

General Terms and Conditions of Delivery and Sale

§ 1 General – Area of Application

1. All contracts concerning the sale and delivery of goods are exclusively subject to our terms and conditions; we reject any terms and conditions of the customer to the contrary or deviating from our terms and conditions unless we have expressly consented to their validity in writing. Our terms and conditions shall apply even if we effect the delivery to the customer without reservation and with knowledge of terms and conditions of the customer to the contrary.
2. All agreements and covenants which are made or agreed between the customer and us for the purpose of performing this contract shall be put into writing in this contract. Amendments and supplements to the contract shall be made in writing.
3. Our terms and conditions only shall be applicable vis-à-vis entrepreneurs (within the meaning of § 14 of the German Civil Code – BGB), juridical persons of public law and public-law special fund.
4. Our terms and conditions apply to all future transactions with the customer in the course of dealing.

§ 2 Offers – Documents

1. Our offers are not binding unless otherwise stated in our offer or otherwise expressly declared by us in writing.
2. We reserve title to and the copyright in illustrations, drawings, calculations and other documents; they may not be made available to third parties. This particularly applies to our trade conditions and terms and written documents which are marked „confidential“. Passing on such documents to third parties requires our prior written consent.

§ 3 Prices – Terms of Payment

1. Unless otherwise arises from the confirmation of the order, our prices apply “ex works“. In case of decentralised deliveries, the customer shall take delivery of goods worth a minimum of Euro 250,00 net, and in case of deliveries to a customer's central warehouse a minimum of Euro 2,500.00 net.
2. All prices and quotations are without the statutory German turnover tax (value-added tax) and must be paid in addition. Cash discounts shall only be admissible if expressly agreed on in writing beforehand.
3. Our prices are fixed prices and include the license fees, if any, for the “green dot“ (“Grüner Punkt“) of DSD AG of for any other system for taking back packaging material. In the event that the above license fees are reduced following the conclusion of the contract, the customer cannot claim a reduction of the prices agreed upon.
4. Unless a period for payment has been allowed in our written confirmation of the order or otherwise in writing, the purchase price shall be due for payment net (free of expenses) directly on receipt of the delivered goods and the invoice. If the customer defaults in payment, we will claim default interest of 8 per cent points per annum above the base interest rate of ECB. We reserve the right to claim further damages.
5. The customer shall have a right of set-off only if his counter-claims have been recognised by declaratory judgement, have not been contested or have been accepted by us. The customer shall be entitled to exercise a right of retention only if the same conditions have been satisfied and moreover his counter-claim is based on the same contract.
6. Drafts and cheques shall be accepted, if at all, as conditional payment only. The costs of drafts and cheques shall be for the customer's account.
7. If we are obliged to make advance deliveries and, after the conclusion of the contract, circumstances come to our knowledge, or are identifiable, which indicate at our proper commercial discretion a substantial deterioration of the customer's assets, we may demand, at our option and notwithstanding of any further rights, either security within a reasonable period of time or delivery versus payment. If the customer does not meet this request, we shall be entitled, subject to further statutory rights, to withdraw from the contract.

