

# General Purchase Conditions of the Dauphin Group („GPC“)

February 2018

## 1. Scope

- 1.1 These General Purchase Conditions ("GPC") shall apply to the following companies of the Dauphin Group, which has its headquarters in Offenhausen, near Nuremberg:
- Dauphin office interiors GmbH & Co. KG  
Espanstrasse 29, D-91238 Offenhausen
  - Dauphin HumanDesign Group GmbH & Co. KG  
Espanstrasse 36, D-91238 Offenhausen
  - Bürositzmöbelfabrik Friedrich-W. Dauphin GmbH & Co.  
Espanstrasse 29, D-91238 Offenhausen
  - Dauphin Entwicklungs- und Beteiligungsges. mbH  
Industriestrasse 11, D-91217 Hersbruck
  - Dauphin Components GmbH & Co. KG  
Augenseestrasse 1, D-07381 Poesneck
  - Artifex Büromöbel GmbH  
Erkelsdorfer Strasse 8, D-92259 Neukirchen
  - Bosse Design Gesellschaft für innovative Office Interiors mbH & Co. KG, Stahler Ufer 7, D-37671 Hoexter
  - Züco Bürositzmöbel AG  
Staatsstrasse 77, CH-9445 Rebstein ("Züco").

The relevant company of the Dauphin Group in each case is that named in the document referring to these GPC and is hereinafter called the "Customer". These GPC shall apply only to contracts between the Customer and entrepreneurs (*Unternehmer*).

- 1.2 These GPC shall apply to the provision of goods and services by the Customer's contractual partner ("Contractor") in relation to the Customer on the basis of a contract ("Contract") concluded between the Contractor and the Customer (the "Parties").
- 1.3 The Contractor is aware that further provisions shall form an integral part of the Contract in addition to these GPC (1.2). The Contractor hereby confirms that it is fully aware of these further provisions.

## 2. Offer and Acceptance

- 2.1 The Contractor shall prepare an offer free of charge. In its offer, the Contractor shall specifically identify those matters deviating from the Customer's request and/or clearly identify any amendments to the request.
- 2.2 If the Contractor's order confirmation differs in content from any preceding declarations made by the Customer, the Customer shall be bound by the differences in the confirmation only if the Contractor has referred to such deviations and the Customer has agreed to such in writing.
- 2.3 The Customer's GPC shall apply exclusively. Any terms and conditions of the Contractor shall not apply even if the Customer does not explicitly object to such. Any acceptance of goods or services and payments shall not constitute acceptance by the Customer of the Contractor's general terms and conditions.
- 2.4 The Customer may revoke any declaration submitted to the Contractor (e.g. an order) provided the Contractor has not accepted such in writing within two weeks of receipt (order confirmation).

## 3. Notification, Duty of Care, Inspection

- 3.1 The Contractor shall promptly notify the Customer in writing of any deviations from the Customer's drawings, sketches, models or similar as well as any changes in the composition of the material or design with respect to any similar delivery previously made to the Customer, identifying the respective deviations or changes. The approval of the Customer shall be required for such changes to be carried out.
- 3.2 Certificates concerning materials and testing records are included in the Contractor's scope of supply for goods and services and must be available at the time of the delivery. The Contractor shall bear the material and personnel costs for certificates concerning materials and testing records for the materials.
- 3.3 The Contractor's liability for defects shall not be affected by any testing.

## 4. Goods and Services

- 4.1. The Contractor shall be entitled to carry out partial deliveries only with the Customer's consent.

- 4.2.1 The Customer shall be entitled to reschedule agreed delivery dates ("First Date") to a later date ("Second Date"). The Customer shall notify the Contractor of the Second Date in text format (*Textform*). By the end of the working day following receipt of this notification, the Contractor shall confirm the Second Date to the Customer as binding.

