

General Terms and Conditions (GTC)

1. - Validity

1.1 All offers, sales, deliveries and services of DS Dichtungstechnik GmbH, Lise-Meitner-Straße 1, G-48301 Nettulin (hereinafter: „DS“) are exclusively based on the following General Terms and Conditions of Sale (hereinafter: „Terms and Conditions of Sale“). The customer's own general terms and conditions within the meaning of §§ 305 ff BGB (German Civil Code) are hereby expressly rejected.

1.2 The following Terms and Conditions of Sale are an integral part of all contracts concluded by DS as Seller with the customer concerning its deliveries and services. They are accepted by the customer by placing the order or accepting the delivery. They do not apply in the relationship with customers in the sense of § 13 BGB.

1.3 If DS provides construction services against payment, the VOB (German Construction Contract Procedures), Part B, in its currently valid version, shall be the basis of the contract. Any provisions deviating from this must be made in writing.

2. – Offer, acceptance, conclusion of contract

2.1 The offers of DS are subject to change and non-binding.

2.2 DS may accept orders of the customer within 30 days. In this respect, the customer shall grant DS a corresponding 30-day acceptance period for each individual future order. An order shall be deemed accepted when it is confirmed in writing or invoiced by DS. Delivery and invoice shall be deemed to be order confirmation at the same time.

2.3 Orders for which fixed price have not been expressly agreed shall be invoiced at the list prices valid on the date of delivery. If the delivery is to be made within four months after conclusion of the contract, the prices applicable at the same time of conclusion of the contract shall apply.

2.4 All information provided by DS in catalogues, price lists, other advertising material etc. regarding the subject of the delivery of service (e.g. weight, dimensions, tolerances) as well as all illustrations, descriptions and diagrams are for descriptive purposes only and are intended only to convey a general idea of the goods described therein. They do not contain any declarations, other assurances or guarantees and do not become part of the contract. Customary deviations or changes that are made due to legal regulations or represent technical improvements are permissible, provided they do not impair the usability for contractually intended purpose.

3. – Delivery, shipping, transfer of risk

3.1 All deliveries shall be made „ex works“ or „ex warehouse“ DS, unless otherwise agreed in writing. Delivery periods and dates are always approximate, unless they have been agreed in writing. Delivery dates always refer to the time of handover to the forwarder or carrier. DS is entitled to withhold outstanding deliveries if the customer does not meet his payment obligations or if there is a justified concern that he will not be able to meet them.

3.2 In the event of default by the customer, DS reserves the right to provide further deliveries and services only against advance payment or by cash on delivery.

3.3 Partial deliveries are permissible insofar as they are reasonable for the customer. Each partial delivery shall be deemed an independent transaction.

3.4 Reasonable early deliveries as well as customary excess or short deliveries are also permissible.

3.5 If the delivery of an initial product by a supplier of DS is delayed, the delivery time to the customer shall be extended accordingly.

3.6 DS is entitled to withdraw from the contract if there is an impediment to the provision of the contractual service that is not only of a temporary nature, for which DS is not responsible and which makes the service significantly more difficult or impossible, in particular if it is a case of force majeure (e.g. war, riots, strikes, lockouts, official measures).

3.7 Insofar as an impediment within the meaning of clause 3.6 significantly changes the economic significance or the content of the delivery or has a significant effect on the delivery or has a significant effect on the operations of DS, the contracts shall be adjusted appropriately in good faith. Insofar as this is not economically justifiable, the customer shall have the right to withdraw, he shall notify DS thereof without undue delay after becoming aware of the consequences of the event.

3.8 The shipping method and packaging is at the discretion of DS. In the case of standard packaging, DS is entitled to round up the ordered quantities to the next higher packaging unit.

3.9 The risk shall pass to the customer at the latest when the delivery item is handed over to the forwarder or carrier. This shall also apply to partial deliveries. If the shipment or the handover is delayed due to a circumstance for which the customer is responsible, the risk shall pass to the customer from the day of readiness for shipment.

3.10 The Customer shall be obliged to inspect the goods immediately upon receipt for damage and freedom from defects. Obvious defects, incorrect or short deliveries must be reported to DS in writing within 7 days of receipt of the goods at the latest. Defects not recognizable during the inspection must be reported in writing within the same period from discovery. Otherwise the goods shall be deemed to have been approved.

4. - Liability for defects

4.1 All parts, deliveries or services shall, at the discretion of DS, be redelivered or provided or repaired twice free of charge (subsequent performance) if they exhibit a material defect within the limitation period and the cause of such defect already existed at the time of passing of risk.

4.2 DS shall first always be granted the opportunity for subsequent performance within the meaning of clause 4.1 within a reasonable period of time.

4.3 If the supplementary performance fails, the customer may, without prejudice to any other claims for damages, at his option withdraw from the contract or reduce the price.

