

## General Terms and Conditions of DBK GmbH

Applicable to business transactions with companies, legal entities under public law and special funds under public law

### 1. Scope

All deliveries and services of DBK David + Baader GmbH and its subsidiaries (DBK) are exclusively based on these General Terms and Conditions (GTCs). Any provisions deviating from these, especially the terms and conditions of business of contract partners, are only valid insofar as DBK has explicitly confirmed them in writing prior to the conclusion of the contract. This also applies if DBK has not expressly contradicted the general terms and conditions of contracting partners in the individual case. These GTCs apply to this transaction as well as to all future transactions.

### 2. Written form

Oral declarations require written confirmation to be effective.

### 3. Offers

**3.1.** Offers by DBK are subject to change and non-binding unless we expressly designate these as binding in writing. Declarations of acceptance and orders of the Purchaser shall, insofar as they constitute offers pursuant to § 145 of the German Civil Code (BGB), only become binding upon our written confirmation of order. We shall accept orders from the Purchaser within 12 working days of receipt of the order.

**3.2.** DBK reserves all property rights and copyrights to illustrations, drawings, calculations and other documents and data, irrespective of the data carrier; they may not be made accessible to third parties. Any transfer to third parties requires the prior, express written consent of DBK. The illustrations, drawings, calculations and other documents and data, as well as the resulting dimensions and weights, are only approximate unless we have expressly designated them, in written form, as binding. The same applies to instructions of use. Tolerances customary in the trade remain reserved within the scope of what is reasonable for the Purchaser.

### 4. Delivery periods / Delay

**4.1.** Delivery times are strictly non-binding and approximate. In the event of uncertainty, the delivery period begins with the dispatch of the confirmation of the order by us.

**4.2.** Compliance with delivery times requires the timely receipt of all documentation to be provided by the Purchaser, the necessary approvals and clearances, plans, compliance with the payment terms agreed, and fulfilment of other obligations of the Purchaser. Where these preconditions are not met in a timely manner, deadlines will be appropriately extended; this will not apply where the delay is attributable to us.

**4.3.** If failure to comply with agreed delivery deadlines can be attributed to force majeure, e.g., mobilisation, war, riots or similar events, such as strikes or lockouts, the deadlines shall be extended appropriately. The same applies if we are not supplied correctly or on time by one of our suppliers.

**4.4.** If we are culpably in default of delivery, the Purchaser – if he can prove that he has incurred damage as a result – for each full week of the delay may demand compensation of 0.5%, however, not more than a total of 5% of the net price for the share of deliveries which could not be placed in serviceable operation due to the delay.

**4.5.** Any claims for compensation for damages by the Purchaser due to delayed delivery and claims for compensation for damages in lieu of performance exceeding the limits specified in section 4.4 are excluded in all cases of delayed delivery after the expiry of a delivery deadline set for us. This does not apply where liability is compulsory in cases of intent, gross negligence or injury to life, limb or health. The Purchaser may only withdraw from the contract within the framework of statutory provisions to the extent that we are responsible for the delayed delivery.

**4.6.** At our request, the Purchaser is obliged to declare within a reasonable period of time if he, due to the delay in delivery, intends to withdraw from the contract or insists on the delivery.

## **5. Prices:**

2

**5.1.** Deliveries are invoiced at the prices of DBK on the day of delivery plus VAT at the respective statutory rate. The stated prices are "ex works" without costs for packaging, shipping and/or customs, which will be invoiced separately.

**5.2.** DBK reserves the right to increase prices appropriately if, after the conclusion of the contract, cost increases occur, especially due to wage cost increases, e.g., due to collective bargaining agreements or changes in material prices. These will be proven to the Purchaser upon request.

## **6. Dispatch**

**6.1.** The dispatch of the goods – even in the case of partial deliveries – shall be at the expense and risk of the Purchaser. This also applies if DBK assumes the freight costs in individual cases. The risk is transferred to the Purchaser when the goods are handed over to the carrier/forwarding agent.

