Purchasing Terms of Dresselhaus GmbH & Co. KG

Last revised: August 2021

I. Offer and Contract Conclusion

1. These General Purchasing Terms (TERMS) apply to all our business relationships with our customers ("Purchaser"). The TERMS only apply if the Purchaser is a contractor (Section 14 of the German Civil Code [BGB]), a legal entity under public law or a public law special fund.

2. The TERMS apply in particular to contracts for the sale and / or delivery of movable objects ("goods"). Unless otherwise agreed, the TERMS in the version valid at the time of the Purchaser's order or at least in the version last communicated to them in text form apply as a framework agreement also for similar future contracts, without us having to refer to them again in each individual case.

3. Our TERMS apply exclusively. The Purchaser's deviating, conflicting or supplementary General Terms and Conditions only become part of the contract if and to the extent that we have expressly agreed to their validity. This consent requirement applies in any case, for example even if we carry out the delivery to them without reservation in knowledge of the Purchaser's TERMS.

4. Our offers are subject to change and non-binding unless they are shown as binding. The order of the goods by the purchaser is considered a binding contract offer. The contract is only concluded with our order confirmation, unless a written contract has already been concluded otherwise or the order has been executed without confirmation.

5. When using the online portals made available for registered customers, the contract is also only concluded with our specific order confirmation in text or in writing or through delivery - not with an automatic electronic confirmation of receipt - unless a written contract has already been concluded otherwise or the order has been executed without confirmation. The same applies to orders by the Purchaser via EDI or, in the case of the conclusion of a contract, via eCommerce.

II. Scope of the Obligation to Perform

1. Our offers are non-binding and do not constitute a binding offer unless they are expressly identified as binding or contain a specific acceptance period. The scope of the services is determined by our written order confirmation or, in the case of immediate order execution, the actually delivered goods together with the delivery note.

2. Samples, brochures and drawings on which an order is based are non-binding and therefore do not constitute liability under a guarantee, unless they have been expressly designated as binding and a guarantee is expressly given. Mere statements about the characteristics of goods do not constitute a guarantee.

3. If we deliver a sample or an initial sample and this is approved by the Purchaser, our service is deemed to be a contractual service in accordance with the approved sample. A change in the quality requirements and requests for goods on the part of the Purchaser only has legal effects after properly documented sampling if we agree to the change. Sampling does not exempt the Purchaser from the obligation to check the goods themselves for their suitability for the intended use. The inspection obligations after delivery remain unaffected in any case. The same applies to all other changes to the subject matter of the contract. The corresponding article designation or drawing always takes precedence over initial samples.

4. We are entitled to partial services, provided that these are reasonable for the Purchaser in the circumstances of the individual case. The invoices issued are due regardless of the total delivery.

5. Insignificant short or excess deliveries of up to 10% customary in the trade and industry are considered to be contractual fulfilment and do not entitle the Purchaser to withhold the amount receivable. In particular, we are entitled to deliver the next larger packaging unit and bill for this if the packaging unit requested by the Purchaser is not available. In addition, within the individual packaging units, slight, tolerance-related quantity deviations are permitted for those products that are usually converted into packaging units, using weight-based weighing processes.

6. In the case of an agreed delivery on request, the Purchaser must accept the goods within one year after we have notified them that the goods are ready for dispatch.

III. Price and Payment Conditions

1. The prices apply ex supplier's works. The statutory value added tax as well as packaging, insurance and transport costs are charged additionally. The packaging will not be taken back. If the agreed service time is more than three months after the conclusion of the contract, we reserve the right to change our prices appropriately by giving one month's notice if changes in the procurement costs after the conclusion of the contract occur due to fluctuations in the price of raw materials, utilization of manufacturing capacities, exchange rates, transport costs, collective bargaining agreements, customs duties or comparable cost-driving factors outside our sphere of influence. If the price increases by more than 20%, the Purchaser may withdraw from the contract. The delivery of price list items takes place at the prices of the price list valid on the day of the delivery. We are entitled to invoice the Purchaser for any customs duties, fees, taxes and other public charges for the import.

