

1 Scope of Application, General

- 1.1 Any delivery of goods and provision of services (hereinafter collectively "Goods") by Dräger* to the Customer shall be subject to these General Terms and Conditions ("GTC") set forth herein. These GTC form a constituent part of all offers, orders and agreements between Dräger and the Customer.
- 1.2 Deviating terms and conditions - unless agreed to in writing - do not apply. Dräger and the Customer may agree to terms and conditions deviating from these GTC, such terms shall then have priority over these GTC. These GTC apply even if Dräger provides the Goods with knowledge but without actual acceptance of deviating terms and conditions of the Customer.
- 1.3 The Customer is responsible for any cooperative measures necessary for the agreed deliveries and services. In particular, the Customer provides to Dräger all information and documents in good time and obtains any necessary public permits.

2 Scope of Performance

- 2.1 Offers by Dräger shall always be non-binding. Orders shall be deemed accepted only if Dräger confirms same or carries out the order.

Offers and contracts that require an export license or approval by export control authorities (e.g. due to embargo) are subject to the condition precedent that such export license or approval is granted. The performance of a contract may be subject to the granting of export licenses by the competent export control authorities (Germany, USA, other countries).

- 2.2 The offer by Dräger shall govern the scope of performance. Statements as to weight and measurements in brochures and offers are according to best knowledge but are not guaranteed properties (*Beschaffheitsgarantie*). The right to reasonable performance and construction modifications is reserved. The functions of software shall be limited to the description in the performance specifications. To the extent reasonably acceptable to the Customer Dräger may use components that are as good as new or that have been rendered as good as new.
- 2.3 Technical norms serve as performance specification only, provided Dräger does not expressly provide a guarantee in the form of a full guarantee for compliance with such technical norm. Guarantees as to properties (*Beschaffheitsgarantie*) or shelf life (*Haltbarkeitsgarantie*) must be in writing.
- 2.4 Dräger shall retain, without limitation, any and all ownership rights, copyrights and industrial property rights in drawings, technical documents and other data, information and documentation in material or immaterial form, including in electronic form; these may not be disclosed to third parties without written consent.
- 2.5 In case of resale of Goods, the Customer is responsible to comply with all applicable export rules and regulations. The Customer shall defend and indemnify Dräger from all costs and claims based on the violation of export rules and regulations by the Customer.

3 Software

- 3.1 Should software be included in the scope of delivery, Dräger grants to the Customer subject to the following terms a non-exclusive and non-transferable right of use therein.
- 3.2 All rights in know-how and products that merit intellectual property right protection (e.g. inventions, copyrights) are retained by Dräger. Dräger may use know-how acquired in connection with the performance of its contractual obligations without limitation for its own commercial purposes.
- 3.3 If software is delivered as a component of a device or intended for a specific device (firmware), the Customer may use the firmware only with the specified equipment. Use of firmware together with other equipment shall require Dräger's express written consent, unless due to a defect in the Goods provided by Dräger the Customer temporarily uses the firmware with replacement equipment of the same type.

