

# **AVB for Dorfner Schleifmittelwerk GmbH**

Status - 18.01.2023

## **General Terms and Conditions of Sale**

### **§ 1 Scope of application, form**

(1) These General Terms and Conditions of Sale (GTCS) shall apply to all our business relationships with our customers („Buyer“) and Dorfner Schleifmittelwerk GmbH („Seller“). The GTCS shall only apply if the Buyer entrepreneur (§ 14 BGB) is a legal entity under public law or a special fund under public law.

(2) The GTCS apply in particular to contracts for the sale and/or delivery of movable goods („Goods“), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers (Sections 433 suppliers (§§ 433, 650 BGB). Unless otherwise agreed, the GTCS shall apply in the version valid at the time of the Buyer's order or in any case in the version last communicated to him in writing as a framework agreement. They shall also apply to similar future contracts without the Seller having to refer to them again in each individual case.

(3) Our GTCS apply exclusively. Any deviating, conflicting or supplementary General Terms and terms and conditions of the Buyer shall only become part of the contract if and insofar as the Seller has expressly agreed to their validity. This requirement of consent shall apply in any case, for example, even if the Buyer refers to his General Terms and Conditions in the context of the order and the Seller does not expressly object to this.

(4) Individual agreements (e.g. framework supply agreements, quality assurance agreements) and information in our order confirmation shall take precedence over the GTCS. In case of uncertainty, trade clauses are in accordance with the Incoterms® published by the International Chamber of Commerce in Paris (ICC) in the version valid at the time of conclusion of the contract.

(5) Legally relevant declarations and notifications by the Buyer in relation to the contract (e.g. deadline, notice of defects, withdrawal or reduction) must be made in writing. Statutory formal requirements and further supporting documents, in particular in cases of doubt regarding the legitimacy of the party making the declaration remain in effect.

(6) References to the validity of statutory provisions are for clarification purposes only. Even without such clarification, the statutory provisions shall apply unless they are directly amended or expressly excluded in these GTCS.

### **§ 2 Conclusion of contract**

(1) Our offers are subject to change and non-binding. This shall also apply if the Seller provides the Buyer with catalogs, technical documentation (e.g. drawings, plans, calculations, costings, references to DIN standards) to DIN standards), other product descriptions or documents - also in electronic form - to which the Seller reserves property rights and copyrights.

(2) The buyer's order of goods shall be deemed as a binding contractual offer. Unless otherwise specified in the order, the Seller is entitled to accept this contractual offer within 14 days of receipt. Acceptance may be made either in written form (e.g. through order confirmation or notification of delivery date) or by delivering the goods to the buyer.

(3) Goods with special dimensions or technical specifications are always ordered on the basis of a specified offer made in response to the Buyer's request. Such offers may be accepted by the Buyer within a period of 14 days by placing a binding order.

(4) The determination of a precise production quantity is excluded, since a precise calculation of the scrap occurring during production is not technically possible. The Seller may deliver a quantity that exceeds or falls short of the contractually agreed amount within a tolerance range of +/- 10%. The buyer is also obliged to pay for and accept the excess quantity in accordance with the contractually agreed unit price.

A shortfall of 10% in the ordered quantity does not constitute a short delivery. This shall not apply if the delivery of an exact quantity was expressly agreed upon conclusion of the contract.

### **§ 3 Delivery time and delivery delay**

(1) Upon acceptance of the order, the Seller will inform the Buyer of the expected calendar week in which the goods will likely leave the Seller's premises. The exceeding of the communicated estimated delivery time does not entitle the Buyer to withdraw from the contract.

(2) The Buyer's rights under § 8 of these terms and conditions and the statutory rights, particularly in cases where the obligation to perform services is excluded (e.g. due to impossibility or unreasonableness of the service and/or subsequent fulfillment), remain unaffected.

### **§ 4 Delivery, Transfer of Risk, Acceptance, Delay of Acceptance**

(1) Delivery is made from the warehouse, unless expressly agreed otherwise. Upon the buyer's request and at their expense, the goods will be shipped to a different destination (shipment purchase). Unless otherwise agreed, the Seller is entitled to determine the method of shipment (including the transport company, shipping route, and packaging).

