

General Terms and Conditions of Dörken Coatings GmbH & Co. KG

§ 1 General information, Scope

1. Our following General Terms and Conditions ("GTCS") only apply if the purchaser is a trader (Section 14 of the German Civil Code – Bürgerliches Gesetzbuch, "BGB"), a legal person governed by public law or a special entity governed by public law. They are not applicable to consumers.
2. Our GTCS apply exclusively. General terms and conditions of the purchaser that deviate from, are contrary to or supplementary to our GTCS shall become part of the contract only if, and only to the extent that, we have expressly consented to their applicability. This requirement of consent shall apply in all cases, even if, for example, we carry out the delivery to the purchaser without reservation in the knowledge of the purchaser's GTCS.
3. Legally relevant declarations and notifications to be made to us by the purchaser after concluding the contract (e.g. setting of dead lines, notifications of defects, declaration of withdrawal or reduction of the price) must be in text form in order to be effective.

§ 2 Conclusion of contracts

1. Our offers are subject to change and are non-binding. This also applies if we have provided the purchaser with catalogues, technical documentation, other product descriptions or documents – including in electronic form.
2. The ordering of goods by the purchaser is deemed to constitute a binding offer of a contract. Unless otherwise specified in the order, we are entitled to accept this offer of a contract within 2 weeks of receiving it. Acceptance can be declared either in text form (e.g. by order confirmation) or by delivery of the goods to the purchaser.
3. We retain, without restriction, all ownership rights and copyrights to cost estimates, drawings, and other documents. These documents may not be disclosed to third parties without our express, prior consent. These documents must be returned to us if the order is not placed. Any copies of the documents must be destroyed in this case.

§ 3 Prices

1. The agreed prices are to be understood as ex works and are subject to the statutory rate of VAT applicable on the day of delivery. Any customs duties, fees, taxes and other statutory charges shall be borne by the purchaser.
2. The weights, numbers of units and quantities determined by us shall be decisive for the calculation if the purchaser does not expressly object immediately and at the latest within 14 days of receiving of the invoice.
3. Price changes shall be permitted if there are more than six weeks between conclusion of the contract and the agreed delivery date. If, after that time and up until the completion of the delivery, wages, raw material prices, other material costs, customs duties, taxes or other charges as well as freight costs increase or are introduced for the first time, we shall be entitled to increase the price appropriately in line with the cost increases. The purchaser shall be entitled to withdraw from the contract only if the price increase exceeds the increase in the general cost of living between the time of the order and the time of the delivery by more than just a negligible amount.

§ 4 Consultancy regarding technical application, suitability

1. Insofar as we provide consultancy services, this takes place to the best of our knowledge. All statements and information about the suitability and application of the goods delivered do not release the purchaser from its obligation to carry out its own checks and tests on the suitability of the products for the intended processes and purposes. This applies in particular if thinners, hardeners, additional coatings or other components not purchased from us are added.
2. The contractual quality of the product shall be determined by the respective property descriptions for our goods, unless expressly agreed otherwise. Nevertheless, such statements regarding quality do not include an independent guarantee statement. The provision of a guarantee always requires an express declaration from us to that effect.
3. We do not warrant that the products delivered do not violate the rights (in particular the property rights) of third parties outside Germany. This must always be confirmed by the customer itself. For deliveries within Germany, we warrant that we are not aware of any rights of third parties that preclude the use of the objects.

§ 5 Delivery, force majeure

1. Agreed delivery dates are not binding, unless expressly agreed otherwise.
2. Unless expressly agreed otherwise, delivery shall be ex works from our factory or distribution centre (Incoterms 2020: EXW).
3. If, in derogation from paragraph 2, it is expressly agreed that we are obliged to ship the goods, the transportation shall be carried out at the expense of the purchaser and, in the absence of special instructions, the choice of the means of transport and the transport route shall be at our discretion. The risk shall be transferred at the point at which we hand over the goods to the carrier. Deliveries worth EUR 1,000.00 or more shall be made carriage paid to the point of receipt.
4. Partial deliveries deemed to be reasonable for the purchaser are permitted.
5. If, through no fault of our own, there are significant and unforeseeable operational disruptions, failures to adhere to delivery dead lines or non-delivery on the part of our suppliers, as well as operational interruptions due to shortages of raw materials, energy or labour, strikes, lockouts, difficulties in procuring means of transport, traffic disruptions, orders of higher authorities and cases of force majeure affecting us and our sub-suppliers, the delivery period shall be extended by the duration of the obstacle to performance, insofar as these are not insignificant in terms of the ability to deliver the goods. We shall inform the purchaser of the beginning and end of such obstacles without delay. If delivery is delayed by more than one month as a result, both we and the purchaser shall be entitled, to the exclusion of any claims for damages, to withdraw from the contract with regard to the quantity affected by the disruption to delivery. Our statutory rights of withdrawal and termination as well as the statutory provisions on the execution of the contract in the event of preclusion of the obligation to perform (e.g. impossibility or unreasonableness of performance and/or subsequent performance) shall remain unaffected. The purchaser's rights of withdrawal and termination pursuant to Clause 9 of these GTCS shall also remain unaffected.
6. If the delivery is made in returnable containers, they must be returned within 90 days of receiving the delivery, free of any residue and carriage paid. The costs incurred by the loss of and damage to returnable packaging shall be borne by the purchaser, unless the purchaser is not responsible for this. Returnable packaging may not be used for other purposes or to accommodate other products. They are intended solely for the transportation of the goods delivered. Labels must not be removed.
7. Single-use packaging will not be taken back by us; instead, we will provide the purchaser with the name of a third party who will arrange for the packaging to be recycled in accordance with the German Packaging Ordinance (Verpackungsverordnung).

