

# General terms and conditions of delivery and service of DSI Getränkearmaturen GmbH (29.04.2008)

## 1. General, scope of application

- 1.1 Our general terms and conditions of delivery and service shall apply exclusively; contradictory terms of Customer or ones deviating from our general terms and conditions of delivery and service shall only be acknowledged if we have expressly agreed to their validity in writing. In particular, reference to correspondence of the customer or a third party containing or referring to terms and conditions of business shall not mean recognition of said terms and conditions. Our general terms and conditions of delivery and service shall apply even if we implement delivery to Customer without reservation despite knowledge of contradictory terms of Customer or ones deviating from our general terms and conditions of delivery and service.
- 1.2 For standards and specifications quoted, the latest issue shall apply in each case insofar as no issue date or review number has been stated.
- 1.3 Our general terms and conditions of delivery and service shall only apply towards enterprises within the meaning of § 310 sub-section 1 German Civil Code.

## 2. Quotation, quotation documents

- 2.1 Our quotations shall be subject to change without notice to the extent that nothing to the contrary results from the order confirmation. The right to intermediate sale shall remain reserved.
- 2.2 We reserve ownership and copyrights to illustrations, drawings, calculations and other documents. This shall also apply to written documents marked "confidential". Before forwarding them to third parties, Customer shall require our express written approval.

## 3. Changes to the contract, supplements

Our employees are not entitled to make verbal additional or side-agreements.

## 4. Deviations

- 4.1 Depending on the kind of appliance (special productions), a deviation in quantity customary in the branch of up to  $\pm 10\%$  shall be permitted, both with a view to the total final quantities and also for any part deliveries.
- 4.2 We reserve the right to make slight deviations or changes in colour, shape, function or finish of our quoted commodities, these in any case being customary in the branch.

## 5. Prices, payment terms

- 5.1 To the extent that nothing to the contrary results from the order confirmation, our prices shall apply "ex works", exclusive of packaging; the latter shall be charged separately.
- 5.2 We reserve the right to amend our prices accordingly if price increases or decreases, in particular as a result of wage agreements or changes in the material price, occur after conclusion of the contract. We shall prove them to Customer upon request.
- 5.3 Statutory Value Added Tax shall not be included in our prices; it shall be stated separately on the invoice to the statutory amount on the date of invoicing.
- 5.4 To the extent that nothing to the contrary results from the order confirmation, our invoices shall be due for payment net (without deduction) within 30 days from the date of the invoice.
- 5.5 Payment by cheque or by bill shall only be admissible by agreement and shall only be deemed as payment on account of performance.
- 5.6 Rights to offset shall only accrue to Customer if his/her counter-claims are legally effective, undisputed or have been acknowledged by us. The same shall apply accordingly to rights of retention.

## 6. Calculations and amortisation of the shares in mould costs

- 6.1 For parts for which we do not yet possess moulds, we charge the share of our production costs stated in our order confirmation for the moulds.
- 6.2 If we have not charged any share of the mould costs as a result of the order quantity of the first order, we shall be entitled to subsequent calculation of the difference in the cases in which the original order quantity has not been purchased within a period of two years.
- 6.3 In the event of changes of moulds, the costs shall be charged separately. An amortisation shall not take place for this.
- 6.4 The mould costs charged shall be a share, as a result of which the expenditure for design, construction, trials, storage and repair is not covered. For this reason, handing over of moulds cannot be demanded.

## 7. Delivery period

- 7.1 The start of the delivery period stated by us shall presuppose clarification of all technical questions.
- 7.2 Compliance with our delivery duty shall further presuppose punctual and proper performance of the duties incumbent on Customer. The right to the defence of unperformed contract shall remain reserved..
- 7.3 If we are prevented from punctual delivery by force majeure, industrial disputes, unrest, official measures, lack of deliveries by downstream suppliers, disturbances in the sequence of operation with us or our downstream suppliers for which we are not answerable and which can be proven to be of considerable influence or by other unforeseeable, unavoidable and severe incidents, the delivery period shall be extended accordingly. If delivery becomes impossible as a result of this, our delivery duty shall no longer apply, damages being ruled out. If Customer proves that later performance is of no interest to him/her as a result of the delay, he/she

can withdraw from the contract, further-reaching claims being ruled out. If the prevention lasts for longer than three months, each contracting party can withdraw from the contract with a view to the part not yet performed.

