

# Terms and conditions of purchase

of Bürositzmöbelfabrik Friedrich-W. Dauphin GmbH & Co. – Last updated January 2008 (“GTCB”)

## 1. Validity

- 1.1 The GTCB of Bürositzmöbelfabrik Friedrich-W. Dauphin GmbH & Co. (“Ordering Party” – “OP”) shall apply only to contracts between the OP and other businesses.
- 1.2 The GTCB shall apply to deliveries and services (“Delivery”) which the OP’s contractual partner (“Contracting Party” – “CP”) provides for the OP based on the contract (“Contract”) between the CP and OP (“Parties”).

## 2. Quotations, acceptance

- 2.1 The CP shall provide quotations free of charge.
- 2.2 If the CP’s order confirmation is inconsistent with the OP’s previous declarations, the OP shall be bound only if it agrees to the inconsistency in writing.
- 2.3 The GTCB of the OP shall apply exclusively. General terms and conditions of business of the CP shall not apply even if the OP does not expressly object to them. The acceptance of deliveries, services or payments shall not constitute approval of the CP’s general terms and conditions of business on the part of the OP.
- 2.4 The OP shall be entitled to revoke a declaration of intent (e.g. an order) issued to the CP if the CP does not accept it in writing (Order Confirmation) within two weeks of receipt.

## 3. Notification, duty of care, checks

- 3.1 In the event that the make-up or mode of delivery should change compared to equivalent deliveries previously made to the OP, the CP shall notify the OP immediately in writing. Such changes shall not be made without the OP’s permission.
- 3.2 In the event that the make-up or mode of delivery should change compared to equivalent deliveries previously made to the OP, the CP shall notify the OP immediately in writing. Such changes shall not be made without the OP’s permission.
- 3.3 The CP’s liability for material defects shall not be affected by testing.

## 4. Deliveries and services

- 4.1 The CP shall be entitled to make partial deliveries only with permission from the OP.
- 4.2 If a delivery or subsequent delivery does not involve installation or assembly work, the point at which the goods are received at the OP’s specified delivery site shall determine whether or not the delivery has been carried out on time. If a service or delivery involving installation or assembly work is provided, the point at which the service or goods were approved shall determine whether the service or delivery has been carried out on time.
- 4.3 If a delivery is delayed or the CP is unable to deliver, the CP shall inform the OP immediately in writing, giving reasons for the delay and details of how long it is expected to last. The CP shall also seek a decision from the OP as to how to proceed further.
- 4.4 Where goods are delivered to the OP’s branches and assembly sites, the CP shall send a copy of the delivery note to the OP as proof of delivery. The delivery note must give details of the recipient, date and time in legible handwriting or block letters.

## 5. Passing of risk and dispatch

- 5.1 If a delivery involves installation or assembly work, the passing of risk shall take place when the goods are approved. If a delivery does not involve installation or assembly, the passing of risk shall take place when the goods are received at the OP’s specified delivery site.
- 5.2 The CP shall bear any dispatch and packaging costs. Where prices are ex works or ex CP sales warehouse, the cheapest method of transport shall be used unless the OP has specified a particular type or means of transport. The CP shall bear any extra costs incurred through failure to observe the transport or packaging regulations. Where prices include delivery to the recipient’s premises, packaging and transport insurance, the OP may choose the type of transport. However, the CP shall remain at liberty to choose the cheapest transport type provided that the goods will not suffer damage and the confirmed delivery deadline will be met. In the event that a faster form of transport is required in order to meet the delivery deadline, the CP shall bear any extra costs incurred.
- 5.3 The CP shall enclose accompanying documents, delivery notes and analysis/test certificates along with the delivery. It shall also notify the OP of the dispatch immediately in writing, giving the same information
- 5.4 The OP shall assume ownership of the goods upon receipt of the delivery or full payment, depending on which occurs first.

