

## General Conditions of Business (GCBs) of DESC Electrical Engineering GmbH (Inc.)

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### Art. 1 General Stipulations

- (1) The extent, quality, terms and conditions for the supplies of goods and the rendering of services (hereinafter referred to as 'consignments') are indicated in the mutual written declarations of the contractual parties, and in these present General Conditions of Business (GCBs) (hereinafter referred to as the 'GCBs') of DESC Electrical Engineering GmbH (Inc.) (hereinafter referred to as 'DESC'). All other general conditions of business of the purchaser are only to be applicable in so far as DESC expressly accepts such in writing. All relative contracts come into legal force with a legal acceptance of an offer or tender.
- (2) DESC hereby reserves its ownership rights, copyrights and exploitation rights unrestrictedly in all documentation, i.e. estimates, technical drawings, etc. (hereinafter referred to as the 'documentation'). Such documentation may only be made available to third parties with the prior approval of DESC, and when goods or services are not subsequently purchased and sold, are to be returned to DESC with immediate effect. Sentences 1 and 2 of this present Sub Article also apply analogously for any similar documentation of the purchaser; but, these may be made available to third parties, whom DESC has permissibly retained for the making of consignments.
- (3) When software is also included in a consignment, the user rights are restricted only to that consignment, and then only for a non-transferrable right to use the software for the contracted use, unless otherwise declared and agreed.
- (4) The purchaser is however permitted to take backup copies of the software for archiving purposes, for error searches, or for the replacement of defective data carriers. The purchaser is not permitted to update, upgrade or make any other extensions or processing of the relative software.
- (5) The fulfilment of any relative contract on the part of DESC is subject to the existence of any hindrances thereto by national or international statutory requirements of foreign trade legislation, as well as by embargos and/or by similar sanctions.
- (6) The purchaser is therefore to inform DESC of any standards or requirements, which are applicable to consignments to the country of the place of the registered office (corporate domicile) of the purchaser and/or the country of the place of consignment.

### Art. 2 Prices and Terms and Conditions of Payment

- (1) All prices are net ex works, excluding all packing, taxes, customs duties or associated levies, which are payable under the law applicable to the consignment. The purchaser binds itself to pay- or compensate for -all taxes, customs duties of associated levies, with which DESC or its suppliers are charged.
- (2) When DESC is also contracted to erect or install, then the purchaser is to bear all requisite side charges in addition to the agreed remuneration, unless otherwise declared and agreed.
- (3) Payments due to DESC are payable to the bank account designated by DESC, without any deduction of discounts, charges, taxes, associated levies, fees, customs duties and the like.
- (4) Unless otherwise declared and agreed between the contractual parties, all invoices are immediately due and become payable 30 days at the latest after date of invoice, without any deductions. When the agreed terms and conditions of payment are not met, arrears interest of eight (8) percent above the current bank rate of the European Central Bank will be charged and become due, without any reminders being issued, as from the 31st day of date of invoice.
- (5) When payment is agreed by documentary credit, then the purchaser is to pay the charges for the opening, advising and confirmation of the documentary credit.
- (6) When an advance sum or contractually agreed surety is not made in accordance with the terms and conditions of a relative contract, then DESC is entitled to continue the relative contract, or withdraw from a relative contract and/or give notice to terminate the relative contract, whereby DESC can assert a claim for indemnities for loss or damage.
- (7) The purchaser is not entitled to withhold or reduce payments because of complaints, claims or financial accounts receivable, which are not recognised by DESC in writing.

### Art. 3 Reservation of Ownership Rights

- (1) All consignments remain the property of DESC until the fulfilling of all claims on the purchaser under the contractual business in hand. Upon the conclusion of a relative contract, the purchaser empowers DESC to register or publish its reservation of ownership rights at the expense of the purchaser, and in accordance with application of national statutory requirements in the required form in public registers, records or similar documentation.
- (2) During any time period of the reservation of the ownership rights of DESC, the purchaser is not permitted to mortgage the consignment or pledge it as surety, and only to resell it to resellers in the course of day-to-day business, and only on condition, that the reseller receives payment from its customer or introduces a reservation, that the ownership rights only pass to the customer when payment is made.
- (3) The purchaser is to notify DESC with immediate effect in writing of any mortgaging, confiscation, judicial dispositions or any other interventions of third parties, which could lead to the loss of the rights of DESC in the consignment.
- (4) In cases of any infringements of contractual duties by the purchaser, in particular arrears of payment, then DESC is entitled to recover the consignment and the purchaser is obliged to relinquish it. A recovery of the consignment, the assertion of ownership rights or the repossession of the consignment, do not represent withdrawal from a relative contract.

