

# Standard Terms and Conditions of Sale

## § 1 GENERAL INFORMATION – SCOPE

- Our conditions of sale apply exclusively; we do not recognise any conditions of the purchaser which conflict with or differ from our conditions of sale, unless we have confirmed their validity in writing. Our conditions of sale also apply if we make the delivery to the purchaser without reservation, having been informed of purchaser's conditions which conflict with or differ from our conditions of sale.
- Our written offer is authoritative in relation to the content and scope of deliveries and services. When we issue an order acknowledgement, our written order acknowledgement is authoritative.
- Our conditions of sale only apply to entrepreneurs as per § 310 Para. 1 BGB (German Civil Code).
- Our conditions of sale also apply for all future business with the purchaser. The following terms and conditions have priority over any conditions of the purchaser which differ in content. The purchaser waives application of any of his own terms and conditions even in the event that we remain silent or render our service. Any deviation from the following conditions requires our written confirmation in each individual case.
- All technical data from our catalogues and other sales documents, lists, drawings and indications of weights, dimensions and mixtures have been provided with care. We reserve the right to make subsequent corrections in case of errors.
- The purchaser shall be responsible for checking whether our product is suitable for his given purpose.
- In the event that statements have to be made in writing in accordance with these terms and conditions, this is governed by the "text form" as per § 126b BGB (German Civil Code).

## § 2 OFFER – OFFER DOCUMENTS

- If the order is qualified as an offer as per § 145 BGB (German Civil Code), we can accept it within four weeks.
- We reserve property rights and copyright for illustrations, drawings, costings and other documents; they must not be made accessible to third parties. This also applies to written documents which are classified as "confidential". The purchaser must obtain our express written approval before forwarding to third parties. Offers are only valid in writing. The stated prices only apply on condition that the order data on which the issued offer was based remains unchanged.
- We only produce initial samples and initial sample test reports by express written agreement and invoiced according to cost.
- If the purchaser orders products from us on the basis of a drawing or sample, the purchaser shall be responsible for checking whether any protective rights of third parties exist and making sure that they are not infringed. In the event that, as a result of a failure to observe this obligation, we are forbidden from manufacturing the product by a third party invoking its property rights, or if the product cannot be used due to the infringement of property rights, we shall be entitled – without checking the legal situation and without the possibility of the purchaser asserting any claims for damages on whatever legal grounds – to stop production and delivery until the circumstances have been clarified and to demand compensation from the purchaser in the amount of at least 15% of the invoice value for the ordered product. The purchaser herewith indemnifies us against demands for damages or any other compensation claims by third parties, in particular those of the holders of rights, upon first request. The scope of damage/loss also includes costs which we incur in the process of defending ourselves against third-party claims.

## § 3 PRICES – PAYMENT TERMS

- Unless the order acknowledgement states otherwise, our prices are quoted "ex works", including the packaging we usually use for our products, plus the value added tax valid on the day on which the invoice is raised. The purchaser will be invoiced for any requested special packaging or secondary packaging or special small packaging. The prices apply exclusively for the contractually agreed quantity and design in each case. In the event that the purchaser requests changes which require a higher level of processing than provided for by the contract or the usual production process, we reserve the right to adjust the prices appropriately. In the event that, after conclusion of the contract, our costs increase in an unforeseeable manner, in particular as a result of labour agreements, increased material prices, especially increased raw material prices, or increased energy costs, we reserve the right to increase our prices in the same proportion as the resulting increased costs.
- The statutory value added tax is not included in our prices; it is shown separately in the invoice at the statutory rate on the day on which the invoice is raised.
- Discounts must only be deducted by special written agreement.
- Unless the order acknowledgement states otherwise, the purchase price must be paid nett (without deductions), free from transaction charges for the recipient and within 10 days of the invoice date. In the event that the purchaser defaults on payment, we shall have the right to demand interest on late payments of 8 percentage points above the statutory base rate per annum. In the event that we are able to prove higher damage/loss due to default of payment, we shall have the right to assert claims for this damage/loss. However, the purchaser shall have the right to provide us with proof that either no or a considerably lower level of damage/loss has been caused as a result of default of payment.
- The purchaser shall only have a right of retention if there are counterclaims which have been determined, are uncontested and have been recognised by the supplier or relate to a mutuality of obligation (synallagmatic contract) to the principal claim. Furthermore, the purchaser shall only have a right of retention if the counterclaim relates to the same contractual relationship. The purchaser shall only have a right of offset if his counterclaims have been legally established, are uncontested or have been recognised by us, or they relate to a mutuality of obligation (synallagmatic contract) to the principal claim. Credit notes are issued expressly for the purposes of offsetting. No right to disbursement exists.
- In case of any doubt about the solvency of the purchaser, we reserve the right to demand payments in advance or security. In the event that we become aware that an unsuccessful attempt has been made to carry out seizure proceedings against the purchaser, we shall have the right to withdraw from the contract and charge for the incurred expenditure.