- 7.4 If we fall into arrears, Customer shall be entitled to set a suitable period of grace in writing and to withdraw from the contract following its fruitless expiry. Setting of a period of grace shall not be necessary if we seriously and finally reject performance or if the underlying contract is a fixed transaction within the meaning of § 323 sub-section 2 no. 2 German Civil Code or § 376 German Commercial Code or particular circumstances justifying immediate withdrawal from the contract, taking both parties' interests into account, exist.
- 7.5 Customer can only demand damages on account of delay in performance if the damage incurred is to be put down to malice aforethought or gross negligence, including malice aforethought or gross negligence of our legal representatives or vicarious agents, or a culpable breach of a cardinal contractual duty. To the extent that we cannot be accused of a deliberate breach of a duty, the liability to damages shall however be limited to the foreseeable damage typically occurring. The limitations of liability pursuant to the aforementioned sentence 1 and sentence 2 shall not apply to damage from injury of life, limb and health, for which we shall be liable according to the legal provisions.
- 7.6 If delivery is to be on call order by Customer, the latter must call the commodities within the next twelve months from receipt of the order if not expressly agreed to the contrary; otherwise, we shall be entitled to deliver the commodities even without a call order by Customer.

## 8. Passage of risk, deliveries - packaging

- 8.1 To the extent that nothing to the contrary results from the order confirmation, delivery "ex works" has been agreed. This shall apply even if we have assumed the costs of transport or have advanced them for Customer.
- 8.2 Risk shall pass to Customer upon dispatch of the delivered parts from our factory, even if we have assumed the costs of transport or have advanced them for Customer. If dispatch is delayed for reasons for which Customer is answerable, risk shall pass to him/her on the day of provision.
- 8.3 We shall be entitled to make part deliveries. Delays or lack of deliveries shall have no influence on the handling of the remaining order as a matter of principle. The contrary shall only apply if only complete delivery is economically sensible from an objective point of view according to the contents of the contract.
- 8.4 We shall take transport packaging back at our registered office during customary business hours. Customer shall bear the costs of recycling.
- 8.6 Customer shall inform us in writing if he/she requires a specific form of transport for the return of the items and/or coverage by transport insurance, Customer bearing the costs incurred to this extent.

## 9. Retention of title

- 9.1 We reserve title to the commodities supplied until receipt of all the payments from the business relationship with Customer. To the extent that we agree payment of the purchase price owed on the basis of the cheque/bill procedure with Customer, the reservation shall also extend to the honouring of the bill accepted by us by Customer and shall also not expire as a result of crediting of the cheque received by us.
- 9.2 Customer shall be entitled to sell the delivered commodities in the customary course of business, although he/she here and now assigns all claims to the amount of the final invoice amount (including VAT) of our claims accruing to him/her against his/her customers or third parties from the resale, regardless of whether the object of purchase has been resold without or following processing. Customer shall remain entitled to collect said claim even after the assignment. Our power to collect the claim ourselves shall remain unaffected hereby, although we engage not to collect the claim as long as no protests against cheques or bills occur, Customer complies with his/her payment duties from the income received, is not in arrears of payment and in particular does not make any application for opening of insolvency proceedings or payments have been ceased. But if this is the case, we can demand that Customer notifies us of the assigned claims and their debtors, gives all the information necessary for collection, hands over the pertinent documents and informs the debtors (third parties) of the assignment.
- 9.3 Processing or reshaping of the conditional commodities supplied by us by Customer shall always be done on our behalf. If the conditional commodities supplied by us are processed with other objects / materials not belonging to us, we shall acquire co-title to the new object in the ratio of the value of the conditional commodities to the other processed objects / materials at the time of the processing. Apart from this, the same shall apply to the object originating from the processing as for the conditional commodities supplied.
- 9.4 If the conditional commodities supplied by us are inseparably blended with other objects / materials not belonging to us or this is done in such a way that they become integral components of a single object, we shall acquire co-title to the new object in the ratio of the value of the conditional commodities to the other blended or combined objects / materials at the time of the combining or blending. If the blending or combining is done in such a way that Customer's object is to be regarded as the main object, it is here and now agreed that Customer assigns co-title to us pro rata. Customer shall keep the co-title originating in this way on our behalf. Apart from this, the same shall apply to the object originating from the blending or combining as for the conditional commodities supplied.
- 9.5 We engage to release the collateral accruing to us upon request by Customer to the extent that the realisable value of our collaterals exceeds the claims to be

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secured by more than 10%; the selection of the collaterals to be released shall be a matter for us.

- 9.6 Frames and moulds produced by order of Customer shall remain our property, even if they have been totally or partly paid for by Customer.

## 10. Acquisition of title by processing or machining of objects provided by us

- 10.1 If Customer provides us with an object for processing or machining and if the value of our processing or machining is considerably lower than the value of the object, it shall here and now be deemed agreed that Customer assigns co-title to us pro rata in the ratio of the value of our processing or machining (final invoice amount including VAT) to the value of the object provided at the time of the processing.
- 10.2 If the object is blended or combined with objects / materials belonging to us in the processing or machining in such a way that they become integral components of a single object, we shall acquire co-title to the new object in the ratio of the value of our objects / materials to the value of Customer's object provided at the time of the blending or combining.
- 10.3 If the blending or the combining is done in such a way that Customer's object is to be regarded as the main object, it is here and now agreed that Customer assigns co-title to us pro rata in the ratio of the value of our machining or processing (final invoice amount including VAT) to the value of the object provided at the time of the blending or combining.
- 10.4 To this extent, Sections 9.1 to 9.5 of the present terms shall apply accordingly to objects of Customer to which we have acquired co-title according to the aforementioned provisions.

