

General Terms of Delivery

of DUROtherm Kunststoffverarbeitung GmbH



1. Subject of the contract and scope of performance

1.1 The business relations and scope of performance between us and the customer shall be based solely on our written confirmation of order and the following General Terms of Delivery. Unless otherwise agreed, these General Terms of Delivery shall also continue to apply to future contracts.

1.2 Alterations or additions to the business relationships, including these General Terms of Delivery, will only be effective if made in writing. This shall also apply to any alterations or additions waiving this requirement for written form.

1.3 Any other general terms of business, including but not limited to those of the customer, shall not be a subject of the contract even if we do not explicitly express an objection to them.

2. Formation of the contract / Refusal of performance by the customer

2.1 All offers and quotations shall be subject to change.

2.2 A contract between us and the customer shall only come into effect with our written confirmation of order, with the content expressed therein and subject to these General Terms of Delivery. Any public utterances, especially details given in advertising, shall not be deemed to be quality descriptions and shall not constitute any quality agreement on our part or any promise of suitability for use under the terms of section 434 German Civil Code (BGB). Unless they are explicitly declared in the confirmation of order, no warranties are provided by us, especially not under the terms of section 443 German Civil Code (BGB). Any supplementary agreements which are not contained in the confirmation of order shall not be deemed to be part of the contract.

2.3 If the customer refuses to fulfil a contract which has become effective under the above provisions, we shall be entitled at our own discretion to enforce fulfilment of the contract or to revoke the contract in accordance with the statutory provisions and to enforce compensation claims for the specific damage or loss we have incurred. Instead of enforcing the specific damage or loss, we reserve the right to charge lump sum compensation of 10% of the contractual sum unless the customer proves that we have incurred no damage or loss, or that the damage or loss incurred is lower than the lump sum charged.

3. Delivery / Liability for breach of duty

3.1 We shall be entitled to render partial performance and partial deliveries insofar as the customer can be reasonably expected to accept them.

3.2 The delivery periods and deadlines specified in the confirmation of order shall be deemed to be non-binding times (approximate times). Circumstances which are beyond our control, such as force majeure, import or export restrictions, war, strike, delays in the delivery of major raw materials and comparable circumstances, shall extend the delivery period by a time commensurate with the duration of the hindering circumstances. Insofar as it can be foreseen that a delay in delivery due to force majeure will last for longer than 2 months, both parties shall be entitled to revoke the contract. In important cases, the start and end of delivery delays will be notified to the customer as soon as possible.

3.3 Breach of duty in this regard, including but not limited to delivery delays, shall only be recognised if the delivery periods and confirmation of order deadlines stated in 3.2(1) are exceeded by at least two weeks for reasons for which we are responsible. If in such cases the customer sets us an appropriate period of grace of at least two more weeks, thereby declaring that upon expiry of this period it will refuse acceptance of the services, the customer shall be entitled to withdraw from the contract if such period of grace is not complied with. The customer shall only be entitled to withdraw from the contract and claim for compensation, including but not limited to claims for default and/or non-performance or breach of subsidiary contractual obligations, in cases in which

such breach was committed by us with wilful intent or by gross negligence. The same applies if agents in performance are deployed. This limitation of liability shall not apply in instances in which a breach results in injury to life, limb or health of third parties.

Claims for compensation for breach are excluded in cases of force majeure. This also applies if force majeure intervenes at a time when the breach has already occurred but the damage was not suffered until after the intervention of force majeure. This should not affect any claim to compensation for injury to life, limb or health for which we hold mandatory liability despite force majeure.

3.4 If, pursuant to the above provisions, there is nevertheless a possibility of liability on our part, our liability for all losses is limited, except in the case of injury to life, limb or health, to the value of the contract. We shall not be required to provide compensation for losses (including but not limited to lost profits, lost sales, etc. incurred by the customer or third party).