## § 4 DELIVERY TIME – TERMS AND CONDITIONS OF DELIVERY

- The start of the delivery time specified by us or agreed with us shall only apply once the purchaser has clarified all technical questions, supplied all the documents required from the purchaser, provided all the required approvals, in particular for plans, and has adhered to the agreed payment terms and fulfilled any other cooperation on the part of the purchaser.
- Our obligation to deliver shall only apply if the obligation of the purchaser is fulfilled on time and properly, and the raw materials required for production of the delivered product are supplied to us properly, if they are being supplied by the purchaser. We reserve the right to the defence of lack of performance of the contract.
- In case of failure to adhere to delivery deadlines due to force majeure, e.g. strike, lock-out etc., the deadlines shall be extended appropriately. Such an appropriate extension of delivery deadlines shall also be applied if we do not receive deliveries on time.
- If the purchaser defaults on acceptance or culpably violates other obligations to cooperate, we shall have the right to demand compensation for any resultant damage/loss, including any additional expenditure. We reserve the right to assert further claims.
- Provided that the prerequisites in Para. 4 are met, the risk of accidental destruction or accidental deterioration of the purchased item shall be transferred to the purchaser at the point at which the purchaser becomes in default of acceptance or debtor's default.
- We shall be liable in accordance with the legal regulations, provided that the underlying contract of sale is a transaction to be settled on a fixed date as per § 286 Para. 2 No. 4 BGB (German Civil Code) or § 376 HGB (German Commercial Code). We shall also be liable in accordance with the legal regulations provided that, as a result of default of delivery for which we are responsible, the purchaser has the right to assert that the purchaser's interest in further fulfilment of the contract has discontinued.
- Furthermore, we shall be liable in accordance with the legal regulations, provided that the default of delivery is due to a wilful or grossly negligent contract violation for which we are responsible; any blame on the part of our representatives or vicarious agents shall be attributed to us. If the default of delivery is due to a wilful or grossly negligent contract violation for which we are responsible, our liability to provide compensation is restricted to the foreseeable damage/loss which typically occurs.
- We shall also be liable in accordance with the legal regulations, provided that the default of delivery for which we are responsible is due to culpable violation of an essential contractual obligation; however, in this case the liability to provide compensation shall be restricted to the foreseeable damage/loss which typically occurs.
- We shall, furthermore, be liable in case of default of delivery for each complete week of delay within the scope of a flat-rate compensation amount for default of 3% of the delivery value, but no more than 15% of the delivery value.
- We shall have the right to make partial deliveries of reasonable amounts. Deviations in the dimensions, weight, technical design, production and amount of the supplied goods are admissible within the customary commercial product-specific tolerances. Moreover, changes which serve to improve our products technically, are considered as approved by the manufacturer.

## § 5 TRANSFER OF RISK – PACKAGING COSTS

- Unless the order acknowledgement states otherwise, delivery "ex works" is agreed.
- Special agreements apply for the return of packaging.
- If the purchaser requires it, we shall take out transport insurance for the delivery; the purchaser shall bear the costs incurred in this regard.
- If, in departure from § 5 Para. 1, the parties agree a sale by delivery to a place other than the place of performance as per § 447 BGB (German Civil Code), the purchaser shall be required to appoint one or more persons who shall be authorised by the purchaser to receive the goods and accompanying documents and to sign the delivery papers and accompanying documents, giving reasonable notice before delivery of the goods. This applies in particular if the goods are to be delivered to a location other than the purchaser's place of business. In the event that such information is not provided, the persons who actually

received the goods, shall be regarded as authorised to receive the goods and to sign the transfer papers (delivery note and other accompanying documents). The risk of accidental destruction or deterioration of the object is transferred as per the provision of § 447 Para. 1 BGB (German Civil Code).

