

## GENERAL TERMS OF DELIVERY AND PAYMENT OF DREI BOND GMBH

### 1. Scope

These General Terms of Delivery and Payment (hereafter referred to as "**Terms**") apply exclusively to all legal transactions with the purchaser. These Terms apply to all present business relationships as well as all future transactions carried out between the purchaser and us. Any other general conditions of business of the purchaser that conflict with or deviate from these Terms will not be recognised unless we have agreed in writing to the specific conditions. These Terms only apply to companies as defined in § 14 BGB (German Civil Code) and to legal entities governed by public law.

### 2. Written form, quotations, conclusion of contracts, acceptance periods, catalogues and documentation

- 2.1 Orders, acceptance declarations, amendments and any ancillary agreements or other arrangements made before or when the contract was concluded are not considered legally binding unless provided in written form (letter, fax, e-mail). This applies accordingly to any property warranties.
- 2.2 Our quotations are non-binding, in so far as they are not declared expressly as or agreed to be binding. The purchaser is bound by his order for a period of four weeks. A contract is deemed to come into effect following written confirmation of the order as received by us, but no later – hence deviating from the provisions of clause 2.1 – than with the acceptance of our delivery by the purchaser.
- 2.3 Unless agreed or specified otherwise, the drawings, illustrations, dimensions, weights and other information presented in catalogues and brochures are provided for reference purposes only and do not represent any sort of property warranty.
- 2.4 We retain the unrestricted title and copyright to all documents provided to the purchaser (cost estimates, drawings, illustrations, etc.); they must not be made available to third parties.

### **3. Prices, price adjustments**

- 3.1 Unless agreed otherwise, our prices are effective ex works and are net of the VAT rate in force at the time and exclude the costs of packaging and insurance. The purchaser will be charged separately for packaging, at cost price.
- 3.2 If the delivery takes place more than one month following conclusion of the contract, and a fixed price agreement covering changes in costs has not been entered into, we shall be entitled to adjust our prices within reasonable limits for the not yet delivered goods to reflect any changes in wages, salaries, material and production costs that may have occurred in the meantime.

### **4. Payment, offsetting, retention, late payment**

- 4.1 Unless agreed or specified otherwise, the purchase price becomes due on delivery of the goods and is to be paid net within 30 days of delivery and invoice date.
- 4.2 The purchaser may only offset such claims against us that are undisputed, have reached the decision stage or have been recognised by the final judgement of a court. He may only exercise retention rights against us if they relate to counterclaims that are undisputed, have reached the decision stage or have been recognised by the final judgement of a court and stem from the same contractual relationship.
- 4.3 In the event of late payment, interest at the rate of 9% p.a. above base rate will be charged on the outstanding receivables. We reserve the right to assert further claims, especially the statutory EUR 40.00 flat charge for damage caused by default.

### **5. Periods for delivery and performance, delivery by our suppliers, force majeure, part deliveries, delay in delivery**

- 5.1 Unless agreed or specified otherwise, all periods and deadlines for delivery are non-binding. Delivery periods begin upon conclusion of the contract, but not before the purchaser has provided the necessary documentation, in particular permits and approvals, and not before the purchaser has made the agreed down payment. Periods and deadlines for delivery have been met if, by the time of their expiration, the goods have left the factory or when notification has been given that the goods are ready for shipment.

- 5.2 Should a supplier fail to deliver to us or fail to deliver in a timely manner, we shall not be deemed in default with the purchaser if we have concluded a congruent hedging transaction for the ordered goods and have been let down by the supplier or we for some other reason cannot be held responsible for the failure of our supplier to deliver to us or to deliver in a timely manner. Should it be established that delivery of the ordered goods by our supplier is not going to take place for reasons beyond our control, then we shall be entitled to withdraw from the contract. This does not affect statutory rights of withdrawal.
- 5.3 Force majeure and other unforeseeable circumstances affecting us or our suppliers, e.g. lawful strikes or lock-outs, and which through no fault on our part or attributable to us temporarily prevent us from delivering on the agreed date or within the agreed period shall result in these dates and periods being extended by the duration of the disruption caused by such circumstances. If the period or deadline for delivery is exceeded by at least three months because of such disruption, both parties shall be entitled to withdraw from the contract. This does not affect statutory rights of withdrawal.
- 5.4 We are entitled to make part deliveries and raise invoices accordingly to an extent deemed reasonable for the purchaser.
- 5.5 In addition to the delivery, the purchaser may claim compensation for the damage caused by a delay in delivery if the reasons for such delay involve intent or gross negligence on our part. In the event of ordinary negligence, and subject to the provisions of clause 9.2, liability is limited to the damage typical for the contract and foreseeable at the time the contract was concluded, however to no more than 10% of the agreed price of that portion of the goods that we are in delay in delivering.