§ 6 Payment, default, set-off

1. The purchase price and the fees for ancillary services shall fall due immediately upon delivery, unless other conditions have been expressly agreed. Insofar as we are entitled to partial supplies, these can also be asserted and declared due for payment by means of interim invoices within a single supply contract.
2. Agreed periods of payment shall apply as from the time the goods are made available or from the time the goods are delivered, irrespective of when the purchaser receives the invoice.
3. In the event of default of payment, default interest shall be payable at a rate of 9 percentage points above the applicable base rate. The right to assert further claims for damages in addition to this shall remain unaffected.
4. The provision of bills of exchange is not regarded as cash payment and is permitted as conditional payment only with our express, prior consent. Charges for discounts and bills of exchange shall be borne by the purchaser.
5. The purchaser shall be entitled to rights of set-off or retention only to the extent that its claim has been definitively established in law or is undisputed. We are entitled to rights of set-off or retention without limitation. We are also entitled to initially offset payments against existing debts of the purchaser.
6. As a general rule, discounts are not granted. If something else has been expressly agreed by way of exception, discount deductions are permitted only if there are no outstanding payments from the business relationship as a whole.
7. We have the right to deliver or provide goods or render the service only after payment by the purchaser if the purchaser has not complied with agreed terms of payment from previous services or if there are still outstanding payments from those services or if the solvency of the purchaser has been called into question.
8. A payment obligation is deemed to have been fulfilled only once payment has been received in our account.
9. The purchaser shall be in default if it does not make payment by the calendar date for payment specified in the contract or does not pay following a reminder sent by us after the purchase price has fallen due. The statutory provision pursuant to which the debtor is automatically in default thirty days after a payment has fallen due and an invoice or equivalent payment schedule has been received remains unaffected.
10. Non-payment of invoices due for payment or other circumstances which indicate a significant deterioration in the financial circumstances of the purchaser after conclusion of the contract (e.g. application for the opening of insolvency proceedings) shall entitle us to declare that all our accounts receivable arising from the ongoing business relationship with the purchaser are due for payment. Furthermore, we shall be entitled, in accordance with the statutory provisions (Section 321 BGB), to refuse performance and – potentially after setting a deadline – to withdraw from the contract.

§ 7 Reservation of title

1. We shall reserve title to the goods sold until all our present and future accounts receivable arising from the purchase contract and the ongoing business relationship (secured claims) have been paid in full. The reservation of title shall continue to apply even if our individual accounts receivable are combined into one outstanding account and payments are offset against the balance of that account and the balance is acknowledged. Accounts receivable in respect of a purchase price shall be deemed not to have extinguished despite payment as long as any liability on a bill of exchange assumed by us in this connection – such as in the context of a cheque/bill of exchange procedure – continues to exist.
2. The goods subject to reservation of title must not be pledged to third parties or transferred by way of security before full payment of the secured accounts receivable. The purchaser must inform us immediately in text form if third parties have access to the goods belonging to us and, if so, to what extent.
3. Any processing or mixing carried out by the purchaser on our behalf shall not give rise to any liability on our part. In the event of processing or mixing with other items not belonging to us, the purchaser hereby transfers to us, in order to secure our claims, joint ownership of the new item in the ratio of the value of the reserved goods to that of the other processed items, subject to the proviso that the purchaser shall keep the new item for us.
4. The purchaser is entitled to dispose of the products in the ordinary course of business as long as it complies with its obligations from the business relationship with us in due time.
5. Claims arising from the sale of goods over which we have ownership rights are hereby assigned to us by the purchaser as security to the extent of our ownership share in the goods sold. If the purchaser combines or mixes the delivered goods with a main item of a third party for consideration, it hereby assigns to us its claims for remuneration against the third party up to the invoice value of the delivered goods as security. We accept these assignments.
6. At our request, the purchaser shall provide us with all necessary information regarding the stock of goods owned by us and regarding the claims assigned to us and shall inform its customers of the assignment.
7. The purchaser is obliged to keep the reserved goods in a safe place and to insure them against loss and damage at its own expense. It hereby assigns its claims arising from the insurance policies to us in advance. We accept this assignment.
8. If the realisable value of the security exceeds our claims by more than 10%, we shall, at the request of the purchaser, release and discharge such security of our choice to that extent.
9. The right of the purchaser to dispose of the products to which we have reserved title and to recover the claims assigned to us shall cease to exist as soon as it ceases payment and/or suffers financial collapse. If these conditions exist, we shall be entitled to demand the immediate provisional return of all the goods to which we have reserved title without granting a grace period or exercising the right of withdrawal, whereby the purchaser's right of reservation of title is excluded.
10. Insofar as the reservation of title is not effective under the law of the country in which the delivered goods are located, the purchaser must provide equivalent security at our request. If it does not comply with this request, we can demand the immediate payment of all outstanding invoices, irrespective of any agreed periods of payment.

