

# **General Terms and Conditions of Sale, Delivery and Payment of Dätwyler Sealing Solutions Deutschland GmbH & Co. KG**

## **1. Scope of application, form**

1.1 These General Terms and Conditions of Sale, Delivery and Payment (hereinafter referred to as "GTC") apply to all our business relations with our customers (hereinafter referred to as "Buyer"). The GTC shall only apply if the Buyer is an entrepreneur within the meaning of § 14 BGB (German Civil Code), a legal entity under public law or a special fund under public law.

1.2 These GTC shall apply in particular to contracts for the sale and/or delivery of movable goods (hereinafter referred to as "Goods"), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers (§§ 433, 650 BGB, German Civil Code).

1.3 Unless otherwise agreed, these GTC in the version valid at the time of the Buyer's order or, in any case, in the version most recently communicated to him in text form, shall also apply as a framework agreement for similar future contracts without us having to refer to them again in each individual case.

1.4 Our GTC apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of Business of the Buyer shall only become part of the contract if and to the extent that we have expressly agreed to their validity. This requirement of consent applies in any case, for example even if we carry out the delivery to the Buyer without reservation in the knowledge of the Buyer's General Terms and Conditions of Business.

1.5 Individual agreements made with the Buyer in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these GTC. Subject to proof to the contrary, a written contract or our written confirmation shall be decisive for the content of such agreements.

1.6 Legally relevant declarations and notifications of the Buyer in relation to a contract, e.g. for setting a deadline, notification of defects, withdrawal or reduction, must be made in writing, i.e. in accordance with § 127 BGB (German Civil Code) in written or text form, e.g. in a letter, e-mail or fax. Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the person making the declaration, remain unaffected by this.

1.7 References to the validity of legal regulations are only of clarifying significance. Even without such clarification, the statutory provisions shall therefore apply, unless they are directly amended or expressly excluded in these GTC.

## **2. Conclusion of contract**

2.1 Our offers are subject to change and non-binding. This shall also apply if we have provided the Buyer with catalogues, technical documentation, such as drawings, plans, calculations, statistics, references to DIN standards, other product descriptions or documents - also in electronic form - to which we reserve ownership rights and copyrights.

2.2 The order of the Goods by the Buyer is considered a binding offer of contract. Unless otherwise stated in the order, we shall be entitled to accept this contractual offer within 14 calendar days of its receipt by us.

2.3 Acceptance can be declared either in writing, e.g. by our order confirmation, or by delivery of the Goods to the Buyer.

## **3. Delivery period and delay in delivery**

3.1 The delivery period is agreed individually or is specified by us when accepting the order or when accepting a prototype of the Goods. If this is not the case, the delivery period is approximately 45 calendar days from the conclusion of the contract or from the acceptance of the prototype of the Goods.

3.2 If we cannot meet binding delivery deadlines for reasons for which we are not responsible (non-availability of the service), we shall inform the Buyer of this immediately and at the same time inform him of the expected new delivery deadline. If the service is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall immediately reimburse any consideration already provided by the Buyer. In particular, the non-availability of the service in this sense is deemed to be the non-timely delivery by our supplier, if we have concluded a congruent hedging transaction, neither we nor our supplier are at fault or we are not obligated to procure in individual cases.

3.3 The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder from the Buyer is required. If we are in default of delivery, the Buyer can demand lump-sum compensation for the damage caused by the delay. The lump-sum compensation shall amount to 0.5% of the net price (delivery value) for each completed calendar week of the delay, but in total not more than 5% of the delivery value of the Goods delivered late. We reserve the right to prove that the Buyer did not suffer any damage at all or only a considerably lower damage than the above lump sum.

3.4 The Buyer's rights under clause 8 of these GTC and our statutory rights, in particular in the event of an exclusion of the obligation to perform, for example due to impossibility or unreasonableness of performance and/or subsequent performance, shall remain unaffected.

## **4. Delivery, transfer of risk, acceptance, default of acceptance**

4.1 Delivery is ex works. Unless otherwise stated in these GTC, the provisions of Incoterms 2020 Ex Works (EXW) shall apply ex our factory or warehouse.

4.2 Our factory is also the place of performance for all deliveries and services and any subsequent performance.

4.3 At the request and expense of the Buyer, the Goods will be shipped to another destination (sale to destination).

4.4 Unless otherwise agreed, we shall be entitled to determine the type of shipment (in particular transportation company, shipping route, packaging) ourselves.

