

General Terms and Conditions of Diehl Metering GesmbH

<p>1. Scope</p> <p>1.1. The General Terms and Conditions shall apply to all legal transactions which are concluded with Diehl Metering GesmbH, especially to the distribution of goods and correspondingly also to the provision of services.</p> <p>1.2. Deviations from these General Terms and Conditions shall only be effective if they are acknowledged by Diehl Metering GesmbH in writing. If the terms and conditions of Diehl Metering GesmbH's business partner are in conflict with The General Terms and Conditions of Diehl Metering GesmbH, they must be acknowledged by Diehl Metering GesmbH in writing, in order to be valid and to coexist.</p> <p>2. Offer</p> <p>2.1. Diehl Metering GesmbH's offers shall be considered as such, and as possible subject to change.</p> <p>2.2. Any offer- and project documents are neither allowed to be reproduced nor to be made accessible to third parties without Diehl Metering GesmbH's approval. All documents can be reclaimed at any time and shall be returned to Diehl Metering GesmbH in such cases without delay.</p> <p>3. Conclusion of a contract</p> <p>3.1. The contract shall be deemed as concluded if Diehl Metering GesmbH has either sent off a written confirmation of an order after receipt of the order or has accepted the order by dispatching the goods.</p> <p>3.2. The information included in catalogues, brochures and the like as well as other written or spoken statements shall only be relevant if the order confirmation refers to them expressly.</p> <p>3.3. In order to become valid, subsequent modifications and amendments of the contract require a written confirmation of Diehl Metering GesmbH</p> <p>4. Prices</p> <p>4.1. The prices apply ex works, respectively ex Diehl Metering GesmbH warehouse and are exclusive VAT, packaging, charges for loading, dismantling, withdrawal and orderly recycling and disposal of electrical and electronic devices for commercial purposes as defined by the Ordinance Regulating the Handling of Waste Electrical Equipment. If fees, taxes, customs or other fees apply in connection with the delivery, they shall be borne by the buyer. If shipment with delivery is agreed upon, the latter as</p>	<p>well as any transport insurance requested by the buyer shall be charged separately, but shall not include unloading and carrying. Package can be returned only under explicit agreement.</p> <p>4.2. In the event of an order differing from Diehl Metering GesmbH's offer, Diehl Metering GesmbH reserves the right to a corresponding alteration of price.</p> <p>4.3. Prices are based on costs at the time of the initial price offer made by Diehl Metering GesmbH. In the event the costs increase by the time of delivery, Diehl Metering GesmbH shall be entitled to modify the prices accordingly.</p> <p>4.4. In the event of repair orders the services deemed as appropriate by Diehl Metering GesmbH shall be carried out and charged on the basis of the expenses incurred. This shall also apply to services and additional services whose appropriateness only becomes apparent during the execution of the repair order, whereby a special notification to the purchaser is not to be required in such cases.</p> <p>4.5. The purchaser is charged expenses for generating repair offers or expert opinions.</p> <p>5. Delivery</p> <p>5.1. The period of delivery shall start to run with the conditions set out hereafter: a.) date of order confirmation; b.) date of performance of all technical, commercial and other duties which apply to the purchaser c.) date on which Diehl Metering GesmbH receives a deposit or a guaranty prior to the delivery of the goods.</p> <p>5.2. Official licenses and any permissions required from third parties for the export of systems shall be obtained by the purchaser. If such licenses and permissions are not obtained in due time, the term of delivery shall be extended accordingly.</p> <p>5.3. Diehl Metering GesmbH shall be entitled to effect and invoice partial or advance deliveries. If delivery on call has been agreed upon, delivery shall be deemed to be retrieved one year after the placement of the order at the latest.</p> <p>5.4. To the extent that unforeseeable circumstances or those independent of the will of the party occur, as e.g. all cases of force majeure, which prevent the adherence to the agreed delivery term, the same is extended by the</p>
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period of these circumstances; these include in particular the following: armed conflicts, official interference and prohibition, transport and custom clearance delays, transport damage, power- and raw material shortage, work disputes and the failure of an important supplier, who is difficult to replace. These aforementioned circumstances shall also justify an extension of the delivery period if they occur with a supplier.

5.5.