## 6. Delays

- 6.1 If the CP is responsible for the delivery being delayed, the OP shall be entitled, without prejudice to any other rights, to demand payment of a contractual penalty. This shall be equivalent to 0.5% of the order value for each week or part thereof that the delivery is delayed, but shall not exceed 5% of the order value. The OP shall remain at liberty to assert other legal claims including claims for a higher rate of compensation. Any contractual penalty already paid will be counted as part of any higher rate of compensation. It shall not be necessary to expressly reserve the right to assert claims for the payment of the contractual penalty in the event that the delayed delivery is accepted. The CP shall be entitled to prove that the OP suffered lesser or no damages
- 6.2 In the event of force majeure, industrial action on the part of the OP and/or CP or their vicarious agents, or any other unavoidable circumstances which hinder or prevent performance of the contract and for which the OP and/or CP or one of their vicarious agents is not responsible, the affected party shall be absolved of their obligations according to the extent of the disruption and its duration. In the event that the CP is affected by one or more of the above circumstances, it shall inform the OP of these circumstances immediately in writing.

## 7. Invoices

- 7.1 An original and duplicate copy of each invoice should be submitted. Invoices must contain at least the following information:
  1. The OP’s order number and item number
  2. The supplier’s number (CP’s number) if allocated to the CP by the OP
  3. Part number (article number) if allocated by the OP
  4. Description (order text)
  5. Quantity
  6. Prices, with VAT shown separately, and any surcharges
  7. Transport and packaging costs
  8. VAT number
  9. Customs tariff number
  10. Country of origin
  11. Date of delivery/service
- 7.2 Invoices lacking this information shall not be paid. Duplicate copies of invoices should be marked “Duplicate”.

## 8. Payments

- 8.1 Unless otherwise agreed, payments shall be made:
  1. within 14 days with a 3% discount or
  2. within 30 days net.
- 8.2 The deadline for payment shall begin as soon as the delivery has been made in full and the OP has received the invoice featuring all the information listed in 7.1. A delivery shall not be deemed complete unless the material and test certificates (3.2) have been received. Discounts shall also be possible in the event that the OP makes a set-off or withholds payments to a reasonable extent owing to defects. In the latter case, the deadline for payment of the sums withheld shall begin when the defects have been completely rectified.
- 8.3 The OP shall be deemed to have defaulted on payment only if it still fails to make payment following receipt of a written reminder sent by the CP after payment became overdue.
- 8.4 In the event of a defective delivery, a debit note will be issued for the CP and debited against accounts payable.
- 8.5 Payments shall not constitute an acknowledgement that the deliveries or services have been provided in accordance with the contract.

## 9. Prices

- 9.1 When an order is placed, the prices quoted by the CP shall be fixed for the duration of that order. Prices may be changed only if the OP provides written confirmation.
- 9.2 If advance payments have been agreed, the OP shall be entitled to demand that the CP produce absolute guarantees with a major German bank or insurance company as security for the advance payments
- 9.3 In the event that the OP rescinds the contract, any advance payments which have already been made shall be paid back together with interest charged from the date of payment onwards at a rate of 3% above the one-week EURIBOR rate as published by the German Bundesbank.

## 10. Securities

When paying the invoice, the OP shall be entitled to deduct and withhold 5% of the order value to cover material defects, provided that it pays the amount withheld into a blocked account which can only be accessed by the OP and CP together. Once the amount withheld is released to the CP, the CP shall be entitled to any interest from the blocked account.

## 11. Replacement parts and availability

- 11.1 The CP shall supply replacement parts for the expected lifespan of the goods delivered (though for at least 10 years).
- 11.2 In the event that the CP stops producing the replacement parts, it shall give the OP the opportunity to place a final order and/or hand over upon request all equipment and documents required to produce the replacement parts and allow them to be used free of charge.

## 12. Checks on goods received

- 12.1 As soon as the goods are delivered, the OP shall check them for any obvious transport damage or other obvious defects.
- 12.2 If, when checking the goods as described above, the OP discovers any defects, it shall report them to the CP. If the OP discovers any defects at a later date, it shall likewise report them to the CP.
- 12.3 Complaints may be lodged within a month (1) of the goods being received or (2) of the defects being discovered if the defects were only identified when the goods were processed or put into use.
- 12.4 The OP shall be under no obligation to carry out checks or provide notification other than as described above.