4. Payment / Set-off and right of retention

4.1 Unless otherwise agreed in the confirmation of order, the prices given therein shall be deemed to be subject to the applicable statutory value-added tax. The statutory provisions at the time of the invoice shall be definitive for the amount of the value-added tax. For any deliveries abroad, the relevant statutory provisions for liability to value-added tax shall apply.

4.2 If the confirmation and ordered supplies/services are more than four months apart and prices increase during this period, in particular due to increases in wages, increases in the cost of raw materials, general price rises due to inflation or other comparable factors, we will be entitled to charge a correspondingly higher price.

4.3 Unless otherwise agreed, our respective invoices shall be payable in full within 10 days from the invoice date. The deduction of discounts shall not be permissible.

4.4 If the customer defaults on due payment to us, we shall be entitled – without prejudice to the enforcement of any specific loss or damage – to charge interest on arrears at 8% above the base interest rate if the customer is unable to demonstrate that the loss or damage was lower or was not incurred at all.

4.5 We shall only accept payment by bill of exchange after an explicit prior agreement. In other respects, the acceptance of bills of exchange or cheques shall only be deemed to be conditional payment under the terms of section 364(2) of the German Civil Code (BGB). We shall not be liable for timely presentation for payment, protest, etc.

4.6 Insofar as the customer does not stipulate specific redemption provisions, payments shall always be deemed to redeem the oldest payable debt of the customer.

4.7 The enforcement of any rights of retention or a declaration of set-off with counterclaims of the customer against our invoices shall not be permissible unless the counterclaims are undisputed or non-appealable.

4.8 We shall assume the creditworthiness of our customer at the time of the confirmation of order unless we have any contrary information. If the customer defaults on due payment, all outstanding invoices shall be due for settlement immediately subject to the above provisions, regardless of their actual due date. We shall be entitled to demand prepayment for further deliveries. The same shall apply if the customer's financial circumstances deteriorate significantly after the confirmation of order, or if it becomes apparent after the confirmation of order that the customer's financial circumstances at the time of the confirmation of order were significantly worse than was assumed at the time. In other respects, we shall be entitled to demand payment in advance, if this is necessary in view of the volume of the contract and if this was agreed accordingly at the time of conclusion of the contract.

5. Reservation of ownership

5.1

All goods supplied by us shall remain our property until all accounts receivable from the business relationship have been paid in full, including any auxiliary claims, claims for compensation and claims which will become effective in the future. This shall especially apply until any payment by cheque or bill of exchange has been encashed, and also if any or all of our accounts receivable have been included in an open account (current account) and the balance has been struck and accepted.

5.2

Any processing and treatment of the reserved goods shall be on our behalf as the producer within the meaning of section 950 of the German Civil Code (BGB), but without any liability on our part. Processed or treated goods count as reserved goods for the purposes of the above.

5.3

If the customer processes, combines or mixes reserved goods with other goods, we will acquire a share of the title to the new item corresponding to the ratio of the invoice value of the reserved goods concerned to the invoice value of the other goods. If our ownership should lapse as a result of the joining, mingling or processing by the customer, the customer assigns to us in advance its entitlement to the property and entitlement rights in the new inventory or goods for the invoice value of the reserved goods, or for processed goods, in proportion to the invoice value of the reserved goods in relation to the invoice value of the other goods used, and the customer shall hold them on our behalf free of charge. Our co-title rights shall count as reserved goods within the meaning of the above provisions.

5.4

The customer shall only be entitled to resell reserved goods in its normal business transactions on its normal terms and conditions and as long as it is not in default with its performance to us under this contract, subject to the proviso that the customer agrees a reservation of ownership with its customer and that the accounts receivable from the resale shall be transferred to us in accordance with these General Terms of Delivery. The customer shall not be entitled to dispose of the reserved goods in any other way. Any use of the reserved goods in fulfilment of service contracts or contracts for work, labour and materials shall be deemed to be a resale.