§ 4 Time of Delivery

1. Commencement of the time of delivery stated by us is contingent upon clarification of all technical questions. Unless otherwise agreed or provided for in the contract, the time of delivery stated by us is not binding.
2. We shall not be liable for delays in delivery due to force majeure or to unforeseeable circumstances beyond our control such as plant interruptions, strikes, lock-outs, lack of means of transportation, war, terror, difficulties in procuring raw materials and supplying energy; orders imposed by the authorities; supplies not delivered to us on time by our suppliers. Any agreed term for delivery shall be extended by the period of obstruction plus a start-up period of reasonable length. If the obstruction lasts longer than three months, we and the customer shall be entitled at the end of an additional period of time of reasonable length to withdraw from the contract with regard to the part not yet performed. In this case, claims for damages are excluded.
3. If, after our default, the customer granted us an additional period of time of reasonable length, he shall be entitled to rescind the contract after this additional period of time has expired without results; the customer shall be entitled to claim damages instead of performance only if the default was caused intentionally or by gross negligence, or by the negligent violation of a material obligation (an obligation the customer could have confided in); furthermore, in all events of negligence on our part the liability for damages shall be limited to the foreseeable damage which is typical of the contract.
4. The limitation on liability pursuant to section 3. shall not apply insofar as a transaction for delivery by a fixed date where the date is of essence was agreed or the customer may legitimately assert that he is no longer interested in performing the contract because of our default.
5. Compliance with our obligation to deliver is contingent upon the timely and proper performance of the customer's obligations.
6. If the customer defaults in taking delivery or infringes other duties to cooperate, we shall be entitled to claim compensation for the damage suffered by us, including any additional expenses. In this case, the risk of accidental loss or accidental deterioration of the object of purchase will pass to the customer at the time when he defaults in taking delivery.
7. We are entitled to effect part deliveries unless the customer may legitimately claim reasonable interests to the contrary.

§ 5 Passing of Risk

1. Unless otherwise shown in the confirmation of the order, the delivery clause “ex works“ (Incoterms 2000) shall apply.
2. Only on the customer's express request, we shall take out a transport insurance policy; the costs accruing in this connection shall be borne by the customer.

§ 6 Warranty Claims

1. The warranty rights (warranty claims) of the commercial customer are contingent upon customer's properly performed obligations to inspect the goods immediately after delivery and to give notice of defects pursuant to § 377 of HGB (German Commercial Code). All notices of defects must be given in writing and specify the defect at the same time. Insofar as defects as to the number of items and weight were already noticeable upon delivery according to the above duties of inspection, the customer is obliged to complain about such defects when receiving the goods from the carrier and shall have the carrier certify the complaint. Any notice of defect not made in due time and in due form shall insofar exclude any warranty claims of the customer.
2. Warranty claims are excluded in cases of insignificant deviations from the agreed upon or customary quality and conditions of the goods or insignificant impairment of usability.
3. All our specifications constitute performance specifications only and no guarantees, unless expressly otherwise provided.
4. If we are responsible for the defect in the object of purchase, we shall be entitled, at our option, to repair the objects or to deliver defect free objects (together: “Subsequent Performance“).
5. In case of a notification of defects, payments of the customer may only be retained to such extent which is in adequate proportion to the defects occurred. Moreover these payments may be retained under the prerequisites of § 3 section 4 sentence 2 of these General Terms and Conditions of Delivery and Sale only.
6. If the customer, for reasons for which we are not responsible, wrongfully gives notice of a defect for which we are not responsible, we shall be entitled to charge the customer for reasonable expenses incurred by us in connection with the repair and/or determination of defects.
7. We may charge the customer for the extra cost of the expenses incurred by our Complete Performance, particularly transport charges, infrastructure cost, labor cost and cost of materials, insofar as such expenses increase if the delivered goods are transported to a place other than the place of delivery.
8. In the event of the purchase of a consumer good, claims of the customer under a right of recourse (§ 478 of the German Civil Code – BGB) which due to an agreement between the customer and his purchasers exceed the statutory claims of the customer are excluded. The customer shall inform us so timely about the warranty claims of his purchasers that we are in a position, at our option, to settle these claims of the respective purchaser instead of by the customer.
9. Warranty claims will become statute-barred within 12 months calculated from the date of the commencement of the statutory period of limitation, unless we caused the defect intentionally or by gross negligence, or concealed the absence of a defect with intent to deceive. This shall also apply to guarantees given, if any, which are binding for us, unless otherwise agreed. The statutory periods of time for the claim under a right of recourse according to § 478 of the German Civil Code (BGB) as well as the statutory periods of time

exceeding two years (for instance, with regard to defects of buildings and items used for buildings, § 438 section 1 No. 2 of the German Civil Code – BGB) shall not thereby be affected. The statutory periods of limitation shall also apply to consequential damages. If, owing to faulty delivery, Subsequent Performance is required the period of limitation will not start again at the date of Subsequent Performance.