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## 13. Liability for material defects

- 13.1 Claims for material defects on the part of the OP shall lapse after a period of three years, unless agreed otherwise or the law provides for longer periods. The period of limitation shall commence with the passing of risk (5.1). For deliveries to the OP's customers, it shall commence when the goods are approved by the OP's customer.
- 13.2 Technical specifications provided by the CP shall not constitute agreements as to the properties of the goods, e.g. as defined in § 434 Para. 1 Clause 1 of the BGB (German Civil Code) or § 633 Para. 2 Clause 2 of the BGB.
- 13.3 If defects are discovered before or during the passing of risk or during the period of limitation, the CP shall, at the discretion of the OP, either rectify the defects or provide new goods or services which are free of defects at no charge. This also applies to deliveries where only random checks are carried out. The OP shall use reasonable judgement when deciding which course of action to take.
- 13.4 If the CP rectifies an acknowledged defect by providing a replacement delivery, the period of limitation for defects in the replacement goods shall recommence with the passing of risk (5.1) as stated in 13.1. For deliveries to the OP's customers, it shall recommence when the goods are approved by the OP's customer.
- 13.5 If the CP rectifies an acknowledged defect by making subsequent improvements, the period of limitation shall not recommence, unless the subsequent improvements were unsatisfactory. In this case, the period of limitation for defects rectified through subsequent improvements shall recommence with the passing of risk (5.1) as stated in 13.1.
- 13.6 If attempts to rectify the defects or provide a replacement delivery fail, the OP shall be entitled:
1. to rescind the contract in part or in full without compensation or
  2. to demand a price reduction or
  3. to make subsequent improvements or a replacement delivery itself or arrange for this to be done, in both cases at the CP's expense, and
  4. to demand compensation in place of performance. § 281 Para. 2 and § 323 Para. 2 of the BGB shall remain unaffected.
- 13.7 The same shall apply if the CP declares that it is unable to rectify the defects or provide a replacement delivery/service within a reasonable period.
- 13.8 If the OP demands compensation in place of performance, it shall keep its claim to the delivery until the CP has actually paid the full compensation amount.
- 13.9 If the OP requires immediate subsequent improvements in order to avoid a delay in its dealings with third parties or for some other urgent matter and it has reported the defect to the CP and set a deadline for its rectification, it shall be entitled to carry out the subsequent improvement work at the expense of the CP once the deadline has expired.
- 13.10 If the CP does not take back defective deliveries in spite of being asked to do so by the OP, the OP shall be entitled to dispose of the goods at the expense of the CP or send them back unfranked with shipping costs payable by the CP. The CP shall bear the risk of returning defective deliveries.
- 13.11 Further-reaching claims of the OP, in particular claims arising from the recourse rights set out in § 478 of the BGB and claims for the reimbursement of unnecessary processing costs, shall remain unaffected.

## 14. Industrial property rights

- 14.1 The CP shall carry out the delivery without legal defects, in particular without infringing third-party industrial property rights and applications (“Industrial Property Rights”). In the event of an infringement of Industrial Property Rights, the CP shall indemnify the OP and/or its customer if a legal claim is made against them, either in or out of court, as a result of the infringement. In the event of a legal dispute, the CP shall, if requested, provide legal assistance. In addition, the CP shall provide compensation for all damages which the OP and/or its customer suffer as a result of the delivery/service not being freely usable. The CP shall compensate a customer of the OP only if the customer has made a legal claim against the OP.
- 14.2 The CP shall not be liable if it has manufactured the goods exclusively in accordance with the OP's drawings and models and did not know or need to know that manufacturing the goods would lead to a legal infringement as described above.
- 14.3 If requested, the CP shall specify all Industrial Property Rights which it uses in connection with the delivery. If the CP identifies an infringement of Industrial Property Rights, it shall automatically inform the OP.