**6.2.** Freight costs are not advanced. Transport is carried out by a carrier/forwarding agent of DBK's choice, without any obligation for the cheapest shipment. By choosing the carrier/forwarding agent, DBK does not assume any risk for the transport.

**6.3.** Even for goods delivered at the expense of DBK, the transfer of risk from DBK to the Purchaser takes place at the moment of handing over to the carrier.

**6.4.** If the purchased goods are exported, the Purchaser is obliged to obtain all documents required for export (e.g., export and customs permits, etc.) at his own expense. DBK is not liable for the legal admissibility of the export of the goods and their compliance with the

legal and technical regulations of the importing country. Furthermore, DBK is not liable for the fact that the goods correspond to the technical standard in the importing country.

## **7. Outer packaging**

Invoiced outer packaging – crates or special boxes – will be credited to the Purchaser at 2/3 of the invoiced value if returned freight paid, provided it arrives at DBK in good condition and can be reused according to its nature.

## **8. Reimbursement of tool costs**

Unless the transfer of ownership of tools that are specially manufactured or procured by DBK for the production of goods to be delivered to the Purchaser has been expressly agreed in writing, these tools remain the property of DBK. Even if the manufacturing costs for these tools have been paid in full, the Purchaser does not acquire the right to transfer ownership of the tools themselves.

## **9. Liability for material defects**

**9.1.** Warranty rights of the Purchaser presuppose that the Purchaser has fulfilled his obligations to inspect the goods and give notice of defects in accordance with § 377 of the German Commercial Code (HGB).

3

**9.2.** Warranty claims expire 12 months after delivery of the goods supplied by us to the Purchaser. Our consent must be obtained before any goods are returned. This period does not apply if the law according to §§ 438 paragraphs 1, no. 2 (buildings and items for buildings), 479 paragraph 1 (right of recourse) and 634 a paragraphs 1 no. 2 (building defects) BGB (German Civil Code) prescribes longer periods.

**9.3.** Should the goods delivered by us, despite due care, show a defect that already existed at the time of the transfer of risk, we will, subject to timely notification of defects, either repair the goods or deliver replacement goods at our discretion. We must always be given the opportunity to remedy the defect within a reasonable period of time. Recourse claims remain unaffected by the above regulation without restriction.

**9.4.** If the supplementary performance fails, the Purchaser can withdraw from the contract or reduce the payment – without prejudice to any claims for damages according to item 10.8.

**9.5.** Warranty claims shall not exist in the case of only insignificant deviations from the agreed quality, insignificant impairment of usability, natural wear and tear or wear as well as damage arising after the transfer of risk as a result of incorrect or negligent handling, excessive strain, unsuitable operating materials or due to special external influences that are not provided for under the contract. If the Purchaser or third parties carry out improper repair work or modifications, no claims based on defects shall exist for these and the resulting consequences.

**9.6.** Claims by the Purchaser for expenses necessary for supplementary performance, especially transport, travel, labour and material costs, are excluded as far as the expenses

increase because the goods delivered by us have subsequently been taken to a place other than the Purchaser's premises unless the transfer corresponds to their intended use.

**9.7.** Recourse claims of the Purchaser against us shall exist only to the extent that the Purchaser has not entered into any agreements with its customer exceeding the mandatory statutory claims for defects.

**9.8.** Claims for damages on the part of the Purchaser due to a material defect are excluded. This does not apply in the event of fraudulent concealment of the defect, non-observance of a quality guarantee, injury to life, limb, health or freedom and in the event of an intentional or grossly negligent breach of duty by us. Any further Purchaser claims or claims other than those set out in these GTC for a material defect are excluded.

## **10. Other claims for damages, statute of limitations**

**10.1.** Claims for damages on the part of the Purchaser, regardless of the legal grounds, in particular, due to breach of duties arising from the contractual obligation and unlawful acts, are excluded.

**10.2.** This shall not apply in the event of mandatory liability, e.g., under the Product Liability Act (Produkthaftungsgesetz), in cases of intent, gross negligence, due to injury to life, limb or health or due to the violation of essential contractual obligations. However, claims for damages for breach of material contractual obligations shall be limited to the foreseeable damage typical of the contract unless caused by intent or gross negligence or based on liability for injury to life, limb or health.

