



## **Dittrich & Greipl GmbH - Terms and Conditions of Sale and Delivery**

### **I. GENERAL - SCOPE**

- 1 The following contractual conditions shall apply for all present and future business relationships which are concluded with the customers/purchasers of our services and goods.
- 2 Deviating conditions of the purchaser shall only be binding on us if we have expressly consented to this on writing or if this is necessary due to an applicable law.

### **II. CONCLUSION OF THE CONTRACT**

- 1 Our quotes are without obligation. Technical alterations in the manufacturing process as well as changes of shape, colour and/or weight within reason shall be reserved.
- 2 Purchasers who place an order make a binding declaration that they wish to purchase the goods they have ordered. We shall be entitled to accept the contractual offer as specified in the order within two weeks of receipt by us. Acceptance can be declared either in writing or by invoicing in conjunction with a delivery of the goods to the purchaser.
- 3 Images, illustrations, dimensions, weights or any other service specifications shall only be binding if they have been expressly agreed in writing. We reserve the right to make insignificant changes or alterations, in particular such which do not damage the usability of the goods or performance, without any prior notification.
- 4 The conclusion of the contract is subject to the proper and timely delivery of parts by our suppliers. This shall only apply in the event that the non-delivery is not our fault, especially in the event of congruent transactions with our supplier. The purchaser shall find out about the non-availability of the service immediately. The payment shall be reimbursed immediately.

### **III. PRICES - PAYMENT TERMS**

- 1 Unless otherwise specified in the order confirmation, the quoted prices are "ex works" excluding packaging; this shall be charged separately.
- 2 Unless explicitly stated otherwise, our prices are in euros.
- 3 Statutory VAT is not included in our prices; this will be stated separately using the value applicable on the date of invoice.
- 4 Discounts and reductions must be agreed separately; a discount or reduction is not possible without a corresponding agreement.
- 5 We shall have the right to assign claims arising from our business relationships. Should the purchaser be in arrears with payment obligations of any kind with us, then all payments owing to us shall be due immediately. All payments must be made with a discharging effect exclusively to the bank account of Coface Finanz GmbH, Isaac-Fulda-Allee 5, 55124 Mainz, to which we have assigned our present and future claims from our business relationship. We have also transferred our retention of title to this institute.
- 6 We shall be entitled to charge for partial deliveries immediately, irrespective of the termination of the overall delivery; all invoices shall be payable on the delivery or invoice date, irrespective of the termination of the overall delivery; in the event of terminations, advance payments shall be proportionally offset against the individual partial deliveries unless anything to the contrary is agreed.
- 7 We reserve the right to adjust prices appropriately if costs should rise or decrease after conclusion of contract, particularly as a result of wage agreements or if changes to freight, shipping or subsidiary shipping costs or material prices arise. We will provide the purchaser with proof of these on request.
- 8 The purchaser shall only be entitled to offset amounts if its counterclaims have been legally established or recognised by us.
- 9 The purchaser may only exercise a right of retention if its counterclaim is based on the same contractual relationship.



