

## **General Terms and Conditions of Sale and Delivery**

**DFP Solutions GmbH, Am Wasserwerk 11a, 58840 Plettenberg**

### **§ 1 Scope**

1. These conditions of sale apply exclusively to business owners, legal entities of public law or special funds under public law according to sec. 310 para. 1 of the German Civil Code (BGB). Terms and conditions of the purchaser, that are in conflict with or differing from these Terms and Conditions will be only accepted, if we have confirmed their validity in writing.
2. These conditions of sale shall also apply to all future transactions with the purchaser, insofar as these are legal transactions of a related nature.

### **§ 2 Offer and contract**

1. If an order is to be regarded as an offer according to sec.145 of the German Civil Code (BGB), we can accept it within two weeks. Our so called "offers" are usually non-binding, i. they are not to be understood as offers according to sec.145 of the German Civil Code (BGB) but rather as an invitation to submit an offer in the form of an "order". So called „offers“ are only binding, if we expressly request acceptance or confirmation of the commission. In all other cases contractual agreements shall only become binding upon our confirmation.
2. After conclusion of the contract, a change or cancellation of the contract requires our express consent. The basis for our deliveries and services are the conditions and specifications of our binding offer and / or our order confirmation.

### **§ 3 Submitted documents**

We reserve ownership and copyrights of all documents provided to the purchaser in connection with an order, in particular but non exclusively to calculations, drawings, etc.. These documents may not be made accessible to third parties without our express written consent. If we do not accept the offer of the purchaser within the period referred to in § 2, these documents are to be returned to us

immediately.

#### **§ 4 prices and payment**

1. Unless otherwise agreed in writing, our prices apply „ex works“excluding packaging and plus value added tax in the respective valid amount. Packaging costs will be charged separately.
2. Payment of the purchase price must be made exclusively to the account specified in our invoice. The deduction of any discount requires a written special agreement.
3. Unless otherwise agreed, the purchase price must be paid within 10 days of delivery. In case of default in payment we charge default interest of 8 percentage points above the respective basic interest rate of the European Central Bank. Our right to claim higher damage caused by default remains unaffected.
4. Unless a fixed price agreement was made, we reserve the right to make reasonable price changes due to changes in labor, material and distribution costs for deliveries made 3 months or later after conclusion of the contract.

#### **§ 5 Rights of retention**

The purchaser shall only have a right of retention insofar as his counterclaims are based on the same contractual relationship and either undisputed or legally established. The right of the purchaser according to sec.320 of the German Civil Code (BGB) or sec. 641 para. 3 of the German Civil Code (BGB) to retain payment to the extent that the directly corresponding counter-performance is not or not properly performed remains unaffected (for example, a reasonable part of the remuneration for a particular delivery may be withheld if this particular delivery is defective whereas defects in other deliveries do not entitle the purchaser to retain payment or performance of the contract. Unless otherwise agreed, this applies even if there is a framework agreement between us and the purchaser).

#### **§ 6 Transfer of risk in cases of shipment**

If the contractual goods are shipped to the purchaser at the request of the purchaser, the risk of accidental loss or accidental deterioration of the goods shall pass to the purchaser upon delivery of the goods to the carrier, at the latest when the goods leave our factory / warehouse. This applies regardless of whether the

goods are shipped from the place of performance or who bears the freight costs.

## **§ 7 Retention of title**

1. We reserve the ownership of the delivered goods until we receive full payment of the agreed purchase price (retention of title). This also applies to all future deliveries, even if we do not always expressly refer to it. We are entitled to take back the goods if the purchaser violates the contractual agreement.
2. The purchaser is obliged to handle the purchased goods with sufficient care as long as the property has not been transferred to him. In particular, he is obliged to sufficiently insure the goods subject to a retention of title against theft, fire and water damage at the replacement value. If maintenance and inspection work has to be carried out, the purchaser has to carry it out in due time at his own expense. As long as the ownership has not been transferred, the purchaser must notify us immediately in writing if delivered goods are seized or subjected to other interventions by third parties. The purchaser shall bear all costs arising from attempts to recover possession of these goods, especially the costs of legal proceedings in accordance with sec. 771 of the German Code of Civil Procedure (ZPO), in so far as the third party fails to reimburse or for these costs.
3. The purchaser is entitled to resell the goods which are subject to a retention of title in the normal course of business. The purchaser hereby assigns to us all claims against his purchasers arising from the resale of the goods to the extent of the order price of the respective goods (including value added tax). This assignment applies regardless of whether the purchased goods have been further processed before being resold. In spite of the assignment the purchaser remains authorized to collect the claim. Our power to collect the claim ourselves remains unaffected. However, we will not collect the claim as long as the purchaser fulfills his payment obligations arising out of the proceeds collected, is not in default of payment, and, in particular, has not filed for insolvency proceedings or ceased to pay his debts.
4. The processing and transformation of the purchased goods which are subject to a retention of title shall always be carried out in our name and on behalf of us. In this case, the expectancy right of the purchaser continues for the products which are the result of the processing or transformation of the purchased goods. If the purchased goods are processed with other items not belonging to us, we acquire co-ownership of the new product in proportion of the objective value of the purchased goods to the other processed items at the time of processing. The same applies to the case of mixing. If the mixing takes place in such a way that the item of the purchaser is to be regarded as the main item, it shall be deemed agreed that the purchaser assigns proportional co-ownership to us and secures the resulting sole ownership or co-ownership for us. To secure our claims against the purchaser, the purchaser also assigns to us such claims which accrue to him

