

Dichtomatik Vertriebsgesellschaft für technische Dichtungen mbH

Terms and Conditions of Sales and Delivery

I. General

1. The following terms and conditions apply to our quotations, deliveries and other services (including consultations). We hereby expressly reject the customer's buying terms and conditions; which only then have validity when accepted by us in writing.

2. Our quotations are subject to alteration. An order is deemed legally valid when confirmed in writing or executed by us. Telephonic or oral statements by our representatives require written confirmation for legal validity.

3. We reserve the right of ownership and authorship on quotations, designs, drawings and other documents; access by third parties is only permitted with our consent. Drawings and other documents provided by us with quotations are to be returned at any time on request and unquestionable if the order is not placed. Insofar as we have delivered objects in accordance with drawings, models, samples or other documents provided by the customer, the customer takes the responsibility that third party copyrights are not infringed. Should third parties prohibit us production and delivery of such objects with reference to copyrights, we are entitled to discontinue any further work and to claim compensation. The customer is obliged to exempt us from any claims made by third parties with reference to the documents provided. Moulds produced on our behalf remain our property, even when proportionately debited to the customer.

4. We reserve the right of approximate delivery of up to +/- 10% of the quantities ordered in accordance with common practice in our field. In respect of orders available on call, we are entitled to procure the material for the total order and immediately manufacture the total amount ordered. Any alterations from the customer cannot be taken into consideration after the order has been placed unless this has been expressly agreed.

5. Delivery is from stock, unless otherwise agreed. Goods are transported at the customer's risk at all times including when freight-free delivery has been agreed.

II. Notification in accordance with the Federal Republic of Germany's data protection laws ("BDSG")

Customer data is stored and processed by us insofar as this is necessary for the completion and execution of the business and permissible within the framework of the "BDSG".

III. Delivery and delivery dates

1. Delivery date details are, even when a delivery date has been agreed with the customer, always approximate and not binding unless the delivery date is expressly agreed as fixed in writing. A confirmed delivery date is always given with the reservation that our own deliveries from suppliers are correct, complete and punctual. The delivery period is maintained when the object has left our works or we have informed the customer of readiness for delivery by expiry of the delivery period. The delivery period does not begin until the customer has properly fulfilled his obligations, such as, e.g. the provision of technical data and documents, permits as well as a deposit or furnished a guarantee of payment. Legitimate time and quantity part deliveries are permissible.

2. Should an Act of God or some other event outside of our influence or responsibility occur – whether in our company or at our suppliers – or industrial action or the effects thereof – prevent the fulfilment of our delivery obligation, the delivery date will be extended by the duration of the obstacle. This also applies if these events occur when we are behind schedule. Should delivery also become impossible or unreasonable due to such an event, we are entitled to withdraw from the contract, totally or partially. Should later delivery be unreasonable for the customer, he is also entitled to withdraw from the contract after an appropriate extended deadline has been set. Neither our customer nor we are entitled to compensation claims in the event of withdrawal from the contract due to an Act of God.

3. The customer is entitled to withdraw from the contract in accordance with the legal premises if delivery is delayed or impossible at our responsibility. If delivery is delayed by us and the customer suffers damages as a result, we are obliged to compensate such damages. This does not apply to loss of profits and damages caused by operating interruption.

With minor negligence, claims for compensation are limited to additional freight costs, replacement costs and after failure of an extended deadline or cessation of interest in the delivery, to additional costs for covering purchases. Otherwise, clause VII. of these terms and conditions applies with regard to liability for delay or impossibility.

IV. Terms of payment

1. Insofar as not otherwise confirmed in writing, invoices are payable within 30 days after the date of invoice, net or within 14 days after date of invoice minus 2% cash discount. Prices are in Euro and subject to the addition of the statutory value added tax. Cash discounts are granted only when all due payments have been received.
2. The date of receipt of payment is deemed to be the day on which the amount is received or is credited to our bank account. If the customer is in arrears, we are entitled to charge interest at the rate of 8% p.a. above the base interest rate for the period he is in arrears. This does not limit our right to further claims for compensation.
3. All our demands become immediately due when the customer is in arrears, regardless of e.g. the period of validity of a bill of exchange accepted in discharge of obligations. The same applies when, after conclusion of the contract, it becomes evident that our payment demands are at risk due to the customer's inability to pay. Simultaneously, we are entitled to demand security or payment in advance for any outstanding deliveries.
4. Setting off is permissible only against counterdemands acknowledged by us or determined as legally valid. This also applies to rights of retention due to counterclaims.