- 4.2.2 The Contractor's obligation arising from section 4.2.1 sentence 3 shall not apply if the Contractor has good cause (*wichtiger Grund*) not to comply with the Second Date. In such case, the Contractor shall notify the Customer within the deadline specified under sec. 4.2.1 of the reasons preventing compliance with the Second Date and, at the same time, inform the Customer as to the earliest date upon which the Contractor is able to provide delivery ("Alternative Date"). The Customer shall then promptly select the First Date, or the Alternative Date or a new Second Date in accordance with section 4.2.1.

- 4.3 Compliance with a delivery date for delivery or any subsequent performance, excluding set-up and assembly in each case, shall be determined by the date of receipt at the place of receipt specified by the Customer. Compliance with a delivery date for delivery with set-up and assembly in addition to services shall be determined by the date of the Customer's acceptance.

- 4.4 In the event of foreseeable delays in relation to any delivery of goods or services or an inability to deliver, the Contractor shall notify the Customer in writing without undue delay, stating the reasons and expected duration of the delay and requesting a determination by the Customer.

- 4.5 In the event of any delivery to the Customer's branch offices or assembly areas, the Contractor shall send the Customer a copy of the delivery note as proof of delivery. The delivery note must indicate the accepting party, date and time in legible writing or block letters.

## 5. Transfer of Risk and Dispatch

- 5.1 For any delivery including set-up or assembly, the transfer of risk shall take place upon acceptance. For deliveries excluding set-up or assembly, the transfer of risk shall take place upon receipt at the place of receipt specified by the Customer.

- 5.2 The Contractor shall bear forwarding and packaging costs. If the pricing is ex works or ex sales depot of the Contractor, forwarding must be at the lowest cost in each case unless the Customer has specified a certain method or means of forwarding. Any additional costs resulting from non-compliance with forwarding or packaging regulations shall be borne by the Contractor. If pricing is free recipient, including packaging and transport insurance, the Customer may determine the method of forwarding; the Contractor shall, however, have the option to choose the least expensive method of forwarding provided that damage to the Delivery can be excluded and the confirmed delivery date is to be met. Additional costs for any accelerated forwarding necessary in order to comply with a delivery date shall be borne by the Contractor.

- 5.3 The Contractor shall enclose with any delivery the accompanying documentation and delivery notes related to the content of each delivery, as well as any analysis and test certificates at the request of the Customer, and the Contractor shall further notify the Customer without undue delay of the dispatch of the delivery with the same information.

- 5.4 Title to any goods or services shall transfer to the Customer upon delivery or receipt of full payment, whichever is the first.

- 5.5 Any extended retention of title by the Contractor is hereby excluded. Section 2.3 of the GPC shall remain unaffected hereby.

## 6. Delay

- 6.1 Without prejudice to any other rights, if the Contractor is in delay with any delivery, the Customer shall be entitled to a contractual penalty of 0.5% of the order value per commenced week up to a maximum of 5% of the order value. Any rights to claim further remedies including an increased level of compensation shall remain unaffected hereby; any contractual penalty which has already been paid shall be taken into account if additional compensation is claimed. Upon acceptance of any delayed delivery, the Contractor is not obliged to explicitly reserve its rights to claim a contractual penalty. The