(2) The risk of accidental loss or deterioration of the goods transfers to the buyer at the latest upon handover. However, in the case of a shipment purchase, the risk of accidental loss or deterioration of the goods, as well as the risk of delay, passes to the buyer upon delivery of the goods to the carrier, freight forwarder, or any other person or entity designated to carry out the shipment.

(3) The Seller is entitled to make partial deliveries. The Buyer will bear additional costs of the shipment if a delivery is made at the explicit request of the Buyer.

(4) If the Buyer delays acceptance, fails to cooperate, or delays delivery for other reasons attributable to the buyer, the Seller is entitled to claim compensation for the resulting damages, including additional expenses (e.g. storage costs).

### **§ 5 Prices and terms of payment**

(1) Unless otherwise agreed in individual cases, the Seller's prices at the time of conclusion of the contract, ex works plus statutory value added tax, are valid.

(2) In the case of sale by delivery to a place other than the place of performance (§ 4 para. 1), the Buyer shall bear the transportation costs ex warehouse and the costs of any transportation insurance requested by the Buyer. Any customs duties, fees, taxes and other and other public charges shall be borne by the Buyer.

(3) The purchase price is due and payable within 14 days of invoicing. However, the Seller is entitled at any time, even in the context of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. The Seller shall declare a corresponding restriction at the latest with the order confirmation.

(4) The Buyer is in default upon expiry of the given or aforementioned payment deadline. Upon default, interest to the the purchase price at the respective applicable statutory default interest rate will be charged. The Seller reserves the right to claim further damages for default.

(5) Outstanding payments from previous orders establish a right of retention.

(6) The Buyer is only entitled to set-off or retention rights to the extent that their claim has been legally established or is undisputed. In the event of defects in the delivery, the Buyer's counterclaims, in particular pursuant to § 7 (6) sentence 2 of these General Terms and Conditions, remain unaffected.

(7) If it becomes apparent after the conclusion of the contract (e.g. through payment default with previous claims) that the Seller's claim for the purchase price is jeopardized by the Buyer's lack of solvency, the Seller is entitled, in accordance with the statutory provisions, to refuse performance and, if necessary, to withdraw from the contract (§ 321 of the German Civil Code).

## **§ 6 Call-off Orders**

(1) In the case of call-off orders, the buyer is obligated to call off the agreed quantity of goods at the agreed call-off times or within the agreed call-off periods. The Seller is entitled to invoice the agreed call-off quantities at the agreed call-off times or upon the expiration of an agreed call-off period, even if the Buyer does not initiate the call-off. A call-off of quantities before the agreed call-off time or before the start of the agreed call-off period is only possible with the Seller's written consent.

(2) The Seller is entitled to deliver the agreed call-off quantities six months after the expiration of the call-off period.

(3) Any changes to the specifications of goods that have not been called off can only be made with the Seller's written consent and only with the Buyer's approval of any price adjustments.

(4) Section 2 (4) applies accordingly.

## **§ 7 Retention of Title**

(1) The Seller retains ownership of the sold goods until full payment of all current and future claims from the purchase contract and ongoing business relationship (secured claims) are made by the Buyer.

(2) The goods subject to retention of ownership may not be pledged to third parties or transferred as security before full payment of the secured claims. The Buyer must notify the Seller immediately in writing if an application for the opening of insolvency proceedings is filed or if there are any third-party actions (e.g. claims) against the goods owned by us.

(3) In the event of the Buyer's contractual breach, particularly non-payment of the due purchase price, the Seller is entitled to withdraw from the contract and/or demand the return of the goods based on the retention of title, in accordance with the statutory provisions. The demand for return does not automatically imply a declaration of withdrawal; rather, the Seller is entitled to merely demand the return of the goods and reserve the right to withdraw. The Seller may only exercise these rights if the Buyer has previously been given an adequate payment deadline which has been met without success or if such a deadline is not required according to statutory provisions.

(4) Until revoked as outlined in (c) below, the Buyer is granted authorization to resell and/or utilize the goods under retention of title in the regular course of business. In this case, the following provisions shall apply additionally.

