

# STANDARD TERMS AND CONDITIONS Dräger MSI GmbH

## For use in dealings with:

1. Any person who is a businessman or professional or self-employed person at the time when a contract is signed (businessmen);
2. Public law legal entities or public funds.

## 1. General, Scope

- 1.1 The following terms and conditions shall apply to any legal transactions executed after January 1, 2011. Variations from these Terms shall be subject to the written consent of Dräger MSI GmbH, in short Dräger MSI. The Customer's terms varying from these Terms shall be binding only when explicitly accepted by Dräger MSI in writing.
- 1.2 Unless explicitly defined otherwise, message format shall be acceptable in addition to the written form.
- 1.3 These Terms shall apply to any deliveries made and services rendered by Dräger MSI with the exception of construction services.
- 1.4 Unless specifically otherwise agreed, any construction services rendered by Dräger MSI shall be governed by Part B of the Standard Building Contract Ordinance (Verdingungsordnung für Bauleistungen, Teil B VOB/B), in effect on the date a given contract is signed. Paras. 1, 3, 6 and paras. 10 - 14 of these Terms shall also apply.

## 2. Signature of Contract

- 2.1 Quotations of Dräger MSI shall be subject to prior sale and acceptable technical changes.
- 2.2 When goods are ordered, the Customer has stated firmly that he is willing to acquire the goods in question. The Customer shall be solely responsible for the correct selection and quantity of goods.
- 2.3 Should a contract involve more than one Customer, the Customers involved agree to authorise each other for acceptance of any legally binding statements from Dräger MSI for any matters associated with the purchase. Dräger MSI agrees to render services to each of the Customers, which may cause effects to or against any of the other Customers.
- 2.4 Dräger MSI shall be entitled to accept the contractual quotation, on which an order is to be based, within a period of two weeks after receipt by Dräger MSI. Acceptance shall be effected by a written confirmation or supply of the goods to the Customer.
- 2.5 Any changes or supplements to an order shall require written confirmation by Dräger MSI.
- 2.6 In all cases, contracts shall be signed subject to correct supplies being obtained in due course by the vendor from his suppliers. This shall apply to cases only where failure to supply is not the fault of Dräger MSI, in particular the completion of identical cover purchases from a supplier of Dräger MSI. The Customer shall be informed without delay should services not be available. Any consideration received shall be refunded.
- 2.8 § 312a sub-paras. 1-3 BGB (German Civil Code) shall not apply.
- 2.9 Should the Customer order goods electronically, the wording of the contract shall be stored by Dräger MSI and sent to the Customer by e-mail on request, in addition to these Terms and Conditions of Sale.

## 3. Terms of Payment, Set-Off, Right of Retention

- The following terms of payment shall apply:
- 3.1 Payments shall be exclusively effected in EURO.
  - 3.2 Payments for any deliveries and services of Dräger MSI to a foreign country shall be made by irrevocable letter of credit, issued and confirmed by a major German bank, payable in favour of Dräger MSI upon presentation of documents to the said bank.
  - 3.3 Cheques and any other means of payment shall be accepted as conditional payments only. With respect to these types of payment, the date on which funds are made available to Dräger MSI shall be deemed the date of payment.
  - 3.4 Dräger MSI shall be free to define for which Customers' accounts receivable will be credited. Cheques shall be exclusively accepted subject to being honoured and for fulfilment only. Dräger MSI shall not be obliged to accept bills of exchange. Dräger MSI shall be entitled to offset any accounts receivable from the Customer against accounts payable by the parent company, subsidiaries and any other associated companies of Dräger MSI.
  - 3.5 Any discount charges and other expenses incurred for collecting payment shall be charged to the Customer.
  - 3.6 Should cost prices paid by Dräger MSI for raw materials, freight charges and/or labour cost, etc. be increased or reduced between the presentation of a quotation and acceptance of an order and its completion, Dräger MSI shall be entitled to adjust sales prices accordingly irrespective of any quotations and confirmation of order.
  - 3.7 The Customer shall be entitled to withhold or offset payments against counterclaims only to the extent in which the Customer's counterclaims are undisputed or have been confirmed by a final judgment.
  - 3.8 Other rights of retention may be asserted only when relating to the same contract.
  - 3.9 In compliance with VAT law, for fully overhauled parts, the company of Dräger MSI overhauling the said parts will have to charge VAT on 10% of the replacement value of the goods as the value of the replaced parts. The said VAT may be charged to the Customer.
  - 3.10 Should no specific agreements have been made, the following terms of payment shall apply from the date of invoice:
    - domestic supplies: within a period of 10 days minus 2% cash discount or within 30 days net.
    - Exports: within a period of 21 days minus 2% cash discount or within 60 days net. In principle, service invoices shall not be subject to any cash discount.