V. Reservation of proprietary rights

1. All goods delivered remain our property (reserved goods), until all unpaid demands arising from the business connection, including additional costs and interest and in particular also the deferred payments on the due balance at any one time, are settled; in this respect, our deliveries are considered a cohesive delivery transaction. Should we accept a bill-type obligation within the framework of a rediscounting transaction as settlement of our demands, the reservation of proprietary rights, with their above and following provisions, remain in force until the rediscounted bill has been redeemed.
2. The handling and processing of the reserved goods occurs for us, as producers, in accordance with §950 BGB, without any obligations for us arising therefrom. Handled or processed goods are considered reserved goods. Should the customer process, connect to or combine the reserved goods with goods which are the property of a third party, into a new thing or, into mixed components, we are entitled to a share in the ownership thereof and in the ratio of the invoice value of the reserved goods to the total value of the new thing or the mixed components. Should the customer acquire by law the sole ownership of the new thing as a result of the connecting, combining or processing, we are in agreement with him that he will grant us co-ownership in the ratio of the invoice value of the reserved goods to the total value of the new thing at the time of the processing, connecting or combining and that he will safeguard this for us, free of charge. The customer undertakes to handle the things co(owned) by us with the care taken by a respectable businessman and to adequately insure them against fire, theft and other commonly accepted risks.
3. Resellers may sell reserved goods in an orderly business manner on condition that their demands from the resale are transferred to us. Seizure or transfer of ownership as security on a debt of the reserved goods is prohibited as well as a cession prohibition agreement. Ceding the demands from the resale within the framework of factoring is permitted only with our express prior agreement. The customer hereby cedes to us his demands from the sale in advance including all additional rights which ensue. When our reserved goods are sold after processing, connecting or combining with other goods which do not belong to us or together with other goods, the cession of demands from the resale applies only to the sum of the invoice value of our reserved goods.
4. The customer is entitled to collect the demands from the resale. He is obliged to resell the reserved goods only under reservation of proprietary rights if they are not immediately paid for by his buyer. The right to resale or to collection of demands expires when payment is in arrears or there is a considerable deterioration in the customer's financial circumstances. The customer is obliged to inform us of the debtor's name at our request.
5. The customer's right of ownership of the reserved goods expires when payment is in arrears or there is a considerable deterioration in his financial circumstances. We can then demand surrender of the goods. In the surrender demand or return of the reserved goods a withdrawal from the contract is only then present when we have expressly declared it.
6. The customer must inform us without delay of a seizure or any other restriction of our rights on goods and demands by a third party.
7. Should the existing securities exceed the value of the demands as a whole by more than 10%, we are obliged, at the customer's request, to release securities selected by us.

8. Should the laws of the country in which the delivery object is located, not permit reservation of proprietary rights or only in a limited form, but allows the seller reservation of other rights on the delivery object, we are then entitled to exercise all such rights. The customer is obliged to undertake all measures such as, e.g. registrations for the effective agreement of our reservation of proprietary rights and to cooperate in the measures which we intend to undertake to safeguard our proprietary rights or, in their place, other rights on the delivery object.

VI. Liability for faults or defects

1. Our technical consultations and quotations are prepared with the utmost of care and take into consideration the parameters and circumstances known to us. All recommendations for the application of our products are made to the best of our knowledge. However, due to the multitude of application possibilities, different demands and individual conditions for the application, we cannot guarantee the suitability of a product for a particular application. Information on the composition and application possibilities of our products do not constitute any guarantees, and particularly not in accordance with §444, §639 BGB, unless expressly described as such in writing. The customer is, in all cases, obliged to inspect the suitability of the product for his intended application himself. Any other performance or composition characteristics of the delivery and performance are not at fault. We reserve the right of customary in the trade or technically unavoidable tolerances of physical and chemical proportions, including colour as well as order quantities, so far as this is reasonable for the customer. Storage of elastomer articles is in accordance with DIN 7716. Technical alterations for improvement of the product are permissible.

2. Claims against obvious and recognisable faults and incorrect quantities must be asserted, in writing, without delay after receipt of the goods and, at the latest, within two weeks thereof. Faults which cannot be discovered within this deadline, even after careful inspection, are to be reported to us in writing without delay and, at the latest, within a week of the discovery. After further processing or installation, claims are not possible unless the fault only became recognisable due to the further processing or installation.

