

General Terms and Conditions of Sale and Delivery - DI DEKODUR Int. GmbH & Co. KG, Hirschhorn

Scope of Application

The following provisions shall exclusively apply to merchants, provided that the contract forms part of the running of their commercial enterprise, as well as to legal persons, whether governed by public or private law or a special fund under public law.

I. Application

- Orders shall become binding only after confirmation by the supplier. Alterations or additions shall be made in writing. All offers shall be subject to alteration unless specified as binding.
- In case of ongoing business relationships, these terms shall also apply to future contracts, even if no express reference is made to them, provided that they had been made available to the purchaser with a previous order confirmed by the supplier.
- The purchaser's terms and conditions shall not be applicable unless expressly accepted by the supplier.
- If individual conditions are or become ineffective, this shall not affect the validity of the remaining conditions.

II. Prices

- All prices shall be ex-works and exclusive of transportation charges, customs duties, additional import duties, packaging and the statutory VAT (value added tax).
- In the event that the main costs quoted change radically from the time of the quotation or confirmation thereof until the delivery date, the supplier and the purchaser shall reach a mutual agreement on an adjustment of the prices.
- If the agreed price depends on the weight of the individual parts, the end price shall be regulated by the weight of the outturn samples approved.
- In case of new orders (follow-up orders), the supplier shall not be bound to any previous prices.

III. Obligation to Deliver and Purchase Commitment

- The delivery deadlines shall start at the time of receipt of all documents required for carrying out the order and the down payment as well as on the date of timely material ordering, provided that this was agreed upon. With the notice of readiness for delivery, the delivery deadline shall be deemed to be complied with when the dispatch is delayed or not possible due to causes beyond the influence of the supplier.
- If a delivery deadline agreed upon is not complied with due to the fault of the supplier, the purchaser shall, after a reasonable grace period, be entitled to demand compensation for delay or to withdraw from the contract. This shall only apply if gross negligence or intent on the part of the purchaser can be excluded, and provided that the purchaser had notified the rejection of the order in writing when the grace period was agreed upon. The compensation for delay shall be limited to 5% of that part of the order that was not delivered in line with the contractual agreements.
- Appropriate partial deliveries, as well as reasonable deviations from the ordered quantities by plus/minus 10% shall be permissible.
- In case of call orders without agreements on term, manufacturing sizes and acceptance dates, the supplier shall be entitled to request a binding determination with regard thereto at the latest three months following the order confirmation. Failure of the purchaser to do so within three weeks shall entitle the supplier to determine a two-week grace period upon the expiry of which the supplier shall be entitled to withdraw from the order and to demand compensation for damage.
- If the purchaser fails to comply with the purchase commitment, the supplier shall, without prejudice to any rights, not be bound to the provisions on the self-help sale, but rather be entitled to sell the delivery item by private contract with prior notification of the purchaser.
- The supplier's acceptance of the returned delivery items as a gesture of goodwill implies the perfect condition, original packaging and freight-paid delivery on a mutually agreed date. The supplier shall be entitled to charge an appropriate amount for the costs incurred due to the acceptance of the returned goods.
- Events of force majeure shall entitle the supplier to postpone the delivery date by the duration of the impediment and a reasonable start-up period or, due to the part that has not yet been fulfilled, to withdraw from the contract in whole or in part. Events of force majeure shall include strike, lockout or unforeseeable circumstances such as disruption making it impossible for the supplier to comply with the agreed deadline despite reasonable efforts. The supplier shall provide a corresponding prove. The same shall also apply when the above-mentioned impediments occur during a delay or at the premises of a subcontractor. The purchaser may request the supplier to declare, within a period of two weeks, whether the supplier wishes to withdraw from the contract or to deliver within a reasonable grace period. Failure of the supplier to do so shall entitle the purchaser to withdraw from that part of the contract that has not yet been fulfilled. If an event of force majeure as described above occurs, the supplier shall immediately inform the purchaser. Adverse effects on the purchaser shall be minimised as far as possible, where appropriate, by handing over the moulds for the duration of the impediment.