#### **Art. 4 Delivery Time Periods; Arrears**

- (1) A prerequisite for compliance by DESC with agreed delivery time periods, is the advance receipt by DESC in good time of all documentation to be provided by the purchaser, all necessary permits and approvals, and in particular plans. The purchaser is to fulfil all the agreed terms and conditions of payment and any other sundry contractual duties. When such terms and conditions are not fulfilled, then the delivery time periods become correspondingly extended, and the purchaser is to compensate for all additional charges arising from the delay, unless DESC is responsible for the delay.
- (2) Compliance with the delivery time periods is effected, when a consignment 'ready note' is sent to the purchaser before the expiry of the delivery time period.
- (3) When non-compliance with delivery time periods is caused by hindrances, accidents or disruptions at DESC or its suppliers, and compliance is not possible even whilst observing all due care, then the delivery time periods can be extended correspondingly. Hindrances include, in particular: mobilisation, war, insurrection, affairs of state, failure to obtain export permits, epidemics, strikes and lockouts, raw materials scarcity, lack of transportation capacities, electricity cuts and natural catastrophes.
- (4) Should DESC become culpably in arrears of consignment, the purchaser is entitled to assert an indemnity for each complete week of arrears of 0.5% of the total value ordered, but only a total of 5.0% at the most, for that part of the consignment, which cannot be taken into operational use, provided that the purchaser can show, that the arrears cause the loss or damage suffered.
- (5) The indemnity claims of the purchaser for loss or damage, which exceed the limitations of Paragraph (4) of this present Article, are excluded in all cases of delayed consignments. The same also applies for the expiry of time periods of grace set for the supplier. The purchaser is only then entitled to withdraw from a relative contract because of arrears, when a reasonable time period of grace for compliance has been granted to the supplier without success, and the indemnities for arrears in Paragraph (4) of this present Article are exhausted.
- (6) Further-going entitlements for arrears, other than those mentioned in Paragraph (4) of this present Article, in particular indemnity claims of the purchaser for loss or damage, are excluded.
- (7) When consignments or deliveries of consignments are delayed at the request of the purchaser by more than one month after notification of the readiness to consign, the purchaser can be charged by DESC for storage of 0.5% of the price of the order, but at the most 10.0% of the total contract price.

#### **Art. 5 The Passing of the Perils**

When consignment, delivery, commencement- or the conduct -of erection-/ installation work, or acceptance at the premises of the purchaser, is delayed on grounds for which the purchaser is responsible, or when the purchaser is in arrears of acceptance, then the perils pass to the purchaser and the point in time of the passing of the perils is the original agreed date before the delay.

#### **Art. 6 Packing**

Packing will be charged extra by DESC, and is not returnable. When however the packing is declared to be the property of DESC, then such is to be returned to the place of consignment free of charge.

#### **Art. 7 Deliveries: Good-Inwards Inspections and Acceptances**

- (1) DESC will inspect consignments before transportation as is usual in the industry. When the purchaser requires more thorough inspections before consignment, e.g. an acceptance approval inspection, then such is to be agreed in writing and to be remunerated by the purchaser.
- (2) The purchaser is to inspect delivered consignments received within 30 days and report deficiencies to DESC in writing with immediate effect. When the purchaser fails to comply, then the delivered consignment is deemed to be approved and accepted by the purchaser.

#### **Art. 8 Liabilities for Material Deficiencies**

- (1) Upon any written request of the purchaser, DESC will, at its discretion effect improvements on its consignments for deficiencies or consign anew, when material deficiencies occur within a statute barred period of time, provided that the cause is before the date of the passing of the perils. All deficient and replaced parts pass into the ownership of DESC.
- (2) Material deficiency claims become statute barred twelve (12) months after the date of the passing of the perils to the purchaser and/or after the date of completion when a consignment is to be installed or erected.
- (3) For the removal of deficiencies, appropriate time and opportunity is to be given. The purchaser is to provide access to a deficient consignment, including its dismantling and re-erection, free of charge. All charges impinging for work routines in improvements in the works or in repair workshops of DESC, are to be for the debit of DESC. When an improvement is not possible there, then the associated charges, which exceed the usual transportation-, personnel-, travel-, and board and lodging –charges, are for the account of the purchaser.
- (4) When a reasonable period of time has expired without DESC being able to rectify a deficiency, then the purchaser can demand a reduction (diminution) in the remuneration.
- (5) DESC is however not liable for deficiencies, which only inconsiderably encroach upon the usability of an affected consignment, nor for inconsiderable divergences of the consignment from the agreed characteristics, in cases of wear-and-tear and loss or damage occurring after the date of the passing of the perils, as a result of incorrect or negligent handling, excessive strains and loadings, unsuitable operational mediums, defective erection or instalment not carried out by the supplier, or which occur to the consignment because of external influences.
- (6) DESC is also not liable for improper alterations or repairs to the consignment conducted by the purchaser or by retained third parties.
- (7) Any additional entitlements and claims of the purchaser for material deficiencies other than in Art. 8 hereof, in particular the entitlement to withdraw from contract or assert indemnities for loss or damage, are excluded.