If a contractual penalty for default of delivery was agreed upon by the contracting parties when the contract was concluded, it shall be executed as follows, whereby any deviations concerning individual items shall not affect the remaining provisions:

Where delay in performance can be shown to have occurred solely through the fault of Diehl Metering GesmbH, the purchaser may claim for each completed week of delay an indemnity of a maximum of 0.5 %, however, a total of no more than 5 % of the value of that part of the goods to be delivered which cannot be used on account of Diehl Metering GesmbH's failure to deliver an essential part thereof, provided the purchaser has suffered a damage to the aforesaid extent. Any other claims based on delay of delivery or performance shall be excluded.

5.6.

In the event of any disposals, damages, or confusions the purchaser must demand the confirmations from the railway company or post office, which is required to enforce claims for damages immediately upon receipt of goods and show these confirmations to Diehl Metering GesmbH.

Short deliveries shall be reported immediately upon receipt of the goods, transport damage shall be reported on the next working day following the delivery day at the latest.

Complaints regarding other defects shall only be accepted within 8 days after the taking over of goods.

In the event of a return consignment the number of the affected receipt (and delivery note respectively) shall be indicated. Diehl Metering GesmbH refuses to take back the packaging; if a special packaging for the return consignment is required the costs therefore will be charged to the purchaser.

5.7.

Diehl Metering GesmbH is released for the obligations according the Packaging Ordinance (ARA 9056) by having concluded a license agreement.

6. Transfer of risk and place of performance

6.1.

Unless otherwise agreed, the delivery item shall be deemed to be sold FCA, Hainburger Straße 33, in accordance with INCOTERMS® 2010.

6.2.

The place of performance for services is the one stated in the written order confirmation or secondarily the one, where the service is actually carried out by Diehl Metering GesmbH. The risk for a service or an agreed part service shall be transferred to the purchaser upon the respective performance.

7. Payment

7.1.

Unless otherwise agreed in writing, invoices shall be immediately due for payment, counting the date of the invoice. In case insolvency proceedings are opened over the assets of the purchaser or if an application for such insolvency proceedings is rejected due to lack of sufficient assets, deliveries shall only take place against prepayment.

7.2.

In case of partial invoices, the corresponding part payments are immediately due for payment, counting the date of the respective invoice.

This shall also apply to any amounts exceeding the original contractual sum due to additional deliveries or other agreements, irrespective of the terms of payment agreed upon for the main delivery.

7.3.

Payments shall be made to the purchaser without any kind of deduction and free of transaction charges in the currency agreed upon. The acceptance of checks or bills of exchange is on account of payment only. All interests and costs in connection therewith (such as collection and discounting charges) shall be borne by the purchaser.

7.4.

The purchaser is not entitled to withhold or clear payments due to warranty claims or other counterclaims.

7.5.

Payments shall be deemed to be effected on the date on which the amount in question is at Diehl Metering GesmbH's disposal.

7.6.

If the purchaser is in default of any agreed payment or other performance of the respective or any other legal transaction, notwithstanding any other rights Diehl Metering GesmbH shall be entitled to,

a.) postpone the fulfilment of its own obligations until payment or other performance is effected and demand an extension of the term of delivery;

b.) make all outstanding payments of the respective or any other legal transaction due and demand default interest for these amounts amounting 1.25 % per month plus VAT. If the interest expense for Diehl Metering GesmbH exceeds this amount, Diehl Metering GesmbH shall be entitled to invoice this amount.

c.) In the event the purchaser is in default of two invoices, Diehl Metering GesmbH shall be entitled to fulfill other legal transaction against prepayment only; in any case Diehl Metering GesmbH shall be entitled to invoice pre-procedural costs, in particular costs of reminders and lawyers' fees.

7.7.

Granted discounts or bonuses shall only apply if timely payment is made. In the event of default payment granted discounts or bonuses are not granted.

