

General Terms of Business of DIRAK Dieter Ramsauer
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Prefatory remark

All our deliveries and services are subject solely to our General Terms of Business. We will oppose the incorporation of our contract partners' / clients' General Terms of Business. Provisions which are individually contractually agreed in the context of the contractual relationship shall have priority over the General Terms of Business.

1. Purchase orders and order acceptance

- (1) We explicitly reserve the right for ordered or delivered items to deviate from the purchase order where such deviation does not run counter to normal utilisation, in particular with regard to materials and execution.
- (2) Product descriptions – especially in our catalogues – do not represent a description of the quality composition, but are merely exemplary presentations.
- (3) The client is obliged to inform us in writing, and in good time, if the quality composition of the product, or a special execution or specific material, is of particular significance for the intended utilisation.
- (4) Frame-contracts are valid 12 month except not otherwise agreed. After the expiration of the contract DIRAK is in the position to deliver the remaining quantities to the agreed conditions of the contract.

2. Delivery time

- (1) The delivery dates stated by us are generally non-binding, and simply designate a period of around 1 to 2 weeks before or after the stated date, unless they have been explicitly confirmed by us in writing in the form of a „binding delivery date“. The client is obliged to inform us in good time if non-observance of the projected delivery date could result in a loss. In such cases, we are prepared to agree a „binding“ delivery date – where appropriate in return for a suitable surcharge – and to guarantee adherence to that date.
- (2) In the event of a delay for which we are responsible, the client is only entitled to enforce further rights if the client has set a subsequent deadline of at least three weeks, and that deadline has elapsed without success.

3. Shipping

- (1) If it is necessary to ship the ordered goods, shipping will take place from the supplier's principal place of business at the contract partner's / client's expense and risk. In the absence of specific agreements, we shall be free to select the shipping company and shipping method. Even if carriage-paid delivery has been agreed, the risk will be transferred to the client when the goods are shipped from the supplier's principal place of business.
- (2) If shipping is delayed due to reasons for which the client is responsible, the risk will already be transferred to the client at the time of shipping readiness. The client must bear the costs caused by the delay (especially warehousing charges).
- (3) The supplier is not obliged to insure the consignment against transport damage, or to arrange for such insurance, unless the supplier has given such an undertaking in writing.

4. Liability for defects

- (1) The client is obliged to examine the delivered goods immediately following delivery, and to notify us immediately, and in writing, of any existing defects (at the latest, by the third working day following the delivery). Detectable defects which, contrary to the above obligation, are notified too late will not be entertained by us and will not be covered by the warranty. Notices of defect will only be acknowledged if lodged in writing and addressed to ourselves. Notices of defect lodged with field staff, shippers or other third parties shall be invalid.
- (2) The supplier's prior agreement must be obtained if it is necessary to return goods to the supplier in the event of a defect. The supplier need not accept returns which are sent without his prior agreement. In that event, the client will bear the costs of the return shipment.
- (3) The provisions governing the delivery period will apply accordingly in the event that, based on a justified notice of defect, a retrospective improvement or replacement delivery is made.
- (4) The client shall have the following rights based on the existence of a defect which has been determined as such, and which has been notified by means of a valid notice of defect:
- (a) In the event of a defect, the client shall initially be entitled to demand retrospective performance from the supplier. In this regard, the supplier is entitled to choose whether to deliver a replacement object or to remedy the defect.
- (b) Furthermore, if a retrospective performance attempt fails, the supplier may make a further retrospective performance attempt, and again may make a choice in this regard. The client shall only be entitled to repudiate the contract or reduce the purchase price once the repeated retrospective performance attempt has failed.
- (5) Any further rights are ruled out unless the supplier is guilty of premeditation or gross negligence.
- (6) The warranty period is one year from the date of delivery. The client must, under all circumstances, prove that the defect was already present at the time of delivery.
- (7) In case of any return shipments DIRAK is allowed to charge handling expenses.

5. Other liability in respect of breach of duty by the supplier

Without prejudice to the provisions governing the warranty or other special arrangements contained in these provisions, the following shall apply in cases where the supplier is in breach of duty:

(1) The client must set the supplier an appropriate retrospective performance deadline to rectify the breach of duty; this deadline must not be under three weeks.

(2) The client may only repudiate the contract and/or demand damage compensation once this retrospective performance deadline has elapsed without success.

(3) The client may only enforce a damage compensation claim in cases of grossly negligent or premeditated breach of duty by the supplier. Damage compensation in place of the service (in the case of non-performance, § 280 III in conjunction with § 281 German Civil Code) and delayrelated damage (§ 280 II in conjunction with § 286 German Civil Code) shall be limited to the negative interest, while damage compensation for a service which has not been performed, or which has not been performed in the manner owed (§ 282 German Civil Code), shall be limited to the amount of the purchase price. Damage compensation in place of the service shall be ruled out in the event that the obligation to render the service is excluded (performance impossibility).

