

Terms and conditions of sale

of Dauphin HumanDesign® Group GmbH & Co. KG for contracts with companies

January 2004 („T&C's“)

1. Scope of Delivery Terms

- 1.1 The Terms and Conditions of Sale of Dauphin HumanDesign® Group GmbH & Co. KG („Contractor“ – „CO“) shall only apply to contracts concluded between CO and companies („B2B“).
- 1.2 The Terms and Conditions of Sale shall apply to deliveries and services of CO („Delivery“) to the contracting party of CO („Ordering Party“ – „OP“) on the basis of the contract („Contract“) concluded between CO and OP („the Parties“).
- 1.3 Terms and conditions of OP shall only apply insofar as they have been expressly approved in writing by CO. Provisions which differ in wording from these Terms and Conditions of Sale – to the extent that they are not stipulated in the CO's whole offer – shall not apply.
- 1.4 The customer shall be entitled to avail himself of third parties, in particular, of Dauphin-Group enterprises, in order to meet its contractual obligations.

2. Offer

- 2.1 Specifications of the Delivery composition are set out exclusively and finally in the „Technical Specifications“ chapter of the respective brochure of CO valid at the time of the conclusion of the Contract.
- 2.2 Should the Delivery include an assembly instruction or instructions for use („Manual“), CO may fulfill his obligation to submit such Manual to OP by providing OP with an Internet address, where OP can download the Manual free of charge.
- 2.3 CO shall reserve all rights of ownership and copyrights to all cost estimates, drawings and other documents („Documents“) included in his offer. The Documents may only be made available to third parties upon CO's prior approval and, should the offer not be awarded to CO, shall be handed over to him without delay. OP shall have no right of retention.
- 2.4 CO shall be committed to the offer for 45 calendar days as of the date of the offer.
- 2.5 Any advance performances (including cost estimates) provided within the scope of an offer by CO at OP's request, shall be billed by CO, even if no subsequent Contract is concluded.

3. Reservation as to Obtaining Delivery Ourselves

If the contractually agreed Delivery is not available on grounds that CO did not receive delivery from his own suppliers or CO's stock necessary for the Delivery is run down, CO shall be entitled to provide a Delivery which is equivalent in quality and price. Should CO be unable to provide a Delivery equivalent in quality and price, he may rescind the Contract.

4. Terms of Delivery

- 4.1 All prices are Ex Works of CO, Offenhausen, Germany (EXW according to Incoterms 2000) („Place of Performance“).
- 4.2 All prices are net prices in EUR, plus the turnover tax valid at the time of performance of the service, without further deductions. Partial Deliveries are possible insofar as they are acceptable for the OP.
- 4.3 If CO has agreed to carry out the assembly or installation, OP shall bear, apart from the agreed prices, all extra charges (e.g. travel costs, transportation costs, allowances) arising in connection with such assembly or installation.

5. Terms of Payment

- 5.1 Unless the Parties have agreed on other payment conditions, invoices shall be payable without delay and without any deductions to the payment.
- 5.2 OP may only set off claims which are undisputed or have been finally determined in a legally binding manner.

6. Reservation of Title

- 6.1 CO shall retain ownership of the delivered items („Reserved Goods“) until OP has fulfilled all his obligations from the business relation. Should the total value of CO's legitimate securities exceed the total value of all claims to be secured by more than 20 percent, CO shall, at OP's request release a corresponding part of the securities.
- 6.2 For the duration of the reservation of title, OP shall not be entitled to pledging or transfer of security.
- 6.3 OP may only re-sell the Reserved Goods within the scope of normal business operations and under the condition that OP receives payment from his buyer or provides for the reservation that the transfer of ownership onto the buyer does not take place until the buyer meets his payment commitments.
- 6.4 CO's ownership of the Reserved Goods shall also remain valid during the manufacturing and after the completion of the product of OP for which the Reserved Goods are used („Final Product“). CO's ownership of the Reserved Goods shall continue as towards the Final Product; CO shall obtain common ownership of the Final Product in proportion of the value of the Reserved Goods to the total value of the Final Product.
- 6.5 OP shall, upon the conclusion of the Contract, assign to CO as security a part of his claims against his buyer arising from the resale or manufacturing of the Reserved Goods corresponding to the CO's claims against himself arising from the Delivery. This shall not affect CO's obligation to release set out in 6.1.
- 6.6 In the event of a levy of execution, seizure or any orders of third parties OP shall inform CO without delay.