#### **IV. RETENTION OF TITLE - SEIZURES**

- 1 We shall retain title to the goods until full payment of all claims from the ongoing business relationship.
- 2 The purchaser is obliged to look after the goods. If maintenance and inspection work is necessary, the purchaser shall carry out such work on a regular basis at its own expense.
- 3 The purchaser is obligated to immediately inform us of any accessing of the goods by third parties, such as in the event of a seizure, or of any damage or destruction of the goods. The purchaser shall report, without delay, a change of ownership of the reserved goods and a change of its own registered address.
- 4 We shall be entitled in the event of breach of contract on the part of the purchaser, in particular default in payment or in the event of a breach of an obligation in accordance with sections 2 and 3 of this provision, to withdraw from the contract and reclaim the reserved goods.
- 5 The purchaser is entitled to continue to dispose of the goods in the ordinary course of business; however, it hereby assigns to us all claims in the amount of the final amount of the invoice (including VAT) that accrue to it from the resale or processing against its purchasers or third parties, regardless of whether the goods were resold without or after processing. We hereby accept the assignment. The purchaser shall also remain authorised to collect this claim even after the assignment. This shall not affect our authorisation to collect the claim ourselves. However, we shall undertake not to collect the claim as long as the purchaser fulfils his payment obligations from the proceeds received, is not in default of payment and, in particular, as long as no application for the opening of insolvency proceedings or the implementation of an extrajudicial settlement procedure with the creditors regarding the settlement of debts (§305 (1) No.1 of the Insolvency Act (InsO)) has been filed, and no cheque or bill of exchange proceedings or suspension of payments has occurred. However, if this is the case, we may request that the purchaser disclose the claim assigned and the debtor in question, make all indications required for collection, surrender the relevant documents, and notify the debtor (third parties) of such assignment of claims. The collection right refers to the whole balance claim.
- 6 The processing or reworking of the goods by the purchaser shall always be carried out for us. If our reserved goods are processed alongside other objects not belonging to us, we shall acquire joint ownership of the new objects in the ratio of the value of our goods to the other processed objects at the time of processing. Items arising as a result of processing are subject to the same conditions as goods delivered retention of title.
- 7 Should goods be mixed with other objects that do not belong to us, then we shall acquire joint ownership of the new objects in proportion to the value of the goods compared to the value of the other mixed objects at the time of the mixing. If the mixing takes place in such a way that the purchaser's item can be regarded as the main item, it is agreed that the purchaser shall transfer pro rata joint ownership to us. The purchaser shall retain the resulting sole ownership or joint ownership for us for free.
- 8 With the cessation of the collection right according to (5) of this clause, the purchaser shall no longer be entitled to modify the reserved goods, inseparably mix them or process them.
- 9 The purchaser shall also assign us the claims against third parties, which arise due to the combination of the goods with a property against a third party. This also includes the right to grant a collateral mortgage priority over the rest. We shall accept this assignment.
- 10 If the reserved goods are integrated by the purchaser as a significant component into their own property, then the purchaser shall assign claims that he has incurred as a result of the sale of the property or of the property rights to the value of the reserved goods along with all associated rights and priority over the rest. We shall accept the assignment.
- 11 We undertake to release the securities that we hold upon the purchaser's request insofar as the realisable value of our securities exceeds the claims to be secured by more than 20%. If the purchaser does not prove a lower realisable value for the reserved goods, the realisable value shall be set at the purchase price of the purchaser or, in the event of processing the reserved goods, the manufacturing costs of the items serving as security or the co-ownership share. The option of the securities to be released shall be incumbent upon us.

#### **V. SHIPMENT - PACKAGING**

- 1 The shipment of the goods shall take place "ex works" at the cost and risk of the purchaser, unless anything to the contrary is agreed. This shall also apply if the goods are delivered by third parties at our request; in this case, we shall be entitled to also charge the supply costs. Upon dispatch, the risk of accidental deterioration and accidental destruction of the goods shall pass to the purchaser.



- 2 Unless otherwise agreed with the purchaser, the choice of shipping method shall be at our discretion. We assume no guarantee for a low-cost shipment, however.
- 3 Transport and outer packaging shall not be taken back.

## **VI. DELIVERY - DELIVERY TIME**

- 1 Times set for deliveries shall only be binding if all documents to be furnished by the purchaser, necessary permits and approvals, especially concerning plans, are received in time and if agreed terms of payment and other obligations of the purchaser are fulfilled. If these conditions are not fulfilled in time, times set shall be extended reasonably; this shall not apply if we are responsible for the delay.
- 2 If the deadlines are not observed due to a case of force majeure, e.g. mobilisation, war, riot or similar events, e.g. strike, lockout, said deadlines shall be extended as appropriate.
- 3 The purchaser is obliged to state whether or not he wishes to withdraw from the contract due to a delay in delivery or still insists on the delivery within an appropriate period when requested by us.
- 4 If shipment or delivery is delayed by more than one month of notification of the shipment date at the request of the purchaser, the purchaser can be charged warehouse charges for each month which has begun in the amount of 0.5% of the price of the objects contained in the delivery up to a maximum of 5%. The contracting parties shall be at liberty to prove higher or lower warehouse costs in consideration of certain circumstances.

