

## **General Terms & Conditions for Düvelsdorf Handelsgesellschaft mbH, Ottersberg, for contracts concluded with companies**

### **Section 1 Scope**

- I. These General Terms and Conditions of Delivery shall serve as the exclusive basis for all deliveries, services and offers made or provided by the Seller. They shall form an integral part of all contracts that the Seller concludes with their contractual partners (hereinafter also referred to as the Client) regarding the deliveries and services they offer. They shall also apply to all future deliveries, services or offers provided or made to the Client, even if they are not the subject of another separate agreement.
- II. Any terms and conditions of the Client or third parties shall not apply, even if the Seller does not separately object to the validity thereof in the individual case. Even if the Seller refers to correspondence that contains or refers to terms and conditions of the Client or a third party, this does not mean that the Seller has agreed that such terms and conditions apply.

### **Section 2 Offers and Contract Conclusion**

- I. All offers made by the Seller are subject to confirmation and non-binding, unless they are expressly marked as binding or contain a specific acceptance period. The Seller can accept orders and jobs within 14 days of receipt.
- II. The legal relationship between the Seller and Client shall be solely governed by the written purchase agreement, including these General Terms and Conditions of Delivery. This shall reproduce in full all agreements made between the contractual partners regarding the subject matter of the contract. Any verbal promises the Seller makes prior to the conclusion of this contract are legally non-binding and any oral agreements reached between the contractual partners shall be replaced by the written contract, unless expressly stated therein that they shall continue to be binding.
- III. Any additions and amendments to the agreement reached, including these General Terms and Conditions, must be made in writing in order to be valid. With the exception of Managing Directors or Authorised Representatives, the Seller's employees are not entitled to make any verbal agreements that deviate herefrom.
- IV. Information provided by the Seller on the subject matter of the delivery or service (e.g. weights, dimensions, utility values, capacities, tolerances and technical data), as well as the Seller's presentations (e.g. in drawings and illustrations), should only serve as approximations, unless their usability for the purpose specified in the contract requires exact conformity. They are not guaranteed characteristics, but descriptions or indications of the delivery or service. Customary deviations, those that occur due to legal regulations or those that constitute technical improvements, as well as the act of replacing components with equivalent parts, are permissible, provided that they do not impair usability for the purpose specified in the contract.

### **Section 3 Prices and Payment**

- I. The prices are applicable for the goods and services specified in the order confirmation. Any additional or special services will be charged separately. The prices are indicated in EUROS ex works, plus packaging, statutory value added tax, customs duties for export deliveries, as well as any fees and other official charges.

- II. Insofar as the prices agreed upon are based on the Seller's catalogue prices and delivery is not to take place until more than four months after the contract has been concluded, the Seller's catalogue prices valid at the time of delivery shall apply (less a percentage or fixed discount agreed upon in the specific individual case).
- III. Invoice amounts are to be paid within 21 days without any deduction, unless otherwise agreed upon in writing. The date of payment is determined by when the Seller receives the payment. If the Client fails to pay by the due date, interest shall be payable on the outstanding amounts at a rate of 5% p.a. from the due date; the possibility of applying higher interest rates and other damages in the event of delay remains unaffected.
- IV. Offsetting against any Client counterclaims or withholding payments on account of such claims shall only be permissible if the counterclaims are undisputed or have been established as final and legally binding.
- V. The Seller shall be entitled to only execute or render outstanding deliveries or services against the provision of advance payment or security if, after the contract has been concluded, they become aware of circumstances which are likely to significantly reduce the Client's solvency, or which compromise the Client's ability to pay the outstanding amounts owed to the Seller due to the respective contractual relationship (including other individual orders to which the same general agreement applies).

#### **Section 4 Delivery and delivery time**

- I. Deliveries are generally made from the Seller's registered office .
- II. Deadlines and dates for deliveries and services that the Seller plans in are only approximate, unless a fixed deadline or date has been expressly promised or agreed upon. If shipment has been agreed upon, delivery periods and dates refer to the time of handover to the freight forwarder, carrier or other third party commissioned with transport.
- III. Without prejudice to their rights under the contract concluded with the Client, the Seller may demand that periods for delivery or performance be extended or delivery or performance deadlines be postponed by the same amount of time for which the Client fails to fulfil their contractual obligations towards the Seller.
- IV. The Seller shall not be liable for delivery being impossible or delayed, insofar as this is caused by force majeure or other events not foreseeable at the time the contract was concluded (e.g. operational disruptions of any kind, difficulties in the procurement of materials or energy, transport delays, strikes, lawful lockouts, lack of labour, energy or raw materials, difficulties in obtaining necessary official approvals, official measures or the lack of, incorrect or untimely delivery from upstream suppliers), for which the Seller is not responsible. If such events make delivery or service provision significantly more difficult or impossible for the Seller and the disruption is not only temporary, the Seller shall be entitled to withdraw from the contract. In the event of obstacles that are temporary in duration, periods for delivery and performance shall be extended or deadlines for delivery and performance shall be postponed by the period of the disruption, plus a reasonable period allowing for business to start up again.

