

**Standard Terms of Sale**  
of Dransfeld GmbH & Co. KG

**§1 General, scope**

- (1)Our terms of sale apply exclusively; we do not recognise any terms of sale from the Buyer that are contrary to or deviate from ours, unless we have agreed expressly in writing to their application. Our terms of sale shall also apply if we carry out a delivery to the Buyer without reservation in the knowledge of terms of sale from the Buyer that are contrary to or deviate from ours.
- (2)All agreements that are concluded between us and the Buyer for the purpose of implementation of this contract shall be put into writing in this contract.
- (3)Our terms of sale shall apply only to merchants as defined in s. 24 German Standard Contract Terms Act and to legal entities under public law and special assets under public law.
- (4)Our terms of sale shall also apply to all future transactions with the Buyer. The following terms of business shall have priority over terms from the Buyer that deviate as to their contents. The waiver of the Buyer of the application of any of its own terms of business shall not be eliminated by our silence or our performance. Any deviation from the following terms shall require our written confirmation in an individual case.
- (5)The Buyer consents to the necessary processing of its data for business purposes. The above shall be regarded as a notification pursuant to s. 33(1) Federal Data Protection Act (*BDSG*).

**§2 Offer, offer documents**

- (1)If the order is to be qualified as an offer pursuant to s. 145 German Civil Code (*BGB*), we may accept this within four weeks.
- (2)We reserve title to and copyright in illustrations, drawings, calculations and other documents; they may not be made accessible to third parties. This shall apply in particular to those written documents that are designated "confidential"; the Buyer shall require our express written consent before

transmitting them to third parties. Offers shall only be valid in writing. Prices that are quoted shall be subject to the proviso that the order data on which the submission of the offer was based remain unchanged.

(3) We make initial samples and initial sample test reports only following express written agreement and against invoicing of costs.

### **§3 Prices - terms of payment**

(1) Unless otherwise shown in the acknowledgement of order, our prices are net prices in euros, ex works, excluding packaging, plus the VAT applicable on the day of delivery.

We reserve the right to increase our prices accordingly if cost increases occur after conclusion of the contract, in particular on the basis of collective wage agreements, increases in the price of materials or increased energy costs. We shall provide the Buyer with evidence of this on demand.

(2) Our prices include VAT; this is shown separately in the invoice in the amount valid on the date of the invoice.

(3) Discounts shall require a special written reference in the order, acknowledgement of order or invoice.

(4) Unless otherwise shown in the acknowledgement of order, the purchase price shall be paid in cash (without deductions) free our payment office and shall be due and payable as follows:

-The Buyer shall be entitled to a discount of 2% for cash payments within 14 days.

-The invoice amount shall be due without a discount for payments within 30 days of the date of the invoice.

- Invoices with a net invoice value up to EUR 50.00 shall be due and payable in cash without deduction. If the Buyer defaults, we shall be entitled to demand default interest in the amount of 5% p.a. above the respective base rate of the European Central Bank. If we are able to show proof of greater default damage, we shall have the right to claim this. However, the Buyer shall have the right to show proof that we did not suffer any, or much less, damage in consequence of the default.

(5) The Buyer shall only be entitled to rights to set off if its counterclaims are final and absolute, are not disputed or are accepted by us. The Buyer shall not be entitled to any rights of retention because of disputed counterclaims.

Claiming a right of retention shall also be excluded insofar as such claims are not based on the same contractual relationship.

Credit notes are issued solely for the purpose of offsetting. There is no right to payment.

#### **§4 Delivery period**

(1) We shall make efforts to comply with the stated delivery periods. The start of the delivery period we state shall depend on clarification of all technical questions. The delivery period shall commence with the transmission of the acknowledgement of order. However, a reasonable extension to this period shall occur if the Buyer does not supply the documents, drawings and approvals that it is to provide in good time, amends drawings subsequently, or fails to comply with contractual and payment obligations that are material to the contract.

(2) If we are in default for reasons within our control, liability for damages shall be excluded in cases of ordinary negligence. If we are responsible for the delay in delivery because of grossly negligent or intentional behaviour, the Buyer shall be entitled to demand lump-sum compensation for delay in the amount of 0.5% of the value of the delivery, up to a maximum of 5% of the delivery value, for each complete week of the delay.

(3) If the Buyer sets a reasonable period of grace after we are already in default, with a threat of refusal, it shall be entitled to rescind the contract after expiry of this period of grace without results; the Buyer shall only be entitled to claims for damages for non-performance in the amount of the foreseeable damage if the default was caused intentionally or by gross negligence; apart from that, liability for damages shall be limited to 50% of the damage that occurred.