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- Contractor shall be entitled to provide evidence that the Customer has actually incurred less damage or no damage at all.
- 6.2 In case of any force majeure event or labour dispute related to the Customer and/or the Contractor or their respective agents or, in case of any other unavoidable event preventing or rendering impossible the performance of a Contract, provided that such event was not caused by the Customer and/or the Contractor or their respective agents, the affected party shall be relieved of its obligations for the duration of the disruption. If one or more of the above events occur in relation to the Contractor, the Contractor shall notify the Customer of each such event in writing and without undue delay in each case.
- 7. Invoices**
- 7.1 Invoices must be issued in duplicate (original and duplicate copy) and must, in addition to the statutory requirements and those of the tax authorities, contain at least the following information:
1. Full name and address of the Customer
  2. Order number and item number of the Customer
  3. Supplier or vendor number (number of the Contractor) if allocated by the Customer to the Contractor
  4. Part number (article number) if allocated by the Customer
  5. Description (order text)
  6. Quantity
  7. Prices, with VAT (*Umsatzsteuer*) itemised separately, as well as any additional charges
  8. Transportation and packaging costs
  9. VAT identification number
  10. Customs tariff number and, if applicable, the Export Control Classification Number in accordance with the U.S. Commerce Control List (ECCN)
  11. Country of origin
  12. Date of the delivery of the goods and services
- 7.2 If any of the above details is not provided in full as required, the related invoice shall not be payable. Duplicate copies of invoices must be labelled as "duplicate".
- 8. Payments**
- 8.1 Payments shall be made, unless agreed otherwise,
1. within 14 days with a discount of 3 % for prompt payment or,
  2. within 30 days net.
- 8.2 The payment deadlines as set out in section 8.1 shall commence to run from the date delivery has been completed and the respective invoice containing all of the information specified under section 7.1 has been received by the Customer. Complete delivery shall include the receipt of certificates concerning the materials and testing records (section 3.2). The discount for prompt payment shall be permitted even in circumstances where the Customer sets off or retains any payment to an appropriate extent due to any defect; in this case the payment deadlines as set out section 8.1 shall commence for any retained amount sums from the date of full rectification of all defects.
- 8.3 The Customer shall be deemed to be in default in relation to any payment only if it does not pay in response to a written notice from the Contractor issued after payment has become due.
- 8.4 Any defective delivery of goods or services shall be offset against the Contractor by way of a debit note and charged to the Contractor's vendor account.
- 8.5 Payments shall not constitute any recognition of goods or services being in compliance with a Contract or its requirements.
- 9. Prices**
- 9.1.1 Prices offered by the Contractor shall be fixed prices for the term of the order from the time the order is placed. Price amendments shall be permissible only after the Customer explicitly confirms such in each case provided that, unless otherwise agreed, such amendments shall apply only to those Customer orders from the beginning of the fourth month after the date of the Customer's confirmation.
- 9.1.2 Any price increases must be notified to the Customer three months in advance or, three months before the end of the calendar quarter.
- 9.2.1 If any advance payments are agreed, the Customer may require the Contractor to arrange as security a directly enforceable guarantee (*selbstschuldnerische Bürgschaft*) issued by from a major German bank or major German insurance company.
- 9.2.2 If the Contractor has concluded a Contract with Züco as a Customer, the following shall apply instead of section 9.2.1: Züco may require from the Contractor a guarantee (*Bürgschaft*) issued by a Swiss bank or Swiss insurance company.
- 9.3 In the event that the Customer withdraws from the Contract (*Rücktritt*), any advance payments which have already been made must be paid back. Additionally, interest on the advance payment shall be paid as from the date of the disbursement at the rate of 3 % above the respective weekly EURIBOR rate as published by the German Federal Reserve Bank (*Deutsche Bundesbank*).
- 10. Security Retention**
- The Customer may deduct 5 % of the order value upon payment of the invoice as security against any defects, provided that such amount retained is payed into an escrow account (*Sperkonto*) in relation to which the Customer and the Contractor have authority to act jointly, but not individually. Upon the release to the Contractor of any amount retained, the Contractor shall be entitled to any interest accrued during the period the amount was held in escrow.
- 11. Spare Parts and Supply**
- 11.1 The Contractor shall be obliged supply spare parts for the estimated period of the technical life of the goods and services under appropriate conditions, but in any event for a period of not less than 10 years.
- 11.2 If the Contractor ceases production of the spare parts, the Contractor shall give the Customer the opportunity to make a final order and/or hand over upon request all of the devices and documentation necessary for the production of the spare parts and the Contractor shall permit the Customer to use such devices and documentation free of charge.
- 12. Incoming Inspections**
- 12.1 Upon receipt of any delivery the Customer shall inspect without undue delay the goods for any externally-apparent transportation damage or externally-apparent defects.
- 12.2 If the Customer detects any defect when carrying out the above inspections, it shall notify the Contractor of such. If the Customer detects a defect at a later time, it shall similarly notify the Contractor.
- 12.3 Notification of defects may be given within either (1) one month of receipt of the delivery or, (2) where a defect becomes apparent only upon processing or coming into use, within one month of actual detection.
- 12.4 The Customer shall have no further obligations in relation to the Contractor to perform any further or additional inspection or provide any further or additional notification other than as stated above.
- 13. Liability for Material Defects**
- 13.1 The rights of the Customer to claim based on defects (*Sachmängel*) shall be limited to a period of three years, provided that the law does not provide for longer periods or the Parties have agreed otherwise. The limitation period shall commence from the time of the transfer of risk (section 5.1). In case of deliveries of goods or services to customers of the Customer, the limitation period shall run from the time of acceptance by the Customer's customer.
- 13.2.1 Technical specifications of the Contractor shall not constitute a conclusive agreement on quality (*Beschaffenheitsvereinbarung*) such as, for example, as provided for in § 434 (I) 1 German Civil Code (*BGB*) or by § 633 (II) 2 *BGB*.
- 13.2.2 If the Contractor has concluded a Contract with Züco as a Customer, the following shall apply instead of section 13.2.1: Any technical specifications of the Contractor shall not constitute a conclusive, assured feature (*zugesicherte Eigenschaften*) such as, for example, as provided for in Art. 197 (1) Swiss Code of Obligations (*OR*).
- 13.3 If any defect is determined before or upon transfer of risk or becomes apparent during the limitation period, the Contractor

