

General Terms and Conditions of Sale, Delivery and Payment of DINOL GmbH, Pyrmonter Strasse 76, 32676 Lügde, Germany

I. Scope of application, general

1. These Terms and Conditions apply to all business relations of DINOL GmbH (hereinafter called “DINOL”) with its customers (hereinafter called “Buyer”). These Terms and Conditions apply only where the Buyer is an entrepreneur (Section 14 BGB [German Civil Code]), a legal entity organized under public law or a special asset fund organized under public law.
2. These Terms and Conditions apply in particular to contracts for the sale and/or delivery of moveable items (hereinafter also called “Goods”) irrespective of whether DINOL produces the goods itself or buys them in from suppliers (Sections 433 and 651 BGB). The Terms and Conditions are also valid in the version in force at any time as a framework agreement for future contracts for the sale and/or supply of moveable items with the same Buyer without our having to make reference to them in every single case; in this case, we will inform the Buyer of any changes to our Terms and Conditions.
3. These Terms and Conditions shall apply exclusively; general terms and conditions of the Buyer that conflict with or deviate from these Terms and Conditions are and will not be recognized by DINOL unless DINOL has expressly agreed that they shall apply. These Terms and Conditions shall apply even if DINOL should perform delivery to the Buyer without reservation despite having knowledge of conflicting or deviating terms and conditions of the Buyer.
4. Individual agreements concluded with the Buyer in any particular case shall take precedence over these Terms and Conditions. A written contract or the written confirmation of DINOL shall be authoritative for the content of such agreements.
5. Legally significant declarations and notifications which must be made to DINOL by the Buyer after conclusion of a contract (e.g. setting of deadlines, reminders or dunning letters, notice of rescission of contract) shall only be deemed valid if made in writing.
6. References to the application of statutory regulations are provided for the sake of clarification only. That means that, except insofar as they are directly amended or their application is expressly ruled out in these Terms and Conditions, they are applicable in any case, even without such clarification.

II. Conclusion of contract

1. Offers of DINOL are without engagement and subject to confirmation. This applies even where DINOL has provided the Buyer with catalogues, technical documentations, other product descriptions or documents, to which DINOL reserves the right of title and copyright.
2. An order for goods by the Buyer counts as a firm contract offer. If nothing to the contrary is indicated in the order, DINOL has the right to accept this contract offer within a period of 4 weeks from it being received by DINOL.
3. Acceptance of the order can be declared either in writing in the form of an order confirmation or by delivery of the goods to the Buyer. Transmission via electronic data transfer is sufficient to satisfy the requirement of the written form.
4. Where DINOL makes use of telemedia (contract in electronic commerce) for the purpose of concluding a contract for the supply of goods or the provision of services, the Buyer dispenses with the provision of appropriate, effective and accessible technical means for the detection and correction of input errors, as well as with communication of the information specified in Art. 246 § 3 EGBGB [Introductory Act to the German Civil Code] and with a confirmation of receipt of the order. Orders transmitted by electronic means only count as received when they have been called forward and opened by DINOL.

III. Prices - Terms of payment

1. All prices of DINOL are quoted ex warehouse plus value added tax at the statutory rate in force at the time of issue of the invoice.
2. In the case of sales shipment (Section VI No. 1), the Buyer bears the costs of transport ex warehouse (including the costs of transport packing and loading) and the costs of transport insurance, if such insurance is requested by the Buyer. Customs, fees, taxes and other official levies, if any, must be borne by the Buyer. DINOL does not take back transport packing or any other packing pursuant to the Packaging Ordinance [“Verpackungsverordnung”]; such packaging shall become the property of the Buyer; excepted from this are reusable pallets and reusable containers.
3. Unless agreed otherwise, the agreed purchase price is due and payable within 10 calendar days from issue of the invoice.
4. For all means and modes of payment, the day of receipt of payment is defined as the day on which DINOL has the sum owed by the Buyer at its disposal.

5. On expiry of the period specified under No. 3, the Buyer shall be deemed to be in default. During the time of default, interest is payable on the purchase price at the official default interest rate. DINOL reserves the right to claim for additional damages on account of delay. In business with registered traders, the claim of DINOL to the commercial default interest (§ 353 German Commercial Code [“Handelsgesetzbuch”, - abbreviated “HGB”]) shall remain unaffected.