IV. Packaging, Dispatch, Transfer of Risk

- Unless otherwise agreed, it is at the supplier's discretion to select the type of packaging, mode of transport and dispatch route.
- Even in case of freight-paid delivery, the risk shall be transferred to the purchaser as soon as the goods leave the supplier's works. In case of delays or dispatch attributable to the purchaser, the risk shall be transferred to the purchaser as early as with the notice of readiness for delivery.
- Upon written request of the purchaser, the goods will be insured against the risks specified by them as well as at their own expense.

V. Reservation of Title

- The products shall remain the property of the supplier until all claims of the supplier against the purchaser have been met, which shall also apply when the purchase price for specifically designated charges has been paid. In case of outstanding invoices, the reserved-title deliveries (goods subject to retention of title) shall be considered a security for the supplier for the balance due. If the payment of the purchase price involves a liability by bill of exchange for the supplier, the reservation of title shall not expire until the bill of exchange has been honoured by the purchaser as the drawee.
- Any processing or treatment on the part of the purchaser shall occur to the exclusion of the acquisition of ownership according to § 950 BGB (German Civil Code) on behalf of the supplier, who shall, according to the ratio of the net invoice value of their goods to the net invoice value of the goods to be processed or treated, be co-proprietor of the so developed products, which shall serve as goods subject to retention of title in order to secure the supplier's claims according to section 1.
- If the purchaser processes (compounds/blends) the products with other goods not belonging to the supplier, the provisions according to § 947,948 BGB shall apply with the consequence that the supplier's co-ownership share in the new products shall now be considered goods subject to retention of title according to these provisions.
- The purchaser may only resell the goods subject to retention of title in the normal course of business and under the condition that an agreement on the retention of title according to sections 1 to 3 is made with their customers. The purchaser shall not be entitled to any other disposal of the goods subject to retention of title, which shall particularly apply to pledging and security transfer.
- In the event of resale, the purchaser shall as early as now and until all claims of the supplier have been fulfilled, assign to the supplier any receivables and other justified claims against their customers resulting from the resale, including all ancillary rights. Upon request of the supplier, the purchaser shall be obliged to immediately disclose to the supplier any information and documents required to assert the supplier's rights against the purchaser's customers.
- If the purchaser resells the goods subject to retention of title after processing according to section 2 and/or 3 along with other goods not belonging to the supplier, the assignment of the purchase price claim according to section 5 shall apply exclusively to the amount of the invoice value of the supplier's goods subject to retention of title.
- The supplier shall authorise the customer, subject to revocation, to collect any outstanding debts according to sections 4 and 5. The supplier shall not enforce their own right to collect debts as long as the purchaser complies with their payment obligations, also with those towards third parties. At the supplier's request, the purchaser shall be obliged to name the debtors of the claims assigned and to inform these about the assignment. The debtors may also be informed about the assignment by the supplier themselves.
- The suspension of payments as well as the application or initiation of insolvency proceedings or judicial or extrajudicial settlement proceedings shall void the right to use or install the goods subject to retention of title and the authorisation to collect the debts assigned. This authorisation shall also lapse in case of protests of a cheque or bill.
- If the value of the supplier's securities exceeds their total claim by more than 10%, the supplier shall be obliged, upon request of the purchaser, to release the securities in the corresponding value at the supplier's option.
- Any third-party seizure or confiscation of the goods subject to retention of title must be reported to the supplier immediately. The resulting intervention costs shall be borne by the purchaser provided that they are not paid by third parties.
- If the supplier exercises their right to retain the title in line with the above-mentioned provisions by taking back the goods subject to retention of title, the supplier shall be entitled to sell these goods or put them up for auction by private contract. The goods subject to retention of title shall be taken back at the sales revenue achieved, whilst the delivery prices agreed shall not be exceeded. Any further claims for damages, and particularly those relating to lost profits, shall remain reserved.