## **6. Transfer of risk, insurance, taking back of packaging material**

- 6.1 Unless agreed otherwise, our deliveries shall be made at the risk of the purchaser. The risk of deterioration of the goods and their accidental loss passes to the purchaser as soon as the goods are handed over to the haulier or leave our works for the purposes of shipment. This also applies to part deliveries, carriage paid deliveries and to delivery and installation by us. If shipment is delayed for reasons beyond our control or if the purchaser fails to accept the goods in a timely manner, even though they have been offered to him, then the risk passes to the purchaser upon receipt of the notification that the goods are ready for dispatch.

- 6.2. Unless agreed otherwise, we are not obliged to take out transport or any other type of insurance policy. We will only take out an appropriate insurance policy at the request and cost of the purchaser.
- 6.3 If we are obliged in accordance with the Packaging Ordinance to take back transport packaging, this shall be carried out by sending the packaging material to us at the cost of the purchaser.

## **7. Retention of title**

- 7.1 All goods delivered by us remain our property as reserved goods until all our claims arising from the contractual relationship and all other claims that we acquire against the purchaser, on whatever legal grounds, now or in the future (including all current account balance claims) have been settled in full.
- 7.2 The purchaser is entitled to resell the delivered reserved goods in the ordinary course of business. To cover this eventuality and to secure our claims under the business relationship, the purchaser hereby agrees to assign to us now all claims arising out of the sale of the reserved goods; we hereby accept this assignment. As long as we are the owners of the reserved goods, we shall be entitled on presentation of an objectively justified reason to revoke our authorisation to resell the goods.
- 7.3 The purchaser is granted the revocable authorisation to collect the assigned claim. We may revoke this collection authorisation on presentation of an objectively justified reason. Our authorisation to collect the claim ourselves is not affected. However, we undertake not to collect the claims provided that the purchaser properly complies with his payment obligations.
- 7.4 Should the purchaser fail to comply properly with his payment obligations and we are thus entitled to collect the claims ourselves, the purchaser undertakes, at our request, to inform his customers of this assignment and to provide us with the information and documentation relating to the assigned claims and his debtors that will enable us to assert our rights.
- 7.5 Any processing of the reserved goods is carried out on our behalf and in such a way that we are deemed to be the manufacturer within the meaning of § 950 BGB. In other words, we retain the right of ownership to our products at all times irrespective of the degree of processing without incurring any obligations on our part as a result. Should the purchaser process, combine or blend our goods with others that do not belong to us, we are entitled to

a co-ownership share of the new object in relation to the invoice value of the reserved goods against the invoice value of the other processed goods at the time of the processing, combining or blending. The new object is deemed to be reserved goods within the meaning of these Terms. If aside from our reserved goods the new object only contains components that either belong to the purchaser or were only delivered to him with an ordinary retention of title, the purchaser hereby assigns to us his claims arising from the resale of this object to protect our claims arising from the business relationship. If this advance assignment coincides with the extended reservation of title of other suppliers, we will be entitled to a fraction of the claims that result from the relationship between the invoice value of the reserved goods and the invoice value of the other processed goods. We hereby offer the purchaser a contingent right to the joint ownership shares that are created. The purchaser accepts this offer.

