

Purchase

of the company DUROtherm® Kunststoffverarbeitung GmbH

1. General provisions

These Terms and Conditions of Purchase apply exclusively to orders from DUROtherm. Terms and conditions of the contractor have not been agreed.

Confirmation or execution of our order shall be deemed to be acceptance of these Terms and Conditions of Purchase. Other conditions, in particular terms and conditions of the sellers and contractors or other contractual partners, do not become part of the contract, even if we do not expressly contradict them.

If the goods or services are accepted by us without express objection, the inclusion of the contractual partner's terms of delivery can in no way be derived from this.

We do not grant any remuneration or compensation for visits or the preparation of offers, projects, plans, etc., even if no order is placed. Agreements to the contrary must be made in writing.

Regulation (EU) 2023/988 of the European Parliament and of the Council applies to the terms and conditions of purchase. In addition, the following provisions are based on the legislative assessment of the LkSG.

2. Conclusion of Contract

Only orders placed in text form and signed in a legally binding manner are valid. Verbal ancillary agreements or verbal orders as well as amendments and additions require confirmation in text form by our purchasing department in order to be effective.

If the Contractor confirms our order later than two days after receipt of the order or deviates from our order in its confirmation, this is a new offer that requires written acceptance by us. If the Contractor executes the delivery or service in such cases even though our written acceptance is missing, a contract is not concluded by the mere acceptance of the delivery or service.

On order confirmations, delivery notes and invoices, the corresponding DUROtherm order and item numbers or under other file numbers must be indicated.

The contractual partner guarantees to have all necessary permits and permits for the provision of the agreed service.

3. Price

Price agreements are only concluded by our price confirmation in text form. The confirmed price is binding.

4. Delivery

Unless otherwise agreed, all deliveries are made free of charge, duty-paid, including packaging, at the risk of the contractual partner to the point of receipt or use specified by us.

If freight collect has been expressly agreed, we shall designate the carrier. The goods must be declared in the consignment note in such a way that the lowest permissible freight rate is calculated for the shipment. To carry out the transport, the contractor will notify us when the goods are ready for shipment. In this case, we will take out transport insurance and bear the costs incurred.

The packaging of the goods to be delivered is free of charge, unless expressly agreed otherwise. We are entitled to return bulky packaging goods, in particular containers, drums, crates, etc., carriage free of charge at the contractual partner's expense after emptying and without prejudice to any transport or other wear and tear.

Handling that deviates from the provisions of the Packaging Ordinance requires our prior consent in text form.

In the event of short deliveries, we are entitled to reduce the invoice by the proportion attributable to the short quantity. We will return inadmissible additional deliveries at the expense and risk of the contractual partner.

We are not obliged to accept partial deliveries.

The Contracting Party guarantees the ability to supply the ordered products in stock for a period of 5 years, calculated from the time of acceptance of the delivery.

5. Delivery note

5.1 Deliveries in general

Each shipment must be accompanied by a delivery note in which all the markings prescribed on our behalf must be indicated. In particular, compliance with the product safety standards of Regulation (EU) 2023/988 of the European Parliament and of the Council must also be positively demonstrated. Residual deliveries must be specially marked. "Collective delivery notes" are not accepted. In order to be able to determine the contents of a consignment without opening it, the delivery note must be affixed either under the sticker or on a glued-on bag with the note "Here delivery note".

5.2 Product Descriptions

All documents required for acceptance, operation, maintenance, repairs and certification, in particular test reports, factory certificates, drawings, plans, operating instructions and repair manuals, must be supplied free of charge by the contractual partner in a form that can be reproduced. Such product information is part of the defect-free and complete performance obligation of the contractual partner.

6. Delivery time

The delivery dates, delivery deadlines and other execution periods requested by us are binding unless the contractual partner expressly objects. The receipt of the goods at the point of receipt or use specified by us is decisive for compliance with the delivery date or delivery period.