VI. Assurance and Liability for Defects

- Decisive for the quality and design of the products are the outturn samples. If requested by the purchaser, the supplier shall submit these to the purchaser for inspection. The assurance of certain properties of the delivery item and the mould specifications must be made in writing with the order confirmation. The reference to technical standards serves to describe the service. The assurance shall not include the risk relating to consequential damages, provided that intention or gross negligence on the part of the supplier and the supplier's executives or subcontractors can be excluded.
- If the supplier advised the purchaser beyond the contractual service, the supplier shall only be liable for the functionality and suitability of the delivery item in case of express assurance. The state of the art at the time of the order acceptance shall be decisive.
- Notifications of defects shall be asserted in writing immediately. Hidden defects shall be notified immediately upon discovery. Unless otherwise agreed, both types of claim shall lapse twelve months following the transfer of risk. Where German law mandatorily prescribes longer terms according to § 438 section 1 no. 2 BGB, § 479 section 1 BGB and § 634a section 1 no. 2 BGB, these shall apply respectively.
- In case of a justified notification of defect – whereas the outturn samples approved by the purchaser in writing shall determine the quality and design to be expected – the supplier shall be obliged to supplementary performance. Failure of the supplier to meet this obligation within a reasonable period of time or to rectify the defect despite a repeated attempt, the purchaser shall be entitled to reduce the purchase price or to withdraw from the contract. Further claims, in particular those related to reimbursement of expenses or claims for damages due to damages caused by defects or consequential damages, shall only apply within the framework of the provisions according to section VII. Fitting and removal costs will not be reimbursed under any circumstances. Upon request of the supplier, replaced parts shall be returned to the supplier carriage forward.
- Unauthorised reworking and improper handling shall void all claims for defects. In order to avoid disproportionately huge damages, or in case that the supplier fails to rectify the defects in due time, the purchaser shall be entitled to carry out rectifications with prior notification of the supplier and to demand reimbursement for the reasonable expenses.
- Wear and tear within a normal scope shall not imply any warranty entitlements.
- Rights of recourse according to §§ 478,479 BGB shall only apply if the consumer's claim was justified and only to the extent prescribed by law. However, they shall not apply to any settlements on an ex-gratia basis not agreed upon with the supplier and imply the compliance with own obligations of the party entitled to recourse, which shall particularly apply to the observance of the obligation to notify defects.

VII. General Limitation of Liability

Whenever the supplier is, notwithstanding the above-mentioned conditions, obliged to compensate damages or reimburse expenses due to contractual or statutory provisions, the supplier shall only be liable if their executives or subcontractors are charged with intention, gross negligence or damage to life, body and health. This shall not affect the strict liability according to the product liability law as well as the liability for the culpable breach of material contractual obligations. Except for the cases stated in section 1, the liability shall be limited to the foreseeable damage characteristic for the contract. Changes to the burden of proof to the disadvantage of the purchaser shall not be connected to the above-mentioned provisions.

VIII. Terms of Payment

- All payments shall be made in euro and exclusively to the supplier.
- Unless otherwise agreed, the purchase price for the deliveries shall be payable with a 2% discount within 14 days, as well as without any discount within 30 days from the invoice date. The discount shall only be granted under the condition that all previous undisputable invoices have been settled. No discount shall be granted for any payments by bill of exchange.
- If the payment deadline agreed upon is exceeded, interest at a rate of 8% above the respective base rate of the European Central Bank shall be charged, unless the supplier provides evidence of higher damage. The purchaser shall be entitled to furnish evidence of lower damage.
- The right to refuse cheques or bills of exchange shall remain reserved. If cheques or re-discountable bills of exchange are accepted, all related fees shall be borne by the purchaser.
- The purchaser shall only be entitled to offsetting or rights of retention if their claims are undisputable or have been established as final.
- Continued non-compliance with the terms of payment or circumstances giving rise to serious doubts about the solvency of the purchaser shall entitle the supplier to demand immediate payment of all outstanding debts. In this case, the supplier shall moreover be entitled to demand advance payments for all pending deliveries, as well as to withdraw from the contract upon expiry of a reasonable deadline.

