



GENERAL TERMS AND CONDITIONS OF DELIVERY OF DSG-CANUSA GMBH

§ 1 Scope

These conditions of delivery apply to all of our company's supplies and services; they only apply against "entrepreneurs" within the definition of Section 310 (1) German Civil Code (BGB), legal persons constituted under public law and public law special funds. We do not acknowledge the customer's contrary or alternative conditions, nor shall these constitute part of the contract through acceptance of the order or the absence of any repudiation. Our conditions of delivery likewise apply if we, in the knowledge of the customer's conditions contrary or alternative to our own, deliver the supply or service to the customer without reservation. The customer's alternative terms will only constitute a component of this contract if these are expressly agreed in writing.

§ 2 Conclusion of contract and contractual contents

- (1) Our quotations are non-binding and subject to change, unless they are expressly labelled as binding or if they contain a specific period for acceptance. We may accept those purchase orders of the customer, classifiable as invitations to enter into an agreement, within two weeks following our receipt of the relevant order. This may take place by way of sending a written order confirmation or by rendering the contractual performance within the same period of time. We reserve the right to notify the customer within the same time period that we are rejecting the purchase order.
- (2) Quantities, quality and the description of our goods and services are based on our quotation or our written order confirmation. The customer's specifications will only be taken into consideration if confirmed by us in writing. We reserve the right to modify the contractual performance following the conclusion of the contract, insofar as such modifications are customary, reasonable and minor, or are necessary in order to satisfy amended legal provisions and confirmed by us in writing.
- (3) As a rule, we only distribute goods made from first-class raw materials. Nevertheless, we naturally assume no warranty with respect to the chemical resistance and the physical properties of the goods we distribute. Customary deviations from the presented samples are unavoidable, particularly in relation to hardness, colour and dimensions. Claims cannot be derived on this basis, provided the deviations are not unreasonable and do not impair the contractually defined purpose.
- (4) The content, dimensions and weight data set out in our quotations and order confirmations concerns average values, and may correspondingly differ from the specific nature of the material processed. Such quantity deviations are deemed to be mutually agreed insofar as these are not unreasonable for the customer. This assumption cannot usually be made in relation to deviations of 10%. Tolerances in relation to colour, surface finish and thickness are reserved within the ranges customary in the trade.
- (5) The customer shall indemnify us in respect of third-party claims for damages made against us for infringement of copyright or industrial property rights in relation to goods we produce in accordance with the instructions and specifications of the customer.
- (6) In the event that we make deliveries in accordance with our own drawings, samples or models, these shall only be binding for the external shape and technical design. These do not comprise any implied statements regarding suitability for a particular purpose. Descriptions, depictions, quality designations and advertising claims, etc. do not constitute guarantees, unless we have expressly made such a guarantee in writing.
- (7) The delivery of raw materials and semi-finished goods for contract processing or contract finishing shall be performed at the cost and risk of the customer as is the return delivery of the finished goods. We will not compensate or reimburse the difference in value resulting from the damage to or loss of the materials stored by us, unless the damage is the result of actions for which we are responsible or which are caused by us deliberately or through our gross negligence.

§ 3 Purchase price and ancillary costs

- (1) Unless stated otherwise in the order confirmation, payments are payable net (without deduction) within 30 days from the invoice date. We reserve the right to stipulate alternative payment conditions in specific cases, especially to demand advance payments or cash before delivery. Cheques or bills of exchange are only accepted with a view to payment.
- (2) Unless our quotation or order confirmation states otherwise, the EXW prices - within the definition of Incoterms®2010 - listed there shall apply, including packaging and the applicable rate of statutory value-added tax.
- (3) Subject to alternative agreements, the customer shall bear the additional costs incurred by reason of alternative delivery destinations and modes.
- (4) The minimum net order value is € 250; the minimum value per item is € 50. For orders under this limit, we shall levy a handling charge of € 10 per item that does not meet the minimum and an additional € 30, if the total order value falls short of € 250.

