

Terms of Purchase

of DUROtherm Kunststoffverarbeitung GmbH



1. General provisions

All purchase orders placed by DUROtherm shall be subject exclusively to the following Terms of Purchase. The contractor's terms of business are not agreed.

Confirmation or performance of our purchase order shall be deemed recognition of these Terms of Purchase. Other terms and conditions, including but not limited to the terms and conditions of the seller and independent contractor or any other contracting party shall not constitute part of the contract, even if we do not explicitly object to such terms and conditions.

In the event that supplies or services are accepted by us without any explicit objection being made, this shall on no account be interpreted as accepting application of the contracting party's terms of delivery.

We shall not pay any remuneration or compensation for visits or the preparation of quotations, projects, plans, etc., even if no purchase order is subsequently placed. All other contrary agreements must be made in written form in order to be valid.

2. Conclusion of contract

Purchase orders shall only be valid if placed in writing and accompanied by a legally binding signature. Verbal ancillary agreements or verbal purchase orders, as well as changes and additions, shall only be valid if confirmed in writing by our purchasing department. This stipulation requiring written form may likewise only be waived in writing.

If the contractor confirms our purchase order later than two days after its receipt, or if such confirmation deviates from our order, this shall be deemed a new offer subject to written acceptance by us. If the contractor provides the supplies or services in such cases without our written declaration of acceptance, acceptance of the supplies or services alone shall not bring a contract into effect.

The applicable DUROtherm purchase order and item numbers for any other reference numbers shall be stated in confirmations of order, delivery notes and invoices.

The other contracting party guarantees that it holds all and any permits and approvals required for the purpose of providing the agreed supplies or services.

3. Price

Price agreements shall be based exclusively on written confirmations of price.

4. Delivery

Unless otherwise agreed, all shipments shall be made carriage and duty paid, including packaging, at the risk of the other contracting party to the place of receipt or use stated by us.

If shipment has explicitly not been agreed as carriage paid, we shall name the carrier to be used. The goods must be declared in the bill of lading in such a way that the lowest possible freight tariff is charged for the shipment. The contractor shall provide us with notification of transport when the goods are ready for shipment. In this case we shall take out and pay for transport insurance.

Unless otherwise explicitly agreed, the goods shall be packaged at no charge. We shall be entitled to return bulky packaging material, including but not limited to containers, barrels, cases, etc. to the other contracting party after they have been emptied, regardless of any transport or other wear and tear, at no charge to us at the cost of the other contracting party.

Any action which deviates from the provisions of the Packaging Ordinance (Verpackungsordnung) shall be subject to our prior written approval.

In the event of shortfall deliveries, we shall be entitled to reduce the invoice total by the amount applicable to such shortfall. We shall return any excess deliveries made at the cost and risk of the other contracting party.

We shall be entitled but not obliged to accept partial deliveries.

The other contracting party shall guarantee its ability to make subsequent deliveries of the ordered products in inventory for a period of 5 years from the date of acceptance of delivery.

5. Delivery note

5.1
Deliveries in general

A delivery note stating all the information in our order shall be included with all shipments. Residual deliveries shall be identified separately. "Collective delivery notes" will not be accepted. In order to be able to identify the contents of a shipment without opening it, delivery notes must be attached either underneath the adhesive label or in an envelope attached to the delivery marked "delivery note inside".

5.2
Product descriptions

The other contracting party shall include all the documents required for acceptance, operation, maintenance, repairs and certification, including but not limited to inspection logs, inspection certificates, drawings, plans, operating instructions and repair manuals, in reproducible form at no charge. Such product information forms part of the other contracting party's duty to provide full and defect-free delivery.

6. Delivery period

Unless explicitly rejected by the other contracting party, delivery deadlines, delivery periods and other performance deadlines requested by us are binding. Decisive for compliance with the delivery date or the delivery deadline is receipt of the goods at the point of receipt or, respectively, use indicated by us.

If there is a risk of delay, the other contracting party shall inform us in writing accordingly immediately stating the reasons and probable duration of such delay. Any changes to the order necessary as a result of delayed delivery shall be communicated by us without delay and shall be complied with precisely by the other contracting party.

If the delivery deadline is exceeded, we shall be entitled, after setting a reasonable period of grace within which performance or subsequent performance shall be provided, to assert our statutory claims. The rights referred to above shall continue to apply even if we have unconditionally accepted late deliveries in the past.

If the payment period is linked to a delivery deadline, the former shall only commence at the time of the agreed delivery deadline regardless of whether delivery was in fact made earlier.

7. Passage of risk

Unless otherwise agreed, the other contracting party shall bear the risk of accidental loss or deterioration prior to acceptance/delivery.

8. Warranty

Unless otherwise agreed in the following, the other contracting party's warranty shall accord with the statutory provisions.

The other contracting party warrants that, at the time of acceptance/delivery, its supplies or services reflect the state of the art and that all the statutory regulations, ordinances and other rules, including but not limited to all safety and environmental regulations, applying to such supplies and services have been complied with.

The other contracting party shall also warrant that the supplies are suitable for their intended purpose and that stipulated specifications and company standards are complied with alongside product descriptions and/or advertising claims made by the other contracting party or third party.

The other contracting party shall guarantee, within the meaning of section 443 of the German Civil Code (BGB), the quality descriptions made by it regarding the suitability for use of its products for the intended purpose and shall indemnify us against all and any damages incurred as a result of non-compliance with this guarantee. Unless otherwise explicitly agreed, the other contracting party shall likewise guarantee the service life of its products for a period of at least 5 years from acceptance.