2. Individually agreed prices that deviate from the currently valid price list require an express written agreement. In particular, these prices only apply to the individually specified scope of articles or call-forward orders and only for the period agreed in writing. After the agreed period has expired, we reserve the right to levy price increases in accordance with Section 1. Insofar as call-forward orders are not designed to be dispatchable, they will be stocked in twelve equal monthly quantities.

3. If we take back delivered goods without the Purchaser having a legal claim, we will charge a restocking fee of 25% of the value of the goods (agreed gross purchase price) for the additional expenses incurred as a result, but at least EUR 15.00. We are entitled to set off this amount against the purchase price that may be reimbursed.

4. For small orders with a goods value of less than EUR 150.00, a small quantity surcharge of EUR 20.00 is levied, provided that no deviating individual agreements exist. In the case of deliveries abroad, a country-specific surcharge for small quantities may be assessed, which is determined based on expenditure.

5. The purchase price is due in accordance with the following regulations and must be paid as follows:

   a) For payment in cash, cheque or bank transfer - receipt or credit to our accounts - within 10 days after receipt of the invoice by the Purchaser.

   b) For contracts with a goods value of more than EUR 5,000.00, we are entitled to request a down payment of 30% of the purchase price. The deposit is due and payable within 10 calendar days after receipt of the invoice by the Purchaser.

c) Upon expiry of a payment period of 10 days from receipt, the Purchaser shall be in default.

6. During the period of default, the purchase price is subject to interest at the applicable statutory default interest rate. We reserve the right to assert further damage caused by default. Our claim to the commercial maturity interest (Section 353 of the German Commercial Code [HGB]) remains unaffected.

7. In the event of non-compliance with the terms of payment or in the event of circumstances that become known to us after the conclusion of the contract and which hinder the creditworthiness of the Purchaser from a banking perspective, all claims become due immediately after a reminder notice. In this case, we are entitled to carry out outstanding deliveries and services only against advance payment or the provision of security, or withdraw from the contract after a reasonable grace period or demand compensation instead of the payment.

8. If the payment of the purchase price owed is not made despite the fact that it has become due, data will be transmitted to credit agencies or service providers for cooperating with us under the conditions of the GDPR for the management of amounts receivable.

9. If, on the basis of a SEPA direct debit mandate of the Purchaser, we are entitled to collect claims against the Purchaser by direct debit, the Purchaser agrees that we may provide advance information (Pre- Notification) about this to them no later than 3 days before the date of the intended collection of a SEPA direct debit (execution date).

   Setting off against any counterclaims contested by us that are not ready for decision and not established as final and absolute is not permitted. The same applies to a right of retention.

IV. Deliveries, Delivery Time, Default in Delivery

1. Delivery times are always quoted as being prospective, even if this is not specifically mentioned. Delivery presupposes the timely and proper fulfilment of the Purchaser's obligations. The plea of the unfulfilled contract remains reserved.

2. In the event of default in acceptance or any other culpable breach of duty to cooperate on the part of the Purchaser, we are entitled to compensation for the resulting damage, including any additional expenses. We reserve the right to assert further claims. In this case, the risk of accidental loss or accidental deterioration of the goods is transferred to the Purchaser at the time of the default in acceptance or the other breach of duty to cooperate.

3. If we cannot meet binding delivery deadlines for reasons for which we are not responsible (unavailability of the service), we will inform the Purchaser of this without undue delay and at the same time notify the prospective new delivery deadline. If the service is not available within the new delivery period, we are entitled to withdraw from the contract in whole or in part; we will reimburse any consideration already provided by the Purchaser without undue delay. A case of the unavailability of the service in this sense is in particular the late delivery by our supplier if we have concluded a congruent hedging transaction, neither we nor our supplier are at fault or we are not obliged to procure in individual cases.

