

## **Standard Terms and Conditions for Goods and Services of Dräger Sverige AB, Dräger Danmark A/S, Dräger Suomi Oy and Dräger Norge AS**

### **1 Scope of Application, General**

- 1.1 For all goods and services (with the exception of construction services) which are provided by Dräger Sverige AB, Dräger Danmark A/S, Dräger Suomi Oy or Dräger Norge AS respectively (hereinafter each individually referred to as "Dräger") to legal entities or persons who, upon conclusion of the agreement, are acting in a commercial capacity (hereinafter "customer"), shall be governed exclusively by these standard terms and conditions (hereinafter "Standard Terms and Conditions"). In no event shall the above mentioned entities have any joint liability towards each other. The customer enters into agreement only with the respective Dräger entity.
- 1.2 Where different terms and conditions are applicable according to one or several of the above mentioned Dräger entities, this is indicated in the Standard Terms and Conditions as follows, "SE" for goods and services provided by Dräger Sverige AB, "DK" for Dräger Danmark A/S, "FI" for Dräger Suomi Oy and "NO" for Dräger Norge AS.
- 1.3 Any deviations from these Standard Terms and Conditions shall require written confirmation by Dräger. Differing terms and conditions on the part of the customer shall not apply unless Dräger has agreed thereto in writing. These Standard Terms and Conditions shall also apply if Dräger provides the goods and/or services without reservation and knowledge of deviating terms and conditions of the customer.
- 1.4 Unless agreed otherwise, Dräger shall provide construction services in accordance with SE: *Allmänna bestämmelser för byggnads-, anläggnings- och installationsentreprenader AB04*, DK: *Almindelige betingelser for arbejder og leverancer i bygge og anlægsvikrsomhed AB92*, FI: *Rakennustuotteiden yleiset hankinta- ja toimitusehdot on RYHT 2000 RT*, and for NO: *Norsk Standards bygge- og anleggskontrakt NS 8405*. These shall however be supplemented in a subordinate manner by these Standard Terms and Conditions.

### **2 Scope of Performance**

- 2.1 Offers by Dräger, as well as data contained in marketing material, price lists and other product information, shall always be non-binding. Orders shall be deemed accepted only if Dräger confirms the same in writing or carries out the order.
- 2.2 The declarations made by both parties shall govern the scope of performance. Statements as to weight and measurements in prospectuses and offers shall be made according to the best of the relevant party's knowledge. Dräger reserves the right to reasonable deviations in performance and construction modifications. The functions of offered software programs and modules shall be limited to the description in the performance specifications. Moreover, Dräger reserves the right to use components that are as good as new or that have been rendered as good as new.

- 2.3 Any reference to technical norms shall constitute a performance specification only, provided Dräger does not expressly provide a guarantee in the form of a full guarantee for compliance with such technical norm. Should guarantees as to quality or shelf life in relation to the subject matter of the agreement be made upon conclusion thereof, these 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.

### **3 Software Use**

- 3.1 Unless agreed otherwise, if software is included in the scope of delivery, all rights in know-how and products that merit intellectual property right protection (e.g. inventions, copyrights) shall be retained by Dräger, notwithstanding the duty to furnish the software to the customer. Dräger may use the know-how acquired in connection with the performance of the agreement without limitation for its commercial activities.
- 3.2 Should software be included in the scope of delivery, Dräger shall grant the customer a non-exclusive right therein and, subject to Section 3.8, a non-transferable right of use.
- 3.3 Unless agreed otherwise, should software be delivered as a component of equipment or for specific equipment, the customer may use the software only with the specified hardware or the hardware delivered together with the software. Use of the software together with other equipment shall require Dräger's express written consent, unless the customer temporarily uses the software with replacement equipment of the same type due to a hardware defect.
- 3.4 Should software be delivered as a component of equipment, the provision of user documentation shall require express written agreement. The provision of maintenance and service documentation shall in any event require separate written agreement. Should documentation be provided, the term "software" within the meaning of the Standard Terms and Conditions shall also include such documentation.
- 3.5 Should Dräger not expressly grant the customer a multiple licence, the customer shall receive a single licence in the software, i.e. the customer may simultaneously use the software on only one piece of equipment or one workstation. However, the customer may make one copy solely for backup purposes. In the event of a multiple licence, the customer shall comply with the instructions on reproduction furnished by Dräger and shall keep a record of the location of any and all reproductions. Such records shall be submitted to Dräger upon request.
- 3.6 The software shall be furnished exclusively in machine readable form as the object code.