4.5 The risk of accidental loss and accidental deterioration of the Goods shall pass to the Buyer at the latest upon delivery. In the case of mail order purchases, however, the risk of accidental loss and accidental deterioration of the Goods as well as the risk of delay shall pass to the Buyer upon delivery of the Goods to the forwarding agent, carrier or other person or institution designated to carry out the shipment. If acceptance has been agreed, this is decisive for the transfer of risk. The statutory provisions of the law on contracts for work and services also apply

accordingly to an agreed acceptance. If the Buyer is in default of acceptance, this shall be deemed equivalent to handover or acceptance.

4.6 If the Buyer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the Buyer is responsible, we are entitled to demand compensation for the resulting damage, including additional expenses, such as storage costs. For this purpose, we shall charge a flat-rate compensation of 0.5% of the net price (delivery value) per calendar day of the delay in acceptance, but not more than a total of 10% of the delivery value of the Goods affected by the delay in acceptance, beginning with the delivery deadline or - in the absence of a delivery deadline - with the notification that the Goods are ready for dispatch. The proof of a higher damage and our statutory claims (in particular compensation for additional expenses, appropriate compensation, termination) remain unaffected by this. However, the lump-sum compensation shall be set off against further monetary claims. The Buyer shall be entitled to prove that we have incurred no damage at all or only a considerably lower damage than the above lump sum.

### **5. Prices and terms of payment**

5.1 Unless otherwise agreed in individual cases, our prices valid at the time of conclusion of the contract shall apply ex works, plus the respective applicable statutory value added tax.

5.2 The prices quoted by us correspond to the previous cost situation and calculation. Since we are dependent on raw material prices in the supply chain, such as metal and crude oil prices, and since these are subject to strong fluctuations, the prices quoted by us apply under the conditions that the orders can be executed without hindrance and that our wage and material costs also remain the same. Should there be any changes in costs between the conclusion of the contract and the delivery of the Goods, we are entitled, but not obligated, to charge the prices valid at the time of delivery. Should any price increase associated with this significantly exceed the general cost of living, the Buyer may withdraw from the contract. If no merchant is involved in the business transaction, this only applies if delivery is made later than four months after the conclusion of the contract.

5.3 In the case of sale by delivery to a place other than the place of performance (see clause 4.3), the Buyer shall bear the transportation costs ex works and the costs of any possible transportation insurance requested by the Buyer.

5.4 Any customs duties, fees, taxes and other public charges shall be borne by the Buyer.

5.5 The purchase price is due and payable within 14 calendar days of invoicing and delivery or acceptance of the Goods.

5.6 Notwithstanding the above clause 5.4, we are, however, entitled at any time, even within the framework of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. We declare a corresponding reservation at the latest with the order confirmation.

5.7 Upon expiration of the payment period contained in clause 5.5, the Buyer is in default. During the period of default, interest shall be charged on the purchase price at the statutory default interest rate applicable at the time. We reserve the right to assert further damages caused by default. Our claim to the commercial due date interest (§ 353 HGB, German Commercial Code) against merchants remains unaffected.

5.8 The Buyer is only entitled to set-off or retention rights insofar as his claim has been legally established or is undisputed. In the event of defects in the delivery, the Buyer's counter rights, in particular in accordance with clause 7.8, sentence 2 of these GTC, shall remain unaffected.

5.9 If it becomes apparent after conclusion of the contract, e.g. through an application for the opening of insolvency proceedings, that our claim to the purchase price is endangered by the Buyer's inability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB, German Civil Code). In the case of contracts for the manufacture of unacceptable items (custom-made products), we may declare our withdrawal from the contract immediately. This shall not affect the statutory provisions on the dispensability of setting a deadline.

### **6. Reservation of title**

6.1 Until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims), we reserve title to the Goods sold (hereinafter also referred to as "Reserved Goods").

6.2 Reserved Goods may not be pledged to third parties or assigned as security before the secured claims have been paid in full. The Buyer must inform us immediately in writing if an application for the opening of insolvency proceedings is filed or if third parties have access to our Reserved Goods, e.g. through seizure.

6.3 If the Buyer acts in breach of contract, in particular if he fails to pay the due purchase price, we are entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the Reserved Goods. The demand for the return of the Goods does not at the same time include the declaration of withdrawal from the contract. Rather, we are entitled to demand the return of only the reserved Goods and to reserve the right to withdraw from the contract. If the Buyer does not pay the due purchase price, we may only assert these rights if we have previously set the Buyer a reasonable deadline for payment without success or if such a deadline is dispensable according to the statutory provisions.

6.4 Until revocation, the Buyer is authorized in accordance with the following clause 6.4.3 to resell and/or process the Reserved Goods in the ordinary course of business. In this case, the following provisions shall apply in addition:

6.4.1 Retention of title shall extend to the full value of the products resulting from the processing, mixing or combination of our Reserved Goods, whereby we shall be deemed the manufacturer. If a third party's right of ownership remains in effect after processing, mixing or combining with Goods of a third party, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined Goods. Otherwise, the same applies to the resulting product as to the Goods subject to retention of title.

