



DEIF Electrical (Shanghai) Co., Ltd Terms and Conditions of Sale and Delivery for Products 丹控电气(上海)有限公司销售和交付产品的条款及条件

The present Terms and Conditions of Sale and Delivery shall apply to all orders placed with and all deliveries made by DEIF Electrical (Shanghai) Co., Ltd (hereafter referred to as "DEIF") unless otherwise agreed in writing. 以下销售和交货条款适用于与丹控电气(上海)有限公司(以下简称“DEIF”)所签订的所有订单以及DEIF 所作出的所有交货, 除非另有书面约定。

1. QUOTATIONS

All quotations are based on the sales prices, customs duty rates, exchange rates, taxes, etc. applicable on the date of the quotation. Notwithstanding the provision contained in item 2, DEIF reserves the right to adjust the final sales price in case of changes in the above-mentioned rates and taxes after the issue of the quotation.

1, 报价

所有报价均基于报价日的销售价格、关税税率、汇率、税率等作出。尽管有第 2 条中规定, 在报价发出后, 如果上述费率、利率或税率上涨, DEIF 保留调整最终销售价格的权利。

2. ORDERS

All orders are binding on the party placing the order, for which reason any changes to or cancellation of any order are subject to DEIF's prior written acceptance. Concurrently with the placing of an order, the customer is obliged to advise whether the customer himself will be responsible for collecting the order, cf. item 3.

2, 订单

所有订单对下单方具有约束力, 因此, 客户针对订单的任何变更或撤销必须取得 DEIF 的事先书面同意。下单的同时, 客户有义务告知 DEIF 客户是否负责收货, 参见第 3 条。

3. DELIVERY

The terms of delivery are stated in the sales contract issued by DEIF. If the customer has not informed DEIF of the collection of the product at the time of order placement at the latest, DEIF is entitled to arrange for the transportation of the product to the customer - at the customer's expense and at his risk.

3, 发货

交货条款以 DEIF 签发的销售合同为准。若客户, 最迟在客户下订单时, 未就收货方式告知 DEIF, 则 DEIF 有权安排发货, 由此产生的费用与风险由客户承担。

4. TIME OF DELIVERY

The time of delivery is stated in the sales contract issued by DEIF.

4, 交货时间

交货时间在 DEIF 签发的销售合同上注明。

5. RETENTION OF TITLE

DEIF shall retain the full title to the product delivered until the purchase sum, including any interest accrued, is paid in full, cf. below.

5, 货物所有权保留

在客户付清全部货款之前, 包括任何累积的利息, DEIF 保留已交付货物的所有权。

6. INTELLECTUAL PROPERTY RIGHTS AND DATA

Subject to the provisions set forth herein, the sale by DEIF of a product implies the non-exclusive and non-transferable license to customer under any of DEIF's intellectual property rights ("DEIF IPR")

(1) to use and resell products as sold by DEIF to customer, as well as

(2) to use and resell systems of products manufactured by or on behalf of customer that include one or more of such DEIF products.

To the extent that software and/or documentation is embedded or made available by DEIF for downloading into a product, the sale of such product shall not constitute the transfer of ownership rights or title to such software and/or documentation to customer, but, subject to the provisions set forth herein, shall only imply a non-exclusive license to customer under DEIF IPR to use such software and/or documentation in conjunction with and as embedded in the product. DEIF shall be entitled to collect and store any and all available data from the products. DEIF retains an unlimited, transferable, perpetual, and irrevocable license to use said data, including but not limited to product and business development, marketing, statistics and for maintenance of the products. DEIF may only publish said data in anonymised form.

6, 知识产权和数据

基于此处规定, 在遵守 DEIF 知识产权条件下, DEIF 的产品销售提供客户如下非独家、不可转让的许可:

(1) 使用和转售 DEIF 销售产品; 以及

(2) 当客户或者代表客户而生产的产品系统中包含一个或多个 DEIF 产品时, 客户可以使用和转售该产品系统。

若 DEIF 产品中包含或嵌入有相关软件和/或文档, 则产品的销售并不构成该软件和/或文档的所有权等转让给客户; 当然, 在客户遵守 DEIF 知识产权条件下, 客户被非独家地许可来使用产品包含的软件和/或文档。

DEIF 有权从产品中收集和存储任何所有可用数据, 并且 DEIF 有权无条件地、可转让地、永久和不可撤销地使用这些数据, 包括但不限于产品和业务发展、营销、统计和产品维护。DEIF 只能以匿名形式发布上述数据。

7. PAYMENT

The terms of payment are stated in the sales contract issued by DEIF. Unless otherwise agreed by DEIF in writing for any particular order, DEIF issues the invoice after dispatch of the goods from DEIF. In the event of a delay in payment, interest is payable at a rate of 0.05% per cent per day from the due date and until payment. The customer is in no event entitled to withhold payment without prior acceptance in writing from DEIF.