**10.3.** Insofar as the Purchaser is entitled to claims for damages; these shall become time-barred upon expiry of the limitation period applicable under item 10.2. The same shall apply to claims of the Purchaser in connection with measures to prevent damage (e.g., recall actions). The statutory limitation periods shall apply to claims for damages under the Product Liability Act.

## **11. Impossibility, adaptation of contract**

**11.1.** If delivery is impossible, the Purchaser is entitled to claim damages unless we are not responsible for the impossibility. However, the Purchaser's claim for damages is limited to 5% of the value of that part of the delivery, which cannot be put into useful operation due to the impossibility. This does not apply where liability is compulsory in cases of intent, gross negligence or injury to life, limb or health. The right of the Purchaser to withdraw from the contract remains unaffected.

**11.2.** If unforeseen events in the sense of section 4.3. change the economic importance or the content of the delivery considerably or have a considerable effect on our business, the contract will be adapted appropriately in good faith. If this is not economically justifiable, we have the right to withdraw from the contract. If we wish to make use of this right of withdrawal, we must inform the Purchaser immediately after recognising the consequences, even if an extension of the delivery period was initially agreed with the Purchaser.

## **12. Payments and credit standing**

**12.1.** Invoices from DBK are payable within 30 days of the invoice date without deduction.

**12.2.** Field staff are only entitled to accept payments if they are authorised to do so in writing.

**12.3.** All accounts of DBK fall due immediately if the Purchaser does not meet the conditions of payment for reasons accruing from his responsibility or if the Purchaser stops payment.

**12.4.** In addition, DBK is entitled to demand advance payments for outstanding deliveries as well as to withdraw from the contract after a reminder and a reasonable period of grace or to demand damages for non-performance. Furthermore, after a reminder and expiry of an adequate period of grace, the Purchaser may be prohibited from reselling the goods, and the delivered goods may be reclaimed at the Purchaser's expense.

**12.5.** Retention of payments or offsetting against counter-claims of the Purchaser is excluded unless these have been expressly accepted by DBK in writing or have been legally established.

## **13. Retention of title**

DBK reserves the right of ownership to all goods delivered by DBK until full payment has been made; in this respect, all deliveries are considered to be one continuous delivery transaction. In the case of a current account, the reserved property is considered as security for DBK's balance claim. If the Purchaser combines the goods with other items to form a single item and if the other item is to be regarded as the main item, the Purchaser hereby assigns to DBK pro-rata co-ownership insofar as the main item belongs to DBK.

If the Purchaser resells the delivered goods as intended, the Purchaser hereby assigns to DBK all claims arising from the sale against its customers, including all ancillary rights, until all their claims have been settled in full.

In case of justified cause (e.g., delay in payment), the Purchaser is obliged, on request of DBK, to disclose the assignment to the third party purchasers and give DBK all information and documents necessary to assert their rights. DBK will release the securities held by DBK if their value exceeds the claims to be secured by more than 20 % in total.

## **14. General**

**14.1.** If one of the contracting parties ceases to make payments or if insolvency proceedings are applied for over its assets or judicial or extrajudicial composition proceedings are applied for; the other contracting party may withdraw from the contract for the part not fulfilled.

**14.2.** Should any provision of these terms and conditions and the further agreements made be or become invalid, the validity of the remainder of the contract shall not be affected thereby. The contracting parties are obliged to replace the invalid provision with a provision that comes as close as possible to the invalid provision in terms of economic success.

**14.3.** The law of the Federal Republic of Germany shall apply exclusively unless expressly agreed otherwise in writing. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 is excluded.

**14.4.** The place of performance is the registered office of the DBK Group involved in the delivery contract as Seller.

**14.5.** DBK is entitled to store and process data of the Purchaser for the purpose of handling the business relationship in compliance with the provisions of the Federal Data Protection Act.

**14.6.** The place of jurisdiction for all legal disputes arising from the contractual relationship is the registered office of the DBK Group company involved in the delivery contract as Seller. DBK is entitled to file a suit at any other competent court.