4. Serious events, such as, in particular, force majeure, labour disputes, unrest, armed conflict or terrorist disputes and pandemics, which have unforeseeable consequences for the performance of the service, also and in particular if suppliers are affected, release the contracting parties from their performance obligations for the duration of the disruption and to the extent of their effect, even if they are in default. This does not mean that the contract is automatically terminated, unless the delivery subsequently becomes unreasonable for one of the contracting parties due to such events. In particular, the following sets of circumstances apply to us as unreasonable in the above sense:

   (a) If we request more than six sub-suppliers from the supplier base for a commercial catalogue or standard product and do not receive an offer that allows a contractual service.

   (b) If the usual use, the Purchaser's specific purpose and / or the specification-compliant manufacturing process of a delivery item justifies a specific entitlement to the performance of the sub-supplier and we do not have available any demonstrably qualified upstream suppliers which are consequently approved for the product range concerned for the purpose of the alternative procurement in our supplier base.

   (c) If an alternative procurement to fulfil the contract results in a price increase on the procurement side, which means that the new procurement price is more than 5% above the previously agreed price between the Purchaser and us. The contracting parties also agree to adapt their obligations to the changed circumstances in good faith in the event of such an obstacle. In any case, the contracting parties must inform each other without undue delay after becoming aware of such an obstacle or event.

5. If a delivery or service date or a delivery or service period has been agreed or is held out in prospect by us and the agreed delivery or service date or the delivery or service period is thereupon exceeded by more than two weeks in the case of Dresselhaus catalogue products or four weeks in the case of non-Dresselhaus catalogue products due to events according to the above clauses 3 and 4 or if adherence to the contract is objectively unreasonable for the Purchaser in the case of a non-binding service date, the Purchaser is entitled to withdraw from the contract due to the part that has not yet been fulfilled.

6. When operating hardware-based system delivery concepts with continuous subsequent delivery, the occurrence of default, in the absence of a deviating individual agreement, further presupposes that this is not due to an extraordinary increase in demand from the Purchaser. The latter is given when the ordered quantity exceeds 30% of the floating annual average on a monthly basis and / or a system design (system / number of containers, compartment allocation) agreed on the basis of previous consumption is not able to meet the increase in demand. In order to prevent such availability problems with system delivery concepts, the Purchaser must notify us of foreseeable increases in demand at an early stage in order to enable a system adjustment.

7. If we are in default of delivery, the Purchaser may demand lump-sum compensation for the damage caused by default. The lump-sum for damages for each completed calendar week of the default amounts to 0.5% of the net purchase price, but no more than 5% of the net purchase price of the delayed goods. We reserve the right to provide documentary evidence that the Purchaser has incurred no damage or only significantly less damage than the above lump-sum amount. If the Purchaser asserts lump-sum compensation caused by default on the basis of this provision, this will be taken into account based on an additional claim made in accordance with Section IX. of these TERMS.

V. Transfer of Risk and Taking Receipt of the Goods

1. When the goods are handed over to a forwarding agent, carrier or collector, but no later than when they leave our company, the risk is transferred to the Purchaser, including when transporting them with our means of transport.

VI. Retention of Title

1. We retain title to the sold goods until the complete payment of all of our current and future amounts receivable under the purchase agreements and an ongoing business relationship (secured claims).

2. The goods subject to retention of title may not be pledged to third parties or assigned as security before the secured claims have been paid in full. The Purchaser must notify us without undue delay in writing if an application is filed to open insolvency proceedings or if third parties (e.g., attachments) have access to the goods belonging to us.