4.4 There shall be no claims based on liability for defects in the case of insignificant deviations from the agreed quality, insignificant impairment or usability, natural wear and tear or damage occurring after the transfer of risk as a result of incorrect or negligent handling, excessive stress or use, improper storage or installation, noncompliance with installation and handling instructions and operating instructions, lack of maintenance or care, unsuitable operating materials, defective construction work, unsuitable foundation soil or due to special external influences which are not assumed under the contract.

4.5 If the customer or third parties carry out improper and/or unauthorized modifications to the goods or repair work, there shall also be no claims based on liability for defects for these and the resulting consequences if the customer does not succeed in proving that the improper modifications or repair work were not the cause of the defect. In particular, there shall be no claims based on liability for defects if parts of foreign origin are installed by the customer or third parties and the defect is causally caused by the modification or use.

4.6 If the parties have agreed, in deviation from clause 9.2 of these Terms and Conditions of Sale, that subsequent performance is to take place at a place other than the place specified therein, claims of the customer for the expenses necessary for the purpose of subsequent performance, in particular transport, travel, labour and material costs, are also excluded to the extent that the expenses increase because the object of the delivery has subsequently been taken to a place other than the place of subsequent performance determined in deviation from clause 9.2 of these Terms and Conditions of Sale.

4.7 The customer shall have statutory rights or recourse against DS only to the extent that the customer has not entered into any agreements with its purchaser exceeding the statutory claims based on liability for defects.

4.8 The amount of compensation to be paid within the scope of clause 4.7 is limited to the customer's cost price (e.g. transport and material costs), but not to the customer's profit margin vis-à-vis its customer.

4.9 DS shall bear or reimburse any installation and removal costs required for the purpose of subsequent fulfillment. Further claims of the customer against DS and vicarious agents of DS due to material defects are excluded, subject to the provision in clause 5 of these Terms and Conditions of Sale; this applies in particular to consequential damage (including financial loss, loss of production, loss of profit).

4.10 Claims based on liability for defects that are not covered by §§ 438 para. 1 no. 2, 479 para. 1 and 634a para. 1 no. 2 of the German Civil Code (BGB) shall become statute-barred one year after delivery.

4.11 Claims based on liability for defects under sections 438 (1) No. 2, 479 (1) and 634a (1) of the German Civil Code (BGB) shall become statute-barred one year after delivery.

4.12 Claims for damages by the Customer due to intent and gross negligence, as well as due to culpable injury to life, limb or health by DS shall lapse exclusively in accordance with the statutory provisions.

5. - Liability

5.1 Claims for damages by the customer, regardless of the legal grounds, are excluded, except in cases of intent, gross negligence, injury to life, limb or health, breach of a guarantee in accordance with Section 444 BGB, inability, fraudulently concealed defects or

breach of material contractual obligations. Material contractual obligations are those obligations whose fulfillment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely. Compensation for the breach of essential contractual obligations is, however, limited to the foreseeable damage typical for the contract, unless there is intent or gross negligence or liability for injury to life, limb or health. A change in the burden of proof to the detriment of the customer is not associated with the above provisions.

5.2 Insofar as the Customer is entitled to claim damages due to the impossibility of delivery or management for which DS is responsible, the Customer's claim for damages shall be limited to 10% of that part of the delivery which cannot be put into operation for the intended purpose due to the impossibility. This limitation does not apply if liability is mandatory in cases of intent, gross negligence or physical injury. A change of the burden of proof to the disadvantage of the customer is also not connected with this. The right of the customer to withdraw from the contract remains unaffected.

5.3 If DS is in default with the delivery or service, the customer may – provided that he can credibly prove that he has suffered a loss as a result – claim damages under the above conditions of 0.5% for each competed week of the default, but in total not more than 5% of the price for that part of supplies which could not be put into operation due to the default.

5.4 Claims for damages by the customer due to delay in performance that exceed the limits specified in clause 5.3 shall be excluded, even after expiry of any delivery deadlines set by DS. This shall not apply where liability is mandatory in cases of willful intent or gross negligence or for physical injury. This shall not imply a change in the burden of proof to the detriment of the Customer. However, the Customer may only withdraw from the contract if DS is responsible for the delay in delivery or performance within the meaning of clause 5.1. In all other respects, the Customer's statutory right of cancellation and its right to claim damages in lieu of performance shall remain unaffected subject to the relevant statutory requirements.

5.6 The provisions of the Product Liability Act shall apply without restriction.

6. - Retention of title

6.1 The goods shall remain the property of DS until full payment of all claims arising from the business relationship, including ancillary claims, claims for damages and encashment of checks and bills of exchange.

6.2 The retention of title shall remain in force even if individual claims of DS are included in a current invoice and the balance is struck and acknowledged.

6.3 The customer's authority to sell Retained Goods in the ordinary course of business shall end upon revocation by DS as a result of a sustained deterioration of the customer's financial position, but no later than upon the customer's cessation of payment or upon the filing of an application for or the institution of insolvency proceedings against the customer's assets.

