



## GT & C

### General Terms and Conditions of DELCO CONTROLS AG

#### 1. Scope of application

1.1 The following conditions are binding in respect of all deliveries to be made by **DELCO CONTROLS AG** (referred to below as the “supplier”). By placing an order of any kind, the customer (referred to below as the “customer”) acknowledges the following conditions. Divergent conditions of purchase of the customer are binding on the supplier only if he has expressly acknowledged them.

1.2 For special productions and in special circumstances, differing/supplementary provisions may apply. In every case, differing provisions are valid only if they have been agreed in writing.

1.3 The nature and scope of the delivery are indicated in the written order confirmation made out by the supplier. Agreements which differ from the order confirmation become binding only if they are confirmed in writing by the supplier. Differing provisions in the order confirmation take priority over these general terms and conditions and also over the conditions of delivery for specific countries set out in section 12 et seq.

1.4 The conditions of delivery for specific countries set out in section 12 et seq take priority over the following general provisions.

1.5 All delivery conditions contained in these general terms and conditions of business are guided by the regulatory provisions contained in Incoterms 2000.

1.6 Should any particular provisions of these general terms and conditions of business be invalid now or become invalid in future, that will not affect the remaining provisions.

1.7 In the event of inaccuracies in the translated texts, the general terms and conditions of business in German will take priority over the foreign language versions.

#### 2. Prices

2.1 The prices listed in the catalogue, on price lists and in our web shop are not binding. The prices only become binding upon confirmation of the order or upon delivery of the goods with the supplier's invoice.

2.2 The prices are quoted ex-supplier's works (EXW designated place) in the currency stated on the documents (CHF Swiss francs or EUR Euro) and exclude packaging costs, value added tax or sales tax, transport, insurance and other charges.

2.3 If cost factors (raw materials, exchange rate supplements etc.) change after the supplier has issued the order confirmation, price adjustments may be made.

2.4 In the case of follow-on orders, the supplier is not bound by the prices stated in previous order confirmations.

### **3. Payment terms**

3.1 All accounts fall due when the invoice is issued and are payable within 30 days from the date of invoice without any deduction to a bank account/postal account indicated by the supplier. Offsetting against any claims of the customer on the supplier (e.g. because of complaints) is excluded. For the collection of payments made by cheque, a charge of CHF 10 / EUR 7 will be made and this may be billed when the next order is placed. Differing arrangements may be made for particular orders, provided that they are set down in writing. In particular, advance payments and/or instalment payments or other sureties may be required.

#### **3.2 Payment arrears**

In the event of payment arrears, new payment terms may be stipulated for all outstanding orders. From the second warning, a charge in the flat-rate amount of CHF 15 / EUR 10 per warning will be invoiced. Moreover, even without prior warning, interest on arrears will be charged to the customer from the first day of the arrears in the amount of 5% of the outstanding sum. The supplier is likewise entitled to require the customer to make good all necessary payment collection and legal action costs, including attorneys' costs. The right to claim compensation for further prejudice is specifically reserved. If the customer is in arrears, the supplier is entitled to withdraw from the agreement and to require goods already delivered to be returned.

### **4. Retention of title**

4.1 The items pertaining to the Supplies ("Retained Goods") shall remain the Supplier's property until each and every claim the Supplier has against the Purchaser on account of the business relationship has been fulfilled. If the combined value of the Supplier's security interests exceeds the value of all secured claims by more than 10 %, the Supplier shall release a corresponding part of the security interest if so requested by the Purchaser; the Supplier shall be entitled to choose which security interest it wishes to release.

4.2 For the duration of the retention of title, the Purchaser may not pledge the Retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment.

4.3 The Purchaser shall inform the Supplier forthwith of any seizure or other act of intervention by third parties.

4.4 Where the Purchaser fails to fulfil its duties, fails to make payment due, or otherwise violates its obligations the Supplier shall be entitled to rescind the contract and take back the Retained Goods in the case of continued failure following expiry of a reasonable remedy period set by the Supplier; the statutory provisions providing that a remedy period is not needed shall be unaffected. The Purchaser shall be obliged to return the Retained Goods. The fact that the Supplier takes back Retained Goods and/or exercises the retention of title, or has the Retained Goods seized, shall not be construed to constitute a rescission of the contract, unless the Supplier so expressly declares.