(4) The limitation of liability pursuant to subsections 2 and 3 shall not apply insofar as a commercial fixed date contract was agreed; this shall also apply if

the Buyer can claim that its interest in performance of the contract has ceased because of the default for which we are responsible.

(5) Compliance with our obligation to delivery presupposes the Buyer's correct compliance with its obligations in good time.

(6) If the Buyer is in default of acceptance or is in breach of other duties to cooperate, we shall have the right to demand compensation for the damage we have suffered plus any extra expenditure. In this case, the risk of accidental loss or accidental deterioration of the purchased goods shall pass to the Buyer at the moment the latter is in default of acceptance.

(7) Standard excess or short deliveries, or those caused by production, of up to 10% of the ordered quantity shall be permitted, unless a deviation from the contract quantity is unacceptable to the Buyer in an individual case. We shall be entitled to make part deliveries to a reasonable extent.

#### **§5 Transfer of risk, documents, default of acceptance, packaging**

(1) Unless otherwise stipulated in the acknowledgement of order, delivery ex works is agreed.

(2) The Buyer shall be obliged to indicate our order number exactly on all shipping papers and delivery notes; if it fails to do this, delays in processing are unavoidable and we shall not be responsible for them.

(3) If desired by the Buyer, we shall cover the delivery with transport insurance. The Buyer shall be responsible for any costs incurred for this.

(4) We use only transport packaging (cardboard) with the RESY symbol within the meaning of the German Packaging Regulations of 12 June 1991. This means that the Buyer has the opportunity to reuse the transport packaging or to pass it to an analogous application outside the public waste disposal system. Transport packaging is not taken back free of charge.

## **§6 Warranty for defects**

(1) The Buyer's rights under guarantee presuppose that it has duly complied with its obligations to inspect and to notify defects pursuant to sections 377, 378 German Commercial Code (HGB). Defects must be notified to us in writing without delay, but in case of obvious defects no later than within five working days after receipt of the goods, and with concealed defects without delay after they are detected.

The Buyer's rights under guarantee presuppose in addition that it complies with the prescribed maintenance intervals and that it carries this out professionally and correctly.

The Buyer's rights under guarantee for the resistance of coatings, alloys and compounds presuppose in addition that, when ordering, the Buyer notifies us in writing without being asked of the composition of the media, the reactions and the other environmental and physical conditions with which the object of the contract comes into contact or to which it is exposed.

(2) Insofar as the bought item has a defect for which we are responsible, we shall have the option of remedying the defect or supplying a replacement. In the event that we remedy the defect, we shall pay the costs of material, transport and labour, but only half the costs of installing and dismantling. Our maximum liability for expenses is limited to the amount of the purchase price.

(3) If we are unwilling or unable to remedy the defect/supply a replacement, in particular if this is delayed beyond reasonable time limits for reasons beyond our control, or if the remedy of the defect/supply of a replacement fails for any other reason, the Buyer shall have the right at its option of rescinding the contract or demanding an appropriate reduction of the purchase price.

(4) Unless otherwise stipulated in the following, further claims by the Buyer, for whatever legal reason, are excluded. We shall therefore not be liable for damage that is not caused to the delivery item itself; in particular, we are not liable for lost profits or other financial losses suffered by the Buyer.

(5) The above exemption from liability shall not apply

insofar as the cause of the damage is based on intention or gross negligence. However, the obligation to compensate shall be limited to the foreseeable damage. It shall also not apply if a warranted property covering the subsequent risk pursuant to sections 463, 480(2) German Civil Code (BGB) was found and the damage that occurred was caused by its absence.

(6)Our compensation obligation shall be excluded, insofar as this is permissible by statute, beyond the liability provided for in subsections 4 and 5. Insofar as inalienable statutory liability takes effect, our compensation obligation in case of negligent breach of a material contractual obligation shall be limited in case of damage to property and personal injury to the compensation paid by our product liability insurers. We are prepared to allow the Buyer on demand to inspect our policy.

(7)The guarantee shall be assumed for a period of 12 months calculated from the transfer of risk. This period is a period of limitation. It shall also apply for claims for compensation for consequential damage, insofar as claims under tort are not submitted.

## **§7 Total liability**

(1)Liability for damages beyond that provided for in §6 subsections 4 to 6 is excluded, irrespective of the legal nature of the submitted claims.