6.4 The customer hereby assigns to DS the claim with all ancillary rights from the resale of the Reserved Goods – including any balance claims. If the customer has sold the claim within the scope of genuine factoring, the claim of DS shall immediately forward and the customer shall assign the claim against the factor replacing it to DS and shall immediately forward its sales proceed to DS. DS accepts these assignments.

6.5 The customer is authorized to collect the assigned claims as long as he meets his payment obligations. The direct debit authorization expires upon revocation, but at the latest upon default of payment by the customer or upon a significant deterioration of the customer's financial situation. In this case, DS may threaten the customer with the collection of the debt by itself or by a third party. After expiration of the deadline, DS is authorized by the customer to inform the customer of the assignment and to collect the claims itself. The customer is obligated to provide to provide DS, upon request, with an exact list of the claims to which DS is entitled, including the names and addresses of the buyers, the amount of the individual claims, invoice date, etc., and to provide DS with all information necessary for the assertion of the assigned claims and to permit the verification of the information.

6.6 If the value of the security existing for DS exceeds its claim by more than 10% in total, DS is at the request of the customer or of a third party affected by DS's overcollateralization, to release collateral of DS's choice to this extent.

6.7 Pledging or transfer by way of security of the reserved goods or the assigned claims is not permitted. DS must be notified immediately of any pledges, stating the name of the pledgee.

6.8 If the customer does not meet his payment obligations, DS is entitled to withdraw from the contract after setting a deadline without result. If DS exercises its right of withdrawal, DS may satisfy itself from the repossessed reserved goods by private sale.

6.9 The customer shall store the Reserved Goods for DS free of charge. He shall insure them against the usual risks, such as fire, theft and water, and the aforementioned kind in the amount of the invoice value of the goods. DS accepts the assignment.

6.10 All claims as well as the rights arising from the retention of title to all special forms stipulated in these Terms and Conditions shall remain in force until full release from contingent liabilities which DS has entered into in the interest of the customer.

6.11 Payments made by the customer to purchasing associations, central regulators and similar institutions do not affect performance and have no influence on the retention of title; rather, the actual receipt of payment by DS is decisive. The aforementioned institutions shall not be deemed „third parties“ within the meaning of section 362 (2) of the German Civil Code.

6.12 Processing of transformation shall always be carried out for DS as manufacturer. If DS's ownership expires due to combination or mixing, it is already now agreed that the customer's ownership of the uniform object shall pass to DS in proportion to the value (invoice value).

7. - Terms of payment

7.1 All invoice amounts are net amounts ex works plus VAT and are payable within 30 days of the invoice date. The customer shall be in default in any case. With the exception of payment by bill of exchange, all invoices are payable with a 2% discount if paid within 14 days of receipt of the invoice, otherwise without any discount, unless otherwise agreed in writing in advance. The date of receipt by DS is decisive for the date of payment. Checks, bills of exchange, bank transfers are only considered as payment after they have been cashed or credited to the DS account. In the case of payments by bill of exchange, the customer shall be charged the discount and bill of exchange charges incurred as well as any other additional costs. If accepted bills of exchange are not discounted by the bank, DS may claim immediate cash payment.

7.2 If the payment deadlines specified in section 7.1 are not met by the customer, the customer must pay the respective for interest of 9% above the base interest rate according to § 247 BGB. The assertion of further damage caused by delay remains unaffected.

7.3 The retention of payments due to or the offsetting against counterclaims of the customer is only permissible if the counterclaims are undisputed or have been legally established.

7.4 All rights and obligations arising from these Terms and Conditions of Sale or from the contracts covered by them, with the exception of monetary claims, may not be assigned or transferred by the customer without prior written consent of DS.

7.5 If DS receives information about a deterioration of the customer's financial situation or if DS learns that the customer is otherwise in breach of contract, DS shall be entitled to perform outstanding deliveries or services only against advance payment or provision of security.

8. - Data storage

The customer acknowledges that DS stores data from the contractual relationship for the purpose of data processing. Insofar as it becomes necessary, e.g. in the course of the business relationship, e.g. in the course of invoicing, with the customer, DS is authorized to transmit the necessary data of the customer to third parties. The customer already now agrees to a corresponding transfer of his data to third parties.

9. - Final provisions

9.1 The place of jurisdiction for all legal disputes between DS and the customer in Münster. DS is also entitled to sue the customer at the customer's general place of jurisdiction.

9.2 The place of performance for all rights and obligations of DS and the customer arising from these Terms and Conditions of Sale or the contracts covered by them is the respective registered office of DS. This also applies particular to subsequent performance.

9.3 The legal relationship between DS and the customer shall be governed exclusively by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.

9.4 If individual provisions of Terms and Conditions of Sale are or become invalid in whole or in part, this shall not affect the validity of the remaining part or provisions.

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