

General Conditions of Purchase of DS Dhünn-Stahl GmbH, Wermelskirchen

Fassung 10/2014

I. Application

1. These Purchase Conditions (Conditions) shall apply to all our present and future orders for merchandise, service and commission processing and to the performance of such orders towards businesses within the meaning of § 14 Art. 1 BGB. Seller's conditions diverging from these Conditions will not be acknowledged unless otherwise stipulated within these Conditions or otherwise agreed in the contract with the Seller. Should we accept the merchandise not expressly objecting these Conditions, the Seller may in no case assume our consent with his conditions.
2. Any oral agreements made by our employees shall become binding on us only if and in so far as we confirm them in writing.
3. Any offer made by Seller will be free of charge and not binding to us.
4. Any trade terms shall, in cases of doubt, be interpreted according to the Incoterms as amended from time to time

II. Prices

1. The contract price shall be regarded as a fixed price.
2. In case of "free house" deliveries, deliveries "free place of destination" and other "free"-deliveries, the price shall include the costs for freight and packaging. In case of "unfree" delivery, we shall determine the type of shipment. Additionally, the Incoterms shall be applicable as amended from time to time.

III. Payment

1. Unless otherwise agreed the following terms of payment shall apply: Payment shall be made either within 14 days with 2 p.c. discount or within 30 days without discount. Should the Seller's conditions for payment be more favourable, they shall prevail.
2. Payment and discount periods shall begin with the receipt of the invoice but not before the receipt of the merchandise. In case of services, such periods shall begin only after the transaction has been approved by us. If the delivery includes documentation (e.g. test certificates) or similar written material, such periods shall begin only after receipt of the same as agreed upon in the contract.
3. Payment shall be made by bank remittance. Payment is considered to have been made in time if the bank has been instructed to make the remittance on the due date.
4. We will be liable for interest only if and so far as we are in arrears for payments, not at their mere maturity date. The interest rate will then be 5 %points above the Basic Interest Rate. We are, in any case, entitled to establish a lower rate than claimed by the Seller.
5. We shall be entitled to all statutory rights to set-off and retention of our claims against the Seller's.

IV. Delivery Times / Late Delivery

1. All contractual terms and dates of delivery shall be binding to the Seller. The Seller shall immediately inform us in case of imminent delays and submit to us adequate proposals to remedy the consequences of such delays.
2. Unless otherwise agreed in writing, any contractual terms and dates of delivery shall be considered to be met only if and in so far as the merchandise has been handed over to us at such dates.
3. If and in so far as the Seller defaults in delivery, we shall be entitled to our statutory rights. In particular, we shall have the right to claim damages for non-performance if and in so far as the Seller fails to effect delivery after a reasonable grace period set to him has elapsed. Our right to request delivery shall be excluded only if the Seller has compensated us for our damages.
4. The Seller may claim relief for his default by reason of lack of any documents to be submitted by us only in such cases where we have, upon the Seller's reminder, failed to deliver such documents to him.

V. Retention of Title

1. The Seller's terms covering his retention of title shall be valid subject to the condition that title in the merchandise shall pass to us on the date of payment for such goods. Consequently, the extended forms of the so-called current account retention shall not apply.
2. The Seller may claim return of the merchandise on the basis of the retention clause only if he has previously withdrawn from the contract.

VI. Performance of Deliveries and Passing of Risks

1. The Seller shall bear the risks of accidental loss and accidental deterioration of the merchandise until it has been handed over to us at its place of delivery. This provision shall also apply in cases of "free delivery" (franco domicile). Additionally, the Incoterms shall be applicable as amended from time to time.
2. We will not accept partial deliveries unless we have given our prior express consent to them.
3. Excess or short deliveries will be accepted only in accordance with current trade practise.
4. Unless otherwise agreed in writing, the Seller shall bear the costs of packing. Should we, in a given case, agree to bear such costs, the Seller will charge us with the lowest possible costs only. Any obligations to take back packing material shall be governed by the Packaging Decree of 21.08.1998, as amended from time to time. The costs for the back haul or disposal of the packaging shall be borne by the Seller.

VII. Declarations of Origin

1. The Seller will, upon our demand, provide us with a supplier's declaration regarding the preferential origin of the goods.
2. Where the Seller makes a declaration in regard to the preferential or non-preferential origin of the sold goods, the following terms shall apply:
 - a) The Seller will allow verification through customs authorities and submit all necessary information as well as any required certification.
 - b) The Seller shall compensate us for any damages and losses incurred to us, if and in so far as the competent authorities, due to any deficient certification or impossibility to verify, fail to acknowledge the declared origin, unless he proves that he is not responsible for such consequences.

VIII. Warranty Provisions and Statute of Limitations

1. The Seller shall deliver the merchandise free of any material and legal defects. He will certify in particular that his deliveries and his services comply with the state of the art and with any contractual requirements and standards.
2. We will examine the quality and quantity of the merchandise upon its receipt to the extent both reasonable and technically feasible for us. As reasonable and technically feasible for us are deemed examinations of the exterior condition, however not examinations of the interior condition of the merchandise. Any notice of a defect will be deemed to be in time if it reaches the Seller within ten days by letter, telefax, e-mail or by telephone. Periods for such notices shall not start before we – or in case of direct sales our buyers – have detected or should have detected the defect.
3. In the event that the merchandise shows a defect, we may exercise our statutory rights. If the Seller tries to repair the merchandise, such remedy is considered to have failed after the first unsuccessful attempt. We shall have the right to withdraw from the contract also in such cases where a breach of contract is not considered to be material.
4. Where the merchandise was already defective at the time the risk passed to us, we may claim from the Seller also those expenditures in connection with such defect which we must pay to our customer.
5. Any claims arising from defects of the merchandise will be governed by the statutory limitation periods.
6. The Seller hereby assigns to us - on account of performance – the benefit of any claims against his supplier arising from the delivery of deficient merchandise or of such merchandise not conforming with the guaranteed characteristics. He will supply us with any documents necessary to enforce such claims.

IX. Place of Performance, Jurisdiction, Applicable Law

1. Unless otherwise agreed to, our place of business in Wermelskirchen shall be the place of performance for the delivery.
2. Our place of business in Wermelskirchen shall be the place of jurisdiction. We may, however, sue the Seller at his place of jurisdiction.
3. All legal relationships between ourselves and the Seller shall be governed by the laws of the Federal Republic of Germany supplementing these Purchase Conditions, including the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).