IX. Moulds (Tools)

- The price for moulds shall include the costs for single sampling, but not the costs for test and processing units as well as for alterations desired by the purchaser. The costs for further sampling processes requested by the purchaser shall be borne by the purchaser.
- Unless otherwise agreed, the supplier shall remain the proprietor of the moulds manufactured for the purchaser by the supplier or by third parties on the supplier's behalf. These moulds shall only be used for orders placed by the purchaser provided that the payment and purchase obligations are met. The supplier shall only be obliged to replace the moulds free of charge if these are required for a mould life warranted to the purchaser. The supplier's obligation to store these moulds shall lapse two years after the most recent delivery of parts produced with this moulds and after the purchaser has been informed respectively.
- If it has been agreed that the purchaser is to become the proprietor of the moulds, the ownership shall be transferred after the purchase price has been paid in full. The transfer of the moulds to the purchaser shall be replaced by the storage for the benefit of the purchaser. Irrespective of the purchaser's statutory claim for return and the service life of the moulds, the supplier shall be entitled to exclusive ownership until termination of the contract. The supplier shall be obliged to label the moulds as third-party property and to insure them at the purchaser's expense if requested by the purchaser.
- In case of moulds owned by the purchaser according to section 3 and/or moulds provided by the purchaser by way of lending, the supplier's liability with regard to storage and care shall be limited to the due care exercised for the supplier's own property. The costs for maintenance and insurance shall be borne by the purchaser. The supplier's obligations shall cease if the purchaser fails to collect the moulds after completion of the order and following the respective request to do so within a reasonable period of time. Failure of the purchaser to fully meet the contractual obligations shall entitle the supplier to retain the moulds.

X. Supply of Materials

- If materials are supplied by the purchaser, these shall be delivered at the purchaser's expense and risk in a timely manner and perfect condition with a reasonable quantity premium of 5%.
- Failure to fulfill this prerequisite shall prolong the delivery deadline by a reasonable period of time. Except in cases of force majeure, the purchaser shall bear the resulting additional costs, which shall also apply to those caused by production interruptions.

XI. Industrial Property Rights and Defect of Title

- If the supplier is requested to deliver according to the purchaser's drawings, models and patterns or using parts provided by the purchaser, the purchaser shall guarantee that any violation of third-party copyrights in the goods' country of destination is excluded. The supplier shall inform the purchaser about the rights known to them. The purchaser shall indemnify the supplier against third-party claims, and be obliged to compensate for the damage caused. If a third party bars the purchaser from the production and delivery under reference to a copyright owned by the third party, the supplier shall, without the need for checking the legal situation, be entitled to stop production until the legal situation has been clarified by the purchaser and the third party.
- Any drawings and patterns the supplier has been provided with, but which have not led to an order, shall be returned upon request; otherwise, the supplier shall be entitled to destroy them three months after submission of the order. This obligation shall correspondingly apply to the purchaser. The party obliged to destroy the drawings/patterns shall inform the other party in a timely manner about the intention to destroy these materials.
- The supplier shall be entitled to any copyrights and, if applicable, industrial property rights - especially to any rights of use and exploitation - to the models and moulds as well as to the appliances, drafts and drawings designed by the supplier or by third parties on behalf of the supplier.
- In the event of other defects of title, section VI shall apply correspondingly.

XII. Place of Fulfilment and Jurisdiction and Other Provisions

- The supplier's works shall be the place of fulfilment.
- The place of jurisdiction shall be, at the supplier's option, the supplier's or the purchaser's registered office, which shall also apply to summary procedures where plaintiff relies entirely on documentary evidence, special procedures deciding claims arising out of a bill of exchange and actions for assertion of a claim concerning payment of a cheque.
- German law shall exclusively apply. The United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (BGB 1989 p. 586) for the Federal Republic of Germany (BGB 1990 p. 1477) shall be excluded.
- These General Terms and Conditions of Sale and Delivery have been issued in German and in English. The English version shall be for information purposes only; it shall not be construed as an integral part of these General Terms and Conditions of Sale and Delivery. That is why the German version shall exclusively apply in case of any deviations between the German and English versions.