- 7.6 As long as the reservation of title exists, any use of the reserved goods by way of pledging, as security or collateral, any letting, or any other transfer or alteration of the goods that might have an adverse effect on our interests will require our written consent in advance. This does not affect the right of the purchaser to resell the reserved goods during the normal course of business in line with the aforementioned prerequisites. Should third parties gain access to the reserved goods or to the claims assigned to us in advance, e.g. as the result of foreclosure measures, the purchaser must advise us in writing without delay and inform the third party of our reservation of title.
- 7.7 If the realisable value of the securities provided for us exceeds the total value of the claims due to us by more than 10% we shall release collateral at our discretion if so requested by the purchaser.
- 7.8 If the purchaser has not only temporarily suspended payments, if he files a petition for institution of insolvency proceedings against his assets or if insolvency proceedings are instituted against his assets, the purchaser is obliged, at our request, to return the reserved goods that are still our property. Furthermore, should the purchaser act contrary to the terms of the contract, in particular by defaulting in payment or by committing a significant breach of his obligations as set out in clauses 7.2 to 7.6, we shall be entitled to demand that the purchaser return the reserved goods. The repossession of the reserved goods is only a withdrawal from the contract if stated by us explicitly.

## **8. Notification of defects, liability for defects**

Our liability for defects is governed by the law, modified by the provisions set out below:

- 8.1 The purchaser shall examine the delivered goods immediately for defects. Obvious defects are to be reported in writing immediately, and no later than eight days after receipt of the goods. Non-obvious defects are also to be reported in writing immediately, and no later than eight days after their discovery. If such notification is not forthcoming, the delivery shall be deemed free of defects and approved.
- 8.2 Assuming we are notified of a defect as defined in 8.1 within the stipulated period, we shall be entitled at our discretion to deliver a defect-free item or to repair the defect free of charge (supplementary performance).
- 8.3 If the supplementary performance as described in 8.2 above is unsuccessful, the purchaser can in its stead and at his discretion demand a reduction in remuneration or withdraw from the contract. This also applies if the supplementary performance causes an unreasonable delay, is refused without justification or is impossible or cannot reasonably be expected of the purchaser. If the purchaser elects to withdraw from the contract as the result of a defect, he shall not be entitled to also claim for damages in respect of the defect.
- 8.4 Any parts replaced during the supplementary performance carried out by us become our property.
- 8.5 There will be no claims based on defects in the case of only slight variation from the agreed properties of the delivered goods, in the case of only slight impairment of serviceability, where there is natural wear and tear, or in the case of defects that arise after the transfer of risk as a result of improper or careless use (e.g. unsuitable or unprofessional storage and use, incorrect or negligent treatment, excessive stress, unsuitable operating equipment or by virtue of particular external influences that were not foreseen in the contract).
- 8.6 Claims relating to defects expire twelve months after delivery unless the defect was concealed with intent to deceive or affects a warranty regarding the properties of the goods.
- 8.7 Claims for damages due to defects are only available to the purchaser if our liability is not excluded according to the provisions of clause 9. Any other claims for defects over and above those governed by this clause 8 are excluded.

## **9. Liability**

9.1 We assume full liability in cases of intent and gross negligence. In the event of a slightly negligent breach of a major obligation or of an accessory obligation whose breach will put the achievement of the contractual purpose at risk, or whose fulfilment is essential for the due and proper implementation of the contract, and whose fulfilment the purchaser could reasonably rely on ("Essential Accessory Obligation"), our liability shall be limited to damage typical of the contract and foreseeable at the time the contract was concluded.

We shall not be liable for any slightly negligent breach of non-material contractual duties.

9.2 Liability in the event that a defect was concealed with intent to deceive, in the case of the acceptance of a property warranty, liability for claims under the Product Liability Act and arising from injury to life, limb or health remains unaffected. This does not lead to a change in the burden of proof to the disadvantage of the purchaser.

## **10. Place of performance, applicable law, competent court, severability**

10.1 Assuming the purchaser is a merchant, the place of performance for all payment and delivery obligations is our registered office.

10.2 The laws of the Federal Republic of Germany shall apply, excluding the UN Law on International Sales.

10.3 If the purchaser is a merchant, a corporate body under public law or a special fund under public law, or does not have his registered office or domicile within the Federal Republic of Germany, the competent court for all disputes arising in connection with the contractual relationship is the one with jurisdiction over our registered office. However, we are entitled to bring action against the purchaser in any other competent court.

10.4 The invalidity or unenforceability of any provisions in these Terms or the contract of which they are part shall not affect the validity or enforceability of the other provisions. The remaining provisions of the contract and these Terms shall remain in full force and effect.