

DFP | Dörentrup Feuerfestprodukte GmbH & Co. KG

General Terms & Conditions

– Status 01/2015 –

I. General

1. In as far as assembly services are carried out by ourselves, these conditions in terms of the regulations of the German Construction Contract Procedures Section B (VOB/B) have priority and are applied as standard for deliveries and assembly services. The German Construction Contract Procedures Section B are available for review by our customers at our office premises. Sales are subject to the following conditions only.
2. Our deliveries and quotations are made solely on the basis of these terms and conditions in so far as the conditions apply (Item 1.1). These also apply to all future business relationships even if they are not subject to a separate, specific agreement. These conditions are considered to be accepted upon receipt of the goods or services at the latest. Acknowledgements by the purchaser with reference to his general and/or purchasing terms and conditions are therefore not accepted. These terms and conditions apply only in respect of companies.
3. The submission of our quotations is subject to delivery facilities and subject to change with regard to delivery time delivery quantity. Every contract concluded, as well as all verbal and telephone agreements, are valid only if and in as far as we confirm them in writing or acknowledge them through the despatch of goods and invoice. The contractual relationship is subject to German law.
4. The contract as a whole is not rendered invalid by the invalidity of specific contract components. The purchaser's contractual rights are not transferable.
5. The place of execution for the delivery is the supplier.
6. Provided that the contractual partner is a registered trader in terms of the German Commercial Code, a public legal entity or a public asset, Dörentrup is the sole place of jurisdiction for all direct or indirect disputes deriving from the contractual relationship, also with regard to any currency or cheque obligations.
7. Technical consultancy, information, details and other data are provided in good faith but are not binding and form a liability basis only within the scope of item V.7.

II. Prices and Auxiliary Costs

1. Unless agreed otherwise, our prices are in euros ex works; statutory VAT is calculated separately. Should economic upheaval or changes of another kind arise after the commissioning of the order, which were not foreseeable at the time the contract was concluded and if the basis for the services and reciprocal services existing at the time of the conclusion of the purchase is changed significantly as a result, we are then only obligated to deliver if the purchaser adjusts his services to the changed circumstances. We have the right to withdraw from the contract in such an event. We are entitled to charge correspondingly higher prices within the scope of the legal provisions should wages, material prices, other price factors and auxiliary costs be subject to increases prior to despatch.
2. In the case of freight paid deliveries, the freight costs are to be covered by the recipient but will be deducted from the invoice amount. Access, weigh-in and similar fees as well as other transport-related costs are to be borne by the purchaser. In the event of a change in the freight rates forming the basis of the price calculations prior to the completion of an agreed freight paid delivery, then the difference is attributed to or borne by the purchaser.

III. Payment and Late Payment

1. Payment is due within 14 days of the date of invoice in cash without deductions. The invoice date determines the start of the payment deadline.
2. In the event that, in exceptional cases, payment is accepted in foreign currency, then bank discounts, bank charges and stamp duties are to be borne by the purchaser. Foreign currency payments are on account of payment only and are not considered cash payments. The purchaser is therefore not entitled to any agreed discount. In the event of cheques being accepted the payment is considered to have been made only once the cheque has been cleared.
3. Off-set claims on the basis of counterclaims by the purchaser are expressly excluded unless the claim is found to be undisputed or legally valid. The purchaser may not exercise a right of retention on the basis of counterclaims. This does not apply if the right of retention is based on the same contractual relationship or if the purchaser's counterclaims are based on defective performance on our part or are found to be undisputed or legally valid.
4. Should the purchaser's payment of an invoice be overdue we may halt further agreed services or we may demand prepayment or guarantees. In such an event, other demands made of the purchaser also become due with immediate effect. We are entitled to withdraw from the contract or to retrieve materials already despatched from the recipient in the event of the suspension of payment and the opening of bankruptcy proceedings.

IV. Delivery and Despatch

1. We bear no liability even in the case of binding, agreed deadlines in the event of delivery and service delays due to superior forces and as a result of circumstances which significantly hinder delivery or render it impossible through no fault of our own – in particular including strikes, lock outs, official regulations, fire and changes in raw materials, etc, even if they occur at our suppliers or their sub-contractors. Under such circumstances we are entitled to postpone the delivery and/or service with an appropriate lead time for the duration of the hindrance or to withdraw from the unfulfilled contract in part or as a whole. The purchaser may not make any claim for damages as a result.
2. In the unlikely event that we are unable to meet an agreed delivery deadline, the purchaser is only entitled to withdraw from the contract if he has first granted us an appropriate time extension of at least two weeks and which has then been to no avail.
3. In as far as we are liable for non-adherence to binding, agreed deadlines, or should we be behind schedule, then, in addition to being entitled to delivery, the purchaser is also entitled to compensation for damages resulting from the delay; however, this claim is limited to a maximum of 0.5 % for every full week of the delay, up to a total of a maximum of 5% of the invoice value of the deliveries and services affected by the delay. Item V.7 of these terms and conditions applies to claims extending beyond this scope.
4. Despatch is at the recipient's own risk.
5. Unloading charges are to be borne by the purchaser. The commissioning of third party forwarders or freight companies is done in the name and to the account of the purchaser.
6. Quantity: The values determined by the supplier apply to the quantity and weight amounts. Weight shortfalls of up to 5% may not be deducted. Goods packed in sacks are delivered gross for net.

