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Dürr Technik GmbH & Co. KG

# TERMS OF PURCHASE

Last updated: November 2019

1. Scope, formation of contract, changes
  - 1.1 We only place orders in accordance with the following terms of purchase even if we do not expressly refer to them again subsequently in the course of continuing business relations. Changes to these terms of purchase, in particular differing or supplementary terms of business that the contractor incorporates into order confirmations, are hereby rejected. Our failure to reply to an order confirmation that makes reference to differing terms of business is not to be construed as acceptance on our part. We shall not regard such terms of business as valid, even if the contract is performed. Rather, by virtue of the contract being performed, the contractor recognises these terms of purchase. Any change to our terms of purchase within the order confirmation shall be regarded by us as a refusal of our purchase order. Sentence 3 of Section 1.2 shall apply accordingly. If delivery still takes place, this shall constitute acceptance of our terms of purchase.
  - 1.2 Our written purchase order shall be definitive for formation of the contract and its content; verbally placed orders shall only become legally binding once confirmed by us in writing. Each order must be confirmed to us immediately on a copy of our purchase order; if you accept our purchase order subject to deviations, you must make specific reference to these deviations. A contract only comes into being if we have expressly accepted said deviations in writing. If we do not receive the confirmation or confirmation amendment within eight working days, we reserve the right to cancel the order without incurring any costs.
  - 1.3 We are entitled to request changes to the delivery item in terms of its design and execution, provided that the changes are reasonable for the contractor to make. The effects of the changes, particularly regarding any increase/reduction in costs and delivery or performance times, shall be mutually agreed as appropriate; if no understanding can be reached, the contract shall be rendered void.

## 2. Delivery, delivery and performance times

- 2.1 Deliveries are to be made DDP to the specified place of delivery. If no location is specified, the place of delivery is our factory in Bietigheim-Bissingen.
- 2.2 In order for the delivery date or deadline to be considered met, the goods must be punctually and duly received or the service must be properly performed and the documentation also handed over at the place of receipt or place of use specified by us, or the acceptance test must be successfully completed on time.
- 2.3 Any foreseeable delays must be reported to us immediately. The contractor's obligation to meet the originally agreed delivery and performance times remains unaffected.
- 2.4 If the contractor falls behind schedule, we shall, without prejudice to the right to claim further compensation, be entitled to impose a contractual penalty of 1% of the order value for each complete calendar week (including on a pro-rata basis), up to a maximum of 5% of the order value. Pursuant to Section 341 of the German Civil Code, we reserve the right to impose this contractual penalty until final payment of sums contractually agreed or, in the case of framework or long-term contracts, until the end of the year in which the delivery is made or the service is performed, but certainly within 14 days of performance being accepted.

## 3. Transfer of risk

The goods are shipped at your own risk. The risk of any deterioration, including accidental loss, remains with you until the goods have been delivered to the agreed shipping address or place of use. We are under no obligation to process lorryloads before the shipping documents arrive.

In the case of work contracts, it only happens following express acceptance of the work.

## 4. Prices

The agreed prices are fixed prices and exclude the possibility of subsequent claims of any kind. They apply on a DDP basis (Incoterms 2010). If no location is specified, the place of delivery is our factory in Bietigheim-Bissingen.

## 5. Invoicing, payment, terms

- 5.1 Unless otherwise agreed, invoices shall be issued to us in duplicate – the duplicate being marked as such – separately for each delivery or service. Invoices must not be sent with the consignment.
- 5.2 Payments will be made within 14 days with a 3% discount for prompt payment or within 30 days net. The payment period commences on

receipt of the invoice, but certainly no earlier than when the delivery or service is accepted, or when a specially agreed event triggering payment occurs.

- 5.3 In the event of a notification of defects, we shall be entitled to delay payment of the invoice to a reasonable extent until complete clarification is obtained and still deduct the early-payment discount at the end of this period.
- 5.4 Deposits/advance payments payable by us must be secured by the contractor in the form of a directly enforceable open-ended bank guarantee. The guarantee must be subject to German law and must show Bietigheim-Bissingen as the exclusive place of jurisdiction. In all other respects, Section 239 of the German Civil Code shall apply. Unless otherwise agreed, the guarantee must be returned or the guarantee amount reduced as soon or insofar as we have gained value or acquired property as a result of the contractor's deliveries or services.
- 5.5 Our order numbers must be specified in all correspondence, on delivery notes, invoices, notifications of dispatch and consignment notes. You are responsible for all consequences that result from a failure to meet this obligation. Please note that the terms of payment do not apply until the freshly issued invoice has been received.