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- shall either rectify the defects at its own expense or resupply the goods or services free of defects, at the discretion of the Customer. This shall also apply to provision of goods or services in relation to which inspection was limited to random sample or spot checks. The Customer's discretion shall be exercised in a reasonable manner.
- 13.4 If the Contractor has rectified any defect that the Contractor has acknowledged as a defect and if rectification is by way of subsequent delivery (*Nachlieferung*), the limitation period related to claims for any defect in the subsequent delivery shall begin in accordance with section 13.1, starting anew in this respect with the transfer of risk (section 5.1). In cases of a delivery to a customer of the Customer, the limitation period shall begin again in this respect upon acceptance by the Customer's customer.
- 13.5 If the Contractor has rectified any defect that the Contractor has acknowledged as a defect and if rectification is by way of repair (*Nachbesserung*), the limitation period for claims for any defect shall not begin again unless the repair itself is defective. In this case, the limitation period for any defect in the repair shall begin again in this respect under section 13.1 upon transfer of risk in accordance with (5.1).
- 13.6 If any rectification of a defect or replacement delivery (*Ersatzlieferung*) or replacement performance (*Ersatzleistung*) fails, the Customer shall be entitled
1. to withdraw from the Contract partially or fully without compensation or
  2. to claim a price reduction or
  3. to carry out repair or redelivery itself or arrange to have such carried out by a third party at the expense of the Contractor and
  4. to demand compensation in lieu of performance.
- § 281 (II) and § 323 (II) BGB shall remain unaffected hereby.
- 13.7 The same shall apply if the Contractor declares itself unable to carry out any rectification of a defect, to redeliver or to reperform within an appropriate time period.
- 13.8 If the Customer demands compensation in lieu of performance, it shall retain its rights to the provision of the goods and services until such time as the Contractor actually pays the compensation in full.
- 13.9 If the Customer has an interest in an immediate repair in order to avoid its own default with respect to any third party or because of other urgent circumstances and the Customer has notified the Contractor of the defect, setting a deadline for the rectification of the defect, the Customer may carry out the repair at the expense of the Contractor after such deadline has expired.
- 13.10 If the Contractor does not take back defective any goods or services despite being required to do so by notice from the Customer, at the Contractor's expense, the goods or services may be disposed of by the Customer or sent back "freight collect". The Contractor shall bear the risk of any return delivery of defective goods and services.
- 13.11 Any further claims on the part of the Customer, in particular any claims arising from recourse rights of an entrepreneur (§ 478 BGB) and to reimbursement for unsuccessful processing costs and expenses shall remain unaffected hereby.
- 14. Industrial Property Rights**
- 14.1 The Contractor shall provide any goods or services without any defect as to title, in particular without infringing any industrial property rights or any application for industrial property rights of third parties ("Industrial Property Rights").
- 14.1.1 In the event of any culpable infringement of Industrial Property Rights, the Contractor shall hold the Customer and/or its customers harmless in relation to any claim (whether such is out of or in court) against the Customer and/or any of its customer individually or jointly based on any infringement of Industrial Property Rights. In the event of any legal proceedings, the Contractor shall provide legal assistance upon request.
- 14.1.2 In addition, in the event of any culpable infringement of Industrial Property Rights, the Contractor shall compensate for any and all damage suffered by the Customer and/or its customers to the extent that they have relied on the free use of the goods or services. Damage incurred by a customer of the Customer shall be compensated only to the extent that the respective customer has asserted a claim against the Customer.