6.4.3 The Buyer hereby assigns to us as security all claims against third parties arising from the resale of the Reserved Goods or the product, either in total or in the amount of our possible co-ownership share in accordance with the preceding paragraph. We hereby accept the assignment. The obligations of the Buyer mentioned in clause 6.2 shall also apply in consideration of the assigned claims.

6.4.3 In addition to us, the Buyer remains authorized to collect the claim. We undertake not to collect the claim as long as the Buyer fulfills his payment obligations to us, there is no lack of his ability to pay and we do not assert the reservation of title by exercising a right according to clause 6.3. If this is the case, however, we can demand that the Buyer informs us of the assigned claims and their debtors, provides us with all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. Furthermore, in this case we are entitled to revoke the Buyer's authority to further sell and process the Goods subject to retention of title.

6.4.4 If the realizable value of the securities exceeds our claims by more than 10%, we will release securities of our choice at the request of the Buyer.

## **7. Claims for defects of the Buyer**

7.1 The rights of the Buyer in the event of material defects and defects of title (including wrong and short delivery as well as improper assembly or faulty assembly instructions) shall be governed by the statutory provisions, unless otherwise stipulated below.

7.2 In all cases, the statutory special provisions shall remain unaffected in the case of final delivery of the unprocessed Goods to a consumer, even if the consumer has processed them further (supplier recourse according to §§ 478 BGB, German Civil Code).

7.3 Claims from supplier recourse are excluded if the defective Goods have been further processed by the Buyer or another entrepreneur, for example by installation in another product.

7.4 The basis of our liability for defects is above all the agreement reached on the quality of the Goods. All product descriptions and manufacturer's details, which are the subject of the individual contract or which were made public by us (in particular in catalogues or on our Internet homepage) at the time of conclusion of the contract, shall be deemed to be an agreement on the quality of the Goods.

7.5 Insofar as the quality has not been agreed, the statutory regulation shall be applied to determine whether a defect is present or not (§ 434 (1) sentences 2 and 3 BGB). However, we do not assume any liability for public statements made by the manufacturer or other third parties, for example advertising statements, which the Buyer has not pointed out to us as being decisive for his purchase.

7.6 We are generally not liable for defects which the Buyer knows about at the time of conclusion of the contract or which he does not know about due to gross negligence (§ 442 BGB, German Civil Code). Furthermore, the Buyer's claims for defects presuppose that he has complied with his statutory obligations to inspect and give notice of defects (§§ 377, 381 HGB, German Commercial Code). In the case of Goods that are intended for installation or other further processing, an inspection must in any case be carried out immediately before processing. If a defect is discovered during delivery, inspection or at any later time, the Buyer must inform us of this immediately in writing. In any case, obvious defects must be reported in writing within 3 working days (Monday to Friday) from delivery and defects not detectable during inspection within the same period from discovery. If the Buyer fails to carry out a proper inspection and/or report defects, our liability for the defect not reported or not reported in time or not properly is excluded according to the statutory provisions.

7.7 If the delivered Goods are defective, we may initially choose whether we provide subsequent performance by eliminating the defect (rectification of defects) or by delivering a defect-free item (replacement delivery). Our right to refuse subsequent performance under the statutory conditions remains unaffected.

7.8 We are entitled to make the subsequent performance owed dependent on the Buyer paying the due purchase price. However, the Buyer is entitled to retain a reasonable part of the purchase price in relation to the defect.

7.9 The Buyer must give us the time and opportunity necessary for the subsequent performance owed, in particular to hand over the rejected Goods for inspection purposes. In the event of a replacement delivery, the Buyer must return the defective item to us in accordance with the statutory provisions. Subsequent performance does not include the removal of the defective item or its reinstallation if we were not originally obligated to install it.

7.10 We shall bear or reimburse the expenses necessary for the purpose of testing and subsequent performance, in particular transportation, travel, labor and material costs and, if applicable, dismantling and installation costs, in accordance with the statutory provisions if a defect actually exists. Otherwise, we may demand reimbursement from the Buyer for the costs incurred as a result of the unjustified demand for the removal of defects, in particular also the costs of testing and transportation, unless the lack of defect was not recognizable to the Buyer.

7.11 In urgent cases, e.g. if operational safety is endangered or to prevent disproportionate damage, the Buyer has the right to remedy the defect himself and to demand compensation from us for the expenses objectively necessary for this. We are to be informed immediately, if possible in advance, of any such self-remedy. The right of self-remedy does not exist if we would be entitled to refuse a corresponding subsequent performance in accordance with the statutory provisions.