6. The Buyer has the right to make offset or to withhold payment only on account of his own claims which have been finally and conclusively established at law or are undisputed. In the case of defects in the delivery, the Buyer’s counter-rights shall remain unaffected.

7. If it becomes apparent after conclusion of a contract that DINOL’s claim to the purchase price is endangered through inability to pay on the part of the Buyer (evidenced e.g. through a petition for the opening of insolvency proceedings), DINOL is entitled pursuant to the statutory regulations to refuse to effect performance and – after setting a deadline, if necessary – to rescind the contract (§ 321 BGB). In the case of contracts for the production of non-fungible items (one-off productions), DINOL may repudiate the contract immediately; the statutory regulations relating to the dispensability of setting a deadline shall remain unaffected.

8. If DINOL has a due claim to payment against the Buyer arising from a continuous business relationship with the latter, DINOL may refuse to deliver goods until the Buyer has made the due payment. The same applies analogously during the time when a credit line granted by DINOL to the Buyer is exceeded.

IV. Reservation of title

1. DINOL retains title to the goods sold until all present and future claims arising from the respective purchase contracts and ongoing business relationships (hereinafter called “secured claims”) have been paid in full.

2. Until such time as the secured claims have been paid in full, goods which are subject to DINOL’s reservation of title may be neither pledged to any third party nor assigned by way of security. The Buyer must notify DINOL without delay in writing of any seizure of DINOL’s goods by third parties and of the extent thereof.

3. In the case of any breach of contract by the Buyer, and particularly in the case of non-payment of the due purchase price, DINOL shall have the right to rescind the contract in accordance with the statutory provisions and to demand surrender of the Goods on the strength of the reservation of title and the rescission. If the Buyer fails to pay the due purchase price, DINOL may only assert these rights if DINOL has previously allowed the Buyer a reasonable period of time to effect payment, but to no avail, or if the allowance of such time is dispensable pursuant to the statutory regulations.

4. The Buyer is authorized to resell and/or process goods which are subject to the reservation of title in the ordinary course of business. In this case, the following provisions shall additionally apply.

(a) The reservation of title extends to the products created by the processing, mixing or combination of the goods of DINOL at their full value, whereby DINOL counts as the manufacturer. If in the case of processing, mixing or combination with goods of third parties the right of title of the latter remains existent, DINOL shall acquire co-title in the same proportion as that between the invoice values of the goods involved in processing, mixing or combination. In all other respects, the same shall apply to the newly created product as to the goods delivered subject to the reservation of title.

(b) The claims arising against third parties from resale of the goods or the newly created product are hereby already assigned by the Buyer to DINOL either as a whole or in an amount equivalent to the co-ownership share of DINOL as set forth in the foregoing subsection. DINOL accepts the assignment. The duties of the Buyer specified under No. 2 shall also apply in relation to the assigned claims.

(c) The Buyer remains authorized alongside DINOL to collect the claim. DINOL undertakes not to collect the claim for as long as the Buyer fulfils his payment obligations towards DINOL, does not fall into arrears with payment, is not the subject of a petition for the opening of insolvency proceedings and no other impairment of his solvency exists. Should the latter be the case, however, DINOL may require that the Buyer make disclosure of the assigned claims and the parties by whom they are owed (debtors) to DINOL, furnish all particulars needed to make collection, hand over the appurtenant documents and inform the debtors (third parties) of the assignment.

(d) If the realizable value of the securities exceeds DINOL’s claims by more than 10%, DINOL will, on the Buyer’s request, release security. The choice of the security to be released shall lie with DINOL.

V. Delivery period, delivery date, force majeure and delay in delivery

1. Periods or dates for the delivery of goods or services are as individually agreed or stipulated by DINOL on acceptance of the order.