7, 付款

付款方式以 DEIF 签发的销售合同为准。DEIF 在发货后开出发票, 除非 DEIF 在某些订单中有其他特别书面说明。

如果发生迟延付款, 从付款到期日开始按照日利率 0.05% 支付违约利息, 直到所有款项付清为止。在任何情况下, 客户无权拖延付款, 除非取得 DEIF 的事先书面同意。

8. DELAY

In the event that delivery is delayed by more than two weeks, the customer is entitled to a penalty amounting to one per cent of the purchase sum exclusive of VAT per week for that part of the delivery which is delayed. In no event can this penalty exceed eight per cent of the purchase sum exclusive of VAT for the part of the delivery which is delayed. In the event of delays exceeding eight weeks, the customer is furthermore entitled to request in writing that the agreement be cancelled, unless delivery is effected within 14 days thereof.



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8, 延迟交货

当实际交货晚于预定交货期超过两周时, 客户有权就每延迟一周按迟交货物购买价格(不含增值税)的 1% 收取罚金; 任何情况下, 罚金不得超过迟交货物购买价格(不含增值税)的 8%。当迟交货物超过八周时, 除非在 14 天内完成交货, 否则客户有权书面要求取消合约。

9. DEFECTS AND NON-COMPLIANCE

DEIF is obliged and entitled to remedy any defects or non-compliance in accordance with the contents of the present provision. DEIF is liable for the defects or non-compliance which is attributable to DEIF, and which result from defects in design, materials, software or manufacture. DEIF is not liable for any defects or non-compliance whatsoever in materials supplied by the customer, in designs made by the customer nor in designs made by DEIF in accordance with customer specifications. DEIF is not liable for defects caused by inadequate maintenance, by the customer's use of the product sold in a way in which it was not intended to be used, by incorrect assembly or installation on the part of the customer, by changes carried out by the customer without DEIF's consent in writing, by repairs performed by the customer or by ordinary wear and tear. DEIF is not liable for any consequences of the customer's incorrect installation or use of product software updates made available to the customer. DEIF is in no event liable for any defects or non-compliance in any product sold more than two years after delivery. DEIF can be held liable for defects or non-compliance only if the defective or non-compliant products are returned to DEIF in suitable packaging and only to the extent that DEIF, at its sole discretion, confirms the existence of the alleged defects or non-compliance. In the event DEIF determines that the returned products are neither defective nor non-compliant, DEIF is entitled to charge the customer any costs which DEIF has incurred on account of the unfounded allegations of defects or non-compliance by the customer. The liability, if any, of DEIF for damages - whether arising from breach of the terms agreed for the supply of products, is limited to an amount not exceeding the purchase sum giving rise to the liability.

9, 缺陷及不符合标准

DEIF 既有义务也有权利按照现有规定补救任何缺陷或不符合标准的内容。

对可归因于 DEIF 的缺陷或不符合标准, 及源于设计、材料、软件或制造导致的缺陷或不符合标准, DEIF 应当承担责任。

对因客户提供的材料、设计方案或 DEIF 按客户要求提供的技术参数等说明而做出的设计方案导致的任何缺陷或不符合标准, DEIF 不承担任何责任。

对因客户不当维护、客户未按照既定目的使用产品、客户不恰当的装配、客户未经 DEIF 书面同意的变更、客户自行修理或日常磨损造成的任何产品问题, DEIF 不承担任何责任。

对于客户不正确的安装产品或不正确的对产品进行软件升级所造成的产品问题和后果, DEIF 不承担任何责任。

在任何情况下, 对交付超过两年的任何产品, 如发生任何缺陷或不符合标准的内容, DEIF 不承担任何责任。

只有当产品以 DEIF 认可的适当包装方式退回, 并且, 在完全自主决定情况下, DEIF 确认存在被指控

的缺陷或不符合标准, DEIF 方才承担相应责任。如果 DEIF 判定退回的产品既没有缺陷也没有不符合标准, DEIF 有权向客户收取由于客户无根据的缺陷或不符合标准指控造成的所有损失和费用。