- 3.4 User documentation is provided in adequate form for the software's intended purpose. Any further documentation, in particular firmware documentation or documentation for maintenance purposes shall require an express written agreement.
- 3.5 Unless Dräger expressly grants the Customer a multiple licence, the Customer shall receive a single user licence in the software, i.e. the Customer may simultaneously use the software on only one end device. However, solely for backup purposes, the Customer may make one backup copy. In the event of a multiple licence, the Customer shall comply with the installation instructions furnished by Dräger and shall keep a record of the location of every installation. Such records shall be submitted to Dräger upon request.
- 3.6 Software shall be furnished exclusively in machine readable form as object code.
- 3.7 Except in the case of §69e of the German Copyright Act (*Urhebergesetz* – "*UrhG*"), the Customer may not modify, engage in reverse engineering, translate, extract or otherwise link the software to other programs. The Customer may not remove from the data carriers alphanumeric and other labels and manufacturer information - in particular, copyright notices - and shall transfer same without modification to any backup copy.
- 3.8 The Customer may not lease the software or grant sub-licences.
Software acquired in conjunction with a device may only be sold to third parties together with said device.
Software may be sold to third parties only if the Customer does not grant to the third-party rights to use the software exceeding the license granted to the Customer by Dräger.
In the event of resale, the Customer may not retain any copy of the software. Multiple licences may be resold only in their entirety.
- 3.9 If Dräger provides third party software, such as Open Source Software, i.e. software for which Dräger holds only a derivative licence, the terms and conditions of use agreed between Dräger and its licensor shall apply in addition and shall have priority. Dräger shall submit such terms and conditions of use to the Customer upon request. Should such terms and conditions of use be violated by the Customer, both Dräger and the licensor shall be entitled to assert any resultant claims and rights in their own name.
- 3.10 The Customer agrees to store the software and any documentation carefully in order to preclude any abuse.
- 3.11 The sale of software does not include an obligation by Dräger to provide software maintenance services. This shall require a separate agreement.

4 Prices, Payment Terms, Set-off, Right of Retention

- 4.1 Prices are FCA Dräger warehouse, Germany (Incoterms 2020), excluding valued added tax. Prices do not include packaging.
- 4.2 Invoices shall be payable upon receipt without any deductions in the agreed currency. Dräger accepts only payments by wire transfer from an account in the name of the Customer. The Customer shall bear any costs associated with payment.
- 4.3 Payments for Goods provided by Dräger outside of Germany must be made by an irrevocable and confirmed commercial letter of credit issued by a major bank situated in the European Union in favour of Dräger against submission of the shipping documents.
- 4.4 Cheques and other means of payment shall be accepted only based on a separate agreement and then only on account of performance. In the case of such means of payment, the day on which Dräger can dispose over the relevant amount shall be deemed the date of receipt of payment. The Customer shall bear any discount and collection charges.
- 4.5 Dräger reserves the right to demand a down payment or security equivalent to the invoice amount and to suspend the execution of its obligations, in case circumstances justify reasonable doubts to the Customer's willingness or ability to fulfil his payment obligations.

* In these GTC "Dräger" means the company of the Dräger Group entering into a contract with the Customer.

4.6 The Customer shall be entitled to withhold payment or offset counterclaims only to the extent such counterclaims are undisputed or confirmed in a final and binding judgment. Other rights of retention may be asserted only to the extent that they are based on the same contractual relationship. Rights of retention based on defects may be asserted subject to the requirements set forth above and only in a reasonable proportion to the defects that have occurred.

4.7 In the case of components that have been rendered as good as new, Dräger shall be subject to an additional replacement surcharge of 10% of the Goods' value pursuant to the German Value Added Tax Act (*Umsatzsteuergesetz – "UstG"*), provided that Dräger has done the rendering. The valued added tax may be charged to the Customer.

5 Shipping, Packaging, Passing of Risk

5.1 Deliveries within Germany are FCA Dräger warehouse, Germany (Incoterms 2020) excluding packaging.

5.2 The risk of accidental loss or deterioration shall pass to the Customer no later than upon shipping of the Goods, even if freight prepaid delivery is agreed, and even if partial deliveries are made or Dräger has agreed to provide other services, such as commissioning or installation.

Should shipment be impossible or delayed without any fault on the part of Dräger, risk shall pass to the Customer upon notification that the Goods are ready for shipment.

5.3 Should Dräger carry out commissioning or installation of the Goods being delivered within the framework of the supply agreement, risk shall pass to the Customer upon acceptance by the Customer.

Should acceptance not be effected within twelve (12) days following written notification of readiness for acceptance, risk shall pass to the Customer upon expiry of such period, unless Dräger is responsible for the non-acceptance. Should commissioning or installation be delayed, risk shall pass to the Customer no later than three months after shipment, unless Dräger is responsible for the delay.