from a third party as a result of the combination of the purchased goods which are subject to a retention of title with a real estate; we hereby accept this assignment.

5. We will release the securities to which we are entitled upon request of the purchaser to the extent that their value exceeds the claims to be secured by more than 50%.

### **§ 8 Warranty // recourse**

1. If, despite all due care, a defect is apparent within the warranty period, which was already present at the time the risk transferred to the supplier or is the result of such a defect, on a notice of defect at our sole discretion we will either repair or replace the defective goods subject to the condition that the notification of the defect takes place immediately after the discovery and the purchaser has complied with his obligations to inspect the purchased goods and notify defects according to sec. 377 para. 1 of the German Commercial Code (HGB).
2. Further warranty rights such as reduction of the purchase price, cancellation of contract or the right to claim damages instead of performance of contract shall only be exercised under the legal conditions. A prerequisite is in particular that we fail to replace or repair the damaged goods in a reasonable deadline set by the purchaser, unless such deadline is superfluous according to statutory law, in particular in cases that a repair or replacement of the defective goods is obviously impossible for us or unreasonable for the purchaser.
3. Warranty claims shall not arise from minor insignificant deviations from agreed specifications or an insignificant impairment of the usability of the purchased goods. Warranty claims shall arise only in case of defects that were already present at the time of the transfer of risk or are due to a "basic defect" existing at the time of the transfer of risk. Therefore, they do not exist in case of natural wear and tear as well as damages which occur after the transfer of risk as a result of faulty or negligent treatment, excessive use, unsuitable operating resources, inadequate construction work, unsuitable subsoil or due to special external influences, as far as it is not exceptionally specified or must be understood that the goods are subject to these influences and have to resist them. We are not liable for improper repair work or changes to the purchased goods carried out by the purchaser or a third party and the consequences arising thereof.
4. Claims of the purchaser for compensation of his expenses which are necessary for the purpose of carrying out the repair or replacement, in particular transport, travel, labor and material costs, are excluded, to the extent that the expenses increase because the delivered goods were subsequently despatched by the purchaser or a third party to a location different from the purchaser's establishment, unless such despatchment corresponds to the designated contractual use.

5. Warranty rights due to defects in the purchased goods expire after 12 months; the period of limitation begins when the goods have been delivered to the purchaser so that he is able to inspect them in the usual course of business. For damage claims in case of intent and gross negligence as well as injury to life, body and health, which are based on a willful or negligent breach of obligations, the statutory limitation period applies. Insofar as the purchased goods are intended for installation in a building in accordance with their customary use, the warranty period shall be five years from the date of delivery of the goods, unless otherwise agreed.
6. Notwithstanding the preceding provisions claims of the purchaser for reimbursement of expenses he had to bear in relation to his customer with regards to defects of the purchased goods which have existed by the time the risk passed to the supplier or are caused by such defects and the end user is a consumer, i.e. the last contract in the supply chain represents a sale of consumer goods (recourse), according to sec. 445a of the German Civil Code (BGB) are only subject to the periods of limitation according to statutory law.
7. The purchaser may only claim recourse against us insofar as the purchaser is claimed by third parties for defects in the purchased goods and our goods were actually not in accordance with the contract at the time the risk passed to the purchaser. The purchaser shall only resort to us for such expenses he had to bear due to his warranty obligations according to mandatory statutory law. With regards to the extent of any recourse claims of the purchaser paragraph 4 of this clause shall apply accordingly.

## **§ 9 Limitation of Liability**

For all contractual claims arising from an intentional or grossly negligent breach of duty for which we are responsible, and thus for competing tort claims, we shall be liable in accordance with the statutory provisions. The same applies to negligently caused injuries to life, body or health and the resulting consequential damages. In all other cases, we are liable for (lightly) negligently caused property and pecuniary damage only in case of breach of a material contractual obligation (ie a contractual obligation or duty, the performance of which the purchaser may rely as it is essential for the execution of the contract), but limited in amount to the damages typical and foreseeable in this type of contract.