#### **Art. 9 Trade Protection Rights and Copyrights**

- (1) DESC binds itself only to deliver the consignment in the country of the corporate domicile (registered office) of the purchaser, free of all trade protection rights- and copyrights -of third parties (hereinafter referred to as the 'protection rights').
- (2) Should any third party assert justifiable claims against the purchaser because of the infringement of protection rights to do with the consignment, then DESC is only liable to the purchaser to the extent, that DESC selects to obtain a user right for the purchaser at its own expense, or to alter the consignment so that it no longer infringes a protection right.
- (3) The foregoing mentioned contractual duties only obtain when the purchaser immediately informs DESC in writing with immediate effect of the claims of any third party, or does not proceed to recognise an infringement, and permits DESC to address all defensive actions and settlement negotiations. Should any decrease of the use of the consignment be introduced for reasons of reducing any loss or damage, then the relative third party is to be notified, that the decrease of use does not represent any recognition of an infringement of protection rights.
- (4) All claims of the purchaser are excluded when the infringement of user rights is perpetrated by the purchaser.
- (5) Claims of the purchaser are also excluded, when infringements of protection rights are caused by any particular specifications of the purchaser or by any applications impossible of anticipation by DESC. The same applies for alterations in a consignment or for the introduction of products into the consignment other than originally employed.
- (6) All further entitlements and claims of the purchaser, other than those mentioned in this present Art. 9, to assert indemnities for loss or damage for infringements of protection rights, are excluded.
- (7) The purchaser may only employ the plans and technical drawings provided by DESC for the anticipated purpose. The purchaser is not entitled to employ the plans or technical drawings for any other purpose whatsoever, in particular for purposes of copying and reproducing the subject matter of the consignment or parts thereof.

#### **Art. 10 Impossibilities / Contract Adjustments**

- (1) When a consignment is not possible for reasons where DESC is responsible, the purchaser is entitled to claim indemnities for loss or damage. The indemnity claim of the purchaser is limited to 10% of the value of that part of the consignment, which cannot be used in the purposeful business operations of the purchaser, because of the impossibility. The purchaser has then no further entitlements for the future under a relative contract other than the giving of notice to terminate, in particular no entitlement to withdraw from the relative contract, or to assert diminution for other loss or damage.
- (2) Should unforeseeable circumstances arise, which considerably alter the economic significance of the content of the consignment, or considerably influence the fulfilment of the relative contract, or is the execution of the consignment subsequently impossible in whole or in part, then the relative contract is to be appropriately adjusted. Should such then not be economically viable or tenable, then DESC is to be entitled to cancel the relative contract or the part of the relative contract affected. The purchaser has then no further entitlements for the future under the relative contract other than the giving of notice to terminate, in particular no entitlement to withdraw from the relative contract, or to assert diminution for other loss or damage.
- (3) Notwithstanding all other stipulations of a relative contract, DESC is to be entitled to give notice to terminate the relative contract, when an occurrence of force majeure (Act of God) obtains for a time period of longer than 180 days, whereby no liability can be adopted by DESC for indemnities for loss or damage and any charges, in respect of loss or damage indemnity claims under- or in connection with -notices to terminate pursuant to Art. 10 (2) hereof.
- (4) When DESC exercises its entitlement to give notice to terminate the relative contract under Art. 10 (3) hereof, then DESC is to notify the purchaser with immediate effect of the occurrence of force majeure (Act of God), even when an extension of the delivery time period is agreed between the contractual parties.