5.4 Should software be furnished by way of electronic communications media (e.g. via the Internet), risk shall pass when the software leaves Dräger's control.

5.5 In case the Customer is responsible for the export of the Goods outside the EU: The Customer shall use solely the export declaration (the export accompanying document) prepared by Dräger and is obliged to present it together with the exported Goods to the EU-customs office at the point of exit from the EU.

The Customer shall submit proof of export by a valid export declaration confirmed by the EU exit customs office ("*Ausgangsvermerk*").

In the event the Customer fails to submit sufficient proof of export within 150 days from the date of the export declaration, Dräger is compelled to cancel the VAT-free invoice and to send to the Customer a new invoice for the delivered Goods including German VAT (currently 19%). The Customer shall then pay the invoiced price including VAT within 14 days from the receipt of the respective invoice.

6 Delivery and Delivery Time

6.1 Dräger may make partial deliveries, unless this would be unreasonable for the Customer.

6.2 Compliance with agreed deadlines for the provision of Goods shall require prior clarification of all commercial and technical questions between Dräger and the Customer and that the Customer has met any and all obligations incumbent upon it, e.g. provision of documents, other materials, permits or releases, or payment of a down payment. Should this not be the case, the delivery time shall be reasonably extended. This shall not apply if Dräger is responsible for the delay.

6.3 The delivery time shall be deemed complied with if Dräger has shipped the Goods prior to expiry of the delivery time or if notice of readiness for shipment has been given. In the event that formal acceptance is to take place, the acceptance date (except in the case of a legitimate refusal of acceptance), or, alternatively, notice of readiness of acceptance, shall govern.

6.4 The deadline for provision of Goods shall be reasonably extended for obstructions within the sphere of responsibility of the

Customer and in the event of Force Majeure, in particular, in the case of natural events, unforeseeable operational disruptions, measures within the context of industrial disputes, in particular, strike and lockout, and in the event of unforeseeable hindrances and incorrect or late self-delivery, provided Dräger is not responsible therefor. Should the relevant delivery or service become impossible or a hardship due to the aforementioned circumstances, Dräger may rescind the agreement fully or partially.

7 Retention of Title

7.1 Goods delivered or installed by Dräger ("Retained Goods") shall remain the property of Dräger until full payment of any and all receivables (including future receivables) under the business relationship with the Customer, whatever the legal basis therefor, even if payments are made on itemised receivables. In the event of a current account, the retained ownership shall be deemed security for Dräger's current receivables (*Saldoforderung*).

7.2 Any processing or reworking of the Retained Goods shall be effected for Dräger, which shall retain ownership in the products at any stage and level of processing. Such reworking or processing shall be effected free of charge and without any obligation on the part of Dräger.

Any processing, linking or combination by the Customer with other moveable objects not owned by Dräger shall give rise to co-ownership by Dräger in the new object in proportion to the invoice value of the Retained Goods to the other objects used by the Customer at the time of such processing, linking or combination. Moreover, the provisions concerning the Retained Goods shall apply *mutatis mutandis* to any new object created as a result of such processing, linking or combination.

Should the Retained Goods be linked with buildings or other components of real property belonging to the Customer, the Customer agrees to separate the Retained Goods in the event of any default in payment at Dräger's request, and to transfer ownership in such items back to Dräger. Such items shall then be deemed Retained Goods within the meaning of these GTC. Any rights of retention, in particular, based on reimbursement of outlays for maintenance or improvement of such items shall be excluded.

7.3 The Customer may resell Retained Goods during the ordinary course of business if it retains title in the Retained Goods in accordance with the provisions of this Section 7. The Customer hereby assigns to Dräger any and all receivables based on resale of the Retained Goods and under the retention of title agreed to by it to secure any and all receivables of Dräger (including future receivables) under the business relationship, irrespective of whether the Retained Goods are resold without or following processing and irrespective of whether they are sold to one or more purchasers. Dräger hereby accepts such assignment. Upon request by Dräger the Customer shall notify his customers about this assignment.