- 3.7 Except where binding legislation is applicable, 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 the same without modification to any backup copy.
- 3.8 A customer, to whom the software is not furnished for purposes of commercial resale, may pass on the licence in the software to third parties only in tandem with the equipment acquired by the customer together with the software from Dräger. In all other cases, the software may be passed onto third parties or licences awarded to third parties only with Dräger's prior written consent. In the event of transfer of a licence to a third party, the customer shall ensure that the third party is not granted any further licences in the software than those granted to the customer by Dräger, and that the relevant third party is subjected at least to the obligations in place in relation to the software in accordance with the agreements with 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. The customer may not grant sub-licences. In the event of resale, the customer shall be responsible for compliance with any export requirements and shall indemnify Dräger to this extent against any and all obligations.
- 3.9 Should the customer be furnished with third party software, i.e. software for which Dräger holds only a derivative licence, or open source software, the terms and conditions of use agreed between Dräger and its licensor or applicable to the open source software shall apply in addition and shall have priority over the provisions of this Section 3. 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 Dräger does not assume any obligation to provide software services. This shall require a separate agreement.

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

- 4.1 Unless agreed otherwise, the prices are ex works. The price does not include extra packaging (i.e. packaging needed for transport, which is in addition to the components' individual packaging) or delivery. If the parties have agreed that Dräger shall however arrange delivery, this shall instead be made according to DAP at the address of the customer (Incoterms 2010). The price shall then include extra packaging. Unloading is not included. Dräger is eligible to invoice the freight charges from customer unless otherwise agreed
- 4.2 Statutory valued added tax is not included.
- 4.3 Unless agreed otherwise, payment shall be made against invoice 20 days after the date of the invoice. The customer shall bear any costs associated with payment.

Payments shall be made in the currency that has been stated in the offer or the accepted order. Interest on overdue payments shall accrue with 10% per annum from the due date until full payment is made

- 4.4 Dräger reserves the right to demand a down payment or security equivalent to the invoice amount for the goods should circumstances that put the receivables at risk arise or be revealed following execution of the agreement or in case delivery of goods, material etc. and final conclusion of project is more than 14 days apart .
- 4.5 If the customer requests over night shipping or other, extra fast shipping or special delivery for ordered goods, Dräger reserves the right to charge the customer for extra delivery costs and packaging according to price list or individual offers.
- 4.6 The customer shall be entitled to withhold payment or set off against counterclaims only to the extent its 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.

## **5 Shipping, Packaging, Passing of Risk**

- 5.1 Unless agreed otherwise, Dräger shall deliver the goods according to what is stated in section 4.
- 5.2 Irrespective of how delivery is made, the risk of destruction or deterioration of the goods shall pass to the customer no later than upon shipping of the components to be delivered, even if freight prepaid delivery is agreed, and even if partial deliveries are made or Dräger has agreed to provide other services, e.g. delivery, assembly, installation and start-up.
- 5.3 Should shipment be impossible without any fault on part of Dräger, the risk shall pass to the customer upon notification that the goods are ready for shipment.
- 5.4 Should the software be furnished by way of electronic communications media (e.g. via the Internet), risk shall pass when the software leaves Dräger's control.

## **6 Delivery and Delivery Time**

- 6.1 Dräger may make partial deliveries, provided this may be reasonably expected by the customer.
- 6.2 Compliance with the deadline for the provision of goods and services shall require that all commercial and technical questions between Dräger and the customer have been clarified and the customer has met any and all obligations incumbent upon it, e.g. provision of the documents to be procured by it, 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 the subject matter of the delivery has left the works upon expiry of the delivery time or if notice has been given that it is ready for shipment. In the event that formal acceptance is to take place, the acceptance date (except in the case of a legitimate refusal to take acceptance), or, alternatively, notice of readiness to take acceptance, shall govern.
- 6.4 Compliance with the deadline shall not be prevented by any remaining minor adjustments or additions which do not affect the operation of the goods and services.
- 6.5 The deadline for provision of goods and services shall be reasonably extended in the event of *force majeure*, in particular, in the case of natural events, mechanical damage and other 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 due to the aforementioned circumstances, Dräger may rescind the agreement.

## **7 Retention of Title**

- 7.1 The works shall remain the property of Dräger until the works have been paid for in full, to the extent that such retention of title is valid.
- 7.2 The customer shall provide Dräger with extensive support in order to protect Dräger's ownership rights in the delivered goods in accordance with the domestic legal system of the delivery location and destination within the meaning of the foregoing agreement.

## **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 shipping company (post, rail, shipping agent, etc.). Dräger shall be notified of such damage record without undue delay.
- 8.2 Latent defects and defective performance of other services shall, following the legislations for each respective country (for SE: *Köplagen 1990:931*, for DK: *Købeloven, LBK 140 of 17/02/2014*, for FI: *Kauppalaki, 27.3.1987/355* and for NO: *Kjøpsloven, LOV-1988-05-13-27*) be notified to Dräger in writing without undue delay following discovery thereof.
- 8.3 Should the customer be prevented from taking acceptance due to circumstances specified in Section 6.5 of these Standard Terms and Conditions, the acceptance deadline shall be extended together with the deadline for notice of defects pursuant to the foregoing paragraph to a reasonable extent.
- 8.4 Should improvement, processing or conversion of goods be owed or formal acceptance expressly agreed, Dräger shall notify the customer in writing of completion and readiness for acceptance. Should acceptance be delayed for reasons for which Dräger is not responsible, performance shall be deemed rendered

