



General terms and conditions of DSM Messtechnik GmbH

§ 1. Scope of application

- (1) The following general terms and conditions apply only to legal entities, corporations under public law and public legal property acc. to § 310 par. 1 German Civil Code (BGB).
- (2) Conflicting or deviating terms of the customer are only accepted with our express written approval.
- (3) Our general terms apply for all potential future transactions unless these are not legally similar transactions.
- (4) Object of purchase are standard products and custom-made products.

§ 2. Proposal and conclusion of contract

- (1) We can accept orders, as a proposal of contract conclusion, within two weeks after receipt unless the written purchase order states another deadline or date.
- (2) Contract is concluded by our written acceptance of order unless otherwise agreed in written form. Our written acceptance of proposal and potential amendments and side agreements determine the substance and scope of supply to be provided by us.
- (3) Amendments and side agreements require our written approval for validity.

§ 3. Documents related to placing of order

(1) Documents especially descriptions, graphs, data storage media and samples provided by the customer in course of the purchase order are meant to be within the tolerances of the applicable standards and other regulations and alternatively the general accepted norms of technology unless the customer requires smaller tolerances and we accept this in written form.

(2) We keep title and copyright of all our descriptions, graphs, data storage media, samples and cost estimates provided to the customer.

(3) This also applies for documents in written form and data files transmitted. None of our documents shall be provided to third parties unless we have previously agreed in written form.

(4) Written documents and data storage media provided by us shall be returned on our request. Written documents and data storage media provided to us shall be returned on customers request as well. We use documents provided by the customer exclusively for order processing.

§ 4. Technical changes

(1) We reserve the right to implement technical changes and improvements to the object of purchase in course of technical improvements or due to legal requirements.

(2) Special notice to the customer is not required unless the technical changes result in changed prices or functions.

§ 5. Prices and payment terms

(1) Our prices apply ex works including on-site loading excluding packaging and unloading unless otherwise agreed in written form. Our prices apply for the object of purchase with regard to substance and scope of supply and delivery terms agreed in our acceptance of order or a written side agreement. Additional or special services are charged to the customer according to usual domestic market prices unless otherwise agreed.

(2) All of our proposal prices are net prices. The applicable value added tax is included in the invoice.

(3) Payment is due within 30 calendar days after delivery and receipt of invoice unless otherwise agreed in writing.

(4) Discounts are not allowed unless otherwise agreed in written form.

(5) We are authorised to include a down payment of 50% in our acceptance of order if the orderer is our customer for the first time. In case the down payment is not executed with 10 working days, we are authorised to withdraw from the contract.

(6) We reserve our right to adequately change the proposal prices due to changes in cost of labour, materials and distribution costs, if delivery is requested later than three months after contract conclusion unless otherwise agreed in writing.

§ 6. Right of retention

Orderer is only entitled to the right of retention if his counterclaim is based on the same contractual relationship.

§ 7. Time of performance

(1) Times of performance (deadlines and dates) are only binding if agreed in writing. Agreed times of performance are considered to be met by us if the object of purchase has left our works before this time elapses or – in case of delivery on call – readiness for shipment is declared explicitly to the orderer.

(2) We are authorised to extend times of performance

1. if the orderer fails to meet agreed terms of payment especially if agreed down payments are late

2. if the orderer fails to provide documents, graphs, data storage media and samples necessary for our services and delivery terms or potentially components of the purchase object to be provided by the orderer immediately and completely after our request

3. in case of subsequent changes of the order unless the change is to immaterial to justify an extension to the time of performance

4. in case of force majeure, unforeseeable interruptions to operations in the course of labour disputes, problems in material procurement, delay in delivery of our suppliers and other unpredictable obstacles not controllable by us, if these demonstrably and materially affected our business performance or delivery terms.

(3) We are not liable for obstacles according to paragraph 2 No. 4, even though if we were already in delay by occurrence. We will inform the customer about the beginning and ending of such obstacles.

(4) If we do not meet the times of performance due to one of the reasons acc. to paragraph 2 No. 1 – 4 or another reason we are not liable for, orderer is not entitled to claim for a contractual penalty or a compensation for damages, neither to terminate nor withdraw from the contract or revoke it in any other possible way.

(5) We are authorised to claim for compensation of damages and potential additional expenses (§ 5 paragraph 1 sentence 3), if customer is in default of acceptance or debtor's delay or is liable for any other breach of duty to co-operate or shipment is delayed on his request.

We reserve the right to potential claims beyond the above mentioned.

(6) In case of paragraph 5, risk of accidental loss or impairment passes to the orderer when he/she is in default of acceptance or debtor's delay or shipment is delayed on his request.