3.11 Dräger MSI reserves the right to stipulate special terms of payment for exports.

- 3.12 Should the financial status of the Customer be subject to major changes, in particular in the case of (threatening) insolvency, Dräger MSI shall be entitled either to rescind from the contract or request a security for the full or part of the purchasing price. Should the Customer be in arrears with (part) payments due to (threatening) insolvency, Dräger MSI shall be entitled to retain any further supplies pending payment of any outstanding accounts receivable. The Customer's duty to accept deliveries shall not be affected by the above.

## 4. Shipment, Packaging, Transfer of Risk

- 4.1 Dräger MSI agrees to effect supplies ex works excluding packaging.
- 4.2 The risk of accidental loss and deterioration of the goods shall be transferred to the Customer on hand-over, for any purchases shipped, on delivery of the goods to the forwarder, the haulier or any other person or entity contracted for effecting shipment. Unless otherwise agreed, transport insurance shall be exclusively taken out by the Customer – including any part shipments or the acceptance of any other services, such as delivery and installation. Should Dräger MSI have agreed under the terms of the Contract to effect assembly and commissioning of any items delivered, the risk shall pass to the Customer on commissioning. Should any items, for reasons not attributable to Dräger MSI, not have been commissioned within a period of twelve (12) days following a written notice that installation is complete, the risk shall pass to the Customer after expiry of this period. Dräger MSI agrees in this case to notify the Customer that the goods are deemed to have been accepted. Should installation be delayed for reasons attributable to the Customer, the risk shall pass to the Customer for the period of delay.
- 4.3 Signatories of delivery notes shall be deemed by Dräger MSI to have been authorised to accept the goods and confirm receipt. Signature of a delivery note shall confirm acceptance of the list of items delivered.
- 4.4 Delayed acceptance of deliveries by the Customer shall be equal to hand-over.
- 4.5 Should no specific instructions have been given, shipment shall be effected at MSI's discretion without being responsible for selecting the best price for shipping. The Customer agrees to pay any costs incurred by part deliveries.
- 4.6 For blanket orders, Dräger MSI shall set a period of delivery of three months from the date of the order – unless otherwise agreed. On expiry of this period, Dräger MSI shall be entitled at MSI's discretion to either invoice the goods or to cancel the order for any part of the contract not completed.
- 4.7 Unless explicitly defined, dates of delivery shall always be subject to change. Delays in delivery shall entitle the Customer to rescind from the contract after having set a suitable extension for delivery. For deposits paid and part deliveries, deposits shall only be offset against the last part delivery.

## 5. Shipment and Delivery

- 5.1 Weights and dimensions stated in brochures and quotations shall be estimates only and shall be subject to acceptable variations in the specification and changes in design. Likewise, MSI reserves the right to use refurbished parts for servicing.
- 5.2 Any reference to technical standards shall merely represent a specification, unless explicitly warranted by Dräger MSI by the provision of a guarantee (Garantieverpflichtung) for compliance with such technical standards. Any guarantees provided for the quality, condition or life of the subject matter of the contract shall be made in writing on signature of a contract.
- 5.3 Compliance with deliveries for goods and services rendered shall be conditional upon all commercial and technical issues between Dräger MSI and the Customer having been settled and the Customer having satisfied any obligations incumbent upon him, such as the presentation of any documents, permits/approvals, releases or down-payments to be provided by him. Should any conditions stipulated not have been met, delivery shall be extended by a reasonable period of time. The above shall not apply should Dräger MSI be responsible for the delay.
- 5.4 Delivery shall be deemed to have been met when the item to be delivered has left the factory prior to expiry of delivery or when notification of readiness of the goods for dispatch has been given. Should acceptance be required, the date of acceptance shall be decisive or alternative notification of readiness for acceptance – excluding any refusal to accept the goods for justified reasons.
- 5.5 Dates for deliveries and rendering services shall be reasonably extended should events associated with labour disputes arise, including any strikes and lock-outs, and any unforeseeable hindrances that are beyond MSI's control, unless rendering delivery or the provision of services impossible.

## 6. Rescission other than pursuant to Warranty Rules (para. 9)

- 6.1 The Customer shall be entitled to rescind from the Contract should any services to be provided be conclusively rendered impossible prior to transfer of the risk. In addition, the Customer shall be entitled to rescind from the Contract should completion of part of a delivery be rendered impossible and subject to the Customer having a justified interest in declining part delivery. Should this not be the case, the Customer shall pay the contract price apportioned to part deliveries. This rule shall apply to any failure to deliver of Dräger MSI. In all other respects, para. 10 shall apply. Should impossibility or failure to deliver occur when acceptance is delayed or should the Customer be fully or mainly responsible for any reasons

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causing the said impossibility or failure, he shall remain committed to effect payment of a consideration.