- If, in the case of § 5 Para. 4, no person designated by the purchaser is present at the designated location at the designated time, or if this person or other persons are not prepared to accept the goods, the purchaser shall be in default of acceptance, with the result that the risk shall be transferred to the purchaser. Furthermore, the purchaser must cover the additional costs caused as a result of a repeat delivery having to be made.
- The purchaser cannot refuse receipt of deliveries due to insubstantial defects.

## § 6 LIABILITY FOR DEFECTS

- The purchaser can only make claims for defects if the purchaser has properly fulfilled the obligations to inspect and make an immediate complaint upon receipt of the goods, as per § 377 HGB (German Commercial Code).
- In case of corrective measures, we shall be obligated to cover all the required expenditure for the purposes of supplementary performance, in particular transportation, handling, labour and material costs and expenditure for the removal of the defective object and installation or attachment of the repaired or supplied defect-free item, provided that they do not increase as a result of the purchased object being transferred to a place other than the place of performance contrary to its intended use. We can refuse supplementary performance if the expenditure for corrective measures is expected to exceed the purchase price.
- We only have to bear installation and removal costs if the object has been installed in another object or attached to another object in accordance with its type and intended use and we are responsible for the defect which is the cause for assertion of claims for supplementary performance.
- If the supplementary performance fails, the purchaser shall have the right to choose to withdraw from the contract or demand a reduction of the purchase price.
- We shall be liable in accordance with the legal regulations, provided that the purchaser asserts compensation claims that are based on wilful intent or gross negligence, including wilful intent or gross negligence on the part of our representatives or vicarious agents. Unless we are accused of wilful contract violation, the liability to provide compensation is restricted to the foreseeable damage/loss which typically occurs.
- We shall be liable in accordance with the legal regulations, provided that we culpably violate an essential contractual obligation; however, in this case the liability to provide compensation is also restricted to the foreseeable damage/loss which typically occurs. An essential contractual obligation is constituted if the violation of obligations is in relation to an obligation on whose fulfilment the customer has relied and is entitled to rely.
- Liability due to culpable injury to life, body or health remains unaffected; this also applies for mandatory liability as per product liability law.
- Unless otherwise regulated above, liability is excluded.
- The period of limitation for claims for defects is 12 months from the legal commencement of limitation. This does not apply if the purchased item is usually used for a building structure and has caused the defect.

## § 7 OVERALL LIABILITY

- Any further liability for compensation other than provided for in § 4 and § 6 is excluded, regardless of the legal nature of the asserted claim. This applies in particular for compensation claims due to culpability upon conclusion of the contract, due to other violations of obligations or due to tortious compensation claims for damage to property, as per § 823 BGB (German Civil Code).
- A limitation period of 18 months applies for all claims that are not subject to limitation due to a defect in the item. It begins at the point at which the damage/loss and the tortfeasor become known.
- The restriction as per Para. 1 also applies in the event that the purchaser demands reimbursement of futile expenditure in place of a claim for replacement of the damage/loss instead of the service.
- If the liability to provide compensation in relation to us is excluded or restricted, this also applies in relation to the personal liability of our employees, representatives and vicarious agents.