10. Before the customer may assert further claims or rights (rescission, withdrawal, reduction of price, damages or reimbursement of expenses), we shall initially be given the opportunity to effect Subsequent Performance within a reasonable period of time, unless a guarantee to the contrary has been given by us. If Subsequent Performance fails despite at least two attempts of Subsequent Performance or if we refuse Subsequent Performance, or if Subsequent Performance is unacceptable for the customer, the customer may rescind the contract or demand a reduction in the purchase price. § 7 of these General Terms and Conditions of Delivery and Sale shall apply to the assertion of claims for damages.

11. The following shall apply to claims for defect in title in addition:

- a) Unless otherwise provided, we shall only be obliged to effect delivery of the goods, free of any rights of third parties, within the country of the place of performance.
- b) In the event of a violation of intellectual property rights of third parties for which we are responsible, we may, at our option, either obtain at our own expense a license sufficient for the use presupposed or agreed upon and assign the license to the customer, or we may modify the delivered goods by ensuring that the rights are not infringed, or exchange the delivered goods insofar as the use presupposed or agreed upon of the delivered goods will not be affected by third parties' rights. If we are not in a position to do so or if we refuse Subsequent Performance, the customer shall be entitled to the statutory claims and rights. § 7 hereof shall apply to claims for damages.

§ 7 Damages

1. Claims for damages and compensation for expenses owing to defects of the delivered goods shall be excluded insofar as we are not in a position to effect Subsequent Performance for reasons for which we are not responsible. Claims for damages caused by defects and consequential damages based on the delivery of defective goods shall be excluded, unless the defects were negligently or intentionally caused by us.
 2. The assertion of claims for violation of a durability guarantee given by us or a third party (§ 443 section 2 of the German Civil Code – BGB) for which we are responsible shall be excluded, unless the violation was caused negligently or intentionally by us.
 3. Otherwise, claims for damages and compensation for expenses (hereinafter referred to as “damage claims“) of the customer - irrespective of the legal grounds -, particularly for violation of duties from and in connection with the contract, from fault occurred prior to or upon the conclusion of the contract and from tort, shall be excluded. In the event of negligence on our part, our liability shall be restricted to the contracttypical, foreseeable damage.
- The above shall not apply to claims according to §§ 1, 4 of the Product Liability Act (Produkthaftungsgesetz), in case of a breach of duty by intent or gross negligence on our part or on the part of our legal representatives or agents, for violations of life or in the event of personal injury or injury to health (also on the part of our legal representatives or agents), for the giving of a guarantee with regard to the existence of a certain quality (quality guarantee) and a guarantee of durability or in case of a negligent violation of substantial duties (obligations the customer could have confided in). Our liability shall not extend beyond the statutory claims under any circumstances. We shall only be liable from the assumption of a procurement risk provided that we have expressly assumed such risk under a written agreement. This provision does not include changes of the burden of proof.
4. Insofar as our liability is excluded or limited, this shall also apply to the personal liability of our employees, agents and contractual representatives.
 5. Limitation of action in respect of damage claims between us and customer shall be determined by § 6 item 9, unless claims under the Product Liability Act are concerned.