3. If the Purchaser acts in breach of contract, in particular if the purchase price is not paid, we are entitled to withdraw from the contract in accordance with the statutory provisions and / or demand the return of the goods due to the retention of title. The request for surrender does not at the same time contain the declaration of withdrawal; rather, we are entitled only to demand the goods and reserve the right to withdraw from the contract. If the Purchaser does not pay the purchase price due, we may only assert these rights if we have previously unsuccessfully set the Purchaser a reasonable deadline for payment or if such a deadline may be dispensed with according to the statutory provisions.

4. Until further notice, the Purchaser is authorized to resell and / or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions also apply.

    a) The retention of title extends to the full value of the products resulting from the processing, mixing or commingling of our goods, whereby we are deemed to be the manufacturer. If, in the case of processing, commingling or combining with goods of third parties, their ownership rights remain, so we will acquire co-ownership in the ratio of the invoice values of the processed, commingled or combined goods. Otherwise, the same applies to the resulting product as to the goods delivered subject to retention of title.

    b) The Purchaser hereby assigns to us the claims against third parties arising from the resale of the goods or of the products in total or in the amount of our possible co-ownership share in accordance with the preceding paragraph as security. We accept the assignment. The Purchaser's obligations indicated in paragraph 2 also apply with regard to the assigned claim.

    c) The Purchaser remains authorized to collect the amount receivable in addition to us. We undertake not to collect the amount receivable as long as the Purchaser fulfils their payment obligations to us, there is no defect in their service and we do not assert the retention of title by exercising a right in accordance with paragraph 3. However, if this is the case, we may request that the Purchaser disclose to us the assigned amounts receivable and their debtors, provide us with all details required for the collection, hand out the corresponding supporting and notify the assignment to the debtor (third party). Moreover, we are, in this case, entitled to revoke the Purchaser's authority to continue to dispose of and process the goods subject to retention of title.

    d) If the realizable value of the securities exceeds our claims by more than 10%, we will release securities of our choice upon request by the Purchaser.

VII. Purchaser's Claims for Defects

1. Warranty claims may be asserted within 12 months from the transfer of risk. This does not affect special statutory regulations on the statute of limitations (e.g., Section 438 Paragraph 1 No. 2b BGB).

2. The statutory provisions only apply to the Purchaser's rights in the event of material defects and defects of title (including incorrect and short deliveries), unless otherwise specified. In all cases, the statutory provisions remain unaffected for the final delivery of the unprocessed goods to a consumer, even if they have processed them (supplier recourse according to Sections 478 BGB). Claims from supplier recourse are excluded if the defective goods have been further processed by the Purchaser or another contractor, e.g., through installation in another product.

3. The basis of our liability for defects is primarily the agreement made on the quality of the goods. All product descriptions and manufacturer information that are the subject of the individual contract or were made public by us at the time of the conclusion of the contract apply as an agreement on the quality of the goods.

4. If the quality has not been agreed upon, it must be assessed in accordance with the statutory regulation whether or not there is a defect (Section 434, Paragraph 1, Clauses 2 and 3 BGB). However, we do not assume any liability for public statements by the manufacturer or other third parties (e.g., advertising statements) that the Purchaser has not pointed out to us as being decisive for them.

5. As a matter of principle, we are not liable for defects that the Purchaser was aware of when the contract was concluded or that were not known due to gross negligence (Section 442 BGB). Furthermore, the Purchaser's claims for defects require that he has complied with his statutory inspection and notification obligations Sections 377, 381 HGB). In the case of building materials and other goods intended for installation or other processing, an examination must always be carried out immediately before processing. If a defect becomes apparent during the delivery, the inspection or at any later point in time, we must be notified of this without undue delay in writing. Otherwise, our liability for defects that are not reported in good time or properly is excluded in accordance with the statutory provisions.

6. If the delivered item is defective, we may first choose whether we provide supplementary performance by eliminating the defect (subsequent improvement) or by delivering a defect-free item (replacement delivery). Our right to refuse supplementary performance subject to the legal requirements remains unaffected.