5.5

The customer's accounts receivable for the resale of the reserved goods are assigned to us in advance. They shall serve as security for our claims to the same extent as the reserved goods within the meaning of section 5.1.

5.6

If the reserved goods are resold by the customer together with other goods, the accounts receivable for the resale shall be assigned to us in proportion to the invoice value of the reserved goods in relation to the invoice value of the other goods. When goods in which we have obtained co-title under section 5.3 of these General Terms of Delivery are resold, a proportion of the accounts receivable corresponding to our co-ownership share shall be assigned to us.

5.7

The customer shall be entitled to collect accounts receivable from the resale unless we revoke this collection entitlement. A revocation of the collection entitlement shall especially be permissible and reasonable for the customer if any circumstances arise after the conclusion of the contract which cause a significant deterioration in the customer's financial situation, or if we learn of such a deterioration of the customer's financial situation which existed before the conclusion of the contract, and if this deterioration of the customer's financial situation jeopardises the payments to which we are entitled. A deterioration in the customer's financial situation shall especially be deemed to apply if any third party enforcement proceedings are initiated against the customer which are not remedied by the customer without delay within 2 weeks after the initiation of the enforcement proceedings and/or if an application for insolvency is filed for the customer's assets.

In such cases, we shall be entitled to demand that the customer immediately notifies its purchasers of the assignment to us and surrenders to us the information and documents necessary for collection. This shall be without prejudice to our right, after a prior warning to the customer, to inform its contract partner of the assignment.

The customer shall notify us without delay of any seizure or other impairment by third parties.

5.8

In no case shall the customer be entitled to assign the account receivable; this shall also apply to factoring transactions, which the customer shall not be entitled to carry out even on the basis of direct debit authorisation.

5.9

If the value of the existing security exceeds the total value of the secured accounts receivable by more than 20%, we shall be obliged to release reasonable securities of our choice to this extent if the customer so demands.

5.10

In the event of any violation of major contractual obligations by the customer, especially default on payment, we shall after a prior warning be entitled to take back the goods. The customer shall be obliged to surrender them. Any repossession of the goods and any seizure of the goods by us – insofar as section 503 of the German Civil Code (BGB) is not applicable – shall only constitute a revocation of the contract if we explicitly declare this in writing to the customer.

6. Changes in performance / Quantities and other variations / Warranty

6.1

Any slight and/or commercially normal variations in the quality, colours, volume, quantities and dimensions shall not give any cause for complaints against us. Slight deviations in volumes and/or quantities shall be deemed to be deviations by up to 10% above or below the quantity ordered.

6.2

Unless otherwise agreed, the description of our goods shall not be deemed to be a quality description or statement of suitability for use within the meaning of section 434 of the German Civil Code (BGB), and no warranty within the meaning of section 443 of the German Civil Code is given.

If any specific composition in material, design or similar is agreed, we shall only be liable for proper production in accordance with the agreements made.

6.3

Any complaints for excess or short delivery, deviations from dimensions or obvious identifiable defects must be notified without delay, at the latest within 8 days of receipt of the goods supplied by us; the date on which we receive the complaint shall be the definitive date. For any complaints concerning defects other than those stated above, the complaint must reach us within 8 days after the defect has been detected. All such complaints must be given in written form.

6.4

If only part of the goods supplied are defective, this shall not entitle the customer to object to our delivery as a whole unless the partial delivery is of no interest to the customer in this case.

6.5

In the event of defects, the customer shall only be entitled to demand a reduction of the price or to revoke the contract if two attempted remedies offered by us (either correction of the defect or replacement delivery, at our discretion) have failed.

The same shall apply to the enforcement of claims for compensation for violations of our obligations for which we are responsible, subject to the proviso that we shall only be liable for such violations within the framework of section 3.3/7.

6.6

Goods which have been notified as defective must not be touched.

6.7

Insofar as the customer is a business undertaking, our warranty period shall be one year from the transfer of risk.