7.12 If the supplementary performance has failed or a reasonable deadline to be set by the Buyer for the supplementary performance has expired unsuccessfully or is dispensable according to the statutory provisions, the Buyer may withdraw from the purchase contract or reduce the purchase price. In the case of an insignificant defect, however, there is no right to withdraw from the contract.

7.13 The Buyer's claims for damages or compensation for futile expenses shall exist only in accordance with clause 8, even in the case of defects, and shall be excluded in all other respects.

## **8. Other liability**

8.1 Unless otherwise provided for in these GTC including the following provisions, we shall be liable in accordance with statutory provisions in the event of a breach of contractual and non-contractual obligations.

8.2 We shall be liable for damages - irrespective of the legal grounds - within the scope of liability for culpability in the case of intent and gross negligence. In the case of simple negligence, we shall only be liable, subject to statutory limitations of liability, such as care in our own affairs and minor breaches of duty, for

8.2.1 damages resulting from injury to life, body or health

8.2.2 damages resulting from the breach of an essential contractual obligation, i.e. an obligation the fulfilment of which makes the proper execution of

the contract possible in the first place and on the observance of which the contractual partner regularly relies and may rely. In this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.

8.3 The limitations of liability resulting from clause 8.2 shall also apply to breaches of duty by or in favor of persons for whose fault we are responsible under statutory provisions. They shall not apply if we have fraudulently concealed a defect or have assumed a guarantee for the quality of the Goods and for claims of the Buyer under the Product Liability Act (in German: *Produkthaftungsgesetz*).

8.4 Due to a breach of duty which does not consist of a defect, the Buyer may only withdraw or terminate the contract if we are responsible for the breach of duty. A free right of termination by the Buyer (in particular according to §§ 650, 648 BGB (German Civil Code)) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

### **9. Statute of limitations**

9.1 Notwithstanding § 438 (1) No. 3 BGB (German Civil Code), the general limitation period for claims arising from material defects and defects of title is one year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance.

9.2 If, however, the Goods are a building or an object that has been used for a building in accordance with its usual purpose and has caused its defectiveness (building material), the limitation period shall be 5 years from delivery in accordance with the statutory regulation (§ 438 (1) No. 2 BGB, German Civil Code). Other statutory special regulations on the statute of limitations (in particular § 438 (1) No. 1, (3), §§ 444, 445b BGB, German Civil Code) shall also remain unaffected.

9.3 The aforementioned limitation periods of the law on sales also apply to contractual and non-contractual claims for damages of the Buyer which are based on a defect of the Goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB, German Civil Code) would lead to a shorter limitation period in individual cases. However, claims for damages of the Buyer according to clause 8.2 sentence 1 and clause 8.2.1 as well as according to the Product Liability Act (in German: *Produkthaftungsgesetz*) shall be subject to the statutory limitation periods exclusively.

### **10. General Buyer obligations**

10.1 The Buyer agrees and undertakes to comply with our Code of Conduct ([link](#)) and we sign this and our confidentiality agreement at our request.

10.2 The Buyer shall ensure, at its own expense, that he complies with all applicable governmental regulations and laws, including those relating to labor, data protection, the environment and anti-corruption laws.

10.3 In order to ensure a smooth exchange of data, the Buyer commits himself (i) to install and keep up to date appropriate computer hardware and software, (ii) to maintain a sufficient number of exchange devices, (iii) to have a sufficient network connection and (iv) if requested by us, to use an EDI ("Electronic Data Interchange") system compatible with our systems.

10.4 The Buyer (i) warrants that he will pay its employees in accordance with the applicable statutory minimum wage, (ii) acknowledges and agrees that we and our customers shall be entitled at all times

to verify compliance with the obligations set out in these GTC and (iii) agrees to pass on the same obligations as under (i) and (ii) to his own business partners.

10.5 The Buyer undertakes to indemnify us against all damages and costs incurred by us as a result of a breach of the obligations contained in this clause 10 committed by the Buyer himself or one of its business partners.

### **11. Choice of law and place of jurisdiction**

11.1 These GTC and the contractual relationship between us and the Buyer shall be governed by the law of the Federal Republic of Germany, excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods (CISG).

11.2 If the Buyer is a merchant within the meaning of the German Commercial Code (in German: *Handelsgesetzbuch, HGB*), a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our registered office in Cleebrohn. The same applies accordingly if the Buyer is an entrepreneur within the meaning of § 14 BGB (German Civil Code). In all cases, however, we shall also be entitled to bring an action at the place of performance of the delivery obligation in accordance with these General Terms and Conditions or a prior individual agreement or at the general place of jurisdiction of the Buyer. Priority statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.

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