- 6.7 In the event of breach of duty, in particular a default of payment, on the part of the OP, the following provisions shall apply:

- 6.7.1 After unsuccessful expiry of an appropriate deadline set by CO for the rectification of the default, CO shall be entitled to rescind the Contract and to take back the Reserved Goods; OP shall be obliged to hand over the Reserved Goods. This shall not affect the statutory regulations concerning the dispensability of fixing a time-limit.
- 6.7.2 The enforcement of the reservation of title and the taking back of the Reserved Goods is not subject to a prior rescission of the Contract on the part of CO; such action or a levy of execution of the Reserved Goods by CO shall not be considered as a rescission of the Contract, unless expressly stated otherwise.

7. Delivery time

- 7.1 Compliance with the agreed Delivery time requires the timely receipt of all documents, necessary permissions and releases, in particular concerning blueprints to be provided by OP, as well as the observance of the agreed terms of payment and other obligations by the OP. If these conditions are not fulfilled, Delivery times shall be appropriately extended; this shall not apply if the delay is caused by CO.
- 7.2 If Delivery times are not complied with due to force majeure, e.g. mobilisation, war, riots or similar events, e.g. strikes or lock-outs, delivery times shall be appropriately extended.
- 7.3 Should CO be in delay, OP may, if he can substantiate any damage on his part resulting from such delay, claim a compensation for each completed week of delay amounting to 0.5 percent of the price of the part of the delivery which could not be used due to the delay, but not more than a total of 5 percent of the said price.
- 7.4 Any claims for compensation for delayed Delivery or claims for compensation to replace a Delivery on the part of OP which are beyond the limits of 7.3, shall be excluded in all events of delayed Delivery. This shall also apply in the event of the expiry of a deadline set by OP. It shall not apply, however, where there is obligatory liability, in the event of willful misconduct or gross negligence or due to injury to life, body or health. OP may only rescind the Contract if the Delivery delay is caused by CO. No shift in the burden of proof to the detriment of OP is connected with the above provisions.
- 7.5 OP shall only have a right of rescission if he has granted CO an appropriate time deadline for performance and declares that he shall refuse to accept the performance upon the expiry of the deadline, and after the deadline has unsuccessfully expired.
- 7.6 At CO's request, OP shall declare within an appropriate time limit whether he shall rescind the Contract due to the delay or whether he insists on delivery.
- 7.7 If, at OP's request, dispatch or consignment is delayed for more than a month after readiness to dispatch has been expressed, CO may, for each beginning month, charge OP 0.5 percent of the net price of the Delivery, but not more than 5 percent of the total net price, for storage costs. The Parties shall remain at liberty to prove that storage costs were higher or lower.

8. Passing of risk

- 8.1 Subject to the provisions of 8.2 the passing of risk onto OP shall take place:
 - 8.1.1 in case of delivery without assembly or installation, at the moment the goods to be delivered have been made available for dispatch by CO at the Place of Performance;
 - 8.1.2 in case of Delivery with assembly or installation, at the moment assembly or installation is completed.
- 8.2 The passing of the risk onto OP shall take place at the moment the dispatch or the beginning of assembly or installation are delayed due to reasons caused by OP or the occurrence of any other events causing a default in acceptance by OP.

9. Assembly

- Should the Parties agree upon an assembly of the items in addition to their Delivery, the following provisions shall apply:
- 9.1 OP shall provide and bear the costs of:
 - 9.1.1 any secondary work alien to the industry, including the necessary specialist and auxiliary workers, construction materials and tools;
 - 9.1.2 appropriate, dry and lockable space of sufficient size for the storage of the delivered items, tools etc. at the place of assembly.
 - 9.2 Prior to the commencement of the assembly work, OP shall unsolicitedly make available to CO all necessary information concerning the place of assembly (stairs, ramps and their respective angle of inclination, lifts and their respective maximum load etc.) as well as all required statistical data.
 - 9.3 Prior to the commencement of the assembly, all preparatory work must be completed to an extent sufficient to allow the beginning and uninterrupted carrying out of the assembly as agreed. Access roads and the place of assembly must be cleared.
 - 9.4 Should the assembly be delayed due to reasons not caused by CO, OP shall bear, to an appropriate extent, the costs for waiting times and additional travels of CO's staff caused by the delay.
 - 9.5 The assembly shall be considered as complete as soon as CO reports its completion or the delivered goods come into use (the earlier event being decisive).