## 11. Warranty, liability for breaches of duty

- 11.1 To the extent that we have to work on the basis of drawings, specifications, samples, requirements etc. of Customer, the latter shall bear the risk of suitability for the envisaged purpose.
- 11.2 The period for barring of claims from defects shall be one year. This shall not apply to claims to damages on account of culpable injury of life, limb and health or to claims to damage based on malice aforethought or gross negligence, including malice aforethought or gross negligence of our legal representatives or vicarious agents. These shall be barred in the statutory periods. The longer periods of barring according to § 438 sub-section 1 no. 2 (buildings, building materials and parts of buildings), § 478 sub-section 4, 479 German Civil Code (recourse to suppliers) and § 634a sub-section 1 no. 2 (construction defects) shall remain unaffected. The start of the period of barring shall be based on the statutory directives.
- 11.3 Customer's warranty rights shall presuppose that he/she has properly complied with his/her duties to examination and notification of defects pursuant to § 377 German Commercial Code. If the contractual relationship between Customer and ourselves is a contract for work and services, § 377 German Commercial Code shall be applicable accordingly.
- 11.4 If inspection or examination of first samples has been agreed with Customer, notification of defects which Customer could have established in a careful inspection or examination of first samples shall be ruled out.
- 11.5 We shall be given an opportunity to examine a defect complained about on site. If high-handed alterations or improper repairs have been carried out by Customer and/or third parties, no claims from defects shall accrue for them and for the consequences resulting therefrom.
- 11.6 To the extent that a defect in our work for which we are answerable exists, we can remedy the defect free of charge or, to the extent that this is impossible with the items provided by us, credit the invoice value. If a defect of the object of purchase for which we are answerable exists in the event of a purchase contract, we shall be entitled to remedy the defect or to provide replacement delivery (so-called subsequent performance) at our choice. If the subsequent performance fails within a suitable period or if we reject it, Customer shall be entitled, at his/her own choice, to reduce the agreed purchase or work price or to withdraw from the contract. To the extent that we have assumed a quality or shelf-life guarantee for the object of purchase or for the work produced by us, we shall be liable according to the statutory provisions in the event of a defect contradicting the quality or shelf-life guarantee.
- 11.7 In the event of a breach of duty not comprising a defect of the object or purchase or the work, Customer shall be entitled to withdraw from the contract pursuant to the statutory provisions.
- 11.8 We shall be liable according to the statutory provisions for damage from a culpable injury to life, limb or health.
- 11.9 We shall be liable according to the statutory provisions for damage based on malice aforethought or gross negligence, including malice aforethought or gross negligence of our legal representatives or vicarious agents. The same shall apply to culpable breaches of cardinal contractual duties. To the extent that we cannot be accused of a deliberate breach of a duty, the liability to damages shall however be limited to the foreseeable damage typically occurring.
- 11.10 To the extent not regulated to the contrary above, liability shall be ruled out. However, the cogent provisions of the Product Liability Act shall remain unaffected.

## 12. Overall liability

- 12.1 Further-reaching liability to damages than that envisaged in Sections 7.5 and 11. shall be ruled out, without regard for the legal nature of the claim being made. This shall in particular apply to claims to indemnification of damages pursuant to § 823, German Civil Code, from culpa in contrahendo, on account of other breaches of duties or on account of tort.

12.2 The limitation pursuant to Section 12.1 shall also apply to the extent that Customer demands reimbursement of vain expenditure in lieu of a claim to damage in lieu of performance.

12.3 To the extent that liability for damages has been ruled out or limited for us, this shall also apply with a view to the personal liability for damages of our employees, workers, fellow-workers, representatives and vicarious agents.

## 13. Place of jurisdiction, selection of law, place of performance

- 13.1 To the extent that Customer is a businessman, our registered office shall be the place of jurisdiction for all disputes directly or indirectly resulting from the contractual relationship; however, we shall also be entitled to sue Customer at the court competent for his/her place of residence.
- 13.2 The contractual relationship shall be governed by the law of the Federal Republic of Germany. Application of standardised purchase law (Hague Convention) and the CISG (Convention on Contracts for the International Sale of Goods) shall be ruled out.
- 13.3 To the extent that nothing to the contrary results from the order confirmation, Hamm shall be the place of performance.