<p>7.8. Diehl Metering GesmbH shall retain full title of the delivered goods until full payment of the respective invoice plus interest and costs is ensured,. In order to secure Diehl Metering GesmbH's purchase price claim, the purchaser assigns to Diehl Metering GesmbH its claims resulting from a resale of goods under retention of title, even if they were processed, rebuilt or mixed. The purchaser shall only be authorized to dispose goods under retention of title in the course of a resale with deferment of the purchase price if he notifies at the time of the resale the second purchaser of the assignment or enters the assignment in his account books. The purchaser shall inform Diehl Metering GesmbH on demand about the assigned claims and the respective debtors and make all information and documents for the recovery of debts available and notify third party debtors about the assignment. In the case of an attachment or implementation of a claim in another form the purchaser shall be obliged to point out Diehl Metering GesmbH's title and to inform Diehl Metering GesmbH immediately.</p>	<p>Upon presence of a defect covered by warranty according to point 8.1., Diehl Metering GesmbH shall, at its option, rectify the defects of the defective goods or the defective part at the place of fulfillment or have the defective goods or parts sent to its premises in order to rectify the defects or reduce the purchase price accordingly.</p>
<p>8. Warranty and acceptance of defects</p> <p>8.1. Under compliance with the agreed payment conditions and in accordance with the following provisions Diehl Metering GesmbH shall be obliged to remedy any defect affecting the fitness of use and existing at the time of acceptance of the article in question, which is based on a construction defect, faulty material, or execution. No warranty claims can be inferred from information contained in catalogues, brochures, advertising leaflets and written or oral statements, which were not expressly incorporated in the order confirmation.</p> <p>8.2. The warranty period shall be 12 months, unless other warranty conditions are expressly agreed for individual items. These conditions shall also apply to any goods supplied, or services rendered in respect of goods supplied, that are firmly attached to a building or the ground. The warranty period shall commence upon the transfer of risk according to point 6.</p> <p>8.3. The warranty period shall commence anew for improved or replaced items and shall end 6 months after the expiry of the original warranty period.</p> <p>8.4. In the event that delivery or performance is delayed for reasons, which are not within Diehl Metering GesmbH's scope, the warranty period shall commence 2 weeks after Diehl Metering GesmbH's ability to deliver or perform.</p> <p>8.5. The warranty claim requires that the purchaser notifies Diehl Metering GesmbH about the occurred defects in writing within a reasonable term. The purchaser shall prove the presence of the defect within a reasonable period; in particular shall the purchaser provide Diehl Metering GesmbH with all available documents or data.</p>	<p>8.6. All additional costs incurring in connection with the rectification of defects (such as costs for assembly, disassembly, transport, disposal, travel and travel time) shall be borne by the purchaser. For warranty work at the purchaser's premises, the required unskilled workers, lifting devices, scaffolding and incidentals, etc. shall be provided free of charge. All replaced parts become property of Diehl Metering GesmbH.</p> <p>8.7. If Diehl Metering GesmbH manufactures an item on the basis of the purchaser's design data, drawings, models or other specifications, Diehl Metering GesmbH's liability shall only extend to the workmanship as instructed.</p> <p>8.8. The warranty excludes those defects which arise from design and assembly not affected by Diehl Metering GesmbH, unsatisfactory installation, non-observance of installation requirements and conditions of use, straining of parts over the performance measure indicated by Diehl Metering GesmbH, negligent or incorrect treatment and use of inappropriate operating materials; The same shall apply to defects caused by material provided by the purchaser. Diehl Metering GesmbH is also not liable for damage, which can be traced back to third-party activities, atmospheric discharges, electrical surges and chemical influences. Warranty shall not include replacement of parts, which are subject to natural wear and tear. Diehl Metering GesmbH accepts no warranty for the sale of used goods.</p> <p>8.9. The warranty expires immediately if the purchaser or a third party who is not expressly authorized by Diehl Metering GesmbH performs changes or repairs of the delivered goods without Diehl Metering GesmbH's written consent.</p> <p>8.10. Claims according to Article 933b ABGB (Austrian Civil Code) shall become time-barred by all means upon expiry of the term mentioned in point 8.2.</p> <p>8.11. The provisions of points 8.1. to 8.10. shall apply accordingly to the liability for other defects based on other legal grounds.</p> <p>8.12. The exclusion of liability according to point 11.1. and 11.2. of the present General Terms and Conditions shall expressly apply to consequential damages and other claims which are asserted within the scope of the warranty.</p>