### **5. Delivery, delivery lead-times and late delivery**

5.1 The delivery lead-times for goods will be stipulated in writing in the order confirmation together with an indication of the planned delivery date. A specific delivery date is binding only if it is expressly confirmed as a fixed date in the order confirmation at the request of the customer. The lead-times begin to run on receipt of all the necessary documents, any required instalment payments and timely procurement of materials and/or tools needed to perform the order or effect the delivery. The delivery lead-time is deemed to have been respected when notification is given to the customer of readiness for dispatch. If an agreed fixed lead-time is exceeded, the supplier will not be deemed to be late until a special written warning has been issued by the customer; section 5.2 below is reserved. In the event of late performance, the customer is only entitled to withdraw from the agreement after setting an appropriate period of grace. Claims of the customer for compensation are excluded in every case.

5.2 In the event of unforeseen circumstances, such as force majeure and delays in the procurement of goods, materials and tools, the supplier is entitled to extend the delivery lead-times by the duration of the impact of such events; it is immaterial whether these events have occurred within or outside our own business. The customer cannot therefore make claims in respect of arrears or other claims for compensation. If the delivery lead-time is extended by more than six months, both the supplier and the customer may withdraw from the agreement.

5.3 If the customer is late in discharging his own obligations to the supplier in respect of current or previous deliveries, the obligation to deliver will rest, as will the binding nature of the delivery dates for all outstanding orders. The terms of delivery will be determined once again after receipt of payment. Any entitlement of the customer to compensation is excluded.

5.4 Orders on call/framework contracts are to be agreed specially. The supplier is at liberty to make the whole series available at once or only parts thereof. The delivery times will be guided by the agreements reached, points 5.1 to 5.3 being applicable. Requests for changes between the partdeliveries or for the adjustment of delivery cycles may have cost consequences.

5.5 Where part-deliveries in respect of call orders/framework contracts (see section 5.4) are not requested within the agreed time limit, the supplier will be entitled to present an invoice for the quantity which has not yet been procured and to require its acceptance within 14 days. If the originally ordered quantity is not called within the agreed time limit, the supplier is entitled to request a proportionate refund of rebates granted on a quantity-related basis. On the expiry of the acceptance period, the goods will be stored by the supplier for a maximum of 6 months for the account and at the risk of the customer. Thereafter the supplier reserves the right to dispose of the goods at the cost of the customer. In the case of standard products, any call order/framework contract which has not been taken in full by the customer may be terminated; in any such case, the supplier is entitled to request a subsequent refund of all rebates for quantity granted in advance.

5.6 Where "complete delivery" is not expressly agreed in writing, the supplier reserves the right to make part-deliveries. In that case, the transport and packaging costs for each part-delivery will be charged.

## **6. Consignment and transport risk/transfer of benefit and risk**

6.1 Save where otherwise expressly agreed in writing with the customer, the consignment route and type of consignment will be chosen at the supplier's own discretion. Transport and packaging costs will be charged at the actual cost incurred or as a flat-rate price.

6.2 The benefit and risk will be transferred to the customer as soon as the ordered goods leave the suppliers' works.

6.3 If acceptance or dispatch are delayed because of the conduct of the customer, the latter will bear the benefit and risk from the time of handover or readiness for dispatch.

## **7. Returns**

7.1 Where goods have been wrongly ordered or ordered in excess quantities, there is in principle no obligation to take them back. In exceptional cases, return of the goods may be agreed with the supplier, but in every case this requires his prior written authorisation.

7.2 If the supplier approves the return, he is entitled to charge compensation for additional work (charge for replacing storage) in the amount of CHF 30 / EUR 20.

7.3 The returned goods must be in perfect condition. The supplier organises return transport with his forwarding agent. The cost of return transport will be deducted from the credit note. A credit will only be granted for products; transport costs for dispatch to the customer which have already been billed will not be refunded.

7.4 Products specially procured or manufactured for the customer are excluded from any possible return.

## **8. Product modifications**

Modifications to the models, dimensions and design of standard products are reserved at all times.

## **9. Warranty/liability**

9.1 The supplier is liable pursuant to the following provisions for careful performance of the order, section 8 or the specifications expressly agreed in writing being the determining factors in respect of the quality and execution of the delivered goods.

9.2 All indications, designations, information, data, tables and drawings in the catalogue and in our web shop (including, in particular, those in the technical section), and in other notifications made by the supplier are based on information and documents of the manufacturers, raw material suppliers, business partners of the supplier or on his long years of experience. They are understood specifically as simple indications or recommendations (general description of performance) and are not to be interpreted as guaranteed characteristics or as an assurance of particular properties by the supplier. The corresponding information does not release the customer or user of the products procured from the supplier from the performance of his own appropriate tests for the particular intended use and compliance with the statutory requirements in the destination country. All liability is declined for statements made in documents and other communications.