7. Liability

Our liability – on whatever legal grounds – shall be limited to wilful or grossly negligent violations of our obligations. The same shall apply in the event of any damage or loss caused by our vicarious agents or sub-contractors.

If there is nevertheless any question of a liability on our part under the above provisions, the compensation claim against us shall be limited to the contractual volume, or at the most, the damage which was foreseeable at the time of conclusion of the contract. Any other damage or loss (including but not limited to indirect consequential damage or loss, such as loss of sales or profits) as well as damages or loss arising upon the combination or mixture of our goods with other products are excluded.



The above limitation of liability shall not apply in cases of injury to life, limb or health.

8. Property rights and copyright

8.1

When we carry out an order according to the instructions of the customer, we shall not be obliged to check any property rights of third parties (especially patents, utility models, copyright etc.). In this case, the customer shall guarantee that no property rights of third parties are violated, and shall indemnify us against any claims of third parties arising from the violation of such rights.

8.2

All copyright claims and rights, especially the right to duplicate or reproduce our designs, sketches, illustrations, drawings and written information, shall remain with us. Any reprinting, reproduction and/or duplication shall only be permissible with our explicit written approval.

9. Moulds / Tools

9.1

Unless otherwise agreed, the price for tools and moulds includes sampling costs but excludes development costs, the costs of test and processing equipment as well as changes initiated by the customer after the technical drawings have been approved.

9.2

Unless otherwise agreed, we retain ownership of tools and moulds manufactured by us or our suppliers for the customer. Such tools and moulds shall, however, only be used for customer orders if the customer has fulfilled its payment and acceptance obligations.

Our duty to retain tools and moulds shall expire two years after the last part delivery made using the tool or mould.

If customers request the tool or moulds – for whatever reason – any residual manufacturing costs and any tool development costs which have not been disclosed (e.g. engineering input, machine-related additional components, etc.) shall be due for payment upon delivery of the tool or mould to the customer.

9.3

If, as agreed, the customer assumes ownership of the tools or moulds, title shall pass to the customer upon payment of the purchase price. Transfer to the customer shall be replaced by the duty to retain stipulated in 9.2.

Regardless of statutory surrender claims or the service life of tools or moulds, we shall be entitled to maintain exclusive possession of the tool or form with regard to the customer pending acceptance of the agreed minimum number of manufactured products and/or until expiry of an agreed period.

9.4

Our liability for the retention and care of customer tools or moulds under the above provisions or which have been loaned to the customer shall be limited to the care taken in the management of our own affairs. Maintenance and insurance costs shall be borne by the customer.

10. Shipping / Passage of risk

Unless otherwise agreed, goods shall be shipped at the expense and risk of the customer. The manner of shipment (especially the selection of the carrier) shall remain at our discretion. Unless otherwise agreed, the risk of loss, loss and/or damage of the goods shall pass to the customer when the goods are transferred to the carrier.

11. Place of performance and place of jurisdiction

The place of performance and place of jurisdiction for all claims and legal disputes which may arise from this contractual relationship, including any bill enforcement proceedings and proceedings based on documentary evidence, shall be solely our registered place of business insofar as the customer is a business undertaking within the meaning of the German Commercial Code (HGB). However, we also reserve the right to institute legal proceedings against the customer at any other permissible place of jurisdiction.

12. Applicable law

This contractual relationship shall be subject exclusively to the laws of the Federal Republic of Germany. The provisions of the uniform UN right of sale and the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

The standard commercial provisions shall be interpreted according to the respective Incoterms which are applicable at the time of the confirmation of order.

13. Severability clause

If any individual provisions of these General Terms of Delivery are or become ineffective, this shall not affect the validity of the other provisions. The ineffective provisions shall be replaced by the statutory provisions.

March 2004

DUROtherm® Kunststoffverarbeitung GmbH
Industriestraße 52 · 72221 Haiterbach (Germany)
Managing Director: Andreas Hartl
Court of registration: AG Stuttgart HRB 340445