2. The period for delivery of the goods or services as individually agreed or stipulated by DINOL shall only begin when all technical questions have been clarified.
3. Compliance with an obligation to deliver goods or services on the part of DINOL shall be further dependent on prompt and proper fulfilment of the Buyer's own obligations. We reserve the right to plead the defence of non-performance of contract.
4. If, for reasons for which DINOL is not responsible and despite DINOL having duly undertaken the congruent covering transactions, DINOL does not receive goods or services from sub-suppliers at all or receives them incorrectly or not in good time or if events of a force majeure nature, i.e. impediments to performance with a duration of more than 14 calendar days, occur through no fault of DINOL, DINOL will inform the Buyer accordingly in good time in writing. In this case, DINOL shall have the right to defer delivery of the goods or service for the duration of the impediment or to wholly or partially cancel the as yet unfulfilled part of the contract, provided that DINOL has fulfilled its duty to inform as aforesaid and has not assumed the procurement or production risk and the obstacle to performance is of not just a temporary nature. Strikes, lockouts, intervention by official bodies, shortage of energy and raw materials, transport bottlenecks and/or operational hindrances – caused e.g. by fire, water and mechanical damage – through no fault of DINOL, and all other impediments which, when viewed objectively, were not caused culpably by DINOL, shall be deemed equivalent to force majeure.
5. If a period or date for the delivery of goods or services has been firmly agreed and the agreed period or date is exceeded by more than four weeks as a result of events of the kind set forth under No. 4 above or if, where no fixed date for delivery has been agreed, continuation of the contract would be objectively unreasonable for the Buyer, the Buyer shall have the right to rescind the as yet unperformed part of the contract.
6. The start of a delay in delivery on the part of DINOL shall be determined on the basis of the statutory regulations. In all cases, however, a reminder by the Buyer shall be necessary. If DINOL falls into delay with delivery, the Buyer may claim lump-sum compensation for delay. The lump-sum rate of compensation shall be 0.5% of the net value of the goods for each calendar week or part of a week of delay, though altogether not more than 5% of the net goods value of the goods delivered late. DINOL shall be at liberty to prove that the Buyer sustained either no loss or damage at all or only in a considerably lower amount than the aforesaid lump sum.
7. The rights of the Buyer pursuant to Section IX of these Terms and Conditions and the statutory rights of DINOL in particular in the case of exclusion of the duty to perform (e.g. on grounds of impossibility or unreasonableness of performance and/or cure) shall remain unaffected.

VI. Delivery, passage of risk, delay in acceptance

1. Delivery is effected ex warehouse, which is also the place of performance. On the Buyer's request, the goods will be sent to another place of destination (sales shipment). Delivery is made at the Buyer's expense (Incoterms 2010 EXW). Unless agreed otherwise, DINOL has the right to decide on the mode of shipment (in particular regarding the carrier, method of shipment, packing).
2. Part-deliveries are permitted provided they are not detrimental to the Buyer.
3. Having due regard for the respective interests in each individual case and acting within the scope of reasonableness, DINOL reserves the right, in the case of special productions, to over- or under-supply within the customary limits.
4. The risk of accidental loss or accidental deterioration of the goods shall pass to the Buyer at the latest on hand-over of the goods. In the case of sales shipments, however, the risk of accidental loss and accidental deterioration of the goods and the risk of delay shall already pass on delivery of the goods into the custody of the carrier, freight forwarder or other person or body designated to effect transport. If the Buyer is in delay with acceptance, this shall be deemed tantamount to handover.
5. If the Buyer falls into delay with acceptance or fails to fulfil a duty to assist, or if delivery is delayed for other reasons for which the Buyer is responsible, DINOL shall have the right to claim compensation for the resulting loss or damage, including additional expenses (e.g. warehousing expenses).

VII. Transport packing

1. Returnable packaging provided by DINOL must be returned by the Buyer, carriage paid, in good condition and free of all product remnants, within 6 months from original delivery. If the packing is not returned within the said period or is returned damaged or with product remnants, the costs needed for replacement, repair and/or cleaning will be invoiced to the Buyer.
2. Packing which has become the property of the Buyer may only be re-used in trade when the corporate name,

logos, trademarks and other designations of DINOL have been rendered illegible.

3. The Buyer is responsible for ensuring that transport material and/or packing provided by him is in compliance with the legal requirements and standards, in particular for safe and suitable transport. DINOL is entitled to refuse to load or fill material or packing supplied by the Buyer if the packing or material does not meet the said requirements and standards. In the case of any such refusal, DINOL may not be held liable for the consequences of any delay resulting therefrom.

VII. Proprietary rights

1. The Buyer undertakes to inform DINOL without delay of allegations of proprietary rights of third parties in relation to the products supplied by DINOL. DINOL has the right, but not the duty, to assume the legal defence at its own expense and on its own responsibility.
2. The Buyer warrants that goods and services supplied by it are free of proprietary rights of third parties. In the case of any defects of title, he shall indemnify DINOL and hold it harmless against all claims of third parties except where he is not responsible for the defect of title.
3. DINOL retains title and copyright to all documents or aids such as, in particular, drawings, illustrations, graphics, designs, calculations, descriptions, plans, technical specifications, documentations, data carriers and software programs. Documents and aids of the aforesaid kind may be used for the contractual performance only and may not be made accessible to any third party except with DINOL's express written consent. Software programs made available by DINOL may be used by the Buyer only within the scope of the valid licence regulations.

