

## DUNMORE Europe GmbH

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Registered in Freiburg HRB 4931

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### General purchasing terms and conditions

#### Section 1 General information and scope

- (1) These general purchasing terms and conditions apply to all business relations with our business partners and suppliers (hereinafter referred to as "seller"). The general purchasing terms and conditions apply only if the seller is an entrepreneur (Section 14 German Civil Code [BGB]), a legal entity under public law, or a special asset body subject to public law.
- (2) The general purchasing terms and conditions apply particularly to contracts for the sale and/or delivery of movable goods (also referred to below as "goods") without consideration of whether the goods were produced by the seller or purchased from suppliers (Sections 433 and 651 BGB). The respective version of the general purchasing terms and conditions also applies to future contracts for the sale and/or delivery of goods with the same seller without the necessity of explicit reference to this in each individual case.
- (3) These general purchasing terms and conditions are the only applicable terms and conditions. General terms and conditions of the seller which differ from, conflict with or supplement these only become part of the contract if and to the extent we explicitly agree in writing to their application. This requirement of approval applies in each case, for example even if we accept the deliveries of the seller without reservation in the knowledge of the seller's general terms and conditions.
- (4) Individual agreements made in the individual case with the seller (including ancillary agreements, addenda and changes) take precedence over these general purchasing terms and conditions in each case. A written contract or our written confirmation is required for the content of such agreements.
- (5) Material declarations and notifications to be made to us by the seller after the signing of the contract (such as setting deadlines, warnings and a declaration of withdrawal) must be in written form to be valid.
- (6) References to the applicability of statutory regulations serve only for clarification. Thus statutory regulations apply even without such clarification insofar as they are not directly modified or explicitly excluded in these general purchasing terms and conditions.

#### Section 2 Signing of the contract

- (1) Our order is not binding before written submission or confirmation. The seller must inform us of obvious errors (such as clerical errors or errors in calculation) and missing information in the order, including the order documentation, for purposes of correction or completion prior to acceptance.
- (2) The seller is required to confirm our order in writing within seven working days or, in particular, to fulfill it without reservation by shipping the goods (acceptance). Delayed acceptance is to be considered a new quotation requiring our approval.

#### Section 3 Delivery date and delayed delivery

- (1) The delivery date specified by us in the order is binding. If the delivery date is not specified in the order and is not otherwise agreed, it shall be two weeks after the signing of the contract. The seller is obliged to notify us in writing without delay if it is anticipated that the agreed delivery times cannot be met for any reason.
- (2) If the seller does not provide the goods and services or does not do so within the agreed delivery time or is behind schedule, then our rights, particularly those of withdrawal and compensation for damages, are determined according to statutory provisions. The provisions in Paragraph 3 remain unaffected.
- (3) If the seller is behind schedule, in addition to further statutory claims, we can demand lump sum compensation for the damages suffered by us as a result of the delay in the amount of 1% of the net price for each full calendar week which has passed, but no more in total than 5% of the net price of the delayed goods delivered. We reserve the right to document greater damages. The seller retains the right to document that we have suffered no damages or significantly lesser damages.

#### Section 4 Performance, delivery, transfer of risk, default of acceptance

- (1) Delivery shall take place at the location specified in the order. If the destination is not specified and not otherwise agreed, then delivery is to be made to our place of business in 79108 Freiburg, Germany. The respective destination is also the place of fulfillment (obligation).
- (2) We assume the risk of accidental loss and accidental deterioration of the goods with their transfer at the place of fulfillment. If a final inspection has been agreed, it is decisive for the transfer of risk. Moreover, the statutory provisions of the law on contracts for work in services apply accordingly to a final inspection. If we are in default of acceptance, this is equivalent to a transfer or acceptance.
- (3) Statutory provisions apply to the occurrence of our default acceptance. However, the seller must also explicitly offer us the seller's goods and services if a particular or determinable calendar is agreed for an action or for cooperation on our part. If we are in default of acceptance, then the seller can demand compensation for additional time and expense according to statutory provisions (Section 304 German Civil Code (BGB)). If the contract concerns non-fungible goods to be produced by the seller (custom-made goods), the seller shall be entitled to more extensive rights only if we have committed ourselves to provide assistance and are responsible for the failure to do so.

#### Section 5 Prices and terms of payment

- (1) The price specified in the order is binding. All prices are understood to include any statutory VAT if it is not declared separately.
- (2) If no other agreement has been made in the individual case, the price includes all services and ancillary services of the seller as well as all incidentals (such as proper packaging and shipping costs, including any transport and liability insurance).
- (3) The agreed price is due for payment within 30 calendar days of the completion of delivery and service (including any final inspection agreed) and receipt of a proper invoice. If we make payment within 14 calendar days, the seller will grant us a 2% discount on the net invoice amount.
- (4) We are not subject to any post-maturity interest. The seller's claim to the payment of default interest remains unaffected. Statutory provisions apply to the occurrence of default on our part. However, the seller is required to issue a reminder in each case.
- (5) We are entitled to rights of offset and retention and of objection to an unfulfilled contract to the extent granted by law. We particularly have the right to retain payments due as long as we are still entitled to claims against the seller for incomplete or deficient goods and services.
- (6) The seller has a right to offset or retention only in the case of finally adjudicated or undisputed counterclaims.

