

GENERAL TERMS AND CONDITIONS OF SALE OF DÜRR SYSTEMS AG (08/2016)



I) Application of general terms and conditions and sale; Exclusive application

- (1) These general terms and conditions and sale (hereinafter "GTCS") apply to all supplies made by us. However, they only apply where the customer is an entrepreneur within the meaning of § 14 German Civil Code (*Bürgerliches Gesetzbuch*), a legal entity under public law or a special public fund (*öffentlich-rechtliches Sondervermögen*).
- (2) We do not accept terms and conditions used by the customer. Such terms and conditions shall not become a component of the contract even if we supply without reservation in the knowledge that the customer's terms and conditions either conflict with or differ from our GTCS.
- (3) The respective current version of our GTCS shall also apply to all future supplies, services or offers which we make to the customer even if we do not mention or refer to them again. We will inform the client of any changes to our GTCS.

II) Conclusion and content of contract; written form; representation; reservation of rights; confidentiality

- (1) Where our products are presented in our webshop at webshop.durr.com (hereinafter "Webshop") this does not constitute a binding offer for sale on our part. An offer does not come about until the customer has placed the item(s) in the shopping cart and sent off the order by clicking on the "buy now" button.
- (2) Where we respond to a customer enquiry by making an offer, our offer is subject to confirmation and non-binding unless the offer expressly states that it is binding and stipulates a specific acceptance period.
- (3) The customer's order is a legally binding invitation to enter into a contract. We have 14 calendar days to accept the customer's offer.
- (4) We will provide electronic confirmation that we have received the customer's order without undue delay by displaying the words "Order created" in the Webshop (hereinafter "Confirmation of Receipt"). This Confirmation of Receipt does not constitute binding acceptance of the order.
- (5) A contract is not concluded until we have sent a confirmation of order by email or despatched the merchandise ordered.

III) Delivery; transfer of risk; partial supply; default in acceptance

- (1) In our Webshop, the customer can choose between self pick-up and standard shipping. In the event the customer chooses standard shipping, a lump sum for packaging and shipping will be applied. The lump sum amount will be displayed in the Webshop prior to finalizing the order process. All additional taxes, charges and duties, including customs duties have to be borne by the customer directly.
- (2) We are entitled to specify the type of shipment (in particular, the transport company and the shipping route) and the packaging at our reasonable discretion.
- (3) In general, shipments are made only to the shipping address provided by the customer upon registration.
- (4) All deliveries are made at the customer's risk. The risk shall transfer to the customer when the order status in the Webshop changes to "dispatched", but no later than when the merchandise is handed over to the forwarder, carrier or any other transporting entity. This shall also apply to part-shipments and in cases where we have agreed to provide other services (such as shipment, transportation or assembly). This has no effect on the provisions regarding the place of performance (XI of these GTCS).
- (5) We will only insure the merchandise, if this is expressly agreed with the customer, and then, solely at the customer's cost against theft, breakage, transport, fire, water damage or other insurable risks.
- (6) We are entitled to make part-shipments to the extent that this can be reasonably expected of the customer.
- (7) If the customer is in default with acceptance, if he fails to cooperate as required or if our performance is delayed for any other reasons for which the customer is responsible, we may charge for any ensuing damage, including additional expenditure which we incur including but not limited to storage costs. This charge is EUR 30.00 per full calendar week per shipment. This has no effect on our statutory rights or our right

to prove that the actual loss suffered was even higher; however, the above mentioned weekly charge must be offset against any claims that we may have. The customer has the right to prove that we did not suffer any loss or that any loss suffered was substantially less than the weekly charge mentioned above.