- V. If, as a result of the delay, the Client cannot be reasonably expected to accept the delivery or service, they may withdraw from the contract by means of sending an immediate written declaration to the Seller.
- VI. The Seller shall only be entitled to make partial deliveries if the Client can make use of the partial delivery within the framework of the contractual purpose, the remaining goods ordered are guaranteed to be delivered and the Client does not incur any additional costs or have to put in any significant additional effort (unless the Seller agrees to assume these costs). If the Seller is in default with a delivery or service or if a delivery or service becomes impossible for them to make or provide for any reason, the Seller's liability shall be limited to damages according to Section 8 of these General Terms and Conditions of Delivery.

#### **Section 5 Place of Performance, Shipping, Packaging, Transfer of Risk, Acceptance**

- I. The place of performance for all obligations arising from the contractual relationship is Ottersberg, unless otherwise specified.
- II. The shipping method and packaging are at the discretion of the Seller.
- III. Risk shall be transferred to the Client at the latest when the delivery item is handed over to the freight forwarder, carrier or other third party designated to carry out the shipment (whereby the start of the loading process is decisive). This also applies if partial deliveries are made or the Seller has taken on other services (shipping or installation, etc.). If shipment or handover is delayed as a result of a circumstance caused by the Client, the risk shall pass to the Client from the day on which the delivery item is ready for shipment and the Seller has notified the Client in this regard.
- IV. The Client shall bear storage costs after risk has been transferred.
- V. The Seller shall only insure the shipment against theft, breakage, transport, fire and water damage or other insurable risks at the express request of the Client and at their expense.

#### **Section 6 Warranty, Material Defects**

- I. The warranty period lasts one year from delivery, 6 months for electronic parts.
- II. Since the sales taking place between the Seller and Client are a commercial transaction in accordance with Section 377 of the German Commercial Code (HGB), the items delivered must be carefully inspected immediately after being delivered to the Client or third party designated thereby in accordance with this provision. The items shall be deemed approved if the Seller has not received a written notice of defects with regard to the obvious or other defects recognisable during an immediate, careful examination within 7 days after the item has been delivered, or otherwise within 7 working days after the defect has been discovered or at any earlier point in time as soon as the Client was able to detect the defect when using the item as normal without further examination, as described in Section 2. At the request of the Seller, the disputed delivery item must be returned to the Seller with carriage prepaid. In the event that notices of defects are justified, the Seller shall reimburse the costs of the cheapest shipping route; this shall not apply if costs have increased because the item was located in a place other than the place of intended use.

- III. In the event that the items delivered have material defects, the Seller shall be initially obliged and entitled to repair or replace the goods, a choice the Seller should make within a reasonable period of time. In the event of failure, i.e. repair or replacement is impossible, unreasonable, refused or subject to an unreasonable delay, the Client may withdraw from the contract or appropriately reduce the purchase price.
- IV. If a defect is the fault of the Seller, the Client may claim damages under the conditions specified in Section 8.
- V. In the event of defects in components from other manufacturers which the Seller cannot remedy for licensing or factual reasons, the Seller shall, at their discretion, assert their warranty claims against the manufacturer and supplier on behalf of the Client or assign them to the Client. In the case of such defects, warranty claims against the Seller shall only exist under other conditions and in accordance with these General Terms and Conditions of Delivery if legally enforcing the above-mentioned claims against the manufacturer or supplier was unsuccessful or futile, due to insolvency for example. The limitation period for the Client's relevant warranty claims against the Seller shall be suspended for the duration of the legal dispute.
- VI. The warranty shall cease to be valid if the Client modifies the delivery item without the Seller's consent, or has it modified by a third party, and remedying the defect is made impossible or unreasonably difficult as a result. In any case, the Client shall bear the costs incurred by the modification or corrective action.
- VII. Where used items are delivered, as agreed upon with the Client in individual cases, there shall be no warranty provided for material defects.