## **VII. WARRANTY**

- 1 All those parts or services which display a material defect within the limitation period - without consideration of the service life - shall be repaired, re-supplied or performed again free of charge if the cause of this was already present at the time of the transfer of risk.
- 2 Any claims for defects shall expire in 12 months. This shall not apply insofar as the law according to §§ 438 (1) No.2 (construction work and objects for construction), 479 (1) (recourse claim) and 634a (1) No.2 (construction defects) BGB prescribes longer deadlines, such as in the event of injury to life, limb or health, in the event of an intentional or negligent breach of duty on our part or in the event of fraudulent concealment of a defect. The statutory provisions regarding expiry suspension, suspension and restarting of the deadline shall remain unaffected.
- 3 The purchaser must immediately report material defects to us in writing.
- 4 In the case of notifications of defects, payments from the purchaser may be withheld in a reasonable proportion to the defects that have occurred. The purchaser can only withhold payments if a notification of defects has been asserted over whose authority there can be no doubt. If a notification of defects took place wrongly, we shall be entitled to request the costs incurred to us to be replaced by the purchaser.
- 5 Firstly, we must be given the opportunity of subsequent fulfilment within a reasonable time period.
- 6 If the subsequent fulfilment fails, the purchaser may reduce the remuneration or withdraw from the contract, irrespective of any compensation claims according to Art.VIII.
- 7 Claims for defect shall not apply if there are only minor deviations from the agreed properties, if there are only minor restrictions on use, if there is natural wear and tear or damage, which occur after the transfer of risk as a result of incorrect or negligent handling, excessive loading, unsuitable equipment, defective building work, unsuitable foundations or due to extraordinary external influences, which are not provided for under the contract and non-reproducible software errors. If unauthorised changes or repairs are carried out by the purchaser or by third parties, claims of defect shall not be accepted for these and for any resulting consequences.
- 8 Claims made by the purchaser related to costs required for subsequent performance, in particular transport, infrastructure, labour and material costs, shall be excluded, if said costs increase because the object of delivery is subsequently transferred to a location other than a subsidiary of the purchaser, unless said transfer corresponds to its proper use.
- 9 Recourse claims made by the purchaser against us in accordance with §478 BGB (recourse by the contractor) shall only be accepted if the purchaser has not made any agreements with its buyers that extend beyond statutory claims of defect. Moreover, for the scope of the purchaser's recourse claim against the supplier according to §478 (2) BGB, No.8 shall apply accordingly.



10 For compensation claims, Art.VIII (other compensation claims) shall otherwise apply. Further claims made by the purchaser against the supplier and its vicarious agents or claims other than those set out in this article shall be excluded.

11 Warranties in the legal sense shall not be provided to the purchaser by us.

#### **VIII. OTHER COMPENSATION CLAIMS**

- 1 Claims for damages and expenses from the purchaser (hereinafter: claims for damages) shall be excluded, irrespective of their legal basis, particularly for breach of duty under the contractual obligations and for unauthorised action.
- 2 This shall not apply if liability is mandatory, e.g. in accordance with the Product Liability Act, in case of negligence, gross negligence, injury to life, limb or health or a breach of fundamental contractual obligations. Claims for damages for a breach of fundamental contractual obligations shall be limited to calculable damages, as per standard contract provisions, unless liability is due to negligence, gross negligence, and injury to life, limb or health. Any change to the burden of evidence to the detriment of the purchaser shall not be linked to the aforementioned regulations.
- 3 If the purchaser is entitled to make claims for damages in accordance with this Art.VIII, said claims shall expire at the end of the period of limitation applicable for claims of material defect in accordance with Art.VII No.2. In the case of claims for damages according to the Product Liability Act, the statutory provisions shall apply.

#### **IX. IMPOSSIBILITY - ADJUSTMENTS TO THE CONTRACT**

- 1 If performance is impossible, the purchaser is entitled to demand compensation unless the impossibility of performance is not our fault. However, the purchaser's claims for damages shall be limited to 10% of the value of the respective part of the delivery that cannot be used appropriately due to said impossibility of performance. The limitation of liability shall not apply if liability occurs as a result of negligence, gross negligence or due to injury to life, limb or health; this shall not be linked to any change to the burden of proof to the detriment of the purchaser. This shall not affect the right of the purchaser to withdraw from the contract.
- 2 If unforeseeable events within the meaning of Art.IV No.2 significantly change the financial importance or the content of the delivery or have a significant impact on our business, the contract shall be amended appropriately in accordance with the principle of good faith. If this is not financially viable, we shall be entitled to withdraw from the contract. If we wish to assert this right of withdrawal, we must notify the purchaser immediately based on our knowledge of the extent of the event, even if an extension to the delivery time had been agreed with the purchaser.

#### **X. FINAL PROVISIONS**

- 1 The exclusive place of jurisdiction for all disputes arising directly or indirectly from this contractual relationship is Passau (FRG). We are also entitled to bring an action at the purchaser's place of business.
- 2 The contract shall remain binding in all other parts even if individual points are invalid. This shall not apply if adhering to the contract would cause unreasonable hardship to either party.



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