

General Terms and Conditions Sales DoPchoice GmbH, Munich

Updated: March 2009

- 1 General, Scope**
- The terms and conditions delineated herein shall be the sole terms and conditions which apply to all of DoPchoice's current and future business transactions. Unless DoPchoice has approved of such in writing, any terms or conditions which conflict with, deviate from or modify the terms and conditions delineated herein shall not be binding on DoPchoice irrespective of whether DoPchoice had prior notice of such terms or conditions. DoPchoice hereby expressly objects to any such conflicting, deviating or modified terms or conditions.
- 2 Contract Formation**
- 2.1 Any offers made by DoPchoice shall be without obligation and subject to change without notice provided that the parties have not agreed to a lockup period.
- 2.2 The customer is bound to its order for a period of two weeks after its receipt by DoPchoice. A contract is deemed to exist upon the customer's receipt of DoPchoice's written confirmation regarding the order or the effective delivery of the applicable goods to the customer.
- 2.3 The scope and type of delivery for an order shall be established solely through DoPchoice's written confirmation relating to such order. Any errors or omissions in DoPchoice's sales prospectus, pricelists, offer documents or other related documentation may be amended without DoPchoice incurring any liability for damages or compensation in relation to such errors or omissions.
- 3 Payment, SetOff, Withholding**
- 3.1 The purchase price for the contract shall be that price which is specified by DoPchoice for such contract and shall apply ex works, exclusive of any value added tax; if the price is not indicated, the pricelist then in effect shall apply. If the sale has occurred through delivery to a place other than the place of production (at the customer's request), any costs incurred for packaging, shipping, freight, customs or other related costs will be charged separately. If the customer fails to accept delivery when tendered by DoPchoice, payment must nevertheless be made.
- 3.2 In the event that the manufacturing costs for the contracted goods (including, but not limited to, wages, salaries, materials or production costs) rise subsequent to formation of the contract but before maturity, DoPchoice shall have the right to increase the purchase price in accordance therewith.
- 3.3 Invoices from DoPchoice are due and payable without deductions within 10 days of the issuance thereof. Upon a default in payment, any overdue amounts will accrue interest at a rate of 8% above the basic interest rate. DoPchoice reserves its right to assert any further claims regarding damages resulting from a default.
- 3.4 The customer may offset its payments only if its counterclaims thereto are legally recognized or undisputed.
- 4 Delivery**
- 4.1 The dates for delivery and/or the making available of the goods are not binding unless a date for such has been agreed to in writing by DoPchoice. Delivery will be made at the latest two weeks after the unbinding dates for delivery and/or making available of the goods.
- 4.2 DoPchoice is entitled to carry out advance and/or partial deliveries of the goods to a reasonable extent.
- 5 Transfer of Risk**
- 5.1 The risk of loss or damage to the goods passes to the buyer as soon as DoPchoice has dispatched the goods from its premises (i.e., plant, factory or warehouse) or upon the surrendering of the goods to the applicable carrier or to the customer itself, as the case may be. The above shall also apply in the event that DoPchoice serves as the carrier for the goods.
- 5.2 If the forwarding or collection of the goods is delayed due to reasons attributable to the customer, the risk of loss shall be transferred to the customer upon the readiness of the goods for dispatch.
- 6 Defective Goods**
- 6.1 The customer must inspect the delivered goods immediately upon its receipt of such. The customer must notify DoPchoice in writing of any apparent defects within one week of the goods' receipt. DoPchoice must be notified of hidden defects in writing within two weeks of their emergence but in no event later than one year after delivery of such goods. In the event that the customer fails to meet the aforementioned notification obligations, the goods shall be deemed to have been accepted and the rights set forth in Sections 6.2 and 6.3 below shall not be in effect.
- 6.2 In the event that the customer has notified DoPchoice of defects in a timely manner and is thus eligible to make a claim for reperformance,

- DoPchoice shall have the right, at its own cost, either to remedy the defect or to redeliver conforming goods.
- 6.3 If DoPchoice twice fails to remedy a defect or if DoPchoice is otherwise unable to accomplish its reperformance obligation or fails to do so within a time period reasonably set forth by the customer, the customer shall be entitled to reduce the purchase price under the contract or to cancel the contract. Instead of seeking performance, the customer can make a claim for damages or for compensation for expenses.
- 6.4 Provided that DoPchoice has not acted fraudulently, any claims of the customer regarding the goods shall become void and unenforceable one year after delivery of the applicable goods.
- 7 Liability**
- 7.1 DoPchoice shall be liable for any damage hereunder caused by it intentionally or caused by its gross negligence.
- 7.2 In the event of simple negligence by DoPchoice, DoPchoice shall be liable only for ordinary and foreseeable damage arising from the contract, and only to the extent that DoPchoice has breached material contractual obligations. Material contractual obligations are such obligations the completion of which allows the proper performance of the contract and the breach of which threatens the achievement of the subject matter of the contract and why the contractual partner may regularly rely on their observance. Further, in any event, DoPchoice shall be liable for life, body and/or health-related damage and in case of liability claims in accordance with German Product Liability Act attributable to DoPchoice.
- 7.3 In case of a simple negligent breach of a material contractual obligation DoPchoice shall not be liable for damages which were not foreseeable for DoPchoice at entering into the contract based on all circumstances DoPchoice should be typically aware of at that moment.
- 7.4 DoPchoice shall be subject to no liability beyond that which is delineated in this Section 7.
- 7.5 To the extent that DoPchoice's liability is excluded or limited, such exclusion or limitation shall apply to any persons or entities employed by DoPchoice in the performance of its contractual obligations.
- 8 Retention of Title**
- 8.1 Ownership of the delivered goods shall remain with DoPchoice until it has received full payment for such goods. Title to the goods shall first pass to the customer upon DoPchoice's receipt of all payments which are due under the current applicable contract.
- 8.2 Prior to obtaining title to the goods, the customer is not entitled to pledge or, to assign by way of security, the goods.
- 8.3 The customer is, however, authorized to sell the goods to third parties in the ordinary course of business unless a nonassignability agreement regarding the consideration exists between the customer and the third party. If a third party acquires an interest in the goods through a resale to such party, the customer agrees to assign to DoPchoice all of its correlating rights and claims against such third party. DoPchoice hereby accepts such assignment.
- 8.4 Any combination, amalgamation and/or processing of the goods (sections 947, 948 and 950 BGB [German Civil Code]) shall be deemed to have been made on behalf of DoPchoice. DoPchoice shall acquire title to the resulting product in the ratio of the invoiced value of the goods and services provided by DoPchoice to the total invoiced value of the resulting product. If the goods have been resold to a third party, the assignment of rights and claims performed in accordance with Section 8.2 above shall be valid solely up to the amount of the invoiced value of goods and services provided by DoPchoice.
- 9 Jurisdiction; Governing Law**
- 9.1 The parties hereto agree that the exclusive jurisdiction for any transaction and/or contract between the parties is upon DoPchoice's choice, either Munich, Germany or the customer's seat.
- 9.2 The relationship of the parties hereto shall be exclusively governed by and in all respects construed in accordance with the laws of the Federal Republic of Germany with no application whatsoever of the United Nations sales law.
- 9.3 If any of the provisions of this contract or of any other agreements between us and the customer, all or on part, is or shall be adjudged to be invalid, the validity of the remaining provisions of this contract or other agreements shall in no way be affected thereby.