### **Section 7 Property Rights**

- I. In accordance with this Section 7, the Seller shall ensure that the delivery item is not covered by industrial property rights or copyrights of third parties. Each contractual partner shall immediately notify the other contractual partner in writing if claims are made against them for the infringement of such rights.
- II. In the event that the delivery item infringes an industrial property right or copyright of a third party, the Seller shall, at their discretion and own expense, modify or replace the delivery item in such a way that no third party rights are infringed, but the delivery item continues to perform the functions contractually agreed upon, or provide the Client with the rights of use by concluding a license agreement. If they do not succeed in doing so within a reasonable period of time, the Client shall be entitled to withdraw from the contract or to appropriately reduce the purchase price. Any claims for damages made by the Client shall be subject to the restrictions laid down in Section 8 of these General Terms and Conditions.
- III. In the event that products from other manufacturers but supplied by the Seller violate rights, the Seller shall, at their discretion, assert their claims against the manufacturer and upstream suppliers on behalf of the Client or assign them to the Client. In these cases, claims against the Seller shall only exist in accordance with this Section 7 if legally enforcing the above-mentioned claims against the manufacturers or upstream suppliers was unsuccessful or futile due to insolvency, for example.

### **Section 8 Liability for Damages Due to Debt**

- I. The Seller's liability for damages, regardless of the legal grounds, as a result of impossibility, delay, defective or incorrect delivery, breach of contractual obligations in contractual negotiations and tort, shall be limited in accordance with this Section 7, insofar as fault is relevant in each case.
- II. The Seller shall not be liable in the event of simple negligence on the part of their bodies, legal representatives, employees or other vicarious agents, unless essential contractual obligations have been violated.
- III. Insofar as the Seller is liable for damages pursuant to Section 8 (2), this liability shall be limited to damages that the Seller foresaw as a possible consequence of the contract being breached at the time the contract was concluded, or that they should have foreseen if they had exercised due diligence. In addition, indirect or consequential damages resulting from defects in the delivery item are only eligible for compensation to the extent that such damage is typically to be expected when the delivery item is used as intended.
- IV. In the event of liability for simple negligence, the Seller's obligation to compensate for material damage and the resulting further financial losses shall be limited to an amount of €10,000.00 per claim, even if essential contractual obligations have been breached.
- V. The above limitations and exclusions of liability shall apply to the same extent in favour of the Seller's bodies, legal representatives, employees or other vicarious agents.
- VI. Insofar as the Seller provides technical information or acts as an advisor and such information and advice do not form part of the scope of services contractually agreed upon and owed, this shall be done free of charge and excludes any liability.
- VII. The limitations specified in this Section 8 do not apply to the Seller's liability for wilful conduct, guaranteed characteristics, loss of life, bodily injury and damage to health or under the Product Liability Act.

### **Section 9 Comprehensive Retention of Title**

- I. The conditions governing the retention of title agreed upon below are intended to secure all of the Seller's existing current or future claims against the Client arising from the supply relationships between the contractual parties, including any outstanding balances arising from a current account agreement limited to this supply relationship.
- II. The goods the Seller delivers to the Client shall remain the property of the Seller until all secured payables have been paid in full. The goods, as well as the goods serving this purpose under this clause and covered by the conditions governing the retention of title, are hereinafter referred to as goods subject to retention of title.
- III. The Client shall keep the goods subject to retention of title safe for the Seller free of charge.
- IV. The Seller shall be entitled to work on or sell the goods subject to retention of title over the ordinary course of business until enforced recovery can take place (cf. Section 9). Pledges or transfers of title by way of security are therefore inadmissible.

- V. In the event that the goods subject to retention of title are resold, the Client shall hereby assign the resulting receivable from the buyer to the Seller as security. The same shall apply to other receivables that take the place of the goods subject to retention of title or that otherwise arise in relation to these goods, such as insurance claims or claims from tort in the event of loss or destruction. The Seller hereby authorises the buyer to collect receivables assigned to the Seller in their own name, but may revoke such authorisation. The Seller may only revoke this collection authorisation if enforced recovery occurs.
- VI. If third parties access the goods subject to retention of title, especially through attachment, the Client shall immediately inform them that they are the Seller's property, and inform the Seller of this event in order to enable them to enforce their ownership rights.
- VII. The Seller shall release the goods subject to retention of title as well as the items or payables in their place, upon request and at their discretion, provided that their value exceeds the amount of the secured payable by more than 50%.

### **Section 10 Final Provisions**

- I. The place of jurisdiction for any disputes arising from the business relationship between the Seller and Client is Verden Regional Court.
- II. The relationship between the Seller and Client shall be exclusively governed by the law of the Federal Republic of Germany.
- III. Where the agreement under these General Terms and Conditions of Delivery contains loopholes, in order to fill these loopholes, the legally effective provisions which the contractual parties would have agreed upon in line with the economic objectives of the Contract and the purpose of these General Terms and Conditions of Delivery if they had recognised the loophole, shall be deemed to have been agreed upon.

#### **Please note:**

The Client acknowledges that the Seller shall store data resulting from the contractual relationship in accordance with Section 28 of the Federal Data Protection Act for the purpose of data processing, and reserves the right to transfer the data to third parties (e.g. insurance companies) where this is necessary to execute the contract.