IV) Delivery dates, default, force majeure

- (1) The information on availability and delivery dates provided in our Webshop are not binding, unless expressly otherwise agreed. Any delivery times or dates indicated for supplies and services in our order confirmation are approximate unless a fixed delivery time/date is expressly stated or agreed in an individual case.
- (2) The delivery time/date is deemed to have been met if the order status in the Webshop has changed to "dispatched" or – if so agreed – we have handed over the merchandise to the transporting entity.
- (3) Delivery is always subject to us having been supplied in a correct and timely manner by our suppliers.
- (4) If it is foreseeable that a delivery date cannot be met, we will inform the customer accordingly, providing indication of the probable new delivery time.
- (5) Where it is impossible for us to meet our obligations under the contract or only to do so with delay, we are not liable to the extent that this is attributable to force majeure or other occurrences, which were unforeseeable when the contract was concluded and for which we are not responsible, including without limitation any disruption to operations, fire, natural disasters, weather, flooding, war, insurgency, terrorism, transport delays, strikes, lawful lockouts, shortage of energy, raw or human resources, delays in the issue of necessary official permits, official/sovereign measures. Whether such circumstances occur to us or our suppliers shall be of no relevance.
In the event of such occurrences, the delivery dates shall be extended automatically by the duration of the occurrence plus a reasonable start-up period. If a force majeure occurrence lasts for more than eight weeks, each party to the contract may withdraw from the agreement. We are also entitled to withdraw from the contract, if such occurrences make it substantially more difficult or impossible for us to perform our obligations under the contract and if such occurrences are more than just temporary.
- (6) Delivery dates/times will be extended automatically by an appropriate period if the customer does not fulfil its contractual obligations, duties to cooperate or other obligations.
The point at which we fall into default in delivery shall be as provided for in statute. In any event, the customer must send a reminder. If we are in default with delivery, the customer in addition to delivery shall be entitled to compensation for any loss suffered as a result of the delay and in accordance with the statutory provisions. However, provided we have not acted with intent or gross negligence, this entitlement is limited to 0.5 % of the delivery value per week of default, but no more than 5 % of the delivery value. However, we have the right to prove that the customer did not suffer any loss or that any loss suffered was substantially less. This has no effect on the customer's right to withdraw from the contract after a reasonable period has expired and/or to compensation for non-fulfilment in accordance with IX.

V) Retention of title

- (1) We shall reserve title in all merchandises supplied until such time as all claims resulting from the business relationship have been paid in full. Where we supply on current account, the reservation of title shall serve as security for amounts due to us.
- (2) The customer shall treat the merchandise with care; in particular, the customer shall insure the merchandise sufficiently against fire, water and theft at its own expense, with the insured sum being adequate to cover the replacement value.
- (3) In the event of seizure or any other third-party intervention, the customer shall notify us in writing without undue delay, so that we can initiate legal proceedings pursuant to § 771 Code of Civil Procedure (*Zivilprozessordnung*) in order to prevent execution of a court order. If the third party is not able to reimburse us the judicial or out of court costs in connection with action under Section 771 of the German Code of Civil Procedure, the customer shall be liable for our loss.
- (4) If the customer combines or mixes any merchandises in which we have reserved title with other items to form a new unit in such a way that one of the new items must be regarded as the main constituent, we shall have pro rata (co-)title in the new item

created, such (co-)title being in the ratio of the value of the merchandise owned by us to the value of the combined or mixed items at the time of such combining or mixing, and the customer hereby shall transfer title and possession in the new item. We hereby accept this transfer. The customer shall hold the item created by combination or mixing in safekeeping for us free of charge.

- (5) If the customer or a third party, acting on behalf of the customer, processes or modifies the merchandise owned by us, this shall be deemed to have been carried out for us. If the customer acquires sole title in the new main item created by way of such processing or modification, the parties shall be deemed to have agreed that the customer hereby transfers to us (co-) title and possession therein in the ratio of the value of the merchandise (co-) owned by us to the value of the combination or modification and we hereby accept such transfer. The customer shall keep possession of the sole or co-owned items which has thus been created for us free of charge. If the merchandise owned by us has not yet been inextricably combined or mixed with other items or otherwise processed or modified since supply, its value at the time of combining, mixing, processing or modification, shall be deemed to be the amount billed for the merchandise by us including statutory value-added tax.
- (6) The customer has the right to resell the merchandise in the ordinary course of business. The customer shall retain title in the merchandise until his purchasers have fully paid the purchase price. The customer hereby assigns to us any claims, which may arise against his purchasers from the resale of the merchandise supplied by us together with all ancillary rights until such time as all claims have been satisfied in full. We herewith accept such assignment. If the customer and the customer's purchasers operate a current account, the customer hereby assigns to us the balance of his accounts receivable as acknowledged by the customer's purchasers in order to secure our claims or in the event of insolvency of the customer's purchasers the "causal" balance from the current account. We hereby accept this assignment. This clause regarding the assignment of claims also applies to the item newly created by processing, modification, combination or mixing. The assignment shall apply to the customer's entire claim against his purchasers. The customer has a revocable right to collect any receivables assigned. At our request, the customer shall notify its purchasers of the assignment and provide us with any information and documents which is needed to assert its rights.
- (7) We will, at our option and at the customer's request, release the securities held by us to the extent their realizable value exceeds 10% of the claims to be secured.
- (8) If the reservation of title is invalid or unenforceable under the law of the country in which the merchandise is located, the parties shall be deemed to have agreed on whatever security corresponds most closely to the law of that country. The customer shall assist and support us in arranging the security. If the reservation of title is not valid under the law of the country in which the merchandise is located, unless it has been duly registered, the customer shall arrange for or assist with such registration in our favour without undue delay as soon as the merchandise has arrived in that country and shall notify us thereof unbidden.