<p>9. Withdrawal from contract</p> <p>9.1 The pre-condition for the purchaser to withdraw from the contract is a delay in supply which can be ascribed to gross fault on the part of Diehl Metering GesmbH provided the purchaser has set a reasonable grace period in writing, which has not been met by Diehl Metering GesmbH. The withdrawal shall be declared in a registered letter.</p> <p>9.2. Irrespective of its other rights Diehl Metering GesmbH shall be entitled to withdraw from the contract,</p> <p>a) if the execution of delivery or the inception or continuation of services to be rendered under the contract is made impossible for reasons within the possibility of the purchaser or cannot be carried out, despite a reasonable grace period has been set by Diehl Metering GesmbH,</p> <p>b) if doubts have arisen as to the purchaser's creditworthiness and he, upon Diehl Metering GesmbH's demand, neither makes an advance payment nor produces suitable security prior to the delivery,</p> <p>c) if - for reasons mentioned in point 5.4. - the period allowed for delivery is extended by more than half of the period originally agreed, at least 6 months, or</p> <p>d) if the purchaser does not or not properly fulfil the obligations mentioned in point 13.</p> <p>9.3. For the reasons given above the withdrawal shall also be possible in respect of any outstanding part of the delivery or service contracted for.</p> <p>9.4. Diehl Metering GesmbH shall be entitled to withdraw from the contract without any grace period and to demand reimbursement in the event that insolvency proceedings were instituted against the purchaser's assets or an application for the institution of insolvency proceedings was dismissed due to a lack of sufficient assets. If the withdrawal is executed, the same comes with the decision thereon immediately into force that the undertaking of the purchaser is not being continued. If the undertaking is being continued, a withdrawal shall only become effective 6 months after the opening of insolvency proceedings. The dissolution with immediate effect shall happen by all means, unless the insolvency law the purchaser is subjected to, is opposed or the dissolution of the contract by Diehl Metering GesmbH is essential to avert serious economic drawbacks.</p> <p>9.5. Without prejudice to Diehl Metering GesmbH's claim for damages including pre-procedural costs, services or partial services already provided need to be invoiced and paid contractually in the case of withdrawal. This shall also apply as long as delivery or service has not been accepted and for preparatory activities provided by Diehl Metering GesmbH. Instead of this Diehl Metering GesmbH shall be also entitled to demand the cost-free return of already delivered items.</p>	<p>9.6. In the case of Diehl Metering GesmbH's withdrawal expressed according to these terms, the purchaser shall have no right to claim whatsoever arising out of this title.</p> <p>9.7. The assertion of claims on the ground of laesio enormis, error and frustration of contract shall be expressly excluded.</p> <p>9.8. Return shipments of Diehl Metering GesmbH goods shall only be accepted based on a separate written agreement. Return shipments or cancellations of orders shall only be accepted for unused goods packed in original. The cancellation or return shipment must arrive at Diehl Metering GesmbH's premises within 3 weeks of delivery.</p> <p>Diehl Metering GesmbH is entitled to invoice a handling fee of 20 % of the net invoice value of the returned goods plus VAT, but no less than 20 EUR plus VAT. From October of the current year onwards the purchaser is obliged to pay the calibration fees in its entirety. Regarding an order of exchanged meters the dismantled old meters shall be returned to Diehl Metering GesmbH within 4 weeks after delivery. The old meters shall be packaged by the purchaser in the manner customary to trade. If the return shipment is more than 30 old counters or 3 full cartons (original Diehl Metering GesmbH-cartons) Diehl Metering GesmbH carries out the free of charge collection.</p> <p>Costs arising from freight collect return shipments will be charged to the purchaser.</p> <p>If the returned old meters do not correspond with the amount of delivered exchanged meters, for each not returned old meter an extra charge depending on the meter type shall be invoiced to a new meter.</p> <p>10. waste of electrical and electronic equipment</p> <p>10.1. The purchaser of electrical / electronic equipment for commercial purposes, incorporated in Austria, shall be responsible for the financing of the collection and treatment of waste electrical and electronic equipment as defined by the Ordinance Regulating of Waste Electrical Equipment if he is himself the user of the electrical / electronic equipment. If the purchaser is not the end user he shall transfer the full financial commitment to his customer by agreement and provide proof thereof to Diehl Metering GesmbH.</p> <p>10.2. The purchaser incorporated in Austria shall ensure that Diehl Metering GesmbH is provided with all information necessary to meet Diehl Metering GesmbH's obligations as manufacturer / importer, particularly according to Articles 11 and 24 of the Ordinance Regulating of Waste Electrical Equipment and Waste Management Act.</p>
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10.3.