如 DEIF 需要承担损害赔偿责任, 无论是否是因为 DEIF 违反了双方供货协议, 赔偿额限制在不得超过引起责任的采购总额。

10. COMPLAINTS

The customer shall submit any complaint in writing to DEIF and such complaint shall be submitted as soon as any defect or non-compliance has been observed or should have been observed, but in no event later than two years after the product has been delivered to the customer. In the event the time limit allowed for complaints passes, the customer's right to hold DEIF liable because of the defect or non-compliance observed shall lapse.

10, 投诉

在产品被交与客户 2 年内, 当缺陷或不符合标准被客户发现或应该被发现时, 客户应以书面形式将投诉尽快提交 DEIF。

如果投诉时间已经超过 DEIF 所允许的以上 2 年时效, 客户要求 DEIF 就缺陷或不符合标准承担责任的权力将丧失。

11. PRODUCT LIABILITY

DEIF is liable for personal injury only if such injury is attributable to products supplied by DEIF, and only if such injury is attributable to DEIF's negligence or negligence of persons for whom DEIF is liable.

DEIF is only liable for damage to property in accordance with the provisions contained in the laws and regulations of the People's Republic of China.

DEIF is not liable for damage or injury caused by products made by the customer or by products which include components made by the customer or in which products made by the customer have been incorporated, when such damage is attributable to the customer's products. If a third party, for example the customer's customer, seeks to hold DEIF liable for damage or injury, the customer is obliged to indemnify DEIF in connection with any costs incurred by DEIF as a result thereof, including any compensation payable, attorney's fees and costs, etc. The customer is, furthermore, in support of DEIF, obliged to enter into any court proceedings or arbitration case instituted against DEIF by the third party.

11, 产品责任

针对人身伤害事故, 只有被证明归咎于 DEIF 供应的产品, 且同时是因为 DEIF 疏忽或 DEIF 授权人员疏忽造成时, DEIF 方可承担责任。

DEIF 仅只按照中华人民共和国法律法规的规定对相应财产损失负责。

如果财产损失或人身伤害是由客户的产品导致, 或由包含客户生产的部件的产品导致, 或融合有客户生产产品的产品导致, 且该损失可归因于客户的产品时, DEIF 不承担任何责任。当涉及第三方, 比如客户的客户, 要求 DEIF 对相关财产损失或人身伤害承担责任时, 客户有义务, 就 DEIF 可能因此而遭受的任何损失和费用, 包括任何应付的赔偿和律师费等, 对 DEIF 进行赔偿。此外, 如发生第三方起诉 DEIF 或 对 DEIF 提起仲裁, 客户有义务参加相关法庭审理或仲裁程序, 并全面支持 DEIF。



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12. INDIRECT LOSSES

DEIF is in no event liable for the customer's operating loss, loss of earnings, installation costs, loss of profits, loss of or damage to data, or any other indirect loss, including any loss resulting from the customer's legal relationship with any third party.

12, 间接损失

在任何情况下, DEIF 对客户的所有经营亏损、收入损失、装置成本和投资、利润损失、数据损坏或丢失, 或其他任何间接损失, 包括由于客户与第三方法律关系而发生的任何损失, 不承担责任。

13. REMEDYING DEFECTS AND NON-COMPLIANCE

If a product is defective or in any other way non-compliant, cf. above, DEIF is entitled, at its own discretion, to remedy such defect or non-compliance by effecting repairs, a replacement delivery, or by refunding the purchase sum paid.

13, 缺陷或不符合标准的救济

当产品有缺陷或不符合标准(参见以上)时, DEIF 有权自行决定采取以下任何一种方式来救济该缺陷或不符合标准: 修理、置换、或退还客户已付采购款项。

14. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

DEIF, at its sole expense, shall:

(a) defend any legal proceeding brought by a third party against the customer to the extent that the proceeding includes a claim that any product supplied by DEIF hereunder directly infringes the claimant's patent, copyright, trademark, or trade secret; and (b) hold the customer harmless against damages and costs awarded by final judgment in such proceeding to the extent directly and solely attributable to such infringement. Notwithstanding the foregoing, DEIF is not liable for any patent infringement arising from compliance with the customer's design, specifications or instructions.