## § 8 RESERVATION OF TITLE

- We reserve title in the purchased item up until the point at which all payments from the business relationship with the purchaser are received. If we agree to a cheque/bill of exchange procedure for payment with the purchaser, the reservation also extends to the honouring by the purchaser of the bill accepted by us, and does not expire when the cheque we have received is credited. In case of conduct by the purchaser which is contrary to the contract, in particular default of payment, we shall have the right to take back the purchased item. The taking back of the purchased item constitutes withdrawal from the contract. After repossession of the purchased item, we shall be authorised to sell it. The proceeds from the sale must be offset against the liabilities of the customer – minus appropriate sales costs.
- The purchaser shall be obligated to treat the purchased item with care; in particular the purchaser shall be obligated to insure it sufficiently at his own expense to the replacement value against fire and water damage and theft. In the event that maintenance and servicing work is required, the purchaser must carry out this work in good time and at his own expense.
- In the event of seizure or other interventions by third parties, the purchaser must inform us immediately in writing so that we can take legal action as per § 771 ZPO (German Civil Procedure Code). In the event that the third party is not able to reimburse us with the judicial and extrajudicial costs of legal action as per § 771 ZPO (German Civil Procedure Code), the customer is liable for the loss we incur as a result.
- The purchaser shall have the right to resell the purchased item in a normal business transaction; however, the purchaser now assigns to us all claims, in the final invoice amount (including value added tax) of our claim, which accrue to the purchaser vis-a-vis his customer or third parties as a result of the resale, regardless of whether the purchased item has been resold with or without further processing. The purchaser shall remain authorised to recover this claim after assignment. Our authorisation to recover the claim remains unaffected by this. However, we undertake to refrain from recovering the claim as long as the purchaser fulfils his obligation to pay from the collected proceeds, does not default on payment and, in particular, no request has been filed to open insolvency proceedings and the purchaser has not ceased making payments. However, if this is the case, we shall have the right to demand that the purchaser informs us of the assigned claims and their debtor, provides all the information required for recovery, surrenders the corresponding documents and informs the debtors (third parties) of the assignment. The claim assigned by us in advance also relates to the recognised balance and, in the event that the purchaser's customer goes into insolvency, to the causal balance.
- Further processing or transformation of the purchased item by the purchaser shall be performed on our behalf at all times. If the purchased item is processed with other objects not belonging to us, we shall acquire joint ownership of the new item in proportion to the value of the purchased item (final invoice amount including value added tax) in relation to the other processed objects at the time of processing. Furthermore, the same applies for the item produced as a result of processing as for the purchased item delivered with reservation of title.
- If the purchased item is mixed inseparably with other objects not belonging to us, we shall acquire joint ownership of the new item in proportion to the value of the purchased item (final invoice amount including value added tax) in relation to the other mixed objects at the time of mixing. If mixing is conducted in such a way that the customer's item is to be regarded as the main item, it is considered agreed that the purchaser shall transfer proportional joint ownership to us. The purchaser shall hold the resulting sole ownership or joint ownership on our behalf.
- The purchaser shall also assign to us the claims against third parties resulting from the combination of the purchased item with a real estate property as security for our claims against the purchaser.
- We undertake to release securities due to us on request by the purchaser if the realisable value of our securities exceeds the secured claims by more than 10%; it shall be for us to select which securities are released.

## § 9 PLACE OF JURISDICTION – PLACE OF PERFORMANCE

- If the purchaser is a merchant, our place of business shall be the place of jurisdiction; however, we shall have the right to take legal action against the purchaser at the court of the purchaser's domicile.
- The law of the Federal Republic of Germany shall apply; the terms of the UN Convention on Contracts for the International Sale of Goods shall not apply.
- Unless stated otherwise in the order acknowledgement, the place of performance shall be the main site of Dallmer GmbH & Co. KG.
- These Standard Terms and Conditions of Sale shall remain valid in the event that individual clauses prove to be invalid. The invalid clause will be supplemented or reinterpreted so that the intended commercial purpose of the invalid provision is achieved as far as possible. The same procedure shall be followed if a gap requiring supplementation arises during implementation of the contractual relationship. If the invalid provision affects a performance or time determination, it shall be replaced by the legally permitted standard. In the event that a provision of these Standard Terms and Conditions of Sale is ineffective in relation to mandatory foreign law, the purchaser shall, upon request, agree with us such contract amendments and submit such declarations to third parties or authorities as will ensure that the affected provisions or, if this is not possible, the commercial content remain effective, also under foreign law.
- The German version of the terms and conditions is the authoritative version. If translated, the German version has priority over the English and French translation, and is based on German legal decisions.

Dated: February 2020