§ 4 Delivery and acceptance

- (1) The delivery of goods takes place through the customer or its appointed freight carrier taking possession of the goods on our company premises, once we have informed it that the goods are ready for collection. The collection must be performed within six weeks. In the event that the customer is in default of acceptance, we shall store the goods at the costs and risk of the customer.
- (2) We are entitled to make part deliveries, if the part delivery can be practically utilised by the customer within the terms of the contractual purpose, the delivery of the remaining ordered goods is assured and the customer is not hereby subjected to significant additional effort or any significant additional costs.
- (3) Unless otherwise agreed, the stated delivery and performance time periods are approximate periods of time. The compliance with time periods is determined at the time at which the transfer of risk takes place (cf. Section 5). All contracts and delivery dates are subject to the condition that we ourselves receive accurate and scheduled deliveries, unless we are responsible for the inadequate performance or failure of performance. The commencement of the delivery time is, moreover, conditional on the customer providing all the documents, materials, information and approvals necessary for the performance of the contract. The aforementioned documents and materials must be supplied in good time and shall contain the necessary information and/or the requisite characteristics.
- (4) Supply and service time periods shall be extended by that period of time during which we prove that, at no fault of our own, our performance is impeded in relation to the procurement, manufacture or delivery of goods or the supply of services by labour disputes, force majeure or other unforeseen events, plus a reasonable additional lead time for the elimination of the interruption. Supply and service time periods shall also be extended by that time period during which the customer fails to fulfil the duties of cooperation required for the performance of the contract. This applies equally if such events only occur at a point in time in which we are already in default of performance.
- (5) The customer's reminders and stipulations of grace periods must be issued in writing in order to be valid. Damage caused by such delays will not be compensated in the event that the delay is due to slight negligence on the part of ourselves or our vicarious agents. The customer's non-compliance with payment periods and the delays to delivery hereby caused shall in no event result in any payment of compensation. Moreover, in the event of a delay to delivery, we will be liable to pay compensation in respect of the delay at the rate of 0.5% of the value of the delivery for each complete week of the delay, but only up to a maximum sum of 5% of the delivery value. We remain entitled to demonstrate that the customer has sustained no damages at all or a lesser amount than the flat-rate amount set out above.

§ 5 Transfer of risk

- (1) In the event that the goods are delivered on our company premises (cf. Section 4 (1)), the risk of the damage to and loss of the goods passes to the customer at the time at which we notify the customer that the goods are ready for collection. In the event that the goods are not delivered on our company premises, the transfer of risk takes place upon hand-over of the goods to the shipment company or to the person named by the customer as responsible for the shipment.
- (2) If we choose the shipment mode, shipment route or the entity responsible for the shipment, we shall only be liable for gross negligence in relation to the selection.

§ 6 Delay to acceptance and payment

If the customer is in default of payment, we shall be entitled to demand default interest at the rate of 8% p.a. over the applicable base interest rate (Section 247 German Civil Code (BGB)) and to demand immediate payment of all outstanding receivables. We reserve the right to demonstrate that we have sustained additional damages due to the delay. If, following the grant of a reasonable grace period to the customer, the customer refuses to perform acceptance or expressly declares that it does not wish to accept the goods, we shall be entitled to rescind the contract or demand compensation for non-performance.

§ 7 Warranty for material defects or defective legal title

- (1) We warrant that our goods are free of material defects that significantly impair the contractual use, and that they are not encumbered with third-party rights that interfere with the contractual use.
- (2) We will fulfil our warranty obligations through elimination of the fault or making fault-free subsequent delivery (subsequent performance), the choice resting with us. If we have been granted a reasonable grace period for rendering subsequent performance - which must afford us at least two opportunities for rendering subsequent performance - but the subsequent performance nevertheless fails, the customer shall be entitled to rescind the contract or demand the reduction of the payment; the requirement to grant said grace period is waived in the statutory prescribed cases. We shall pay compensation or reimburse futile expenditure due to the defects in accordance with the statutory provisions; however this duty is limited by the disclaimers set out in Section 8. Other warranty claims are hereby excluded.
- (3) The fulfilment of our warranty obligations is conditional on the customer inspecting the contractual characteristics of the supplies and services promptly following their delivery, and reporting any discrepancies and defects without delay (Section 377 German Commercial Code (HGB)). The freight carrier must be requested to present a written report of the facts and, following immediate consultation with us, if necessary an insurance adjuster should be commissioned to issue a certificate of damage.
- (4) In relation to the subsequent performance, the customer shall bear the additional costs arising due to the contractual item having been relocated to a location different from the place at which the contractual item (evidently to us) is to be used in accordance with the contract, or if the fault elimination is rendered more difficult because the goods have been improperly modified or if the cause of the defect results from an instruction issued by the customer. No warranty is extended to defects or damage attributable to operational and natural wear and tear, improper handling, excessive use, inappropriate operating resources, defective third-party repairs, etc. or due to force majeure.
- (5) The statutory warranty period applies for defects.