DEIF has no obligation or liability towards the customer

(1) if DEIF is not (i) promptly notified in writing of any such claim and (ii) given the sole right to control and direct the investigation, preparation, defence and settlement of such claim, including the selection of counsel and (iii) given full reasonable assistance and cooperation by the customer in such investigation, preparation, settlement and defence;

(2) if the claim is made after a period of three years from the date of delivery of the product.

If any product is or in DEIF's opinion is likely to become the subject of a claim of infringement as referred to above, DEIF has a right, but not an obligation at its sole option to: (i) procure for the customer the right to continue to use or sell the product or (ii) replace or modify the product in such a way as to make the modified product non-infringing or (iii) terminate any supply agreement to the extent it is related to such product. Subject to the exclusions and limitations set forth in item 11 above, the foregoing constitutes DEIF's entire liability and obligation towards the customer and the customer's sole remedy with respect to any actual or alleged infringement of any intellectual property rights of any kind.

14, 知识产权索赔

以下情况, DEIF 需自行承担费用负责:

a) 对第三方向客户提出请求就 DEIF 供货的产品直接侵犯到第三方专利、版权、商标或商业机密的索赔诉讼进行相关答辩;

b) 最大程度地使客户免受由此类侵权直接和单独引起的最终不利裁决所带来的损失及费用负担。

c) 尽管有上述规定, 对于为符合客户设计、规格或指令而引起的专利侵权, DEIF 不负责任。

以下情况之一, DEIF 没有义务和责任:

1) (i) DEIF 没有立即被书面告知此类索赔; (ii) DEIF 未被授予控制和主导相关调查、准备、答辩和调解的独占权, 包括相关顾问的选择; 或者, (iii) 在索赔的调查、准备、调解和答辩过程中未得到客户充分合理的协助和配合;

2) 交货超过三年后的索赔。

如果相关产品是被 DEIF 认为可能会成为如上提到的侵权索赔对象, DEIF 有权利, 但无义务, 自主决定以下行动之一: (i) 保持客户继续使用或销售产品的权利, (ii) 更换或更改产品以使产品不再侵权, (iii) 解除涉及侵权索赔产品的供货协议。根据上文第 11 条中所规定的例外和限制条件, 以上条款构成 DEIF 对客户以及客户就任何实际或涉嫌的知识产权侵权救济的全部责任和义务。

15. FORCE MAJEURE

DEIF is not liable for any non-performance of DEIF's obligations if such non-performance is attributable to circumstances which can be regarded as being beyond the control of the company, including but not limited to strike, fire, war, mobilisation, requisitions, sequestration, foreign exchange restrictions, uprising and unrest, shortage of transportation, general scarcity of goods, restrictions concerning energy or defects or delays in deliveries from suppliers which are attributable to similar circumstances as the ones listed in this provision.

15, 不可抗力

如果 DEIF 因为公司不可控制的情势而无法履行义务, 包括但不限于罢工、火灾、战争、动员、征用、扣押、查封、外汇管制、起义和动乱、运力短缺、物资普遍短缺、能源限制, 或者源于分包供应商因以上类似原因引起的履行瑕疵或延迟交付, 则 DEIF 不承担责任。

16. EXPORT CONTROLS

The products may be subject to export controls, and the delivery is therefore subject to the granting of the export authorisation required.

16, 出口限制

产品可能受到出口限制, 因此交货须给予所需的出口授权。

17. DISPUTES

Any dispute in connection with the trading relation between the parties which cannot be settled amicably, shall be finally ruled by the court in the place where DEIF has its domicile in the People's Republic of China. Chinese law shall apply.

17, 争议

和双方之间贸易关系有关的任何纠纷, 双方友好协商; 若协商不成, 则纠纷提交 DEIF 住所地人民法院并由其管辖, 并且适用中华人民共和国法律。

18. LANGUAGE

The Chinese version of these Terms and Conditions of Sale and Delivery shall prevail in case of any discrepancy between the English and the Chinese versions.

18, 语言

本销售和交货条款用英文和中文书写, 如有任何不一致情形, 则中文部分具有最终法律