Until revocation by Dräger, the Customer is authorised to collect the assigned receivables. Dräger is entitled to revoke this direct debit authorisation if the Customer fails to meet his payment obligations towards Dräger. Upon revocation the Customer shall identify the receivables and the respective debtors and submit all information and documents required to collect the receivables and to inform the debtors about the assignment. Dräger is entitled to inform the debtors about the assignment itself.

7.4 The Customer may not make any dispositions over the Retained Goods, in particular, pledges or transfers by way of security, other than those specified in Sections 7.2 and 7.3.

7.5 In case of breach of contract by the Customer, in particular, in the event of a default in payment, Dräger may rescind the agreement upon due warning without remedy by the Customer and repossess the Retained Goods. The Customer shall be obliged to return the Retained Goods. Any application to commence insolvency proceedings over the Customer's assets shall entitle Dräger to demand the immediate return of the Retained Goods.

7.6 Levies of execution, attachments and other dispositions and interventions by third parties shall be notified by the Customer to Dräger without undue delay.

7.7 The Customer shall provide Dräger with extensive support in order to protect Dräger's ownership rights in the Retained Goods in accordance with the domestic legal system of the delivery location and destination.

8 Notice of Defects, Acceptance

8.1 The Customer shall inspect deliveries without undue delay following receipt in order to ascertain any quantitative errors and transport damage. In the event of transport damage, a damage record shall be prepared in order to secure any compensatory damage claims against the forwarder (post, rail, shipping agent, etc.). Such damage record shall be sent to Dräger without undue delay.

8.2 Defects can be asserted in writing only within ten days of receipt of the Goods, unless the relevant defect is latent. Latent defects and defective performance of other services shall be notified to Dräger in writing without undue delay following discovery thereof.

8.3 Should the Customer be prevented from taking acceptance due to Force Majeure circumstances (Section 6.4), the deadline for notice of defects according to Section 8.2 shall be reasonably extended.

8.4 If a formal acceptance is required or expressly agreed upon, Dräger shall notify the Customer in writing about readiness for acceptance. Should acceptance not take place within twelve (12) days following written notification of readiness for acceptance, the Goods shall be considered accepted by the Customer upon expiry of such period, unless Dräger is responsible for the non-acceptance. In this event, Dräger shall notify the Customer that the Goods are deemed accepted. The same shall apply to partial acceptance.

9 Liability for Defects

9.1 Should there be a defect in any Goods provided by Dräger and should notice thereof have been given in a timely manner within the meaning of Section 8.2 of the GTC, Dräger shall, at its choice, remedy the defects of charge or deliver defect-free replacement Goods ("Substitute Performance"), provided the defect was already present upon the passing of risk. In the event of a defect in software, Dräger may also provide a new software release in lieu of repair.

9.2 There shall be no defect if the Goods are suitable for normal use and manifest the quality that is normal for items of the same kind and that could be expected by the Customer. In particular, the Customer is aware that given the current state of the art technology it is not possible to create software that is fully free and clear of errors. The ability to use one-off products is limited to the first use. Moreover, there shall be no quality defect in erroneous assembly instructions if assembly has been carried out free and clear of any defects. Moreover, no quality defect shall lie in the event of inappropriate or improper use, incorrect storage, erroneous assembly or start-up by the Customer or third parties, natural wear and tear, erroneous or negligent handling, improper maintenance, use of inappropriate operating resources, defective construction work, or chemical, electrochemical or electrical influences for which Dräger is not responsible, software errors that cannot be reproduced and in the event of defects that do not arise in last software release furnished to the Customer by Dräger, provided the Customer can be reasonably expected to use the last software release. The delivery of a marginally different item or a marginally different number of items than agreed, shall not entitle the Customer to claim damages or rescind the agreement.