#### **Art. 11 Sundry Loss or Damage Claims**

- (1) All other sundry rights of the purchaser on DESC are excluded hereunder. The purchaser is not entitled to challenge the validity of a relative contract because of a mistake, and also not because of a mistake concerning deficiencies in a consignment. Indemnity claims of the purchaser for loss or damage in particular for loss of production, loss or use, loss of profits, or direct or indirect consequential losses, are excluded.
- (2) The foregoing does not however apply to matters where a mandatory liability obtains, i.e. under the product liability legislation, in cases of premeditation, the gross negligence of corporate officers and leading employees of a supplier, or in cases of fraudulent concealment of deficiencies. This stipulation is also applicable to Arts. 4, 8, 9 and 10 hereof.
- (3) The foregoing limitations of liability are also applicable for subcontractors, suppliers, authorised persons, persons in superior positions, leading employees and the workforce employees of DESC.

#### **Art. 12 Cessions**

- (1) DESC is entitled to cede its contractual rights and duties under a relative contract to third parties, provided that the purchaser does not object within 4 weeks of receipt of the written notice of such a cession.
- (2) The stipulation under Art. 12 (1) hereof does not apply for the cession of rights and duties under a relative contract to companies and corporate entities associated corporately with DESC.

### **Art. 13 Export Controls**

- (1) The purchaser is hereby aware, that all consignments for delivery abroad are subject to the statutory requirements of export control, and cannot be sold, rented, financially leased, ceded or transferred in any manner-, or employed for any use apart from the intended declared purpose, without an export permit or re-export permit of the competent German Federal authorities. The purchaser binds itself to comply with such statutory requirements. The purchaser hereby takes due note, that statutory requirements can change and are applicable for all relative contracts concluded for the time being, in their latest valid wordings.
- (2) All consignments may not directly or indirectly, in any manner whatsoever be employed in connection with the construction, manufacture, employment or storage of chemical, biological or nuclear weapons or their inherent carrier or launching systems.

### **Art. 14 Confidentiality**

- (1) The purchaser is to treat with confidentiality all information communicated in connection with consignments, and exploit such only for the purpose stated in a relative contract. The contractual duty of confidentiality does not however apply for information, which is already in the public domain, or of which the purchaser is generally aware without infringing its contractual duty under a relative contract to maintain confidentiality, or which was known by the purchaser at the time of receipt without any obligation imposed upon it to maintain confidentiality, or which the purchaser legally received from third parties without entering into an obligation to maintain confidentiality, or which the purchaser had already developed itself independently, without exploiting any information communicated under a relative contract with DESC.
- (2) The contractual duty under this present Art. 14 is to remain in force after the termination of a relative contract with DESC, independent of how the relative contract is terminated.

### **Art. 15 Notices to Terminate / Suspensions**

- (1) Each of the contractual parties is entitled to terminate a relative contract by written notice when proceedings are opened on the other contractual party for insolvency or bankruptcy, or a contractual party files protection pleas into court under the legislation governing bankruptcies, insolvencies, judicially approved deferments of payment, debt compacts or debt regulations.
- (2) DESC can require a suspension of its contractual duties, when the purchaser is more than 30 days in arrears of payment, or in arrears of part payment, or when the purchaser fails to contribute the necessary collaboration for the execution of a relative contract, or when a consignment of the subject matter of a relative contract is prevented for more than 180 days, because of export restrictions, or when the purchaser becomes insolvent and/or insolvency proceedings are opened on the purchaser as per Paragraph (1) of this present Art. 15.
- (3) The purchaser is to bear all expenditure incurred by DESC for suspensions of contractual duties. The purchaser is upon demand to return any already delivered consignments, whereby such recoveries of consignments, or the assertion of ownership rights, or claim assertions, do not represent a termination of a relative contract or any other form of termination of the business relationship between the parties.
- (4) Notwithstanding any other stipulations under a relative contract, DESC is to be entitled to give written notice of 30 days to terminate a relative contract in whole or in part, when the prerequisites under this present Art. 15, Paras. (1) to (3) exist. In such cases, DESC has a claim for remuneration for the consignments delivered or services rendered. The purchaser is not permitted to assert indemnities for loss or damage.

### **Art. 16 Various**

- (1) All alterations to a relative contract require the written form for their validity.
- (2) Errors, mistakes, inadvertent loopholes and contradictions in the wording of a relative contract are to be treated and interpreted on the basis of mutual trust and under consideration of the mutual interests of both the contractual parties.
- (3) All relative contracts are to remain as such legally binding in all their parts, even when any individual stipulations turn out to have legal ineffectiveness. This is not to apply for relative contracts when insistence on the execution of a relative contract by one contractual party might cause hardship on the other contractual party.

### **Art. 17 Place of Jurisdiction and Applicable Law**

- (1) The place of jurisdiction is Hanover, Germany.
- (2) This agreement is subject to the body of the law of the Federal Republic of Germany.