14 days following written notice of readiness for acceptance. In this event, Dräger agrees to 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 or services provided by Dräger and should notice thereof have been given in a timely manner within the meaning of Section 8.2 of the Standard Terms and Conditions, Dräger shall, at its choice, render repairs free of charge or substitute delivery ("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 item is suitable for normal use and manifests 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 it is not possible given the current state of the art technology to create software that is fully free and clear of errors. The ability to use single-use 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. Should Dräger deliver an item that is slightly different or deliver a slightly different number of items than agreed in the agreement, this shall not constitute a quality defect. 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, electro-chemical 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 tolerate the last software release provided.
- 9.3 The customer shall provide Dräger – subject to agreement – with the necessary time and opportunity to perform any and all substitute performance measures that appear necessary to Dräger. In particular, upon request, it shall send the delivered goods to Dräger or a workshop to be specified by Dräger on a case-by-case basis. 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, provided these constitute an unreasonable burden to Dräger or the expense is increased because the delivered goods were taken to a location other than the agreed delivery destination. Moreover, Dräger may refuse to render substitute performance if this would be associated with unreasonable costs.
- 9.5 Any replaced parts shall become the property of Dräger.

- 9.6 The customer may rescind the agreement if substitute performance is unsuccessful on two occasions or if Dräger has, after a reasonable or agreed-upon grace period, not made a substitute performance.. Should the criteria for rescission have been met, but if the defect is only insignificant, the customer may only reduce the contract price. Otherwise the right to reduce the contract price shall be excluded. Section 11 of these Standard Terms and Conditions 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 resultant consequences. 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. Should any improper use, repairs or modifications be made during a warranty period, the warranty is automatically waived.
- 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, which guarantee concerns the defect.
- 9.9 Except for components that are as good as new or that have been rendered as good as new, defect-related liability shall be excluded for used delivery goods subject to Section 11.
- 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 delivery 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.
- 9.11 Any additional claims or claims other than those governed by this section or Section 11 on part of the customer against Dräger or its vicarious agents based on quality defects shall be excluded.

## **10 Industrial Property Rights and Copyrights, Legal Defects in Title**

- 10.1 Unless agreed otherwise, Dräger shall furnish the delivery only to the delivery location free and clear of intellectual property rights and third party copyrights ("Intellectual Property Rights"). Should a third party assert legitimate claims against the customer based on the infringement of Intellectual Property Rights by deliveries made by Dräger and used in accordance with the agreement, Dräger shall be liable towards the customer during the period specified in Section 9.10 of the Standard Terms and Conditions in accordance with the following provisions.
- 10.2 Dräger shall, at its choice and at its expense, either arrange a licence for the relevant services, 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 Standard Terms and Conditions. Section 12 of the Standard Terms and Conditions shall apply in relation to damages claims. The foregoing obligations shall apply 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 part of the customer shall be excluded if the customer is responsible for the infringement of an Intellectual Property Right and/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 Section 9 of the Standard Terms and Conditions shall apply *mutatis mutandis*, to any other legal defects in title. Compensatory damages claims on the part of the customer shall be based on Section 11 of these Standard Terms and Conditions.
- 10.5 Any claims on the part of the customer against Dräger or its vicarious agents over and above those governed by this Section 10 based on legal defects in title shall be excluded.

## **11 Processing of Personal Data**

To the extent that the agreement requires that Dräger processes personal data, Drägers Privacy Policy shall apply. Such Privacy Policy is available on Drägers website.

## **12 Liability**

- 12.1 Dräger shall be liable 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 liability lies for personal and property damage for privately used items in accordance with the respective national legislation (for SE: *Produktansvarslagen (1992:18)*, for DK: *Produktansvarsloven (LBK no. 261 of 20/03/2007)*, for FI: *Tuotevastuulaki (17.8..1990/694)* and for NO: *Produktansvarsloven (LOV-1988-12.23.104)*).
- 11.2 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 12.1 and 12.2 only if the customer has ensured that such data can be reconstructed from other data material at reasonable effort and expense.
- 12.3 Compensatory damages claims against Dräger or its vicarious agent other than those governed by this Section 12 – whatever the legal basis therefor – shall be excluded.



### **13 Safety Provisions and disposal of goods**

The customer shall be responsible for compliance with 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, as well as proper disposal of whole or parts of goods. The customer shall indemnify Dräger against any and all claims deriving from non-compliance with such provisions by the customer.

### **14 Forum and Applicable Law**

- 14.1 Forums are the following courts. In relation to disputes between the customer and Dräger Sverige AB: *Gothenburg*, in relation to disputes between the customer and Dräger Danmark A/S: *Copenhagen*, in relation to disputes between the customer and Dräger Suomi Oy: *Helsinki* and in relation to disputes between the customer and Dräger Norge AS: *Oslo*. Dräger may, at its discretion, also resort to the court of competent jurisdiction at the customer's registered office.
- 14.2 This Agreement shall be governed by the laws of each respective country. Application of the United National Convention on International Sale of Goods (CISG) shall be excluded.