## 6. Quality

- 6.1 The contractor's deliveries and services must exhibit the agreed properties and condition. If the properties and condition have not been agreed, the deliveries and services must be suitable for the type of use envisaged under the contract and – as a minimum – for the customary type of use, and must exhibit the properties and condition that are standard for deliveries and services of the same kind and that we are entitled to expect given the nature of the deliveries and services. Unless otherwise agreed, the contractor's deliveries and services must – as a minimum – be in line with the latest state of the art and meet the requirements of all relevant standards and regulations.
- 6.2 The contractor must check the following for completeness, accuracy and suitability for the intended purpose: our plans, drawings and other specifications; and any materials, components etc. that are supplied or stipulated by us, as well as services from other suppliers insofar as these are of relevance to the contractor. If there is any cause for doubt, the contractor must notify us of this immediately in writing. Should the contractor fail to do so, we shall also be entitled to assert claims for defects in this regard; claims for compensation on other grounds shall remain unaffected. In cases where we approve technical documentation belonging to the contractor in the course of performing the order, this does not release the contractor from its obligation to supply deliveries and services free of defects.

- 6.3 The contractor shall install and maintain an appropriate quality assurance system that conforms to the current state of the art, and DIN ISO EN 9001 as an absolute minimum. If the contractor is aware that the delivery item is to be used in rail vehicles, the contractor must also comply with the IRIS standards. If the contractor is aware that it will be used in medical devices, DIN EN ISO 13485 applies in addition. If no further requirements have been agreed, the contractor shall produce the standard records covering all other aspects and shall document – among other things – who has ensured that the deliveries and services are free of defects, as well as when and how. The records must be retained for 15 years and made available to us on request.
- 6.4 The contractor hereby agrees to quality audits by us and/or our customers.
7. Defects
- 7.1 If deliveries or services are defective, we shall have recourse to all contractual and statutory rights relating to product defects.
- 7.2 Where we request supplementary performance, we reserve the right to choose the type of supplementary performance in the case of work contracts as well. The necessary expenses for supplementary performance that are to be borne by the contractor also include the costs of removing and installing the delivery item (including labour and handling costs) as well as all logistics, transport and packaging costs.
- 7.3 If there is reason to believe that not all parts of a delivery are defective, we can ask the contractor to separate out the defective parts or can undertake this ourselves at the contractor's expense. If it can be assumed, on the basis of random samples, that all parts of a delivery are defective, our rights concerning product defects shall extend to the entire delivery even if it should subsequently transpire that only parts of the delivery are defective. Our right to immediately refuse acceptance of a partially defective delivery remains unaffected (Section 266 of the German Civil Code).
- 7.4 The period of limitation for defect claims is at least 36 months, except where longer periods are stipulated by law or have otherwise been agreed. By virtue of our written notification of defects, the period of limitation for our defect claims will be suspended until one or other of the contracting parties refuses to engage in or continue with negotiations.
- 7.5 The period allowed for examination and sending notification of a defect (Section 377, Section 381 Paragraph 2 of the German Commercial Code) is 14 days from delivery; for the examination of hidden defects, it is 14 days from discovery of the defect. If a longer period is appropriate in individual cases, this shall apply. During our incoming goods inspection, we are entitled to limit our checks to deviations that relate to the identity and quantity of the goods, and to readily identifiable defects.

8. Product liability

If claims concerning product liability/manufacturer's liability are made against us, the contractor shall indemnify us for any resulting losses (including the costs of any necessary recall action), insofar as the contractor or its upstream suppliers are responsible for the mistake triggering the liability. In this respect, the contractor shall waive any right to object on the grounds of the period of limitation, unless we ourselves are able to rely on the period of limitation in our defence against the claimant.

9. Material provisions

9.1 Any material or parts provided shall remain our property and shall be stored separately by the contractor and only used for our order. The contractor shall be liable for damage or loss, even if the contractor is not to blame.

9.2 Processing or reconstruction by the contractor is carried out on our behalf. If the item we have provided is worked in with other items not belonging to us, then we shall acquire co-ownership of the new item in proportion to the value of our item to the other worked-in items at the time of working in.