VIII. Buyer's claims for defects

1. Except as provided otherwise below, the rights of the Buyer in the case of defects of quality or title shall be governed by the provisions of law.
2. The basis for DINOL's liability for defects is above all the agreement made in relation to the nature and quality of the goods. Information, drawings, samples/specimens, technical information and data as well as recommendations for use contained in brochures, catalogues, advertisements, price lists or offer documents, insofar as they have been expressly confirmed by DINOL as binding and effectively incorporated into the contract, count as the agreement on the nature and quality of the goods. Quality warranties are only those which are expressly designated as such by DINOL in the order confirmation. DINOL does not assume any liability for public statements of the manufacturer or any third party (e.g. advertising claims).
3. The Buyer's claims for defects are dependent on the Buyer having complied with his statutory duties to inspect and notify (§ 377 and § 381 HGB). If a defect is found during the inspection or at a later date, DINOL must be notified accordingly without delay in writing. The notification is deemed to have been made without delay if it is made within two weeks, whereby this deadline shall be deemed to have been met if the notification is dispatched before expiry of it. Irrespective of this duty to inspect and notify, the Buyer must give written notification of manifest defects (including incorrect delivery and short delivery) within two weeks from delivery, whereby also in this case the deadline shall be deemed to have been met if the notification is dispatched before expiry of it. If the Buyer fails to duly inspect and/or notify, liability on the part of DINOL for the non-notified defect is barred.
4. If the delivered item is non-compliant, DINOL can first of all choose whether to effect cure through elimination of the defect (remediation) or through the delivery of a defect-free item (replacement). The foregoing shall, however, be without prejudice to DINOL's right to refuse to effect cure in the cases provided for by law.
5. DINOL is entitled to effect the cure which it has a duty to provide dependent on payment of the purchase price, when due, by the Buyer. The Buyer is entitled, on the other hand, to withhold a portion of the purchase price that is reasonable in relation to the defect.
6. The Buyer must allow DINOL the necessary time and opportunity to effect the cure which it has a duty to provide, and in particular to surrender the goods in question for examination purposes. In the case of replacement, the Buyer must return the defective item to DINOL in accordance with the statutory regulations. Cure shall include neither dismantling of the defective item nor renewed installation in cases where DINOL was not originally obligated to install.
7. The expenses necessarily incurred for the purpose of inspection and cure, particularly transport, travel, labour and material costs (but not dismantling and installation costs), will be borne by DINOL if a defect actually exists. If, however, the Buyer's request for remediation of defect proves to have been unjustified, DINOL may demand refund of the resulting costs incurred from the Buyer.

8. In urgent cases, e.g. danger to operating safety or in order to avert disproportionately higher damage, the Buyer has the right to remedy the defect himself and claim refund of the objectively necessary expenses therefor. DINOL must be informed of such self-performance promptly, if possible in advance. The right of self-performance shall not apply if DINOL would have been entitled under statutory regulations to refuse to effect the corresponding cure.
9. If an attempt at cure has failed or a reasonable period of time allowed by the Buyer for cure to be effected has elapsed fruitlessly or the allowance of such time is dispensable under the law, the Buyer may repudiate the purchase contract or reduce the purchase price. No right of repudiation shall exist in the case of a minor defect, however.
10. Claims of the Buyer to compensation or refund of futile expenses shall exist in the cases provided for in Section IX only and are otherwise barred.

IX. Other liability

1. Except as provided otherwise in these Terms and Conditions, including the provisions set forth below, DINOL's liability for breach of contractual and extra-contractual duties shall be governed by the relevant provisions of the law.
2. DINOL may be held liable for damages – irrespective of the legal grounds – in the case of wilful intent and gross negligence. In the case of ordinary negligence, DINOL may only be held liable
 - a) for loss or damage resulting from injury to life, limb or health;
 - b) for loss or damage arising from breach of a material contractual duty (i.e. an obligation without the fulfilment of which the proper performance of the contract would be impossible and on fulfilment of which a party to the contract regularly relies and is entitled to rely); in this case, however, DINOL's liability shall be limited to compensation for loss or damage of a foreseeable, typical kind only.
3. The limitations of liability arising from Subsection 2 shall not apply insofar as DINOL has concealed a defect with intent to deceive or has given warranty for the quality of the goods. The same shall also apply to claims of the Buyer under the German Product Liability Act.
4. The Buyer may only repudiate or terminate the contract on account of a breach of duty which is not manifested in the form of a defect if DINOL is responsible for the breach of duty. A right of the Buyer to terminate the contract at any time (in particular pursuant to § 651 and § 649 BGB) is barred. In all other respects, the preconditions, requirements and legal consequences as provided for in the law shall apply.