VI) Prices, terms of payment, retention of goods; exclusion of set-off and reservation rights; inability of customer to perform

- (1) Unless otherwise agreed, prices are always the net prices which apply at the time the contract is concluded, plus the legal value added tax at the applicable statutory rate; the prices are "EXW Incoterms (2010)" (cf. III (1) of these GTCS). Any insurance, transport and packaging costs (see III (3) and III (2) of these GTCS) and any other taxes and levies will be payable in addition unless otherwise agreed.
- (2) Unless otherwise agreed, our invoices are payable within 30 calendar days of delivery and receipt of invoice (and, if expressly agreed, after acceptance) without any deduction and in Euros (€). Delivery shall be understood to mean arrival at customer of our dispatch advice/advice that merchandise is ready for collection or – if shipment of the merchandise has been agreed – handover of the merchandise to the transporting entity. The date on which payment is received shall determine whether payment is timely. We can send our invoice along with the above-mentioned advice.

- (3) The customer shall be deemed to be in default with the expiry of the payment deadline stated in (2); no formal warning needs to be issued. During default, interest shall accrue at the applicable statutory default interest rate. We are also entitled to the standard default amount pursuant to § 288 (5) sentence 1 German Civil Code. We reserve the right to assert any further default damages. Our claim for the commercial maturity interest (§ 353 German Commercial Code) against merchants remains unaffected.
- (4) The customer shall only be entitled to set-off and retention if the counterclaims are undisputed or declared final and absolute by a competent court.
- (5) We are entitled to refuse to perform any outstanding obligations under the contractual relationship if, after the contract has been concluded, it becomes apparent that our claim for payment under the respective contractual relationship is at risk owing to the customer's inability to pay (§ 321 (1) German Civil Code). Our right to refuse performance lapses if payment is rendered or security is provided. We are entitled to set the customer a reasonable deadline by which it must choose either to pay or to provide security concurrently in return for performance by us. We may withdraw from the contract if this period expires and neither payment nor security have been rendered. A deadline does not have to be set if a statutory exemption applies.

VII) Warranty for defects

- (1) We only warrant that the merchandise complies with the specification which applied when the contract was concluded. We do not grant any warranty over and above this; in particular we do not warrant that the merchandise is fit for a specific purpose.
- (2) Unless otherwise expressly agreed, our products and services are only required to comply with statutory requirements which apply in Germany.
- (3) There are no guarantees of any type whatsoever other than those which have been expressly contractually agreed.
- (4) The customer's rights in case of defects of quality and legal title (including incorrect delivery and insufficient quantities, faulty assembly or instructions) are subject to statutory requirements unless otherwise stated qualified in these GTCS. In any event, this has no effect on the specific statutory provisions covering shipment to a final consumer who is a private individual (supplier's recourse pursuant to §§ 478, 479 German Civil Code).
- (5) We are not liable if the customer modifies the merchandise or has it modified by third parties without our consent and if such modification makes it impossible or unreasonably difficult to remedy the defect. In any event, the customer shall bear any additional costs generated by remedying the defect.
- (6) As long as acceptance of the merchandise has not been expressly agreed, the customer shall inspect the merchandise supplied without undue delay after delivery to the customer or to the third party designated by the customer and shall report any defects to us in writing without undue delay, however in no event more than five (5) working days after receipt. The customer shall notify us in writing of any defects, which cannot be identified in the context of a proper incoming goods control without undue delay but in no event more than three (3) working days after discovery. In all other respects, statutory provisions apply.
- (7) The customer must return any merchandise reported as defective to us at our request at the customer's cost without undue delay. If the complaint is justified, we will refund to the customer the costs of the cheapest transport option. This has no effect on (8) (granting the time and opportunity needed to examine warranty and other complaints).
- (8) In any event, the customer must give us appropriate time and opportunity to examine warranty and other complaints and to remedy the defects; in particular, the customer must make the respective merchandise available for the said purposes or – where the merchandise is assembled or installed in a fixed manner – shall grant us access to the site. This has no effect on (7) (Return of merchandise at our request).
- (9) If there is actually a defect, we shall bear the necessary costs of examination and subsequent performance, in particular the costs of transport, travel expenses, work and material. Subsequent fulfilment shall not include removal of the defective item or re-installation of the defect-free item if our original obligations did not include installation. However, if a customer's demand for a defect to be remedied turns out to be unjustified we can demand that the customer reimburses the costs which we have incurred unless the customer could not have seen this.
- (10) If we have supplied a defective merchandise, we have the right and the obligation to either render subsequent fulfilment by

remedying the defect or supply a replacement. We shall notify our customer within a reasonable period, which course of action we have chosen. If we supply a replacement, the customer must return the defective merchandise to us in accordance with the statutory provisions.

