

DURAL GmbH

General Terms and Conditions for Sale, Delivery and Payment**§ 1 General - Scope - Formal Requirements**

1. These terms and conditions for sale, delivery and payment shall apply to all sales to our customers. Deviating agreements or arrangements shall be valid and binding only if expressly agreed on in writing, by e-mail or telefax. If the content or scope of such deviating agreements or arrangements cannot be clearly determined, these terms and conditions shall govern the contracts between us and our customer. The principles of the ampersand confirmation letter between entrepreneurs shall be applicable.
2. General terms and conditions of the customer shall be deemed as agreed and binding only if and to the extent not conflicting with these general terms and conditions. Conflicting general terms and conditions are without prejudice for the effectiveness of a contract with the customer. In case of conflicting terms and conditions, the applicable laws shall govern. If an order of a customer has been issued with reference to terms and conditions which are, in whole or in part, conflicting with these terms and conditions, we hereby explicitly reject such conflicting terms and conditions.
3. These terms and conditions for sale, delivery and payment shall also apply to all future transactions with our customers.

§ 2 Conclusion of a Contract

Except if otherwise explicitly specified in our offer or order confirmation, our offers shall be non-binding. All contracts or agreements between us and our customer related to deliveries based on an order or an offer shall be valid only if made in writing or confirmed per e-mail or telefax. This shall also apply for amendments of or supplements to a contract.

§ 3 Delivery - Delay in Delivery

1. Representations and warranties for goods sold on the basis of samples are limited to the representation and warranty that the good conforms with the sample. No other representations and warranties or guarantees are given. In particular, we do not represent and warrant that such a good is suitable for a specific application.
2. For purposes of calculation, the weights determined at the factory shall be relevant.
3. In principle, delivery and invoicing shall be *ex works* or *works entropot*. Deliveries free of shipping charge require an explicit and separate agreement and only the costs for general cargo, goods load cargo and ship's freight shall be born by us. Additional costs, e.g., for express deliveries, shall be always borne by the customer. If initially paid by the customer, the transportation charges born by us shall be reimbursed to the customer by deduction from the invoiced amount.
4. Subject to the provisions set forth in Section 7 hereof, the risk of loss or deterioration of the ordered goods shall transfer to the customer as soon as the shipment has been delivered into the charge of the freight carrier/express agent, or, in the event of delivery without shipping, when the goods are made available for pick-up. If a shipment is delayed upon request of the customer, or a delay occurs for reasons caused by the customer, the risk of loss or deterioration shall transfer to the customer starting the point in time the goods have been made available for shipment. If the customer is in delay with accepting the delivered goods or in default with other obligations to cooperate, the risk of loss or deterioration of the goods shall transfer to the customer starting the point in time the customer is in default.
5. Claims of the customer for damages in the event of delay of the delivery, or claims for damages in lieu of specific performance shall be hereby explicitly excluded. This shall not apply in the event of deliberate acts, gross negligence or liability for death, bodily injury or health impairment pursuant to mandatory laws. Our liability for negligence shall be limited to the replacement of foreseeable damages which are typical for the respective type of contracts. The customer may rescind the contract pursuant to applicable laws only if we are directly responsible for the delay in delivery. This provision shall not imply any change of the burden of proof to the detriment of our customer.
6. In cases of *force majeure* or unforeseeable or extraordinary events which are not preventable using the care of a prudent businessman, we shall be authorized to postpone the delivery for the duration of the obstruction plus a reasonable time period for restarting our activity. Events of *force majeure* or unforeseeable or extraordinary events are, without limitation, mobilization, war, riots, strikes, lock-outs, unavoidable restrictions in the supply or lack of raw materials or utilities as well as unforeseeable interruption of operations or deliveries by our suppliers.
7. Without limiting the other restrictions set forth in this Terms and Conditions of Sale Agreement, the Buyer shall not export or re-export purchased items (i) into a country subject to embargo by the United States, (ii) to any national or resident of such a country or (iii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals, U.S. Commerce Department's Entity List or the U.S. Commerce Department's Table of Deny Orders.