X. Product information and instructions, quality characteristics

1. Information, drawings, illustrations, samples/specimens, brochures, technical information and catalogues and other technical data as well as recommendations for use contained in brochures, catalogues, advertisements and price lists or in the documents relating to an offer are without engagement and do not release the Buyer from the duty to examine the goods for their suitability for the intended purposes, processes and applications. They shall only be deemed an integral part of a contract if and insofar as they are expressly confirmed by DINOL as binding. Quality warranties are only those which are expressly designated as such in the order confirmation. Application, use and processing of the purchased goods lie exclusively within the Buyer's sphere of responsibility. DINOL retains title and copyright to illustrations, drawings and other documents. Except with DINOL's consent, they may be used for the contractually intended purpose only and may not be made accessible to any third party.
2. Information and instructions of DINOL relating to the storage and processing and use of the goods must be noted and complied with by the Buyer. DINOL may not be held liable for any loss or damage caused by failure to comply with such information and instructions.
3. Standards and approval regulations have been issued by the official bodies in relation to delivered goods which may be eligible for approval under particular laws, e.g. the "Gesetz über die Versorgung mit Arzneimitteln" [Medicinal Products Supply Act] and the "Bekämpfungsmittelgesetz" [Control Agents Act] and/or similar laws of other countries. If and insofar as the Buyer resells the delivered goods, whether with or without prior further processing, he must, to the extent applicable, provide his own contract partners with this information/these instructions, standards and approval regulations.

XI. Limitation period

1. In deviation from § 438 (1) No. 3 BGB, the general limitation period for claims for defects of quality or title is one year from delivery.
2. Where the goods are a building structure or a thing which has been used in accordance with its customary use for a building structure and has caused the building structure to be defective (building material), however, the limitation

period pursuant to the statutory regulation is 5 years from delivery (§ 438 (1) No. 2 BGB). The special legal provisions relating to the claims of third parties to the return of physical items (§ 438 (1) No. 1 BGB) or on grounds of fraudulent intent on the part of the seller (§ 438 (3) BGB) and to claims in recourse against suppliers in the case of end-delivery to a consumer (§ 479 BGB) shall also remain unaffected.

3. The foregoing limitation periods of sales law shall also apply to contractual and extra-contractual claims for compensation of the Buyer based on a defect in the goods except where application of the regular statutory limitation period (§§ 195, 199 BGB) would, in the particular case, result in a shorter limitation period. The limitation periods of the German Product Liability Act [“Produkthaftungsgesetz”] shall remain unaffected in all cases. In all other cases, the statutory limitation periods only shall apply to claims for compensation of the Buyer pursuant to Section IX.

XII. Confidentiality

1. The Buyer has a duty to treat all confidential information of DINOL received in connection with the business relationship, in particular product formulations, illustrations, drawings etc., as strictly confidential. Such information may be disclosed to third parties only with the prior, express and written consent of DINOL.

2. The obligation of confidentiality shall remain in force indefinitely also after termination of the business relationship. It shall only end if and when and insofar as the information enters the public domain.

XIII. Choice of law and legal venue

1. These business relations and all legal relations between DINOL and the Buyer shall be governed by the law of the Federal Republic of Germany, the application of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods, being thereby barred. The requirements for and effects of the reservation of title pursuant to Section IV shall be governed by the law of the place where the goods are located if, under the provisions of that law, the choice of law in favour of German law is inadmissible or ineffective.

2. If the Buyer is a registered trader within the meaning of the German Commercial Code, a legal entity under public law or a special asset fund organized under public law, the exclusive legal venue – also internationally – for all disputes arising from or in connection with the contractual relationship between the parties shall be the courts having jurisdiction for DINOL’s registered place of business in 32676 Lügde, Germany. DINOL is, however, also entitled to bring suit at the place of performance for the supply obligation.

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