- (4) In the event of a merely negligent breach of duty by ourselves or those employed in performing an obligation for which we are vicariously liable, our liability shall be limited to contractually typical and predictable damage, unless grossly negligent behaviour is present, or unless there has been an injury to life, limb or health.
- (5) Repudiation shall be ruled out if the client is solely or primarily responsible for the circumstances which would entitle him to repudiate the contract, or if the circumstance which would entitle the client to repudiate the contract occurred during the period when the client delayed acceptance.

6. Exclusion of procurement risk and guarantees

The supplier does not assume any procurement risk or any guarantees of any kind unless a specific written agreement has been reached with the client in this regard.

7. Prices

Prices will be invoiced from the supplier's principal place of business in EURO excluding the relevant applicable turnover tax.

8. Payment terms

- (1) All the supplier's invoices shall be payable within 30 days of invoice date net cash. The deduction of a discount as well as any other amendment to this term shall require prior written agreement.
- (2) In case a buying party is in delay with his payment, we are charging an administration fee of 5/10/20 Euro for each reminder. An additional default interest has to be paid according to legal provisions. We also reserve the right (in accordance with Section 288 [5] of the German Civil Code) to claim payment of a lump sum of €40.00.
- (3) The exercise of a right of retention or offsetting shall be ruled out unless the counterclaim is undisputed or has been legally determined in a non-appealable manner.

9. Reservation of title

- (1) All goods delivered by the supplier shall remain the supplier's property until the purchase price has been paid in full, and until all other claims deriving from the business relationship have been met in full (extended reservation of title). Any disposal by the client, regardless of the manner of such disposal, of the goods in respect of which title is reserved, shall only be permitted in the context of the client's normal business dealings. The goods may not, under any circumstances, be transferred to a third party by means of security.
- (2) In the event of the goods being sold in the context of normal business dealings, the purchase price shall take the place of the goods. On accepting the goods, the client already assigns all claims deriving from any sale to the supplier, and the supplier accepts this assignment. The client is entitled to collect these claims as long as he meets his payment obligations to the supplier. In consideration of the extended reservation of title (advance assignment of the relevant purchase price demand), an assignment to third parties, in particular to a credit institution, is prohibited. The supplier is entitled to check the client's sales documentation at any time, and to inform the client's clients of the assignment.
- (3) In the event of a levy of execution in respect of goods at the client's premises, the supplier must be informed immediately of the fact that the distrained goods are the goods delivered by the supplier in respect of which title is reserved. This notification must be accompanied by an official copy of the protocol of execution together with a statutory declaration in lieu of oath.
- (4) If, for the foreseeable future, the value of the securities pursuant to the above paragraphs of this article exceeds the amount of the outstanding claims thus secured by more than

20%, the client shall be entitled to demand that the supplier release securities to the value of the surplus amount.

- (5) In the event of payment arrears, we shall be entitled to demand return of the delivered goods, and to offset them against the arrears at our purchase price or cost price.
- (6) Enforcement of the supplier's rights deriving from the reservation of title shall not exempt the client from his contractual obligations. The value of the goods at the time they are taken back will simply be offset against the supplier's existing claims against the client.

10. Supplier's right of repudiation

The supplier shall be entitled to repudiate the contract for the following reasons:

- (1) If it should transpire, contrary to the assumption at the time of contract conclusion, that the client is not credit-worthy. In particular, the client shall be deemed to be unworthy of credit if a bill of exchange or cheque is protested, if the client ceases payment or if an unsuccessful attempt at execution is made.
- (2) If it should transpire that the client made false statements regarding his creditworthiness.
- (3) If the goods in respect of which the supplier has reserved title are disposed of without the supplier's consent and outside the client's normal business dealings, especially by being transferred by way of security or being pledged. The only exceptions are if the supplier gave his consent in writing to such disposal.

11. Place of performance and legal venue

- (1) If the client is an entrepreneur or a legal entity under public law or a special fund under public law, the supplier's principal place of business shall be the sole legal venue for all disputes arising directly or indirectly from the contractual relationship. Furthermore, each contracting party shall be entitled to sue the other party at the party's general legal venue.
- (2) All agreements between ourselves and our contract partners/clients must be in writing. This also applies to setting aside the written form requirement.
- (3) The law of the Federal Republic of Germany shall apply in all cases, in particular also in cases of cross-border deliveries. The provisions of the UN Purchase Law shall not apply.

12. Partial nullity

Should contractual agreements be or become wholly or partially invalid, or should it transpire that there is a loophole in the contract, the validity of the remaining contractual agreements shall not be affected thereby. In such a case, the contract parties are obliged to replace the invalid contract provision with a valid one, and to close the contract loophole with a provision which most closely approximates to the commercial intention.