§ 8 Claims for defects of the purchaser

1. The purchaser must inspect the goods for defects immediately after receipt.
2. Obvious defects must be notified in writing immediately, and at the latest within 14 days of receipt. Hidden defects must be notified immediately, at the latest within 14 days of discovering them. The notification must be made in writing and must precisely describe the type and extent of the defect. If the purchaser fails to carry out the proper inspection and/or notify defects, our liability for defects that have not been notified is excluded.
3. In the case of duly raised and justified complaints regarding defects, we are entitled, at our discretion, to subsequent performance by remedying the defect or by carrying out a replacement delivery. Our right to refuse the chosen type of subsequent performance under the statutory requirements remains unaffected.
4. If there is a defect, we shall bear the necessary expenses incurred for the purposes of inspection and subsequent performance (in particular transport, travel, labour and material costs), provided that these are not increased as a result of the fact that the object of purchase has been transferred to a place other than the place of performance. If, however, a demand for defects to be remedied made by the purchaser proves to be unjustified, we can demand from the purchaser reimbursement of the costs incurred from this.
5. If the subsequent performance fails twice or if a reasonable deadline set by the purchaser for the subsequent performance has expired without success, the purchaser may withdraw from the purchase contract or reduce the purchase price and, if applicable, assert claims for damages. In the case of an insignificant defect, however, there shall be no right to withdraw from the contract.
6. In the case of trader's recourse ("Unternehmerrückgriff", Section 478 BGB), we shall be entitled to reject the purchaser's rights of recourse with the exception of claims for the replacement delivery of goods and for the reimbursement of expenses, provided that we provide the purchaser with equivalent compensation for the exclusion of its rights. Claims for damages by the purchaser are excluded without any compensation being provided.
7. Claims of the purchaser for damages or reimbursement of wasted expenditure exist only in accordance with Clause 9 and are otherwise excluded.

§ 9 Other liability

1. We shall be liable for damages – regardless of the legal grounds – in cases involving intent and gross negligence. We shall be liable for ordinary negligence only:
 - a) for damages resulting from injury to life, limb or health,
 - b) for damages resulting from the breach of an essential contractual obligation (obligation whose fulfilment is essential for the proper performance of the contract and on whose compliance the contractual partner generally relies and may generally rely); in this case, however, our liability is limited to compensation for foreseeable, typically occurring damage.
2. The limitations of liability arising from paragraph 1 shall not apply if we have fraudulently concealed a defect or have made a guarantee in respect of the quality of the goods. The same applies to claims of the purchaser under the Product Liability Act (Produkthaftungsgesetz).
3. The limitations of liability in paragraphs 1 and 2 apply equally in favour of our executive bodies, performing agents and vicarious agents.
4. Due to a breach of duty which does not consist of a defect, the purchaser may withdraw or terminate the contract only if we are responsible for the breach of duty.

§ 10 Limitation period

1. By derogation from point 3 of Section 438(1) BGB, the general limitation period for claims arising from defects in quality and title is one year after receipt of the goods by the purchaser.
2. If, however, the goods are an object that has been used for a building in accordance with its normal use and has caused the building to be defective (building material), the limitation period in accordance with the statutory provisions is 5 years from delivery (point 2 of Section 438(1) BGB).
3. The aforementioned limitation periods of the law on the sale of goods shall also apply to contractual and non-contractual claims for damages of the purchaser which are based on a defect of the goods, unless the application of the regular statutory limitation period (Sections 195 and 199 BGB) would lead to a shorter limitation period in individual cases. The limitation periods of the Product Liability Act shall remain unaffected. Otherwise, the statutory limitation periods shall apply exclusively to claims for damages by the purchaser pursuant to Clause 9.

§ 11 Place of performance, Place of jurisdiction and Miscellaneous

1. The place of performance for all liabilities arising from the business relationship or from an individual contract is our respective shipping point, and the place of performance for payment is our registered office.
2. The place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is, at our discretion, our registered office or the purchaser's general place of jurisdiction. This also applies to disputes in litigation concerning documents, bills of exchange or cheques.
3. The law of the Federal Republic of Germany is exclusively applicable to the contractual relationship with our customers. The applicability of the United Nations Convention on the International Sale of Goods of 11 April 1980 (CISG – "UN Sales Convention") is excluded, as is the application of international conflict of law rules.
4. We shall store and process the purchaser's data insofar as this is necessary for the proper management of the contractual relations.