(2)The rule in subsection 1 shall not apply to claims under §§ 1, 4 German Product Liability Act. This applies analogously to initial inability or impossibility for which we are responsible.

(3)Insofar as our liability is excluded or limited, this shall also apply to the personal liability of our salaried employees, workers, associates, representatives and vicarious agents.

(4)The statute of limitation for claims arising from product liability pursuant to §823 BGB shall be determined by §6 subsection 7, irrespective of the person against whom these claims are asserted.

(5)If the Buyer or a third party suffers damage through a product defect, the Buyer shall be obliged to notify us without delay and to recover the product where possible for the purpose of inspection. The

Buyer shall support our measures for determining the cause and the extent of the damage and for reducing the damage.

(6) If proprietary rights of third parties are infringed when the goods are produced in accordance with a drawing, specimen or other information from the Buyer, the Buyer shall indemnify us against all claims.

#### **§8 Reservation of title, security**

(1) We reserve title to the item bought until receipt of all payments from the business relationship with the Buyer. Insofar as we agree with the Buyer that payment of the purchase price is made by cheque or bill, the reservation shall also cover the discharge by the Buyer of the bill we accepted and shall not be cancelled by the credit entry of the cheque received. In case of noncontractual behaviour by the Buyer, in particular in case of default of payment, we shall have the right to take the item bought back. Our taking back of the item bought shall not be seen as a withdrawal from the contract, unless we have declared this explicitly in writing. Our attachment of the item bought shall always be regarded as a withdrawal from the contract. After taking back the item bought we shall be authorised to sell it. The proceeds of the sale shall be set off against the Buyer's obligations, less reasonable sales costs.

(2) The Buyer shall be obliged to handle the item bought with care, in particular it shall be obliged to insure it at its own cost sufficiently at replacement value against damage by fire and water and against theft. Insofar as maintenance and inspection work is necessary, the Buyer must carry this out at its own expense.

(3) The Buyer shall notify us without delay in writing in the event of attachments or other interventions of third parties, so that we can institute proceedings pursuant to §771 German Civil Procedure Rules (ZPO). Insofar as the third party is unable to reimburse the court and extra-judicial costs of proceedings pursuant to §771 ZPO, the Buyer shall be liable for the loss we suffered.

(4) The Buyer shall be entitled to resell the item bought in the course of ordinary business; however, it hereby assigns all claims against its buyers or third parties in the amount of the final invoice amount

(including VAT) that accrue to it under the resale irrespectively of whether the item bought is resold with or without processing. The Buyer shall remain authorised to collect this debt even after assignment. This shall not affect our authority to collect the debt ourselves. However, we agree not to collect the debt as long as the Buyer complies with its payment obligations from the collected proceeds, is not in default of payment and in particular as long as a petition for the institution of bankruptcy or settlement proceedings has not been submitted, or payments have not been suspended. However, if this is the case, we may demand that the Buyer makes the assigned debts and the debtors known to us, provides all information necessary for collections, hands over the appropriate documents and notifies the debtor (third party) of the assignment.

(5) Processing or transforming the item bought by the Buyer shall always be done for us. If the item bought is further processed with other objects that do not belong to us, we shall acquire co-ownership of the new item in the ratio of the value of the item bought to the other processed objects at the time of processing. The provisions applying to the item bought that is supplied subject to reservation of title shall also apply to the object created by processing.

(6) If the item bought is inseparably amalgamated with other objects that do not belong to us, we shall acquire co-ownership of the new item in the ratio of the value of the item bought to the other amalgamated objects at the time of amalgamating. If amalgamating is carried out in such a way that the Buyer's object is to be regarded as the main object, it is deemed to be agreed that the Buyer assigns pro rate co-ownership to us. The Buyer shall safekeep the sole or co-ownership created in this way for us.

(7) To secure our claim against it, the Buyer shall also assign to us the claim against a third party that accrues to it through the connection of the item bought with land.

(8) We agree to release on demand by the Buyer security to which we are entitled insofar as the value of this security exceeds the claims to be secured by more than 20%; the selection of the security to be released rests with us.

**§9 Place of performance, legal venue, choice of law,**



**severability clause**

(1)Unless otherwise stipulated in the acknowledgement of order, our registered office shall be the place of performance.

(2)Insofar as the Buyer is a registered merchant the location of our registered office shall be the legal venue for all disputes arising from the legal relationship. However, we shall be entitled to sue the Buyer at its place of abode.