- 6.2 Should performance be delayed and should the Customer grant to Dräger MSI in writing a reasonable period of grace and should the said period of grace not be met, the Customer shall be entitled to rescind from the Contract. This rule shall apply should Dräger MSI not perform on time and subject to considerable infringement of MSI's duties. Should, given the nature of the period of grace not being met not constitute an infringement, a warning shall be given instead.
- 6.3 In the cases described in paras. 6.1 and 6.2, para. 10 of these Terms shall apply to MSI's liability.

## 7. Reservation of Title

- 7.1 Dräger MSI shall retain title to any items delivered and/or installed (the retained goods) until all debts, including future debts, arising from business relations with the Customer, regardless of the legal base upon which enforcement thereof is made, have been paid, including any payments made for specifically designated receivables. With respect to current accounts, the retained title shall serve as a security for the balance due to Dräger MSI.

Any work performed on or processing of the retained goods shall be effected on behalf of Dräger MSI. Dräger MSI shall be regarded as the manufacturer in compliance with § 950 BGB (German Civil Code) and shall thereby retain ownership in the products at any given time and any stage of work or processing. Dräger MSI shall not be liable for any payment or incur any obligation with respect to such work or processing.

Should the Customer process, affix or mix the retained goods with any other tangible assets not owned by Dräger MSI, the latter shall be entitled to joint ownership in the new item as a ratio of the invoice value of the retained goods to the value of any other items used by the Customer at the time such other items were processed, affixed or mixed. Regarding the new item created as a result of the said processing, affixing or mixing, the same provisions shall apply as those governing the retained goods. This new item shall be deemed retained goods in compliance with these Terms.

Where items are affixed to buildings or any other parts of a property, the Customer agrees at MSI's request to segregate the delivered and/or installed items (retained goods) and to reconvey title in these items to Dräger MSI. These items shall then be deemed retained goods in compliance with these Terms. No rights to retain any items, in particular for replacement for use on the said items, shall exist.

- 7.2 The Customer's claims arising from any resale of retained goods shall hereby be assigned to Dräger MSI as a security for any of MSI's accounts receivable, including any future claims resulting from business relations with the Customer, irrespective of whether the retained goods are resold without or after processing or whether resold to one or more buyers. Even after assignment, the Customer shall be authorised to collect these assigned receivables unless discontinuing payments or his authority to collect being revoked by Dräger MSI. In any case, this shall not affect the right of Dräger MSI to personally collect the assigned claims. The Customer shall upon request provide Dräger MSI with prompt written notice of the names of any persons to whom he has sold the delivered items and any claims for payment to which the Customer is entitled from the sale and shall surrender any documents necessary for collection.
- 7.3 The Customer shall only be authorised and entitled to resell retained goods based on a purchase, manufacturing, works delivery or any other contract subject to having reserved any title of Dräger MSI in such property against any other party to such a contract, until complete payment of the delivered items by the said party. The Customer shall not be entitled to dispose of retained goods in any other manner, in particular by pledging or assigning such goods as a security. At the request of Dräger MSI, the Customer shall notify his purchaser of any assignment to Dräger MSI for the purposes of payment to the latter.
- 7.4 Should the value of MSI's security exceed the total of MSI's claims by more than 20%, then, upon request by the Customer, or by a third party adversely affected by MSI's excess security, Dräger MSI shall release any excess security at MSI's option at the request of the Customer or any third party so affected.
- 7.5 The Customer shall notify Dräger MSI without delay of any levies of execution, seizures and other attachments by third parties.
- 7.6 In the event of any breach of contract on the part of the Customer, particularly any default on payment, Dräger MSI shall be entitled to recover any delivered items after having sent a reminder for payment, and the Customer agrees to surrender the goods. Enforcement of any reservation of title and any attachment of items delivered by Dräger MSI, shall not constitute any right to rescind from the contract.
- 7.7. Should insolvency proceedings be instituted over the Customer's assets, Dräger MSI shall be entitled to rescind from the Contract and demand immediate return of any items delivered.