§ 8 Liability/disclaimer

- (1) Our contractual and non-contractual liability to pay damages is limited to the following extent:
- (2) We will pay compensation to the statutory limit in relation to deliberate or grossly negligent breaches of duty as well as for death or personal injury.
- (3) In relation to damages for the breach of a material contractual obligation (duty, the fulfilment of which is imperative to enable the very performance of the agreement and upon the fulfilment of which the contractual party could normally expect to rely upon), we will only be liable for the foreseeable, actual typical damage if we are only culpable of slight negligence.
- (4) The liability provisions contained in (1) above are conclusive. We are likewise liable to a similar extent for our representatives and vicarious agents. No other more extensive compensation claims may be asserted against us. Excluded from these limitations are claims based on the Product Liability Act (ProdHaftG) as well as claims resulting from a guarantee given by us or in the event that we deceitfully conceal a defect.

§ 9 Retention of title

- (1) Ownership over the delivered goods (goods subject to retention of title) only passes to the customer once all of our claims established by the business arrangement with the customer have been fulfilled (including ancillary claims, default interest and compensation claims).
- (2) By way of precaution, the customer shall assign to us in advance all claims arising from sales, the assignment being up to the amount of the invoice total for the goods subject to retention of title (including value-added tax). It remains entitled to collect the assigned claims as part of its normal business dealings. In the event that the goods are processed with articles not in our ownership, we shall become co-owners of the modified article. The same applies if the goods subject to retention of title are inextricably combined with other articles. The retention of title and the resale authorization likewise apply to the modified article.
- (3) In relation to third-party attachment orders, the customer must inform those concerned about our ownership over the goods subject to retention of title and notify us promptly. If the customer fails to fulfil this obligation, it shall be liable for the costs incurred.
- (4) If the customer is in default of payment, we shall be entitled to take back the goods subject to retention of title from the customer or even from third parties; this shall be performed at the cost of the customer. To this end the customer hereby assigns to us its surrender claims against the third party.

§ 10 Offset, retention

- (1) The customer is only entitled to offset counter-claims if these are undisputed or have been confirmed by way of a res judicata decision.
- (2) The rights of retention pursuant to Section 273 German Civil Code (BGB) and Sections 369 et seq. German Commercial Code (HGB) are only available to the extent that these are based on the same legal arrangement as our own claim. This limitation shall not apply if the customer's counter-claims are undisputed or have been confirmed by way of a res judicata decision. The customer may not avail of Section 371 German Commercial Code (HGB) for the settlement of its claim.

§ 11 End of the contract

Each of the contractual partners is entitled to terminate contract for cause, or to rescind acceptance of the order. A reason justifying said cause is specifically established if insolvency proceedings are initiated or declined due to a lack of assets or if any out-of-court settlement process takes place or if the claims of the other contractual partner are made subject to an attachment order and the attachment is not withdrawn within two weeks. The termination for cause must be preceded by a written reminder setting out the warning of termination, the reason for termination and stipulation of a time period for compliance unless the delay is not reasonable to expect of the cancelling party.

§ 12 Miscellaneous

- (1) These General Terms and Conditions of Delivery replace all previous agreements made between the contractual partners. Amendments, additions, ancillary agreements and the stipulation of grace periods, terminations and the assumption of guarantees must be issued in writing in order to be enforceable. The contractual partners also satisfy the written form requirement by sending the documents by fax or email.
- (2) If any of the provisions of these General Terms and Conditions of Delivery are wholly or partially unenforceable, or prove in the future so to be, this will not prejudice the enforceability of the remaining provisions.
- (3) All legal relations between the contractual partners shall be exclusively governed by the Law of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded. The place of performance for all contractual duties of performance is our company address; the legal venue for hearing all disputes is the court with jurisdiction over our company address. We also have the right to pursue actions before the court with jurisdiction over the customer's registered address or before any other court with jurisdiction under national or international law.