10. Acceptance

10. OP shall accept the Delivery even if it shows insignificant defects.

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11. Material Defects

CO shall be liable for all material defects of newly manufactured products according to 11.1 – 11.11. Should the item delivered not be a newly manufactured product (e.g. second-hand goods, samples, exhibits, seconds products), CO's liability for material defects shall not apply.

11.1 The parts of the Delivery concerned which show material defects within the term of limitation (if such defects were not caused after the passing of the risk) must, at CO's discretion, be repaired at CO's cost, newly delivered or newly provided („Subsequent Performance“).

11.2 The Subsequent Performance does not initiate a new term of limitation (11.3).

11.3 The term of limitation for the liability for material defects is 24 months. This shall not apply where paragraphs 438, section 1, No. 2, 479, section 1 and 634a, section 1, No. 2 of the BGB [German Civil Code] provide for longer terms, and in the event of injury to life, body or health, in the event of intentional or gross breach of duty by CO or fraudulent concealment of a defect. This shall not affect the statutory regulations concerning the suspension of the running, the suspension or the new beginning of the periods of limitation.

11.4 OP shall complain about material defects to CO without delay in writing. The complaint must include information on the data of the concerned Delivery - name and number of the model, number of CO's confirmation of order, date of manufacture, description of the fault or defect.

11.5 In the event of complaints of defect OP may retain payments to an extent appropriate in proportion to the defects occurred. OP shall only be entitled to retain payments if he is able to assert a complaint of defect justified beyond any doubt. If the complaint of defect proves to be unjustified, CO shall be entitled to request payment of any expenses incurred to him by such complaint.

11.6 CO must be granted the opportunity of Subsequent Performance within an appropriate period of time. Otherwise he shall be freed of any liability for material defects.

11.7 In the event of unsuccessful Subsequent Performance, OP may – notwithstanding any provisions on claims for compensation (14.) rescind the Contract or reduce the payment.

11.8 Warranty claims shall not be admissible in the event of insignificant deviations from the agreed composition, insignificant impairment of the practicability, natural wear and tear or damages caused after the passing of risk as a result of faulty or negligent treatment, excess utilisation, inappropriate service equipment, or damages caused by exceptional external factors, which are not provided for in the Contract. Should OP carry out inexpert alterations or repairs, no warranty claims shall be admissible for such alterations, repairs or consequences thereof.

11.9 Any claims of OP for expenses necessary for the Subsequent Performance, in particular transportation, labour and material costs, shall be excluded, if such expenses should be caused because the Delivery has been transferred to a place other than the Place of Performance.

11.10 Claims under a right of recourse of the OP against CO shall only be admissible insofar as OP has not agreed with his buyer any arrangements beyond the scope of the statutory warranty claims. For the scope of the claims under a right of recourse according to paragraph 478, section 2 of the BGB [German Civil Code], 11.8 shall apply respectively.

11.11 Any further claims based on material defects, and claims other than those settled under 11. of OP against CO shall be excluded. For any claims for damages 14. shall apply.

12. Infringements of Intellectual Property Rights, Other Legal Defects

12.1 Unless agreed otherwise, CO shall carry out the Delivery within the Federal Republic of Germany free of industrial property rights and copyrights of third parties („Intellectual Property Rights“ – „IPR“). Should a third party set up a justified claim against OP for infringement of an IPR caused by the utilisation of a delivery of CO as per agreement, CO shall be liable towards OP within the statutory time limit set out in 11.3 as follows:

12.1.1 CO shall, at his discretion and cost, acquire the right of use for the Delivery concerned, alter the Delivery concerned to ensure that the IPR is no longer infringed, or replace the delivery. In the event that CO is not able to do so under appropriate conditions, OP shall be entitled to use the statutory rights of rescission or rights to a reduction in price.