- 14.2 The Contractor shall not be liable if it has produced the goods or services based solely on the Customer's drawings and models and it did not know or should not have known that the production of the goods or services constituted a legal infringement in the above sense.
- 14.3 The Contractor shall specify to the Customer all Industrial Property Rights it uses in connection with the goods or services upon request. If the Contractor ascertains any infringement of Industrial Property Rights, it shall notify the Customer of such without any requirement that it be requested to do so.
- 14.4 Any claims by the Customer for legal defects shall expire after three years insofar as the law does not provide for longer time limits and nothing to the contrary has been agreed. The commencement of the limitation period shall be in accordance with the provisions of law.
- 15. Rights of Use**
- The Contractor shall grant the Customer at no charge a simple, worldwide and indefinite right to use any and all goods and services for which it has intellectual property rights (e.g. image material, design documents) for all forms of use. Any further or additional transfer by the Customer of such rights of use shall not require the approval of the Contractor.
- 16. Liability**
- The provisions of law shall apply.
- 17. Product Liability**
- If any third party asserts a claim against the Customer based on a defect in the goods or services supplied by the Contractor, the Contractor shall indemnify the Customer against such claims without undue delay.
- 18. Transfer of Orders to Third Party**
- The Contractor is not entitled to pass on any order to a third party without the Customer's written consent. If an order is passed on to a third party without the Customer's written consent the Customer is entitled to withdraw from the Contract partially or fully and to demand compensation.
- 19. Materials**
- 19.1 Materials provided by the Customer shall remain the property of the Customer and must be stored, labelled and administered separately at the Contractor's site, free of charge. Such materials may be used only for the purposes of the Customer orders. If such materials suffer any loss in value or become lost, the Contractor shall provide compensation. This shall also apply to the handing-over of order-related materials for monetary consideration.
- 19.2 Any processing or transformation of the materials shall be made for the Customer. The latter shall immediately become the owner of the new or transformed object. If this is not legally possible, the Parties hereby agree that the Customer shall become joint owner of any new object at each and every stage of processing or transformation in proportion to the value of the materials provided. The Contractor shall store the new object for the Customer free of charge and with the due diligence of a prudent merchant.
- 20. Models, Tools, Moulds, Patterns, etc.**
- 20.1 Any models, tools, moulds and patterns which are the property of the Customer are provided to the Contractor on the basis of a bailment and shall remain the Customer's property. The Contractor shall ensure that the owner is clearly identified as such by way of labels. The Contractor waives all rights regarding these models, tools, moulds and patterns, in particular any rights of retention which may prevent compliance with any demand by the Customer for their return. No models, tools, moulds and patterns may be disposed of or sold without the written consent of the Customer.
- 20.2 Models, tools, moulds, etc. delivered to the Contractor by the Customer (1) shall only be used by the Contractor for the purposes explicitly approved by the Customer and (2) must be stored properly, handled with care and insured for an amount equivalent to their replacement value. Modifications and repairs may be carried out only with the written approval of the Customer. The Contractor shall keep models, tools, moulds and patterns in good condition.