Our duty to examine and give notification of defects shall be fulfilled with regard to mass goods by undertaking random checks in the course of receiving inspections.

The warranty period for supplies and services provided by the other contracting party shall – unless a guarantee applies or otherwise agreed – be 5

years from acceptance by us; this warranty period shall be 7 years for work on buildings.

9. Product liability

If claims for compensation are brought against us as a result of a defect in our product, the other contracting party shall indemnify us against such obligation to pay compensation to the extent that the damage incurred by the third party is the result of a defect in the product supplied by the other contracting party. The other contracting party shall only be released from this obligation if it is able to demonstrate that its supplies or services did not have defects which caused the respective damage.

The other contracting party shall, on request, demonstrate that both the risk of being the object of product liability claims and the risk of indemnifying us against product liability claims are covered to a sufficient degree by insurance.

10. Limited liability of the other contracting party

We shall not accept any limits on the liability of the other contracting party – on any legal grounds whatever. This shall apply in particular to limits on liability for breach, warranty or maximum limits on the amount of liability.

11. Moulding

If we order moulds from a moulds manufacture (other contracting party), the following shall apply to such other contracting party:

11.1

The contractor shall be liable under the statutory warranty provisions of section 633 ff. of the German Civil Code (BGB) for the proper manufacture of the mould and its suitability for use. In addition, the other contracting party shall be liable for all and any damage arising as a result of defects in the mould manufactured by it, including but not limited to damage to our machines, to goods manufactured using the mould, lost profits, etc. Such liabilities shall explicitly include "indirect consequential damages".

11.2

In the event that the contracted and manufactured mould is retained by the other contracting party, said contracting party shall be required to retain the mould and/or the casting pattern for a period of at least two years following the last partial delivery.

11.3

At our request, the other contracting party shall be required to surrender the manufactured mould retained by it. The other contracting party shall only be entitled to exercise rights of attention to the extent that it holds undisputed or non-appealable claims against us.

12. Payment

The other contracting party's claims to payment shall be due for settlement at the earliest upon receipt of a proper invoice, however no earlier than transfer of the goods or acceptance of the supplies or services. The date on which the incoming post stamp is applied shall be deemed the date upon which the invoice has been received.

We make payment within 60 days of receipt of the invoice at no discount. We shall be entitled to deduct 3% prompt payment discount if we pay within 14 days.

Invoices which do not comply with our requirements, for example because the purchase order number is missing, shall be returned to the other contracting party. In this case, the prompt payment discount period shall not begin before receipt of a proper invoice. Invoices shall be submitted in duplicate. To the extent required by law, the other contracting party shall submit to us a certificate of exemption issued by its tax office before beginning work on the supplies or services. If this is not done, we shall be entitled to retain 15% of the due invoice amount and to transfer this to the tax authorities.

13. Building work

Building and maintenance work shall be subject to the terms of German construction contract procedures (VOB) in addition to these terms and conditions, subject to the proviso that a warranty period corresponding to that in section 8 of these Terms of Purchase shall apply with regard to us.

The machines, equipment, devices, tools, operating equipment and similar ordered by us must comply with the latest accident prevention regulations and must be accident proof. Electrical equipment in the items referred to above

must reflect the state of the art and be designed according to the latest Association of German Electrical Engineers (VDE) regulations.

14. Documentation, confidentiality and retention

Models, samples, drawings and datasheets which we make available to the other contracting party shall remain our property and we shall be entitled to demand them back at any time. The contractor shall only be entitled to exercise a right of retention to these items if the claim upon which it bases its right of retention is undisputed or non-appealable.

If models, samples, drawings and datasheets, as well as moulds and tools, are not returned to us upon completion of our order, the other contracting party shall undertake to store said items for us for a period of 2 years beginning with acceptance of the relevant delivery at no charge and separately from its other property, whereby our title to such items shall be shown on them.

All models, samples and drawings shall be treated with confidentiality and may only be used for the purpose of completing our orders. No further rights of use shall be granted to the other contracting party. The other contracting party explicitly undertakes not to duplicate our models, samples and drawings. Transfer to third parties, such as for example subcontractors, shall be subject to our written approval.

All parts manufactured in accordance with our data, drawings or models may only be transferred to us, either permanently or for inspection. All other information regarding quantities, prices, etc. and other information about all our business operations provided to the other contracting party in connection with the placement and performance of the order shall be treated with confidentiality and kept secret including after termination of the business relationship.

15. Assignment

Without our consent, the other contracting party shall not be entitled to assign any claims held against us or to have any such claims collected by third parties. We will provide such consent if refusal would contravene the principles of good faith. In the event that the other contracting party agrees extended retention of ownership in its ordinary business operations with its supplier, we hereby provide our consent.

16. Place of performance, legal venue and contract language

In business transactions with business undertakings, legal persons under public law or special funds governed by public law, the place of performance for delivery or other services by the other contracting party shall be the address specified by us. The place of performance for our payment obligations is our registered place of business. The legal venue for all disputes is our registered place of business. Nonetheless, we retain the right to bring an action at the contractor's registered place of business.

German law applies to the exclusion of UN Convention on Contracts for the International Sale of Goods and the corresponding implementation provisions.

17. Written form / Severability

Additions and amendments to this Agreement must be made in writing to be valid. This stipulation requiring written form may likewise only be waived in writing.

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

18. Data protection

Personal data obtained by us in connection with the contractual relationship will be stored and processed by us in compliance with the provisions of the German Data Protection Act (Bundesdatenschutzgesetz).

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