## 8. Notification of Defects and Acceptance

- 8.1 The Customer agrees to immediately check upon receipt all deliveries for shortages or damage during transport. Should any transport damage occur, such damage shall be recorded in order to provide evidence for any claims for damages against the carrier (the post office, railways, forwarding agent, etc.).
- 8.2 Defects in any items delivered shall be claimed within a period of one week from receipt of such items, except in the case of hidden defects. In order to avoid any loss of rights to replacements and the right to assert any other claims, faulty workmanship shall be notified without delay after having been ascertained.

- 8.3 Should the Customer be prevented from accepting delivery due to a strike or lockout, the period for acceptance and notification of defects, as described in the preceding paragraph, shall be reasonably extended.

## 9. Warranty

For any material defects and faulty services, Dräger MSI agrees to provide the following warranty, excluding any further claims – subject to para. 10:

- 9.1 Any defective parts shall either be replaced or repaired free of charge at MSI's discretion, subject to defects being detected within the statute of limitation and their cause existing at the time of passing the risk. Dräger MSI shall be notified in writing by the Customer without delay of the discovery of any obvious defects within a period of 10 calendar days from receipts of the goods; otherwise warranty claims shall be forfeited. In order to comply with this, dispatch of a complaint in due course shall be sufficient. Any claims for defects notified verbally or by telephone shall be confirmed in writing. In order to allow Dräger MSI to examine any alleged defects, the goods shall be left in their delivered state.

- 9.2 In principle, the condition of the goods shall comply with the product specification of Dräger MSI or the quotation, as agreed. Public statements, recommendations or advertising shall not constitute any contractual description of the condition of the goods.

No material defect shall be deemed to exist when an item is suitable for its ordinary use and is of a condition or quality that could be expected by the purchaser and is usual for items of a similar nature. Furthermore, poor assembly instructions shall not constitute a material defect when assembly has been completed correctly. No material defect shall be deemed to exist if the nature or quantity of any item delivered by Dräger MSI varies slightly from the nature and quantity agreed in the contract. Should the Customer have received poor assembly instructions or instructions for use, Dräger MSI shall only be committed to supply assembly instructions that are free from error and only if any error in assembly instructions would prevent correct assembly. In particular, the following shall not constitute material defects:

Unsuitable or unprofessional use, incorrect storage, incorrect assembly and/or commissioning by the Customer or any third party, natural wear and tear, incorrect or negligent treatment, improper maintenance, the use of unsuitable operating resources, faulty workmanship, chemical, electrochemical or electrical effects, for which Dräger MSI is not responsible.

- 9.3 After coming to an agreement with Dräger MSI, the Customer shall grant Dräger MSI the necessary time and opportunity to effect any repairs and replacement deliveries deemed necessary to Dräger MSI, in particular for sending the delivered item upon request to Dräger MSI or a workshop to be defined by Dräger MSI, as the case may be, otherwise Dräger MSI shall be released from any liability for the resulting consequences. The Customer shall have the right to correct defects himself or cause these to be corrected by a third party should be at risk and/or in order to prevent excessive damage. However, Dräger MSI shall be notified without delay and the Customer shall be entitled to demand from Dräger MSI reimbursement of any expenses incurred.

- 9.4 For any costs incurred for repairs or replacements, Dräger MSI shall pay the costs of the replaced part including shipping costs and any reasonable removal and installation costs, subject to the complaint proving to be justified, and, should this be reasonably demanded, the cost of any fitters and labour if required.

Dräger MSI may refuse to provide replacements of associated with excessive costs.

Replaced parts shall become the property of Dräger MSI.

- 9.5 In compliance with applicable statutory provisions, the Customer has a right to rescind from the contract should Dräger MSI – taking into account any statutory exceptions – fail to successfully repair or replace any items subject to faulty material, by expiry of a reasonable period of grace set for that purpose. When conditions for rescission from the contract are met, but the fault is a minor one only, the Customer shall only be entitled to claim a reduction in the agreed purchasing price. Otherwise any right to claim a reduction in the agreed purchasing price shall be excluded.

- 9.6 Should the Customer opt for rescission from the contract due to any legal or material fault after failure to provide a remedy, he shall not be eligible to any additional claims for damages because of the said fault.

- 9.7 Should the Customer or a third party repair any item(s) in an unprofessional manner, Dräger MSI shall not be liable for any consequences resulting there from.

The same shall apply to any modifications of the item delivered, carried out without the prior consent of Dräger MSI.

- 9.8 Unless fraud or any warranty for condition or quality is involved, the Customer may not present any claims for subsequent completion when a defect was known on signature of the contract, or when he should have been aware of the defect or had not been aware of it because of his own gross negligence.

Para. 10 of these Terms shall apply in relation to any wider claims.

