies in the event a balance is not acknowledged and a "balance is made for cause", for example, in the event of bankruptcy or insolvency by the customer.
2. In the event of breach of this agreement by the customer, including but not necessarily limited to failure to make payment when due, we may retake possession of the merchandise sold without canceling the agreement beforehand. The customer hereby agrees to allow us to enter its business premises during normal business hours to retake possession of the items in question in any such situation. After retaking possession of the items sold, we may dispose of them and credit the proceeds, less appropriate disposal costs, to the outstanding balance due us.
3. The customer shall take proper care of the merchandise and shall have the merchandise adequately insured at new value at its own expense against fire damage, flood damage and theft. In the event maintenance and inspections are necessary, the customer shall have such work carried out on a timely basis at its own expense.

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4. In the event of attachment or any other such proceeding initiated by third parties, the customer shall inform us in writing so that we can take action pursuant to Section 771 Code of Civil Procedure (ZPO). In the event any such third party is not in a position to reimburse us for legal and extralegal expenses resulting from such an action pursuant to Section 771 Code of Civil Procedure (ZPO), the customer shall bear any such expenses.
5. The customer may resell the merchandise in the normal course of its business. However, the customer shall assign the full invoiced amount (including VAT) due from its customer or other parties from the sale to the outstanding balance due to us; and this condition shall apply whether or not the merchandise purchased from us is sold without or after processing. The customer shall remain authorized to collect the amount due after assignment to us. Our right to make collection ourselves remains unaffected. However, we agree to refrain from making collection as long as the customer applies the proceeds from the sale to meet its payment obligations toward us, is not in arrears and, in particular, no insolvency proceeds have been opened against the customer and the customer has not suspended payment. In any such event, we may demand that the customer make known to us the assigned receivables and the corresponding debtors, provide all information required for collection, make available the corresponding documents and inform the debtors (third parties) of the assignment.
6. The processing or modification by the customer of the merchandise is in all cases performed for us. In the event the merchandise is processed with other objects that are not our property, we acquire partial ownership of the object in proportion to the value of the merchandise (total invoice amount, including VAT) as compared with that of the other processed objects at the time of the processing. In addition, the same reservation of title that applies for the merchandise also applies for the object that results from the processing.
7. In the event the merchandise is inextricably combined with objects that are not our property, we acquire partial ownership of the new object in proportion to the value of the merchandise (total invoice amount, including VAT) as compared with that of the other combined objects at the time they are combined. In the event the combination is such that the property of the customer is to be considered the main product, it is agreed that the customer shall transfer proportionate ownership rights to us. The customer shall then hold the resultant sole or partial property for us.
8. The customer shall also assign to us those amounts due from third parties as a result of the attachment of the merchandise to real estate property to secure amounts due to us.
9. In the event the reservation of title or assignment is not effective in the jurisdiction in which the object is located, it is agreed that the security corresponding to reservation of title or assignment in that jurisdiction shall obtain. If the creation of this security requires actions on the part of the customer, the latter shall at our request take any and all measures required to create and maintain such rights at its own expense.
10. We agree to release securities in our favor at the request of the customer in the event the realizable value of sure securities exceeds the value of the secured amounts due by more than 10%. We may determine at our own discretion which securities to release.

11 Support and Assistance

If, in addition to supplying merchandise, we also provide the customer with support and/or assistance with the installation/start-up of the merchandise, the limitation of liability described in Sections 7 and 8 shall apply accordingly.

12 Venue – Place of Delivery – Governing Law

1. This agreement shall be subject to the exclusive jurisdiction of the courts of our principal place of business in the event the customer is a businessman in the sense of Section 14 German Civil Code (BGB), a legal entity or a public institution. We may, however, file suit against the customer before the courts of the customer's principal place of business.
2. In the event the customer is a businessman in the sense of Section 14 German Civil Code (BGB), a legal entity or a public institution and nothing is specified to the contrary in our written confirmation, our principal place of business shall be the place of delivery.
3. This agreement shall be governed by the laws of the Federal Republic of Germany. Application of the United Nations Convention on Contracts for the International Sale of Goods (1980) – CISG – is expressly excluded.
4. In the event of differences of opinion arising from these Terms and Conditions of Sale or in the case of doubt, the original German-language version and it alone shall be legal and binding.

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