9.3 The Customer shall provide Dräger with the necessary time and opportunity to perform any and all remedial measures. In particular, upon request, the Customer shall send the delivered Goods to Dräger or a workshop to be specified by Dräger. Otherwise Dräger shall be discharged from liability for any consequences. Defects in delivered software shall be described in as much detail as possible. Only in urgent cases where safety is at risk or in order to prevent unreasonably large damage (in which case Dräger must be notified immediately) may the Customer remedy the defect itself or arrange for the defect to be remedied by a third party and demand that Dräger reimburse any necessary expenses.

9.4 Any claims on the part of the Customer based on the expenses required for substitute performance, in particular, transport,

travel, work and material costs shall be excluded, if such expenses occur because the Customer moved the delivered Goods to a different destination than the agreed delivery destination, unless the removal of the Goods conforms to the intended use of the Goods. Moreover, Dräger may refuse to render substitute performance if this would be associated with unreasonable costs.

9.5 Parts replaced by Dräger shall become the property of Dräger.

9.6 The Customer may rescind the agreement or demand a reduction of the price only if substitute performance is unsuccessful on two occasions or if Dräger fails to initiate remedial measures within a reasonable grace period set by the Customer. In case of insignificant defects, the Customer may not rescind the agreement. Section 11 of these GTC shall apply to compensatory damages claims.

9.7 Should the Customer or a third party perform improper repairs, Dräger shall not be liable for any resulting damages. The same shall apply to any modifications to the delivered Goods performed without Dräger's prior consent or to any software extension effected by the Customer or a third party over and above the interface provided by Dräger.

9.8 The Customer may not assert any claims for defect-related liability if it is aware of the defect upon execution of the agreement or is unaware thereof as a result of gross negligence, unless the defect was maliciously concealed by Dräger or Dräger provided a guarantee as to quality (*Beschaffheitsgarantie*) and said guarantee concerns the defect.

9.9 Notwithstanding Dräger's liability under Section 11 of these GTC, defect-related liability shall be excluded for used goods, that are not sold as good as new or that have been rendered as good as new.

9.10 Claims on the part of the Customer for defect-related liability pursuant to this Section 9 shall become time-barred twelve (12) months following delivery of the Goods in the event of a purchase and work performance contract or – if agreed – following start up of the delivered item or acceptance of performance.

The foregoing limitations period shall not apply for claims based on Section 11 and to Goods for buildings within the meaning of §§438 (1) No. 2 and 634a (1) No. 2 of the German Civil Code (*Bürgerliches Gesetzbuch - "BGB"*). In such cases, the statutory periods shall govern.

9.11 Any rights of recourse on the part of the Customer in the event of the purchase of consumer goods pursuant to §§478, 479 BGB shall remain unaffected, but shall vest only to the extent that the Customer has not entered into any agreements with its purchaser over and above the statutory defect-related warranty claims.

9.12 Notwithstanding Dräger's liability under Section 11 of these GTC, any additional claims or claims other than those governed by this Section 9 on the part of the Customer against Dräger or its vicarious agents based on defects shall be excluded.

10 Industrial Property Rights, Copyrights, Defects in Title

10.1 Dräger shall supply the Goods free and clear of intellectual property rights and third party copyrights ("Intellectual Property Rights") existing at the agreed destination of the Goods. Should a third party assert legitimate claims against the Customer based on the infringement of Intellectual Property Rights by the Goods delivered by Dräger and used in accordance with the agreement, Dräger shall be liable towards the Customer within the period specified in Section 9.10 of the GTC in accordance with the following provisions.

10.2 Dräger shall, at its choice and at its expense, either arrange a licence for the relevant Goods, modify them such that the relevant Intellectual Property Right is not infringed, or exchange them. Should Dräger be unable to do so at reasonable terms, the Customer shall have a right of rescission or right to reduce the contract price in accordance with Section 9.6 of the GTC. Section 11 of the GTC shall apply to compensate the damages claim. The foregoing obligations shall lie only if the Customer notifies Dräger in writing and without undue delay of the claims asserted by the third party, does not acknowledge any infringement to the third party, and Dräger retains a discretion in relation to any and all measures in mounting a defence and settlement negotiations. Should the Customer cease use of the service, it shall notify the third party that cessation of use does

not constitute an acknowledgement of any infringement of an Industrial Property Right.