7. The Purchaser must give us the time and opportunity necessary for the supplementary performance owed, in particular to hand over the rejected goods for inspection purposes. In the event of a replacement delivery, the Purchaser must return the defective item to us in accordance with the statutory provisions.

8. We shall bear or reimburse the expenses required for the purpose of the inspection and supplementary performance, in particular transport, travel, labour and material costs, in accordance with the statutory provisions, if there is actually a defect. Otherwise, we could demand that the Purchaser reimburse the costs arising from the unjustified request for the rectification of defects (in particular testing and transport costs), unless the lack of defect was not discernible for the Purchaser.

9. In the case of a series defect, the claim for reimbursement of the expenses required for installation and removal is limited to EUR 50,000.00 per defective series, unless the product concerned is based on an initial sample as part of a production process and product approval process in accordance with VDA Volume 2 or PPAP Handbook AIAG has been supplied to the Purchaser or the Purchaser has otherwise credibly demonstrated the concern of higher costs prior to the conclusion of the contract. In the latter cases, the reimbursement of expenses is limited to a maximum of EUR 5 million per defective series. Statutory defences and objections to claims for supplementary performance by the Purchaser remain with us regardless of the above provisions. A series defect is present if a certain defect of the same type is found for individual parts from one or more of our delivery items, which due to its cause, type and nature is present in the entire delivery item/s.

VIII. Exclusion from Liability for Galvanic Surfaces

1. The contracting parties are aware of the various causes and problems of a hydrogen-reduced brittle fracture, especially in the case of electroplated, high-strength or case-hardened articles. We expressly point out that problems can occur in the form of hydrogen-induced brittle fractures (hydrogen embrittlement) even if all due care required in transportation is observed with electroplated articles with a tensile strength of more than 1000 N / mm2 (steel grades of 10.9 and higher) or core and surface hardness from 320 HV. In this respect, damage caused by hydrogen-induced brittle fractures is not subject to the warranty and liability on our part, provided that the procedure in accordance with DIN EN ISO 4042 has been observed and we have not caused the defect of the goods intentionally or through gross negligence or the Purchaser asserts damage arising from injury to health, body or life.

IX. Other Liability

1. In the event of wilful intent or gross negligence on our part or on the part of our representatives or vicarious agents, we are liable in accordance with the statutory rules; also in the case of culpable breach of essential contractual obligations. Unless there is an intentional breach of contract, our liability for damage is limited to the foreseeable, typically occurring damage in the amount of EUR 100,000.00 per liability case. Liability beyond this amount exists in cases in which the parties have agreed on a purpose and the Purchaser has quantified the resulting risk of damage at least in an approximate amount and, if applicable, in the amount of this underlying unit of measure. If this information is plausible, our liability increases by the amount determined and confirmed in this way.

2. Liability for culpable injury to life, body and health as well as liability under the Product Liability Act [Produkthaftungsgesetz] remains unaffected.

3. Unless expressly regulated otherwise above, our liability is excluded.

X. Spare Parts

1. Insofar as we are obliged to deliver spare parts to the Purchaser in the case of customer-specific special parts or articles which, at the time of the order, do not or no longer belong to our catalogue range after the end of a series delivery, we reject a price binding for the spare parts on the part of the Purchaser. In particular, we are not obliged to continue to deliver spare parts at the offer price of the series parts after the series supply has expired. Pre-determined prices for spare parts always require an individual agreement between us and the Purchaser.

2. We are not obliged to deliver every quantity of spare parts ordered by the Purchaser. Rather, when ordering spare parts, the Purchaser must purchase and pay for minimum quantities based on the production lot size of our sub-supplier.

XI. General Provisions

1. The place of performance is the registered office of the delivering branch. The place of jurisdiction is Herford. However, we have the right to sue the Purchaser at any other permissible place of jurisdiction.

2. The law of the Federal Republic of Germany applies to the exclusion of the United Nations Convention on the International Sale of Goods (UN Sales Convention) and to the exclusion of the law governing the conflict of laws.