**21. Origin of Goods/Certificates of Origin/Export Regulations/Environmental Policy**

- 21.1 The Contractor shall provide all certificates (e.g. certificates of origin) required for the Customer to acquire preferential rates of duty or other discounts and for the purposes of customs clearance and all associated procedures, activities, etc.
- 21.2 The Contractor shall inform the Customer in writing as to which components, units, devices, equipment, etc. (in summary: "Components") are subject to export or re-export restrictions in accordance with the cross-border trade provisions of the Federal Republic of Germany or, in the case of a Contract between the Contractor and Züco as Customer, are subject to the cross-border trade provisions of the Swiss Confederation, or which Components are subject to US export regulations.
- 21.3 If the Contractor's goods of services contain Components which, based on the applicable law, are either (1) subject to substance restrictions and/or substance information obligations (e.g. REACH, RoHS), or (2) are classified as hazardous goods, the Contractor shall notify the Customer of this upon conclusion of the Contract at the latest. The Contractor shall comply with all other legal obligations arising from the above clause (e.g. information or registration obligations).
- 21.4 The Contractor shall observe each of the principles of the Customer's environmental policy when fulfilling its provision of goods and services. Such principles shall be made available to the Contractor upon request.

**22. Confidentiality, Advertising Measures**

- 22.1 The Contractor shall not forward any tools, moulds, patterns, models, profiles, drawings, standard sheets, printing templates or other technical documentation made available to it, regardless of carrier medium ("documents"), or any knowledge or information or any objects manufactured according to these documents to third parties or use them for purposes other than those under this Contract without the written consent of the Customer. The documents must be protected against unauthorised access and use. Subject to any further rights, the Customer may demand the return of the documents if the Contractor breaches these provisions.
- 22.2 Any advertising measures of the Contractor using the name "Dauphin" and/or the name of the Customer shall require the explicit prior approval of the Customer. This shall apply also

to the Contractor's advertising measures when the Contractor wants to use other descriptions of Dauphin Group products (as per the definition in 1.1) or diagrams of such products; this approval is not required if the Contractor is entitled to such advertising measures based on mandatory statutory law.

**23. Insurance**

- 23.1 The costs of insuring any delivery, in particular forwarding insurance, shall not be borne by the Customer.
- 23.2 The General German Freight Forwarding Terms and Conditions ("*Allgemeine Deutsche Spediteurbedingungen*" – "ADSp") are hereby excluded.
- 23.3 The Contractor shall take out adequate insurance at its own expense to cover any damage caused by deliveries or services provided. In order to cover product liability risks, the Contractor shall take out business liability insurance, including insurance to cover product-related financial loss (extended product liability insurance for personal injury and damage to property, including damage in foreign territories and covering any costs of product recall). Proof of the extent of the amount covered must be provided to the Customer upon request. Any taking out and provision of evidence of liability insurance shall not limit the scope of the Contractor's liability.

**24. Applicable Law**

- 24.1 The substantive law of the Federal Republic of Germany shall apply. The United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods shall not apply.
- 24.2 If the Contractor has concluded a Contract with Züco as the Customer, the following shall apply instead of section 24.1: The substantive law of the Swiss Confederation shall apply. The United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods shall not apply.

**25. Jurisdiction**

The exclusive place of jurisdiction is the location of the Customer's place of business (*Sitz*). Notwithstanding the previous sentence, the Customer is entitled, to commence proceedings at the Contractor's place of business.