If there is a threat of delays, the contractual partner must inform us immediately in text form, stating the reasons and the probable duration of the delay. Changes to the order that become necessary due to late delivery will be announced by us immediately and must be followed exactly by the contractual partner.

If the delivery deadline is exceeded, we are entitled to assert the statutory claims after a reasonable period of time for performance or subsequent performance. The aforementioned rights are also not excluded by the fact that we have accepted late deliveries without reservation in the past.

If the payment period is linked to a delivery date, it does not begin until the agreed delivery date, even if delivery is made early.

7. Transfer of Risk

The risk of accidental loss or accidental deterioration shall bear until the acceptance/delivery of the contracting parties, unless otherwise agreed.

8. Warranty/Withdrawal

8.1 Warranty

The warranty of the contractual partner is based on the statutory provisions, unless otherwise specified in the following.

The Contracting Party warrants that its goods or services are state-of-the-art at the time of acceptance/delivery and that all statutory provisions, ordinances and other regulations applicable to the delivery item, in particular the provisions of Regulation (EU) 2023/988 of the European Parliament and of the Council as well as all safety and environmental regulations, are complied with.

In addition, the Contract Partner shall guarantee that the goods are suitable for the specific purpose and that specified specifications as well as industry and company-specific standards are complied with, as well as product descriptions and/or advertising information provided by the Contract Partner or third parties.

Within the meaning of § 443 of the German Civil Code (BGB), the contractual partner guarantees the quality information provided by him as well as the suitability of his products for the intended purpose and will indemnify us against all damages resulting from non-compliance with this guarantee by subsequent performance or reimbursement of the purchase price. In the same way, the contractual partner guarantees the shelf life of his products for a period of at least 5 years from acceptance, unless expressly agreed otherwise.

We fulfill our obligation to inspect and complain about mass-produced items by random sampling as part of the incoming goods inspection. Otherwise, it is limited to an external inspection of the goods upon receipt.

8.2 Withdrawal

We are entitled to withdraw from the contract at any time by declaration in text form, stating the reason, if:

(a) we use the ordered products in our business operations due to circumstances for which the supplier is responsible and which occurred after the conclusion of the contract (such as:

the lack of compliance with legal requirements) can no longer use it or can only use it with considerable expenses, or

(b) the financial situation of the supplier deteriorates after the conclusion of the contract to such an extent that delivery in accordance with the contract is not to be expected.



The warranty period for services of the contractual partner is – unless a guarantee comes into effect or otherwise agreed – 5 years from acceptance by us; for work on buildings 7 years.

9. Product liability

If we are sued for damages due to a defect in our product, the contractual partner must indemnify us from this obligation to pay damages insofar as the damage to the third party was caused by a defect in the product supplied by the contractual partner. The contractual partner shall only be released from this obligation if he proves to us that his delivery or service did not have a defect causing the damage.

Upon request, the contractual partner must prove to us that both the risk of a claim for product liability and the risk of having to indemnify us from product liability claims are covered by insurance in a sufficient amount.

10. Limitations of Liability of the Contracting Party

Any limitation of liability of the contractual partner, regardless of the legal grounds, is not accepted by us. This applies in particular to limitations of liability for breaches of duty, warranty and maximum liability limits.

11. Shapes

If we order moulds from a mould manufacturer (contractual partner), the following shall also apply to the manufacturer:

(a) Within the scope of the statutory warranty of § 633 et seq. of the German Civil Code (BGB), the Contractor shall be liable for the proper production of the mould and its suitability for use. In addition, the contractual partner is liable for all damages caused by defects in the mould produced by him, in particular for damage to our machines and to the goods produced with the mould, loss of profit, etc. Liability also expressly extends to so-called "indirect consequential damages".

(b) In the event that the mould commissioned for production is stored by the Contracting Party, the latter is obliged to keep the mould and/or the casting model for at least two years after the last partial delivery.

(c) At our request, the contractual partner is obliged to hand over the manufactured form that has been given to him in safekeeping. In this respect, he is only entitled to rights of retention on the basis of undisputed or legally established claims against us.