## **§ 10 Copyright**

The copyright and the title of ownership of design drawings, data, CAM data,

technology data and all copyrightable works that we provide to the purchaser remains with us, unless otherwise agreed.

### **§ 11 No set-off, contractual penalty**

1. The purchaser may only set off his own claims against our claims for payment of the remuneration for our deliveries and services if his claims are either acknowledged by us or legally established. The right to set off against our claims for payment of the remuneration for particular deliveries or services with synallagmatic warranty claims regarding the respective deliveries or services shall remain unaffected.
2. We will only accept contractual penalties if they are based on an individually negotiated contractual agreement, which is recorded in writing and signed by us. Contractual penalties in the general terms and conditions of the customer do not bind us in any case. All contractual penalties entitle us to the rights according to sec. 339 et seq. German Civil Code (BGB); anyone, who wants to claim a contractual penalty against us, has to explain and prove all preconditions for this. Any contractual penalty is credited to other claims for damages. We reserve the right to reduce the contractual penalty accordingly if no damage has been caused to the customer or the claimed contractual penalty significantly exceeds the damage incurred to the purchaser.

### **§ 12 Delivery and scope of services**

1. The delivery dates communicated by us are deemed to be approximate and non-binding dates, unless the dates are expressly designated by us as binding.
2. We are entitled to make partial deliveries and may invoice them separately to the purchaser.
3. Generally all deliveries shall be made ex works in 58840 Plettenberg (EXW Incoterms 2010), unless it is agreed otherwise. Any transport and insurance contracts with third parties are to be concluded by the purchaser himself at his own expense. The customer bears any costs for the shipment of the purchased goods, other related costs, customs duties and taxes.
4. Unless otherwise stated in the following paragraphs, we are in default if we fail to comply with a binding delivery date. In case that delivery dates are postponed, we shall only be in default upon receipt of a written reminder by the purchaser after the new delivery date has expired, unless the new delivery date has been confirmed in writing as a binding delivery date. If we are in default of delivery, the

purchaser is entitled to the cancellation of the contract, provided that the delivery takes place within a reasonable period of grace granted by the purchaser.

5. The delivery time is met if the purchased goods are ready for shipment or collection by the purchaser in time and the purchaser has been notified accordingly.
6. If the shipment or the collection of the goods is delayed on instruction or due to lack of cooperation by the purchaser, on the fruitless expiry of a reasonable grace period granted by us we are entitled to make other disposals of the purchased goods and to then supply the purchaser within a new, reasonable deadline.
7. Delays in delivery, which are based on the fact that the customer asserts changes to the original order, shall be borne by the purchaser. This shall apply accordingly if the purchaser does not comply with his obligations to cooperate, in particular if he fails to provide data in the agreed form on time or if the data supplied is defective and must be reworked.
8. We are not in default, as far as we can not meet a delivery date without our own fault, because we have not received deliveries or services required for the production of the purchased goods or the performance of the contractual services in due time, although we have ordered them immediately after the contract with the purchaser has been concluded. We will immediately inform the purchaser of the delay. The purchaser is entitled to withdraw from the contract if delivery is delayed for more than one month, if it is not reasonable for him to accept the delay.
9. In the case of force majeure and other unforeseeable, exceptional and unrelated circumstances - e.g. in the case of shortages of raw material, breakdowns, strikes, lockouts, lack of means of transport, official intervention, shortages of energy supply, etc., even if they occur at subcontractors - the delivery period is extended to an appropriate extent, if we are hindered from the timely fulfillment of our obligation without any fault on our part.
10. To the extent that the performance of our deliveries and services becomes impossible or unreasonable as a result of these circumstances, we shall be released from our respective obligations. If the delivery delay lasts longer than one month, the customer is entitled to withdraw from the contract. The purchaser may withdraw earlier if the delivery delay is unreasonable for him.
11. If the agreed delivery time is extended without our fault, for example due to force majeure, and/or if we are released from our delivery obligations for the aforementioned reasons according to clauses 7) to 9), the purchaser can not derive any claims for damages against us. We can only invoke the circumstances mentioned if we inform the purchaser immediately.

## **§ 12 Miscellaneous**

1. This contract and the entire legal relationships of the parties are subject to the laws of the Federal Republic of Germany to the exclusion of the UN Sales Convention (CISG).
2. Place of performance and exclusive place of jurisdiction and for all disputes arising from this contract is our place of business, unless the order confirmation states otherwise.
3. Agreements of the parties deviating from these terms and conditions are only valid if they are laid down in writing. This shall also apply to any agreement regarding a cancellation of the written form requirement.