§ 4 Delivery

If purchase contracts provide for a delivery of a set quantity during an agreed-upon time period, the deliveries shall be distributed uniformly over the entire term of the contract. The parties shall agree on fixed dates for the deliveries. If the customer does not call an order within the agreed upon time period, we shall be entitled to claim damages, including all possible additional expenditures (e.g., costs for transportation, storage, preservation). Further rights are reserved.

§ 5 Price and Payment Conditions

1. Except if otherwise provided in the offer or order confirmation, our prices shall be *ex works*. If the shipping and duty costs for goods sold *free of carriage charges* or *duty paid* shall increase after the conclusion of a contract, the additional costs resulting from the increased rates shall be born by the customer. If, after the conclusion of a contract, the costs shall increase without our fault, in particular due to labor agreements or a price increase for materials, or the cost increase could not be calculated in advance, we hereby reserve the right to increase our prices correspondingly. Upon request of the customer, we shall provide evidence for the reason of the cost increase.
2. All prices shall be in Euro, plus VAT.
3. The invoiced amount (price for the goods plus VAT) shall be due 30 days after the receipt of the invoice. If we become aware after issuing the invoice or before the respective due date that our customer is not credit-worthy, we may demand immediate payment. For payment within 10 days after the date of the invoice we grant a discount of 2% of the invoice balance. No discount is granted for a new invoice if former invoices are due and not fully paid. If we explicitly accept a draft which is eligible for a discount, the banking discount and collection charges and note taxes shall not be subject to discount, charged in full starting the due date of the invoice and become immediately due in cash.
4. If the customer is in delay with its payment, we shall charge a late fee interest p.a. of 8% above to the basis rate released by *Deutsche Bundesbank* as provided by Section 247 of the German Civil Code. We hereby reserve the right to claim further damages caused by the customer's delay.
5. Drafts and checks shall be only accepted on the account of performance.
6. If the customer is in delay with acceptance or payment, notwithstanding any other claims we may have, we shall be authorized to stop further deliveries during the period of delay, and the customer shall have no rights or claims arising out of such an action. The customer shall be entitled to set-off claims only if its counter-claims are undisputed or determined per legally valid and final judgement. The customer shall be authorized to retain payment only if we are in material breach of our obligations, or the payment by the customer exceeds the price for the goods we have delivered. If the customer shall be in delay with payment, we shall be entitled to rescind all contracts after a reasonable grace period.
7. Sales representatives shall be authorized to collect payments only on the basis of a specific written power of attorney.



§ 6 Warranty

1. Warranty claims shall be subject to a statute of limitations of 12 months. This shall not apply if a different statute of limitation is provided by Section 438 Subsection 1 No. 2 (Construction and Items for Construction), Section 479 Subsection 1 (Regress Claim) and Section 634a Subsection 1 No. 2 (Deficiencies in Construction) of the German Civil Code or for claims related to cases of death, bodily injury or impairment of health, or in the event of intentional breach of duty, gross negligence or intentional concealment of a defect. The statutory provisions regarding the stoppage, suspension and renewal of the limitation periods shall remain unaffected.
2. The customer shall inform us in writing of any identifiable defects immediately after delivery of the goods, and of any hidden defects immediately after their respective discovery. The customer shall fulfil diligently its statutory obligations pursuant to Section 377 of the German Commercial Code of inspecting the delivered goods.
3. If a defect already existed at the time of the transfer of the risk, we shall have the opportunity for subsequent performance. i.e., to deliver replacement within a reasonable time period. If the subsequent delivery shall fail, notwithstanding any damage claims pursuant to Section 9 hereof, the customer may rescind the contract or reduce the compensation.