§ 8 Reservation of Title

1. We shall retain title to the delivered items until receipt of all payments owed by the customer under the contract. In the event that the customer acts in breach of contract, in particular defaults in payment, we shall be entitled to take back the item delivered. After taking back the delivered item, we shall be entitled to realize the same; the realization proceeds shall be set off against the customer's liabilities, less reasonable costs of the realization. We hereby reserve the right to assert damage claims. The provisions of the German Insolvency Code (Insolvenzordnung), if applicable, relating to realization shall not thereby be affected.
2. The customer is obliged to handle the delivery item carefully. In particular, he is obliged to insure the same sufficiently at the reinstatement value at his expense against damage caused by fire, water and theft.
3. The customer shall inform us in writing without undue delay of attachments and any other interference by third parties. The customer shall be liable to us for any court and out of court costs and expenses of any action which may be necessary pursuant to § 771 of ZPO (German Code of Civil Procedure) (action in opposition to execution of a judgment, brought by a third party who claims title to the attached property).
4. The customer is entitled to resell the delivery item in the ordinary course of business; however, he herewith already assigns to us all claims to the amount of the invoice sum total (including value-added tax) accruing to him from the resale against his customers or third parties, irrespective of whether the delivery item has been resold without or after having been processed.

The customer shall be authorized to collect this claim even after assignment. However, we shall be authorized to collect the claim ourselves if the customer does not perform his obligations to pay from the collected proceeds, defaults in payment or has filed a petition for the institution of insolvency proceedings or such a petition has been filed or suspense payment. In such cases, we may demand that the customer states which claims have been assigned and their debtors, furnishes all the information necessary for the collection, hands over the appurtenant documents and notifies the debtors (third parties) of the assignment. However, it will not be possible for us to collect the claim if this is precluded by the German Insolvency Code (Insolvenzordnung).

5. We and the customer are agreed that we shall additionally acquire a lien on the claims amounting to the invoiced sum total (including value-added tax) “of our claims“ which accrue to the customer from the resale against his customer or third parties pursuant to item 4, irrespective of whether the delivered item has been resold without or having been processed. However, we shall only be entitled to notify the pledging to the customer's customer or third party if the customer does not perform his obligations to pay from the collected proceeds, defaults in payment or a petition for the institution of insolvency proceedings is filed against him or payments have ceased. In such cases, we may demand that the customer states which claims have been pledged and their debtors, furnishes all the information necessary for the collection, hands over the appurtenant documents and notifies the debtors (third parties) of the pledging.
6. Any processing or transformation of the delivered item by the customer shall always be carried out on our behalf. If the delivered item is processed with other items not belonging to us, we shall acquire joint title to the new good proportionally to the value of the delivered good to the other processed items at the time of the processing. The provisions applicable to the items delivered with a reservation shall also apply to the thing resulting from the processing.
7. If the delivered item is inseparably mixed with other items not belonging to us, we shall acquire joint title to the new thing proportionally to the value of the delivered thing to the other mixed items at the time of the mixing. If the mixing is effected in such a way that the customer's good is to be considered as the principal object we shall acquire joint title to such object on a pro rata basis. The customer shall hold the joint title thus treated on our behalf.
8. We undertake to release the securities to which we are entitled at the customer's request also to the extent that the value of our securities exceeds the claims to be secured by more than 20 %. Selection of the securities to be released shall be incumbent on us.
9. If the delivery item is located outside Germany, the following shall apply:
If the delivery item was delivered prior to payment of all amounts owed by the customer under the contract, we shall retain title to the item until payment in full insofar as this is admissible under the law in the area of application of which the delivery item is located. If the above law does not permit the reservation of title, but allows us to reserve other rights to the delivery item, we may exercise all rights of this kind. The customer is obliged to assist in any action taken by us to protect our title or the right to the delivery item which replaces such title.

§ 9 Place of Jurisdiction – Place of Performance

1. The courts of Hamburg shall have jurisdiction provided that the customer is a „Kaufmann“ (merchant). However, we are entitled to sue the customer also at the court having jurisdiction over his place of residence.
2. Unless the confirmation of the order otherwise requires, the place of performance shall be Seevetal.

§ 10 Applicable Law, Severability Clause

1. The legal relations between the parties shall be exclusively governed by German law, to the exclusion of the UN Convention on the International Sale of Goods (UNCITRAL/CISG).
2. Should individual provisions of this contract or of these general terms and conditions be invalid, the validity of the other provisions shall not thereby be affected.