The purchaser incorporated in Austria shall be liable to Diehl Metering GesmbH for any damages or loss arising from the purchaser's failure to meet his financial and other obligations according to point 10. The purchaser will bear the burden of proof to fulfill these obligations.

11. Liability of Diehl Metering GesmbH

11.1.

Diehl Metering GesmbH shall be liable outside the scope of the Product Liability Act only to the extent such damage can be proven to have occurred due to willful intent or gross negligence in accordance with the legal provisions.

Diehl Metering GesmbH's liability for damages resulting from slight negligence will be fully excluded.

Diehl Metering GesmbH's liability for gross negligence shall be limited to the net order value or to a maximum of 500,000 EUR

Diehl Metering GesmbH's liability per claim shall be limited to 25 % of the net order value or to a maximum of 125,000 EUR.

11.2.

The liability for consequential damages, pure financial losses, indirect damage, loss of production, costs of financing, costs of compensated energy, then again loss of energy, data or information that caused: loss of profit, unrealized savings or interests, consequential harm caused by a defect, loss of production, direct and indirect damage, as well as damage resulting from third party, claimed against the purchaser, shall be excluded. This also applies within the scope of warranty.

11.3.

Any compensation for damages shall be excluded in case of non-compliance with instructions for assembly, commissioning and operation (such as are e.g. to be found in user guides) or non-compliance with official admission requirements.

11.4.

If contractual penalties are agreed upon, claims over and above the same arising from the corresponding title shall be excluded.

11.5.

The provisions of point 11 shall definitively apply for all purchaser's claims against Diehl Metering GesmbH, regardless of the legal basis or title and shall also come into effect for all Diehl Metering GesmbH's co-workers, subcontractors, and sub-distributors.

12. Industrial property rights and copyrights

12.1.

If goods are produced by Diehl Metering GesmbH on the basis of construction specifications, drawings, models or other specifications belonging to the purchaser, the purchaser shall hold Diehl Metering GesmbH harmless in case of any possible infringement.

12.2.

Final planning documents, as e.g. plans, sketches and

other technical documents as well as samples, catalogues, brochures, diagrams and such like, shall remain intellectual property of Diehl Metering GesmbH and shall be subject to the relevant legal provisions regarding duplication, imitation, competition, etc. Point 2.2 of this condition shall also apply to final planning documents.

13. Compliance with export provisions

13.1.

In the event of a transfer of the goods delivered by Diehl Metering GesmbH and the appropriate documentation irrespective of the way of providing or the service provided by Diehl Metering GesmbH including technical support of all forms to third parties, the purchaser is obliged to meet the respective national and international (re-)export provisions.

In any case the purchaser is obliged to respect the (re-) export provisions of the state where Diehl Metering GesmbH is incorporated, the European Union and the United States of America in the case of transferring goods or providing services to third parties.

13.2.

If export control checks are required, the purchaser shall be obliged to promptly transmit Diehl Metering GesmbH all required information upon request - inter alia information about the final recipient, the final destination, and the intended use of the goods or services.

14. General provisions

If individual provisions of these General Terms and Conditions or the concluded contract are ineffective, the validity of the remaining provisions shall be unaffected. The ineffective provision shall be replaced by a valid restriction, which matches the desired economic goal as closely as possible.

15. Legal venue and choice of law

Vienna, hence the relevant court (*ratione materiae*) in the circuit of the Bezirksgericht Innere Stadt Wien shall be agreed as place of exclusive jurisdiction for all disputes between the contracting parties, particularly regarding the conclusion of the contract and the effectiveness of the present General Terms and Conditions. Austrian jurisdiction under the exclusion of the rules concerning transmission to the law of third countries shall be applied for all concluded contracts between business partners. The applications of the United Nations' UNCITRAL- agreement about contracts via the international goods purchase are excluded.

16. Reservation Clause

Diehl Metering GesmbH's obligation to fulfill this contract is under the provision that the fulfillment is not prevented by any barriers based on national and international (re-)export provisions, in particular embargos and/or other sanctions.

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