

## Terms and Conditions of Sale

### **1. GENERAL – DEFINITIONS OF EXPORT TERMS**

In this document the following words and expressions have the following meanings:-

**"Buyer"** means the company, firm or person from whom a purchase order for the Goods is accepted by the Seller.

**"Terms & Conditions"** means the terms and conditions of sale set out in this document together with any other terms and conditions agreed in writing between the Buyer and the Seller.

**"Goods"** means the goods of the description given by the Seller which the Buyer has ordered and which order has been accepted by the Seller or any part thereof.

**"Price"** means the price of the Goods excluding VAT

**"Seller"** means DEKA Controls GmbH

### **2 LIABILITY AND REMEDIES**

It is expressly understood that neither the Buyer nor the Seller are "consumers" (as defined in the Unfair Contract Terms Act 1977) and that all warranties, terms or conditions other than those given under these Terms & conditions are hereby excluded to the full extent permissible by law.

Except as provided for elsewhere in these Terms & Conditions, the liability of the Seller shall be limited to the Price of the Goods.

These Terms & conditions apply for all Export sales made above.

### **3 BASIS OF SALE**

1. These Terms & Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer and shall prevail over any terms & conditions which the Buyer purports or seeks to apply under any purchase order, confirmation or other documents. No alteration other than express written acceptance by the Seller shall be deemed to constitute acceptance of any terms put forward by the Buyer.
2. All orders for Goods shall be deemed to be an offer by the Buyer to purchase the Goods pursuant to these Terms & Conditions.
3. Catalogues, brochures, sales literature, or oral or written representations made by the Seller's employees during negotiations are not intended to form part of these Terms & conditions.
4. No additions or variations to these Terms & Conditions including any special terms & conditions, shall be binding on the Seller unless agreed to in writing by the Seller.
5. Insofar as not otherwise previously accepted by the Buyer in accordance with these terms the Buyer's acceptance of delivery of the Goods shall constitute acceptance of these terms.
6. A contract shall be concluded only when the Seller confirms the offer in writing and shall be based exclusively on the contents of the order confirmation and these Terms & Conditions. Any oral agreements or commitments must also be confirmed in writing in order to be effective.

### **4 ORDERS; PRICES**

1. The Seller's offers shall not be binding with reference to quantities, price and delivery time.
2. Any order issued by the buyer shall not be binding on the Seller until it has been agreed upon and confirmed by the Seller in writing.
3. The seller prices do not include any VAT as it will be statutory at the date of delivery. They are binding on the Seller for the period of the contract agreed upon. If, however, there is any change of any legal provision between the date of contractual agreement and the date of delivery and if this change of law is having any influence on the contractual obligation such as additional duties or any other charges, then the seller shall have the right to increase the purchase price accordingly.
4. The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labor, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

### **5 TERMS OF DELIVERY**

1. The seller shall deliver the goods "ex works, Incoterms 2000". Any costs arising out of the delivery of the goods, i.e. costs for transport, insurance as well as any taxes and custom duties shall be at the seller's expense. The risk in the goods shall pass from the seller to the buyer upon delivery of the goods to the carrier or another person nominated by the buyer. The seller must dispatch the goods, hand over any documents relating to them and transfer the property in

the goods, as required by the contract. If the seller is not bound to deliver the goods at any other particular place, his obligation to deliver consists:

- if the contract of sale involves carriage of the goods – in handling the goods over to the first carrier for transmission to the buyer;
- in other cases – in placing the goods at the buyer's disposal at the seller's premises.

## **6 TRANSFER OF RISK**

1. The goods shall be delivered at the risk of the buyer. If the buyer requests any transport insurance, this will be provided at the expense of the buyer.
2. The Seller will give the Buyer notice when the Goods are ready for delivery. Within seven days commencing on the day of the service of that notice the Buyer will collect the Goods or give the Seller instructions for their delivery.
3. Risk in the Goods shall pass on delivery, or in the case of Goods to be collected from the Seller's premises, on the day of service of the notice referred to in Clause 6.2 and the Buyer will insure the Goods accordingly.

## **7 FORCE MAJEURE**

1. Either party shall be entitled to suspend performance of his obligations under the contract to the extent that such performance is impeded or made unreasonably onerous by any of the following circumstances: industrial disputes and any other circumstance beyond the control of the parties such as fire, war, extensive military mobilization, insurrection, requisition, seizure, embargo restrictions in the use of power and defects or delays in deliveries by sub-contractors caused by any such circumstance referred to in this Clause. A circumstance referred to in this Clause whether occurring prior to or after the formation of the contract shall give a right to suspension only if its effect on the performance of the contract could not be foreseen at the time of the formation of the contract.
2. The party claiming to be affected by Force Majeure shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance. If Force Majeure prevents the Buyer from fulfilling his obligations, he shall compensate the Seller for expenses incurred in securing and protecting the Product.
3. Regardless of what might otherwise follow from these General Conditions either party shall be entitled to terminate the contract by notice in writing to the other party if performance of the contract is suspended under Clause 5.1 for more than six months.