§ 8. Transfer of risk during shipment and collection

(1) Risk of accidental loss or impairment passes to the orderer as the shipment commences or at the latest when leaving our factory if the object of purchase is shipped to the orderer or a third party on request of orderer, irrespective of shipment from place of fulfillment or another place or who is bearing transportation costs.

(2) Risk of accidental loss or impairment passes to the orderer with handover of the object of purchase if the orderer or an authorised representative picks it up from our factory even though the object of purchase is still in our factory at this point in time.

§ 9. Title retention

(1) We reserve our right of title of the purchase object until complete payment of all claims resulting from the respective contract.

(2) This conditional sale applies to all future orders even so if not explicitly invoked by us. We are authorised to claim for return of the object of purchase if the buyer's payments are delayed.

(3) As long as the title has not been transferred, the buyer is obliged to handle the object of purchase carefully. In particular, he is obliged to set up an insurance policy against thievery, fire and water damage for the net purchase price at his own cost. Potential inevitable maintenance and inspections are to be performed by the orderer in time and at his own cost.

(4) As long as the title has not been transferred, the buyer is obliged to inform us immediately when the object of purchase is seized or exposed to other measures of a third party. If the third party is unable to reimburse our cost in course of an lawsuit according to § 771 ZPO, the orderer is liable for this cost.

(5) Despite the title retention, the orderer is authorised to resell the object of purchase in his ordinary course of business. Receivables from third parties resulting from this sale are conveyed to us with the amount of the agreed gross purchase price by now. This conveyance applies regardless of whether the object of purchase was sold to the third party unchanged or after handling, processing or other transformation.

(6) Orderer is entitled to collect his receivable despite of the conveyance. Our right to collect the receivable by ourselves remains unaffected. We will not collect the receivable as long as the orderer is not in payment delay and bankruptcy is not filed.

(7) As long as title has not been transferred all handling, processing or other transformation is performed on our behalf. The expectant right of the orderer for the original object of purchase persists in the treated, processed or otherwise transformed object.

(8) If the object of purchase is processed together with other external objects, we acquire the joint ownership of the new object proportionally to the market value of our object of purchase in relation to the market value of the external objects at the date of processing.

(9) This applies also for amalgamation. If our object of purchase is to be seen as main part of the amalgamation, it is agreed that the orderer transfers proportional joint ownership and keeps it safe on our behalf as long as our title retention persists.

§ 10. Warranty

(1) The obligations according to § 377 HGB apply for the orderer's potential claim for warranty.

(2) All warranty rights expire within 24 months after delivery of the object of purchase. We assume that the object of purchase has not passed through more than one million production cycles within this period unless otherwise agreed on with the orderer or the end customer. If a third party is entitled to warranty claims, his claims are not affected by these terms and conditions. Legal limitation of time applies to all claims for damage compensation resulting from intention or gross negligence as well as for all violation of life, body and health resulting from an intentional or gross careless violation of duty.

(3) If the object of purchase is defective despite all our exercised care, we will provide supplementary performance of our own choice by way of correction of the defect or repeated delivery of the object of purchase without defects, unless the orderer failed to comply with his obligations acc. to § 377 HGB at all or in time. Orderer is obliged to set an adequate time limit for supplementary performance.

(4) Warranty claims are not valid in case of

1. immaterial deviations from the agreed quality,
2. immaterial interference of usability,
3. natural erosion or deterioration assuming that the object of purchase is not involved in more than one million production cycles within 24 months
4. damages after transfer of risk due to gross negligence, excessive load, use of inappropriate lubricants or other operating resources or other external impacts not contractually agreed on.
5. repairs or other interventions by the orderer or third parties.

(5) Claims of the orderer resulting from cost in course of the supplementary performance in particular material, labour and transportation costs are not authorised. Aalen is place of supplementary performance.

(6) If a claim is made to the orderer by a third party, he is only entitled to claim against us in line with these general term and conditions, regardless of his own obligation.

(7) We do not accept warranty claims if the object of purchase cannot be resold to specific buyers or to specific countries, due to political requirements or legal regulations.

§ 13. Miscellaneous

(1) All contracts concluded according to these general terms and conditions, as well as in case of a business title resulting from this, the complete privity of contract are exclusively under German law excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(2) Place of fulfilment and exclusive jurisdiction for all lawsuits resulting from this contract is the registered office of the DSM-Messtechnik GmbH, unless otherwise explicitly agreed in our acceptance of order.

(3) All agreements concluded between the contract parties are codified by these general terms and conditions, our proposal and our acceptance of order. Verbal side agreements are only valid with our written approval.

Aalen, 11 June 2019

DSM Messtechnik GmbH



Florian Wilhelm

Managing director