- 9.9 Replacement of any items delivered by Dräger MSI shall suspend the period of limitation for a period during which the Customer is unable to use the delivered item due to the said activities of Dräger MSI.

- 9.10 For any second-hand items delivered, with the exception of fully reconditioned parts, any claims for subsequent completion whatsoever, including any claims for damages, shall be excluded.

- 9.11 Dräger MSI reserves the right to claim consideration, should subsequent completion become impossible due to services not having been rendered in compliance with the contract. Should any impediment to perform occur due

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to the Customer's sole or overwhelming fault, or should acceptance of his services be delayed.

Dräger MSI reserves the right to claim consideration.

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9.12 MSI's warranty claims shall be subject to the statute of limitation after a period of twelve months from delivery. This provision shall not apply should the Customer not have notified a fault in due course (para. 9.1 of this Article) or have incorporated the products supplied into any other items of the Customer or if products have been changed by the Customer in any other way whatsoever. The option of the Customer to prove that he has not caused the fault by any change to or installation of the products, he shall be unaffected by the above.

9.13 Should Dräger MSI provide an explicit written guarantee for the condition, quality or life of an item, the Customer shall be entitled to claim damages from Dräger MSI as provided by law, in addition to claiming any rights emanating from the guarantee. Claims asserted for the said damages based on paras. 9.2 to 9.10 and para. 10 shall apply mutatis mutandis to the assertion of such claims. In all other respects, the Customer shall not be granted any other legal guarantees. The above shall not affect any manufacturers' guarantees.

## 10. Liability

For any loss or damage not sustained by the delivered item itself, Dräger MSI shall be liable - regardless of the legal reasons - in the following cases only:

- intent,
- gross negligence of the owner/executive bodies or executives,
- culpable injury to life, health or physical injury,
- defects fraudulently concealed by Dräger MSI, or any defects guaranteed by Dräger MSI not to exist,
- defects in the delivered item to the extent that liability for personal injury or material loss/damage to private property was caused in compliance with the German Product Liability Act (Produkthaftungsgesetz).

For any culpable breach of material contractual obligations, Dräger MSI shall also be liable for any breach caused by gross negligence of ordinary employees or by mild negligence. In the latter case, liability shall be limited to any typically contractual and reasonably foreseeable loss or damage, not including any loss of assets.

Any further claims whatsoever shall be excluded.

## 11. Statute of Limitation

Any claims presented by the Customer - regardless of the legal reasons - shall become statute-barred twelve (12) months after delivery, commissioning and/or acceptance of deliveries. Claims in respect of one-off products shall be limited to first use. For intentional or fraudulent actions and any claims in compliance with the German Product Liability Act and claims for recourse presented by a company (§ 479 (1) BGB), the periods of statutory limitation shall apply. Furthermore, the statutory period applying to any defects in a structure or to any items delivered or planning and supervisory services, which, in a manner consistent with their regular use, have been applied in connection with a structure and have caused a defect in a structure, shall be two years from the date of acceptance of any services, unless Part B of the Standard Building Contract Ordinance has been incorporated in the said contracts. A period of limitation of twelve (12) months shall apply to the said contracts. In all other respects, para. 9.12 shall be unaffected by the above.

## 12. Copyright

Dräger MSI hereby reserves any title and copyrights in drawings, technical documents and any other tangible or intangible information, including electronic formats, without any limitation, which shall not be disclosed to third parties without the consent of Dräger MSI.

## 13. Data Protection

In compliance with § 28 of the Federal Data Protection Act (Bundesdatenschutzgesetz), Dräger MSI hereby provides notice that any customer data received in connection with the business relationship will be processed and stored for MSI's own internal purposes.

## 14. Regulations

The Customer shall be responsible for compliance with any national statutes, regulations and regulations, in particular with respect to licensing, installation, operation, maintenance and repair of any items delivered and he agrees to comply with these. The Customer agrees to keep Dräger MSI indemnified against any claims arising due to the Customer's failure to comply with the said provisions.

## 15. Jurisdiction, Governing Law, Salvatorian Clause

15.1 The parties hereto subject to the jurisdiction of the courts of justice at Hagen, Germany. However, Dräger MSI may at its discretion institute legal proceedings in any court having jurisdiction over the Customer's domicile.

15.2 This contract shall be subject to the law of the Federal Republic of Germany. The United Nations Convention for International Goods Sales Contracts shall not apply.

15.3 Should individual provisions of this Contract with the Customer, including these General Terms and Conditions, be or become fully or partly ineffective, the validity of any other provisions of this Contract shall not be affected. In this case, any fully or partly invalid provisions shall be replaced by a provision being as close as possible in financial effect to the ineffective provision.