## **8 DUTY TO INSPECTION AND OBJECTION**

1. Upon delivery the Buyer shall immediately check quantities, weight and packaging and record any objections thereto within 7 days after receipt of goods.
2. In case of a notice of a defect the Buyer shall immediately notify the Seller. The notice must clearly specify quantity and type of defect.

## **9 WARRANTY**

1. The Seller warrants to the Buyer (and to no other person) that as from the date of delivery for a period of 12 months, that when applied properly under normal conditions, the Goods will be free of defects in materials and workmanship.
2. The Buyer shall have 7 days from date of discovery of such defect or when the defect should reasonably have been discovered by the Buyer, to notify the Seller with full details thereof in writing, and the Buyer shall return the defective Goods to the Seller with completed warranty documentation, and particulars of the original order number, Seller's invoice number and relevant serial number(s).
3. The Buyer will be responsible for the costs of returning the defective Goods to the Seller and shall bear the Risk of loss or damage to the Goods in transit.
4. If upon investigation by the Seller, the Goods are found to be defective then the Buyer's rights and remedies shall be limited to:-
  - replacement of the defective Goods in which case the Seller will warrant the replacement Goods for the unexpired balance of the warranty period applicable to the defective Goods; or
  - Repayment, or credit of such part of the Price applicable to the defective Goods; or
  - Repair of the Goods;
5. The Buyer shall not be entitled to withhold payment, or make any deduction, set off or retention in respect of the Price (or any part thereof) for any alleged breach of Clause 9.1, unless it has acted in accordance with the above Clauses 9.2 and 9.3, and if, upon investigation, and finding that the Goods are defective, the Seller has then expressly agreed to such a withholding, deduction, set-off or retention.
6. If upon investigation, the Seller finds in its reasonable opinion, that the Goods are not defective, the Seller shall notify the Buyer who shall then be responsible for collecting the Goods.
7. The Seller shall not be liable for any defect which in its reasonable opinion arises from the misuse, misapplication, negligent use of the Goods, or accident, or in respect of fair wear and tear.
8. This warranty shall not apply to Goods which have not been paid for, or which in the reasonable opinion of the Seller have been improperly applied, installed, serviced, repaired or altered or fitted to inappropriate components.
9. The Buyer shall have no entitlement to return the Goods other than in the circumstances described above and the Seller gives no further warranty and shall have no liability for such defect or failure except in respect of death or

personal injury caused by the Seller's negligence.

#### **10 RETENTION OF TITLE**

1. The ownership of the goods shall remain with the seller until payment in full for all the goods has been received by the seller.
2. The Seller shall retain full title of the goods that have been delivered until the Buyer has discharged all claims arising from the business relationship.
3. Title in the goods shall not pass to the buyer but shall remain with the seller until the contract price has been paid to the seller in full by the buyer. Until such time as title in the goods has passed to the buyer:
  - the seller shall have the absolute authority to retake, sell or otherwise deal with or dispose of all or any part of the goods in which title remains vested in the seller;
  - for the purpose specified above, the seller or any of its agents or authorized representatives shall be entitled at any time and without notice to enter upon any premises in which the goods or any part thereof is installed, stored or kept, or is reasonably believed so to be.
4. The seller shall be entitled to seek court injunction to prevent the buyer from selling, transferring or otherwise disposing of the goods.
5. Notwithstanding the foregoing, risk in the goods shall pass on delivery of the same to the Buyer, and until such time as title in the goods has passed to the buyer, the buyer shall insure such goods to its replacement value and the buyer shall forthwith, upon request, provide the seller with a certificate or other evidence of such insurance.
6. The Buyer shall have the right to dispose of the goods delivered by the Seller in the ordinary course of business.
7. If the goods being delivered under retention of title shall be inseparably assembled or mixed with other goods being under property of any third party, then the Seller shall acquire title in the newly assembled or mixed goods. The proportion of title shall follow from the proportion of the invoice value of the goods delivered by the Seller.
8. In the event of any third party action against the goods delivered by us under retention of title the Buyer shall inform such party of the seller property and shall inform the Seller about such action.
9. If the Buyer shall be in breach of contract, in particular in payment default, he shall, upon on demand, immediately return to the Seller all goods delivered under retention of title

#### **11 TERMS OF PAYMENT**

The purchase price has to be paid in full within 30 days after date of Invoice without any discount.

#### **12 CHOICE OF LAW**

This Agreement shall be governed by and construed in accordance with German law.  
German law shall apply.

#### **13 PLACE OF JURISDICTION**

Place of jurisdiction shall be Stuttgart, Germany.

#### **14 ARBITRATION**

Any dispute or claim arising out of this Agreement shall be finally settled by arbitration in Stuttgart, Germany.