§ 7 Retention of Title

1. We shall retain title to the goods we delivered until all our claims against the respective customer, including claims arising in the future, and claims from other contracts entered into simultaneously or at a later point in time, have been fully paid. In an acceptance bill process (e.g., *check-bill of exchange-process*), we shall retain the title to the goods delivered until the customer has properly honored the bill when due. We shall also retain the title to the goods if one or all of our claims have been included in a current invoice, and the balance is drawn and accepted.
2. The customer shall bear the risk of loss or damage during the time period of retention of title. The customer may process and confuse goods subject to retention of title in the course of its ordinary business. The handling or processing of the goods subject to retention of title shall be deemed to be carried out by the customer on our behalf, without creating or giving rise to any liabilities on our side. Following the processing and confusion of goods subject to retention of title, the retained title to the originally delivered goods shall transform to a co-owner's interest in the newly created good.
3. The customer shall be only authorized to sell the goods subject to retention of title in the ordinary course of its business. The customer hereby assigns to us all claims against the respective buyer or any third party arising from the sale of the respective goods. If the goods subject to retention of title are sold unprocessed or processed, or connected or intermingled with items that are owned by the customer, the customer hereby assigns to us the claim arising from the respective sale up to the amount of our purchase price claim.
4. If the goods subject to retention of title are sold by the customer after processing, or connected or intermingled with goods that are not owned by the customer, the customer hereby assigns to us the claims resulting from the sale of the new product up to the amount of our purchase price claim together with all ancillary rights to such claim, our claim being first in order of priority.
5. The customer shall be authorized to collect the assigned claim also after its assignment to us. Our right to collect the claim shall remain unaffected; however, we may not collect claims as long as the customer properly complies with its payment obligations and other obligations. The customer shall provide us upon our request all information to the assigned claims, the debtor, other information necessary to collect the claim, and deliver all relevant documentation as well as inform the debtor of the assignment.
6. If the value of the collateral exceeds the total of the customer's liabilities to us by more than 20%, we shall reassign to the customer upon its request the collateral exceeding this level. Any assignment of claims shall expire when all liabilities of the customer have been fully paid.
7. In the event of a breach of the contract by the customer, in particular, in case of delay of payment, we shall be entitled to rescind the contract after expiration of a reasonable notice period. The goods subject to retention of title shall be returned to us free of charge immediately following the rescission.

§ 8 Packaging

1. In principle, packaging material not invoiced to the customer shall not be returnable to us. If the customer chooses to return packaging material based on our statutory obligation to accept returned packaging material, such packaging material must be delivered to our registered office in a cleaned condition, free of any foreign matters and properly sorted, as the case may be.
2. Borrowed packaging shall be returned to us within two months after the date of the respective invoice in a clean and re-usable condition and at the cost of the customer. If the customer fails to return such packaging material within this time period, it shall be charged replacement costs. The payment shall be due immediately. If the return of borrowed packaging is delayed, the customer shall pay a charge for wear, depending on the condition of the returned packaging material.

§ 9 Other Compensation Claims

1. In principle, claims of the customer for damages or expenses (hereinafter "Damages"), regardless of their respective legal basis, including claims due to a breach of contractual obligations or tort, shall be explicitly excluded.
2. This shall not apply if and to the extent otherwise provided by statutory laws, e.g., product liability laws, in the event of willful misconduct, gross negligence, death, bodily injury or impairment of health or material breach of contract. Damages for a material breach of contract shall be limited to the damages that are typical for such contracts and foreseeable, except in case of willful misconduct, gross negligence or statutory liability for death, bodily injury or impairment of health. This provision shall not be deemed to change the burden of proof to the detriment of the customer.
3. If the customer shall be entitled to Damages pursuant to this Section 9, the respective claims shall expire with the expiration of the warranty claims as set forth in Section 6.1 hereof in 12 months. Damages pursuant to the product liability laws shall be subject to the statute of limitations provided by the laws.

§ 10 Data Protection

Pursuant to Section 33 of the German Federal Data Protection Act (BDSG), we hereby advise the customer to save all data necessary for its business within the permissible scope of the Data Protection Act.

§ 11 Place of Fulfillment - Applicable Laws - Jurisdiction

1. For both parties, the place of performance for delivery and payment and all rights and obligations from their businesses relationship shall be Ettlingen.
2. The contractual relationship with the customer is governed by German laws. The Vienna Convention on Contracts for the International Sale of Goods - CISG shall not apply, also if the customer is not located in Germany.
3. If the customer is a merchant, venue shall be Ettlingen.

§ 12 Miscellaneous

If one or more of the above provisions is, are or shall become invalid or unenforceable, or these general terms and conditions are incomplete, the validity of the remaining provisions shall remain unaffected. In such a case, the parties shall enter into negotiations with the objective of replacing the invalid or unenforceable provision with a legally valid provision, which comes closest to the initial intended economic purpose.