9.3 If the customer wishes to have advice or suggestions for the choice of suitable materials or products, the supplier will provide the necessary services in good faith having regard to the current state of the art. However, the customer excludes all liability for such advisory services, subject to an express written assurance concerning the quality, material properties and/or suitability for the intended purpose. The customer must disclose the use of the products and materials concerned to the supplier and obtain a guarantee as to the potential uses and suitability of the proposed material. Where products are used for a purpose which is not appropriate having regard to the material properties, the customer alone will be liable. All claims for compensation against the supplier are excluded. This applies in particular also to products which are intended for medical purposes or for use with foodstuffs.

9.4 The chemical and mechanical strength of the material used is determined by the lists of strength factors and documents of the supplier's own sub-contractors. Such information is given for information only. The material properties may change under the specific conditions of use. The supplier declines all liability for any secondary damage resulting from the lack of chemical or mechanical resistance of the material used.

9.5 The customer undertakes to release the supplier from the claims of third parties and the resulting costs in any legal proceedings and to take part in such legal proceedings at the request of the supplier.

## **10. Liability for material defects**

10.1 The statutory warranty period will apply. Complaints must be notified to the supplier in writing within 8 days of receipt of the goods. Thereafter, the goods will be deemed to have been approved. This period for complaint may be extended if quality checks are made after prior written agreement.

10.2 Reworking of delivered workpieces without the consent of the supplier and inappropriate treatment or storage will cause all warranty claims against the supplier to lapse.

10.3 If the complaint proves to be founded, the supplier will provide a replacement free of charge by repair or new delivery, or else will credit the invoiced sum or the value shortfall. More far-reaching claims of the customer, in particular for loss of profit or any type of secondary damage, are excluded. The complaint is justified if the goods concerned are demonstrably found to be defective or unusable because of poor material or defective execution or if the specifically assured properties agreed in writing are clearly not satisfied. If the complaint proves to be unjustified, the supplier is entitled to charge the costs incurred to the customer.

10.4 Goods replaced, or for which a refund has been made, become the property of the supplier and are to be returned to him at his request at his own expense.

10.5 The supplier in principle has no liability for transport damage. Transport damage must be notified without delay to the carrier.

## **11. Place of performance / Place of jurisdiction / Applicable law**

The place of performance and the sole place of jurisdiction for all obligations arising out of the legal relationship between the customer and the supplier is the place where **DELCO CONTROLS AG** has its registered office: **Berikon / Aargau**. The legal relationship will be governed by **Swiss law** (to the exclusion of the Convention on the international purchase of goods (CISG)).

## **Additional provisions for specific countries**

### **12. Deliveries to Switzerland and Liechtenstein**

#### **12.1 Delivery**

The delivery of standard products from the catalogue and from our web shop is made from the Berikon works, without insurance and packaging, (EXW Berikon). For a net goods value of CHF 300 or more per order and destination, delivery of standard products will be made free destination (CPT place of delivery Switzerland), inclusive of packaging.

#### **12.2 Transport, packaging and processing**

In the case of orders for standard products from the catalogue and from our web shop with a net goods value of less than CHF 300, the supplier will invoice the following flat-rate charges for postage, freight, dispatch, packaging and processing costs:

- CHF 10 with standard shipping (delivery within 1-2 days)
- CHF 20 with express shipping (delivery next day before 10:00 clock)

#### **12.3 Supplement for small invoices**

If the net goods value of an order is less than CHF 50, a small invoice supplement of CHF 10 will be charged.

### **13. Deliveries to EU countries**

#### **13.1 Minimum order sum**

The minimum order sum is EUR 100; orders with a value of less than this will not be accepted.

#### **13.2 Delivery**

The delivery of standard products from the catalogue and from our web shop is made from the Berikon works, without insurance and packaging, (EXW Berikon), regardless of the order value. Postage, freight, dispatch, packaging and handling will be charged at the costs actually incurred. Also the costs of any insurance, taxes, levies, fees and duties.

#### **13.3 Payment terms**

Deliveries will be made against advance payment. If differing payment conditions are agreed, in the event of late payment warning charges of EUR 10 for each warning will be made and interest on arrears charged at the usual rate, even without prior warning, from the due date.

#### **13.4 Documents**

The cost of providing evidence of origin or legalisation of export documents will be billed separately. The customer must ascertain for himself whether the products comply with any statutory provisions for importing or use in the country of destination. The supplier cannot be held liable for this.

**14. Deliveries to non-EU countries (excluding Switzerland)**

The provisions for export deliveries to non-EU countries will be made by individual agreement.

**CH-8965 Berikon, December 2009**

**DELCO CONTROLS AG**

**[www.delcocontrols.com](http://www.delcocontrols.com)**