- (11) We have the right to make subsequent fulfilment dependent on the customer paying the purchase price when due, whereby the customer has the right to withhold a portion of the payment commensurate with the defect.
- (12) If subsequent fulfilment is impossible or has failed or if the customer has set a reasonable deadline for subsequent fulfilment, which has expired without success, or if we refuse to render subsequent fulfilment without justification or if there is no statutory obligation to set a subsequent deadline, the customer may decide either to withdraw from the contract or to reduce the purchase price. However, there is no right of withdrawal if the defect is immaterial. Claims for compensation shall exist only subject to IX of these GTCS.
- (13) The limitation period for all claims other than those pursuant to IX is 12 months after supply unless we have made a guarantee or fraudulently concealed a defect.

VIII) Legal defects

- (1) Each party shall inform the other without undue delay in writing if claims are asserted against it for infringement of industrial property rights or copyrights (legal defect).
- (2) Claims arising from infringement of third-party property rights or copyright are excluded if the infringement is attributable to an instruction issued by the customer, an unauthorized modification initiated by the customer or use of the merchandise by the customer in manner which is inconsistent with the contract.
- (3) In the event of a legal defect, we will modify or replace the merchandise at our own discretion and at our costs in a way that the rights of the third-party are no longer infringed and the merchandise can still be used for the contractually agreed purpose. Alternatively, we will conclude a license agreement, granting the customer an utilisation right. If we do not manage to do all this within a reasonable period of time, the customer may withdraw from the contract or make a reasonable reduction to the purchase price.
- (4) Claims for compensation shall exist only subject to IX of these GTCS.
- (5) The limitation period for all claims other than those pursuant to IX is 12 months after supply.

IX) Liability for compensation

- (1) We are liable for our own intent and gross negligence and for intent and gross negligence on the part of our legal representatives and vicarious agents. If we or our legal representatives or vicarious agents have not acted with intent or gross negligence, our liability is limited to foreseeable damage, typical of this type of contract.
- (2) We have unlimited liability for negligent injury to life, body and health caused by us, our legal representatives or vicarious agents and in the case of fraudulent concealment of a defect or if we have assumed a guarantee which – if breached – renders us liable for compensation. In the latter case, the extent of liability is based on the wording of the guarantee.
- (3) We shall also be liable if we, our legal representatives or vicarious agents negligently breach duties which are material for due execution of the contract and on which the buyer relies and can reasonably expect to be able to rely. If we or our legal representatives or vicarious agents have not acted with intent or gross negligence, our liability is limited to the foreseeable damage, typical for this type of contract.
- (4) We shall also be liable in cases of mandatory statutory liability, for example liability according to the German Product Liability Act (*Produkthaftungsgesetz*).
- (5) In all other respects liability is excluded, irrespective of the legal reason.
- (6) If our liability is excluded or limited under the above provisions, this also applies to the personal liability of our directors and officers, legal representatives, employees, workers and other vicarious agents.
The customer shall notify and consult us in detail and without undue delay if he intends to seek legal recourse subject to the above provisions. The customer must grant us the opportunity to examine the claim.

- X) Duty to provide information on product safety measures**
The customer must inform us in writing without undue delay if an official body orders measures related to product safety requirements (e.g official market monitoring such as product withdrawal or recall) to be carried out at or against the customer or if the customer intends to carry out such measures itself.

XI) Place of performance

Place of performance for all merchandise which we supply shall be Bietigheim-Bissingen. If the contract requires us to carry out assembly or render similar services (such as installation, commissioning, set up/adjustment) the place of performance shall be the place stipulated therefore in the contract.

XII) Choice of law and place of jurisdiction

- (1) The business relationships between us and the customer shall be subject solely to the law of the Federal Republic of Germany. The UN Convention on the International Sale of Goods (CISG) shall not apply.
- (2) If the customer is an entrepreneur, a legal entity under public law or a special public fund or has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for all disputes arising from and in connection with the business relationship between us and the customer shall be Stuttgart; this also applies internationally. However, we shall be entitled to bring action against the customer at the customer's domicile or at the place of performance (XI of these GTCS). This provision has no effect on mandatory statutory provisions on the sole places of jurisdiction.
- (3) If the customer is registered outside of the European Union and the European Free Trade Area, all disputes arising in connection with a contract on the basis of these GTCS or all disputes concerning its validity shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS) without recourse to the ordinary courts of law. The place of arbitration is Stuttgart. The number of arbitrators is three. The language of the arbitral proceedings is German.

XIII) Severability

If any provisions of these GTCS are or become void or invalid in whole or in part this shall not affect the validity of the other provisions. If any provisions are invalid, the content of the agreement shall be based primarily on statutory provisions (§ 306 (2) German Civil Code), in which case the parties shall negotiate in good faith to replace the invalid term or condition by a valid term or condition which reflects as closely as possible the economic purpose of the invalid term or condition.