Should faults occur in the goods, the customer is obliged in accordance with our request, to have the nature of the fault established by a neutral expert. The customer must give us or our supplier the opportunity to check the identity of the goods against which they have lodged a complaint as well as the stated faults on site and to provide samples immediately on request.

Claims which result from the handling or processing of the goods not being stopped immediately after determination of the faults or a mixing of our goods with goods from another source is not discontinued and that is, up to the express release of the goods by us or our suppliers, are excepted.

Our guarantee provides for free replacement deliveries. Should a replacement delivery not be possible, or fail, or earnestly and finally be refused by us, the customer may withdraw from the contract or demand a reduction. The customer is entitled to the same rights if the replacement delivery is unreasonably delayed by us or an appropriate deadline set by the customer has fruitlessly expired. However, the customer has no withdrawal rights for minor faults. Liability for compensation within the framework of liability for faulty goods, clause VII. of these conditions is applicable.

Claims against faults do not apply if these are caused by contravention of operating, maintenance and installation regulations, unsuitable or improper use or storage, incorrect or negligent handling or installation as well as normal wear and tear and any tampering with the delivery object by the customer or third parties.

3. In accordance with §437 BGB, claims against faulty goods lapse 12 months after they are lodged.

VII. General liability

1. Claims for compensation of any kind within and outside of the liability for faulty goods – due to delay or impossibility, as a result of contravention of additional contractual responsibilities, incorrect advice, due to culpability on concluding the contract, as a result of contravening other contract responsibilities, due to prohibited undertakings or other legal justifications – in particular also faults not occurring in the delivery object itself, are excepted unless we, our employees or associates are guilty of intent or culpable negligence. For claims resulting from culpable injury to life, body, health, guarantees or contraventions of essential contractual obligations, we also accept liability for minor negligence. With the acceptance of a composition guarantee, claims for compensation exist without blame on our part only then if typical consequential damage resulting from the fault should be avoided by the guarantee.

2. In the case of essential contractual obligations, our liability is limited to the foreseeable, contractually typical, direct average damage. The aforementioned rule applies also to any breach of obligation by our employees and associates.

3. The aforementioned regulations apply respectively to infringement of rights insofar as and if these are applicable to application of our goods in accordance with the contract, have validity in the Federal Republic of Germany and are published at the time of delivery. This does not apply if we have produced the delivered objects in accordance with drawings, models or other equivalent descriptions or information supplied by the customer and do not know, or cannot be expected to know with regard to the goods developed by us that any infringement of rights has occurred. In other respects, our obligations for infringement of rights are precluded.

4. Compensation rights are precluded as far as the customer has in turn effectively limited his own obligations with regard to his customer. The customer must hereby endeavour to arrange limitations of obligations in legally acceptable bounds which are also in our favour.

5. Our obligations in accordance with the requirements of product liability laws are unaffected by the aforementioned regulations. Should the customer be held liable for damages due to his obligations regardless of negligence or fault with regard to the inalienability rights of third parties, we will endorse the customer's liability insofar as he would also be directly liable. For adjustment of damages between the customer and ourselves, the principles laid out in §254 BGB are applicable. This applies also in the case of direct claims against us.

6. When assessing the extent of the entitlement to compensation to be granted by us in accordance with Paragraphs III, VI and VII our economic conditions, type, magnitude and period of business relationship, any contribution to cause or responsibility for liability of the customer in accordance with the stipulations of §254 BGB and a particularly unfavourable installation situation of the part delivered are to be appropriately considered in our favour. In particular, compensation, costs and expenditure which should be carried by us, must be proportionately commensurate to the value of the delivered part.

VIII. Place of execution of contract, court of jurisdiction, applicable law

1. Place of execution for delivery and payment is Hamburg, Germany.

2. Court of jurisdiction for all disputes – also for bill and cheque cases – as far as the customer is a businessman, juristic person according to public law or public law governing special assets or has no court of jurisdiction in this country, is Hamburg (Germany). We can also take proceedings against the customer in the court responsible for his location.

3. German law is applicable to the contract terms. The legal requirements under UN commercial law are excepted. As far as clauses defined in "Incoterms" have been agreed, the "Incoterms 2010" are applicable in their latest version.

4. Should individual terms of these terms and conditions become totally or partially ineffective, the remaining terms and conditions will remain in effect.

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