- 10.3 Claims on the part of the Customer shall be excluded if the Customer is responsible for the infringement of an Intellectual Property Right or if the infringement of the Intellectual Property Right is caused by stipulations by the Customer, by an application not foreseeable by Dräger, by a modification by the Customer, or by use of the service in conjunction with products not delivered by Dräger.
- 10.4 Apart from the above Section 9 of the GTC shall apply, *mutatis mutandis*, to any legal defect in title. Compensatory damages claims on the part of the Customer shall be subject to Section 11 of these GTC.
- 10.5 Notwithstanding Dräger's liability under Section 11 of these GTC, any additional claims or claims other than those governed by this Section 10 on the part of the Customer against Dräger or its vicarious agents based on legal defect in title shall be excluded.

11 Liability

- 11.1 Dräger shall be liable to the Customer in accordance with the relevant statutory provisions in the event of wilful conduct, gross negligence on the part of governing bodies or executive employees, culpable injury to life, limb or health, defects maliciously concealed by Dräger or the absence of which was guaranteed by Dräger, as well as in the case of defects in delivered Goods to the extent that Dräger would be liable for personal and property damage for privately used items in accordance with the German Product Liability Act (*Produkthaftungsgesetz*).
- 11.2 In the event of a breach of material contractual obligations, Dräger shall also be liable in the event of gross negligence on the part of ordinary employees and for ordinary negligence. Liability for ordinary negligence shall be limited to foreseeable damage typical of this type of agreement.
- 11.3 The Customer shall take any and all necessary and reasonable steps in order to prevent or limit damage. In particular, the Customer shall ensure the regular backing up of programs and data. Therefore, Dräger shall be liable for the re-procurement of data subject to the requirements of Sections 11.1 and 11.2 only if the Customer has ensured that such data can be reconstructed from other data material at reasonable effort and expense.
- 11.4 Compensatory damages claims against Dräger or its vicarious agent other than those governed by this Section 11 – whatever the legal basis therefor – shall be excluded.

12 Compliance with Laws, Anti-Corruption

- 12.1 The Customer warrants that he is acting in accordance with applicable laws, including antitrust laws and regulations on corruption and money laundering and other criminal law provisions.
- 12.2 If there is reason to suspect that the Customer is in breach of above obligations, Dräger is entitled to terminate the agreement if it would be unreasonable to Dräger to continue the agreement.
- In the event of such termination,
- (i) Dräger is released from any obligation to execute the agreement,
- (ii) the Customer shall indemnify and keep harmless Dräger and its employees against any and all damages to the extent such damages are based on the Customer's violation of its obligations under this Section 12.

13 Safety Provisions

The Customer shall be responsible for compliance with applicable domestic statutes, regulations and safety provisions, in particular, in relation to admission, installation, operation, maintenance and repair of the delivered Goods and agrees to comply therewith. The Customer shall indemnify Dräger against any and all claims deriving from non-compliance with such provisions by the Customer.

14 Final Provisions

- 14.1 Should any provision of these GTC be or become invalid or inexecutable, the validity of the remaining provisions shall remain unaffected. The parties undertake to replace the invalid or inexecutable provision with a provision that comes as close as possible to the original provision's purpose.
- 14.2 The exclusive forum is Lübeck, Germany. Dräger may, at its discretion, also file suit at the competent court at the Customer's registered office.
- 14.3 This Agreement, its interpretation and execution shall be governed by German substantive law, to the exclusion of the United National Convention on International Sale of Goods (CISG) and the conflict of laws rules.

Lübeck, 2021