## 15. Rights of usage

The CP shall grant free of charge to the OP a non-exclusive and unlimited right of usage to cover any use of materials (e.g. image material, design documents) to which it holds the copyright. The OP shall not require permission from the CP in order to apply these rights of usage further.

## 16. Liability

The legal regulations shall apply.

## 17. Product liability

If a third party makes a legal claim against the OP as a result of a defective delivery provided by the CP, the CP shall immediately indemnify the OP against the claim.

## 18. Passing of orders to third parties

The passing of orders to third parties is prohibited without written permission from the OP and shall entitle the OP to rescind the contract in part or in full and to seek compensation.

## 19. Materials provided

- 19.1 Any materials provided shall remain the property of the OP and shall be stored separately on the CP's premises, labelled and managed free of charge. They may be used only for orders placed by the OP. The CP shall provide compensation if they suffer a loss in value or are lost. This shall also apply to the provision of materials for an order in exchange for a fee.
- 19.2 The materials shall be used to produce goods or processed on behalf of the OP. The OP shall immediately become the owner of the articles produced or the materials processed. If this is not possible owing to legal reasons, the parties agree that the OP shall be the joint owner of the new articles at every point in the production/processing period, with its level of ownership depending on the relative value of the materials provided. The CP shall keep the new article safe on behalf of the OP free of charge and with the diligence of a prudent businessman.

## 20. Models, tools, moulds, patterns etc.

- 20.1 Any models, tools, moulds and patterns which are the property of the OP shall be made available to the CP on loan. The CP shall ensure that the items are clearly labelled with the name of the owner. For these models, tools, moulds and patterns, the CP shall forgo all rights, in particular rights of retention, which could oppose any demand for their return made by the OP. Models, tools, moulds and patterns may not be disposed of or sold without written permission from the OP.
- 20.2 The CP shall ensure that any models, tools, moulds etc. which the OP provides are properly stored, carefully handled and insured for an amount which covers the cost of replacement. Any modifications or repairs may only be carried out with written permission from the OP. The CP shall however maintain any models, tools, moulds and patterns provided.

## 21. Origin of goods / Certificates of origin / Export regulations

- 21.1 The CP shall provide all certificates (e.g. certificates of origin) which the OP may need for the purpose of obtaining customs and other privileges, for customs clearance, and for all related procedures.
- 21.2 The CP shall inform the OP in writing which components, modules, devices, equipment etc. are subject to export or re-export restrictions in accordance with the Federal Republic of Germany's foreign trade regulations or, where relevant, the US export regulations.

## 22. Confidentiality

The CP shall neither pass on to third parties any tools, moulds, patterns, models, profiles, drawings, standard sheets, templates, other technical documentation regardless of the storage medium (“Documents”), knowledge and information, and any products based on them nor use them for non-contractual purposes without written permission from the OP. They must be secured against unauthorised inspection or use. Without prejudice to other rights, the OP shall be entitled to demand that the articles be returned if the CP breaches these obligations.

## 23. Insurance

- 23.1 The OP shall not bear the cost of insuring the deliveries, and in particular the costs of transport insurance.
- 23.2 The General German Haulage Conditions (ADSp) shall not apply.
- 23.3 The CP shall, at its own expense, take out liability insurance which is sufficient to cover damage which occurs when providing deliveries or services. To cover product liability risks, the CP shall hold company liability insurance which covers specific product-related damages (additional product liability insurance for personal injury and material damage, including damage abroad and recovery of recall costs). If requested, the CP shall provide the OP with evidence of the sum covered. Taking out and providing evidence of liability insurance shall not reduce the scope of the CP's liability.

## 24. Applicable law

The substantive law of the Federal Republic of Germany shall apply. The United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 shall not apply.

## 25. Place of jurisdiction

The exclusive place of jurisdiction shall be Nuremberg.

## Bürositzmöbelfabrik Friedrich-W. Dauphin GmbH & Co.

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