9.3 If the item we have provided is combined with other items not belonging to us, then we shall acquire co-ownership of the new item in proportion to the value of the item we have provided to the other combined items at the time of combination. If they are combined in such a way that the contractor's item is to be regarded as the main item, it is hereby agreed that the contractor assigns us proportional co-ownership; the contractor shall keep the co-owned item safe on our behalf. The above provisions shall apply mutatis mutandis if the contractor mixes or blends the item we have provided with other items.

9.4 The contractor shall insure the item wholly owned or co-owned by us, including any new item created through processing, against material damage, loss etc.

10. Results, property rights, right of use

10.1 If the contractor's scope of services includes research, development, designs, drafts or similar services, the contractor is obliged to return to us all results, in particular design and manufacturing drawings, as well as documentation, user manuals etc., in both electronic and hard copy format.

10.2 Software must be delivered on commercially available data carriers in machine-readable object code form along with the application documentation in both electronic and hard copy format. In the case of software development, the scope of services also includes delivery of the software on commercially available data carriers in machine-readable source code

form along with the program development documentation in both electronic and hard copy format; this also applies to subsequent changes and updates.

- 10.3 All items, particularly models, moulds, tools, devices, samples, drawings, plans and documentation of any kind, supplied to the contractor shall remain our property. The contractor shall keep such items confidential and return them to us on request at any time free of charge. The contractor is not permitted to hand such items over to third parties for inspection or otherwise make them available to third parties, to reproduce them or to use them for its own purposes.
- 10.4 The same applies to moulds, tools, devices and similar aids for manufacturing the delivery item that are manufactured on the basis of such documents or are produced entirely or partially at our expense. Any changes in this regard are only to be made with our written consent. It is agreed that the aforementioned items will become our property (provided that a fee has been agreed and paid) and that these items will be kept safe on our behalf in the proper manner and free of charge. Where we have paid for the aforementioned items prior to completion, we shall acquire ownership of the semi-finished product in accordance with the above provision.
- 10.5 The contractor undertakes to insure the items specified in Sections 10.3 and 10.4 and owned by us against material damage, loss etc.
- 10.6 In the cases covered by Section 10.1 and with regard to software that is developed on our behalf in accordance with Section 10.2, we shall have an exclusive right – not limited in time or geographical scope – to use the results and software in every possible way. Where relevant, we shall be entitled to apply for industrial property rights; the contractor is obliged to provide us with all the necessary information for the application.
- 10.7 If the contractor makes improvements in relation to the delivery item or contractually agreed service, we shall have a cost-free, non-exclusive usage right for commercial exploitation of the improvement and any associated industrial property rights.
- 10.8 We shall be entitled to request a change to the delivery item following conclusion of the contract in light of technical innovations and improvements in the design, dimensions, weight, material and shape in cases where we cannot be expected to adhere to the original contract.

## 11. Confidentiality

Confidential information in the aforementioned sense may only be disclosed to sub-suppliers insofar as and to the extent that this is necessary for proper delivery and provided that the supplier ensures in advance that

the sub-supplier is obliged to keep the information confidential by virtue of appropriate confidentiality measures. The same applies to the results referred to in Section 10.1 and the software developed on our behalf in accordance with Section 10.2.

12. Obligation to deliver beyond the end of the contract period
  - 12.1 For 10 years after termination of the series delivery agreement, the contractor is obliged to continue supplying the delivery item as a spare part. If the contractor is aware that the delivery item is to be used in rail vehicles, the obligation to deliver beyond the end of the contract period as defined in Sentence 1 shall be extended by a further 25 years to 35 years. To ensure that this obligation is met, the contractor shall keep available, carefully retain/store and insure the moulds, tools, devices and similar aids that are required to manufacture the delivery item during this period.
  - 12.2 Equivalent obligations are to be imposed on sub-suppliers.
13. Place of performance, place of jurisdiction and applicable law
  - 13.1 The place of performance for the contractor's deliveries and services is the place where the delivery item is to be delivered in accordance with the order or where the work is to be performed in accordance with the order. If no place has been agreed or if our services are affected, the place of performance shall be our registered place of business in 74321 Bietigheim-Bissingen.
  - 13.2 If the contractor is classed as a merchant under German law or does not have a place of general jurisdiction within the Federal Republic of Germany, it is hereby agreed that the exclusive place of jurisdiction shall be the public courts with responsibility for our registered place of business in 74321 Bietigheim-Bissingen. We are also entitled, however, to file legal proceedings at any other court having statutory jurisdiction.
  - 13.3 The contractual relationship is exclusively subject to the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.