V. Warranty, Damages, Withdrawal

1. Delivery is made under normal market conditions. We will only consider complaints regarding quantity, range and quality if the purchaser communicates the identifiable faults in writing immediately upon receipt in the factory – or else a maximum of seven days after arrival at the recipient; in the event of defects which are not immediately identifiable, the complaint must be communicated immediately upon identification, in accordance with the statutory provisions. Notices of defects are no longer accepted once the deadlines have expired.
2. Goods delivered with minor deviations from the agreed or normal conditions do not form the basis of a warranty claim by the purchaser.
3. A sample forming the basis of a subsequent order always represents the average condition of the goods only. The properties of the sample may not be taken as a guarantee. The same applies to purchases made on the basis of brochures, catalogues and our information. Due to the special nature of the production, no guarantee can be provided that the colour of the goods will always be identical. Our material is therefore subject to normal market deviations.
4. If the delivered goods are defective then we have the choice of remedying the defect or of supplying non-defective goods (subsequent delivery). If we are not prepared to or not able to remedy the defect or to provide a replacement, if this extends beyond the appropriate deadline of at least two weeks set by the purchaser or should the remedying of the defect or the replacement be impossible or unacceptable to us for any reason, then the purchaser is entitled to withdraw from the contract or to undertake a corresponding reduction of the purchase price. Item V.7 of these conditions applies to claims for damages.
5. The purchaser's warranty claims expire one year after the delivery of the goods. This does not apply to instances where longer deadlines are prescribed by law according to § 438 Paragraph 1 No. 2b (construction goods) and § 479 Paragraph 1 (right of recourse) of the German Civil Code. Claims for damages on the basis of defects which are not excluded in terms of Item V.7 of these terms and conditions are subject to the relevant statutory limitation period.
6. If the purchaser has had to bring back the sold, newly produced goods due to defects or if the purchaser's customer has reduced the purchase price (§ 478 German Civil Code), then, in the event that the sold goods were sold to a consumer as end user, the purchaser's statutory rights with regard to defects apply, without the warranty restrictions contained in these terms and conditions with the exception of the claims for damages. In the event of a claim for damages from the end user the purchaser does not have to set the deadline otherwise required. Item V.7 of these conditions applies to claims for damages.
7. Claims for damages due to a breach of obligation on our part are excluded irrespective of legal grounds, in particular if due to impossibility, delay, defective performance, infringement of secondary contractual obligations, other contractual obligations and unauthorized actions. This does not apply:
 1. to damages resulting from injury to life, bodily harm or injury to health
 2. to other damages, if
 - a) these are due to wilful or negligent infringement on our part or on the part of a member of our management staff,
 - b) an essential contractual obligation (cardinal obligation – in particular main contractual obligation) has been breached
 - c) any other obligation not covered by b) is breached due to wilful or negligent infringement on the part of one of our assistants.

In instances b) and c) the liability is limited to the compensation amount for typically foreseeable damages.

The above liability exclusions or limitations also apply to the personal liability of the staff members, employees, representatives and assistants. The above disclaimer does not apply to claims according to the German Product Liability Act.

8. The purchaser is entitled to withdraw from the contract only in the event of a breach of contract on our part not constituting defective performance and for which we are to blame.

VI. Reservation of Title

1. We are to be provided with the following guarantees up until the fulfilment of all demands including all current account payment requests to which we are currently legally entitled or to which we may be entitled in the future over the purchaser and his subsidiaries, and which we will exercise at our discretion provided their value exceeds the demands by more than 20%.
2. The goods remain our property. Processing or alteration is always carried out for us as manufacturer but without any obligation on our part. Should our (co-)ownership expire due to incorporation or processing, it is agreed that the purchaser's (co-)ownership of the integrative item is assigned to us on a pro rata basis (invoice value). The purchaser guarantees our (co-)ownership on a gratuitous basis. Goods where we are entitled to (co-)ownership are referred to hereinafter as reserved goods.
3. The purchaser is entitled to process and sell the reserved goods in terms of proper commercial processes provided he is not in arrears. Pledges or security transfers are not permitted. By way of security the purchaser assigns any demands deriving from further sale or other legal grounds (insurance, unauthorized actions) relating to the reserved goods (including all current account payment requests) to us in advance in full. We grant him revocable licence to collect the demands assigned to us in his own name for our account. This right of collection will be revoked if the purchaser does not duly fulfil his payment obligations, if bankruptcy proceedings are initiated or if a payment suspension exists.
4. In the event of access by third parties to the reserved goods, or damage or loss of the goods, the purchaser is to draw attention to the fact that this is our property and to advise us immediately. The costs of the enforcement of our right of ownership either in court or out of court are to be borne by the purchaser if he infringes this custody and information obligation. The obligation to bear costs also applies to the purchaser if the third party is not in a position to refund the seller for the costs incurred in court and out of court in this regard.