## **Section 6 Nondisclosure and retention of ownership**

(1) We reserve ownership rights and copyrights for illustrations, plans, drawings, calculations, implementation guidelines, product descriptions and other documentation. Such documentation is to be used only for the contractual service and must be returned to us after the contract is completed. The documentation is to be kept secret from third parties even after the end of the contract. The duty of nondisclosure becomes void only if and to the extent that the information contained in the documents provided has become generally known.

(2) Processing, combination or linking of included materials will be carried out for us by the seller. If processing, combination or linking with materials from third parties involves the existence of their ownership right, then we shall acquire co-ownership of the new item in proportion to the value of our included material to the other materials.

(3) The transfer of the goods to us ensues without conditions and without consideration of the payment of the price. In all cases, any form of extended retention of ownership is excluded, so that any effectively declared retention of ownership by the seller only applies until payment for the goods delivered to us and applies only for said goods.

## **Section 7 Defective delivery**

(1) Statutory provisions apply to our rights regarding material defects and defects in title (including incorrect and short delivery) and other violations of duty by the seller if not otherwise stipulated below.

(2) According to statutory provisions, the seller is particularly liable for the goods being in the agreed condition upon transfer of risk to us. In each case the applicable agreement on condition is the product descriptions which are the subject of the respective contract, particularly indicated by description or reference in our order, or which were included in the contract in a similar manner as these general purchasing terms and conditions. It makes no difference whether the product description comes from us, the seller or the manufacturer.

(3) Contrary to Section 442 Paragraph 1 Sentence 2 of the German Civil Code (BGB), we also have unrestricted defect claims even if the defect has remained unknown upon conclusion of the contract due to gross negligence.

(4) The legal provisions (Sections 377 and 381 of the German Commercial Code (HGB)) apply to the commercial duty of inspection and defect notification subject to the following conditions: Our duty of inspection is limited to defects which come to notice in our incoming goods inspection through external examination which includes the delivery documentation and in our random sampling for quality control (such as incorrect and short delivery). If the final inspection has been agreed, there is no duty of inspection. Moreover, it depends to what extent an inspection is possible in the proper course of business given the circumstances of the individual case.

Our duty of defect notification for defects discovered later remains unaffected. Our objection (defect notice) is considered to be timely in all cases if received by the seller within 10 working days.

(5) The costs for inspection and improvement incurred by the seller will be borne by the seller even if it is revealed that there was actually no defect. Our liability for damages in cases of unjustified demands for the correction of defects remains unaffected; however, we are liable only if we know or do not recognize due to gross negligence that there is no defect.

(6) If the seller does not meet the obligation for subsequent performance –by correction of the defect (rectification) or by delivering an item with no defect (replacement delivery) – within a suitable grace period set by us, then we can correct the defect ourselves and demand from the seller compensation for the expenses necessary for this and/or the corresponding advance payment. If subsequent performance by the seller is not successful or is not reasonable for us (for example, due to particular urgency, endangerment of safety and operational reliability, or the threat of disproportionate damages), no grace period is required; the seller is to be instructed without delay, in advance if possible.

(7) Moreover, according to statutory provisions, in the case of a defect in material or title, we are entitled to reduce the purchase price or withdraw from the contract. We also have a claim to compensation for damages and reimbursement of expenses according to statutory provisions.

## **Section 8 Manufacturer's liability**

(1) If the seller is responsible for damage to a product, the seller must indemnify us against claims from third parties to the extent that the cause lies within the seller's sphere of control and organization and the seller is individually liable to third parties.

(2) As part of the seller's duty of indemnification, expenses arising from or in conjunction with third-party claims, including recall actions conducted by us, must be reimbursed in accordance with Sections 683 and 670 of the German Civil Code (BGB). We will instruct the seller with regard to the content and scope of recall actions – to the extent that this is possible and reasonable – and provide the opportunity for commentary. Further statutory claims remain unaffected.

## **Section 9 Statutory limitation period**

(1) The mutual claims of the parties to the contract are time-barred according to statutory provisions if not stipulated otherwise below.

(2) Contrary to Section 438 Paragraph 1 No. 3 of the German Civil Code (BGB), the general limitation period for defect claims comprises three years after the transfer of risk. In the final inspection has been agreed, the limitation period begins with the final inspection. The three-year limitation period also applies accordingly for claims arising from defects in title, while the statutory limitation period for third-party claims to return (Section 438 Paragraph 1 No. 1 of the German Civil Code (BGB)) remain unaffected; moreover, claims arising from defects in title remain valid as long as the third party has the right, particularly in the absence of a limitation period, to assert these against us.

(3) The limitation periods of purchasing law, including the aforementioned extension, apply to all contractual defect claims to the legal extent. To the extent that we are entitled to extra-contractual claims for damages due to a defect, the regular statutory limitation period (Sections 195 and 199 of the German Civil Code (BGB)) applies to this if the application of the limitation periods for purchasing law does not result in a longer limitation period in the individual case.

## **Section 10 Choice of law and place of jurisdiction**

(1) The law of the Federal Republic of Germany applies exclusively to these general purchasing terms and conditions and all legal relations between us and the seller to the exclusion of all international and supranational (contractual) legal systems, in particular the UN Convention on the International Sale of Goods (CISG). The conditions and effects of retention of ownership are subject to the law at the particular location of the goods in question to the extent that the choice of German law is inadmissible or ineffective.

(2) If the seller is a merchant as defined in the German Commercial Code (HGB), a legal entity under public law or a special asset body subject to public law the place of jurisdiction – even in international cases – for all disputes arising from the contractual relationship is our business domicile in Freiburg im Breisgau, Germany. However, we are also entitled to file suit in the general place of jurisdiction for the seller.