12. Payment

The payment claims of the contractual partner shall become due at the earliest upon receipt of the proper invoice, but not before the goods have been handed over or the service has been accepted. The date of receipt of the invoice is the date of the incoming mail stamp.

We make payments within 30 days of receipt of the invoice or after receipt of the goods, if they are made after the invoice, purely net. We are entitled to a deduction of 3% discount if we make payment within 14 days.

Invoices that do not meet our requirements, for example because the order number is missing, will be returned by us to the contractual partner. In this case, the discount period does not begin before receipt of the proper invoice. Invoices must be submitted in duplicate.

If required by law, the contractual partner will provide us with a certificate of exemption from the responsible tax office before the start of the provision of services. If this is not done, we are entitled to withhold 15% of the invoice due and pay it to the tax authorities.

13. Construction work

For the execution of construction and repair work, the terms and conditions of the VOB are decisive in addition to these contractual conditions, but with the proviso that a warranty period in accordance with No. 8 of these Terms and Conditions of Purchase applies to us.

The machines, apparatus, devices, tools, operating equipment and the like ordered by us must comply with the latest accident prevention regulations and be accident-proof. Electrical equipment on the above-mentioned items must be state-of-the-art and designed in accordance with the latest VDE regulations.

14. Documentation, Confidentiality and Retention

Models, samples, drawings and leaflets, moulds and tools that we make available to the contractual partner remain our property and can be reclaimed from us at any time. The Contractor shall only have a right to retain these items if the claim on which he bases the right of retention is undisputed or legally established.

Insofar as models, samples, drawings and leaflets, moulds and tools have not been returned to us after completion of our order, the contractual partner undertakes to keep the aforementioned items for a period of 2 years from the acceptance of the underlying

delivery, free of charge for us, separate from his other assets, whereby our property is to be identified.

All models, samples and drawings are to be treated confidentially and may only be used to complete our orders. The contractual partner is not granted any further rights of use. The contractual partner expressly undertakes not to reproduce our models, samples and drawings. Disclosure to third parties, such as subcontractors, is only permitted with our written consent.

All parts manufactured according to our specifications, drawings or models may be left exclusively to us, definitively or for inspection. The contractual partner must also treat all other information submitted to the contractual partner in connection with the placing and execution of the order regarding quantities, prices, etc. and other knowledge received about all our operational processes confidentially and keep it secret even after the end of the business relationship.

15. Assignment

The contractual partner is not entitled to assign claims against us or to have them collected by third parties without our consent, unless the object of the assignment is a pecuniary claim. We will also give consent if a refusal would violate good faith. In the event that the contractual partner agrees on an extended retention of title with his supplier in the ordinary course of business, we already give our consent.

16. Place of Performance, Place of Jurisdiction and Language of Contract

In business transactions with merchants, legal entities under public law or special funds under public law, the place of performance for the delivery or other service of the contractual partner is the destination address specified by us. The place of performance for our payment obligation is our registered office. The place of jurisdiction for all disputes is our registered office. However, we reserve the right to sue at the Contractor's registered office.

German law applies without the UN Convention on Contracts for the International Sale of Goods and without corresponding transformation provisions.

17. Form/Severability

Changes or additions to these terms and conditions must be made in text. This also applies to the amendment of this clause itself.

Should individual provisions of these Terms and Conditions of Purchase be or become invalid, the validity of the remaining provisions shall remain unaffected. The invalid provision shall be replaced by the statutory provisions or an agreement to the contrary between the parties, provided that such an agreement is subsequently made in text form.

18. Data protection

We store and process personal data that become accessible to us in connection with the contractual relationship under the conditions of the Federal Data Protection Act and Regulation (EU) 2016/679 of the European Parliament and of the Council (GDPR).

In May 2024

DUROtherm@ Kunststoffverarbeitung GmbH
Industriestraße 52 · 72221 Haiterbach (Germany)
Managing Director: Andreas Hartl
Registration court: AG Stuttgart HRB 340445