12.1.2 CO's obligation to compensate shall be pursuant to 14.

12.1.3 The above mentioned obligations of CO shall only apply, if OP makes immediate written notification to CO of the claims set up by a third party, if he does not recognise the infringement and if CO's rights to take countermeasures and settlement negotiations remain unaffected. Should OP cease to utilise the delivery due to loss mitigation or other significant reasons, he shall point out to the third party that the cessation of utilisation is no acknowledgement of any infringement of IPR.

12.2 OP shall have no right to claims for the infringements of IPR which were caused by himself.

12.3 Claims shall also be inadmissible, if the infringement of IPR was caused by special instructions of OP, an utilisation which could not be foreseen by CO, or if OP alters the Delivery or uses it with products which were not delivered by CO.

12.4 As far as infringements of IPR are concerned, the respective provisions of 11.5, 11.6, 11.10 shall always apply to all claims of OP set out in 12.1.1.

12.5 In the event of other legal defects the provisions of 11. shall apply respectively.

12.6 Further claims on grounds of legal defects of OP against CO or claims other than those set out in 12. shall be excluded.

13. Impossibility, Adjustment of Contract

13.1 Should delivery be impossible, OP shall be entitled to request compensation, unless CO is not responsible for the impossibility. However, OP's claim for compensation shall be limited to 10 percent of the value of the part of the Delivery which cannot be used due to the impossibility of CO. This shall not apply where there is obligatory liability due to willful misconduct, gross negligence, initial inability or injury to life, body or health. No shift in the burden of proof to the detriment of OP is connected with the above provisions. OP's right of rescission shall remain unaffected.

13.2 Should events of force majeure (7.2) substantially alter the economic significance or the contents of the Delivery or substantially affect CO's business, the Contract shall be appropriately adapted under good faith. If this is not economically acceptable, CO shall have a right of rescission. Should CO wish to make use of such right, he has to notify OP after realisation of the consequences of such incidents without delay, also if the Parties had agreed to an extension of the Delivery time beforehand.

14. Other Claims for Compensation

14.1.1 Claims for compensation of OP, irrespective of their cause in law, but in particular claims arising from the breach of duties resulting from obligation or tort, shall be excluded.

14.1.2 This shall not apply where there is mandatory liability, e.g. according to the law on product liability or in the event of willful misconduct, gross negligence, injury to life, body or health or the infringement of substantial contractual obligations.

14.1.3 However, compensation for damages for the infringement of substantial contractual obligations shall be limited to foreseeable damages typical for the Contract, unless there is liability for of willful misconduct or gross negligence, injury to life, body or health.

14.2 The exclusion or limitation of CO's liability as set out in 14. shall also apply to the personal liability of his workers, employees, co-workers and other persons employed, but not to the personal liability of legal representatives and executives.

14.3 The claims for compensation OP is entitled to according to 14., shall expire upon the expiry of the term of limitation applying to material defects according to 11.3. In the event of willful misconduct and claims for damages in connection with the law on product liability the statutory terms of limitation shall apply.

14.4 No shift in the burden of proof to the detriment of OP is connected with the provisions of 14.

15. Confidentiality

15.1 The Parties shall undertake not to make available to third parties any documents, knowledge and information, tools, moulds, samples, models, profiles, drawings, standard sheets, photomasters and other technical documentation („Information“) received within the scope of the contract and irrespective of the carrier medium without written approval of the respective other party, or use them for other than contractual purposes. Such Information must be secured against unauthorised inspection or use. With reservation of further rights, each party may request the return of such Information, should the other party breach such duty.

15.2 The obligation according to 15.1 shall commence upon the first receipt of Information and expire 36 months after the termination of the Contract.

15.3 The obligation according to 15.1 shall not apply to information which is generally known or which was known to the respective party at the moment of receipt without the party being obliged to confidentiality or to Information which was passed on by a third party authorised to submit such Information or which was developed by the receiving party without utilisation of confidential Information of the other party.

16. Jurisdiction

The exclusive place of jurisdiction – also for cheques and notes receivable – shall be Nuremberg.

17. Applicable Law

The material law of the Federal Republic of Germany shall apply. The UN Convention on Contracts for the International Sale of Goods of 11 April 1980 shall not apply.

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