(a) The retention of title extends to the full value of the products resulting from the use of the Seller's goods, whereby The Seller is deemed to be the manufacturer. If the property rights of third-party goods exist when used with the Seller's goods, the Seller acquires co-ownership in proportion to the invoice values of the goods used. In addition, the same terms apply to the resulting product as to the goods delivered under retention of ownership.

b) The Buyer hereby transfers, as security, all claims arising from the resale of the goods or the product to the Seller, either in their entirety or up to the extent of the Seller's share of potential co-ownership as detailed in the preceding paragraph. The Seller acknowledges and accepts this transfer. The obligations of the Buyer outlined in paragraph 2 also extend to the assigned claims.

(c) The Buyer is authorized to collect the claim alongside the Seller. The Seller agrees not to collect the claim as long as the Buyer fulfills their payment obligations, maintains their ability to perform, and the Seller does not exercise the retention of ownership by invoking a right under paragraph 3. However, if this situation arises, the Seller may request that the Buyer disclose the assigned claims and their debtors, provide all necessary collection information, furnish the relevant documents, and notify the debtors (third parties) of the assignment. Additionally, in such instances, the Seller reserves the right to revoke the Buyer's authority to further sell and process the goods subject to retention of title.

(d) If the realizable value of the securities exceeds the Seller's claims by more than 10%, upon the Buyer's request, the Seller will release securities of their choosing.

## § 7 Buyer's Claims for Defects

(1) The Buyer's rights in case of defects in quality and title (including incorrect and partial delivery as well as improper assembly/installation or faulty instructions) are subject to statutory provisions unless otherwise stipulated below.

(2) The basis of the Seller's liability for defects primarily relies on the agreements made regarding the quality and intended use of the goods (including accessories and instructions). All product descriptions and manufacturer specifications that are part of the individual contract or were publicly available from the Seller (especially in catalogs or on the Seller's website) at the time of contract conclusion are considered quality agreements in this sense. If the quality has not been agreed upon, it shall be determined according to statutory regulations whether a defect exists or not (§ 434 para. 3 BGB).

(3) In the case of goods containing digital elements or other digital content, the Seller is obligated to provide and, if necessary, update the digital content only if expressly agreed upon in a quality agreement according to paragraph 2. The Seller does not assume liability for public statements made by the manufacturer or other third parties in this regard.

(4) The Seller is not generally liable for defects known to the Buyer at the time of contract conclusion or not known due to gross negligence (§ 442 BGB). Furthermore, the Buyer's claims for defects require compliance with their statutory duty to inspect and notify (§§ 377, 381 HGB). For building materials and other goods intended for installation or further processing, an inspection must be conducted immediately before processing in any case. If a defect becomes apparent during delivery, inspection, or at any later time, immediate notification in written form must be provided to us. In any case, obvious defects must be reported within three working days of delivery, and defects not detectable during inspection must be reported within the same period from discovery, in written form. If the Buyer fails to conduct a proper inspection and/or defect notification, our liability for defects not or not timely or properly notified is excluded according to statutory provisions. This exclusion also applies to goods intended for installation, attachment, or installation, even if the defect becomes apparent after such processing due to a breach of these duties; in this case, the Buyer has no claims for reimbursement of corresponding costs („removal and installation costs“).

(5) If the delivered item is defective, the Buyer may initially choose whether the Seller provides subsequent performance by remedying the defect (rectification) or by delivering a defect-free item (replacement). If the type of subsequent performance chosen by the Seller is unreasonable for the Buyer in an individual case, they may reject it. The Seller's right to refuse subsequent performance under the statutory conditions remains unaffected.

(6) The Seller is entitled to make subsequent performance conditional on the Buyer paying the due purchase price. However, the Buyer is entitled to withhold a reasonable portion of the purchase price in proportion to the defect.

(7) The Buyer must grant the Seller the necessary time and opportunity for subsequent performance, especially by handing over the disputed goods for inspection purposes. In the case of replacement delivery, the Buyer must return the defective item to the Seller upon their request in accordance with statutory provisions; however, the Buyer has no right to demand a return. Subsequent performance does not include the removal, disposal, or uninstallation of the defective item nor the installation or attachment of a defect-free item if the Seller was not originally obligated to provide these services; the Buyer's claims for reimbursement of corresponding costs („removal and installation costs“) remain unaffected.

(8) The Seller bears or reimburses the expenses necessary for inspection and subsequent performance, particularly transport, travel, labor, and material costs, as well as any removal and installation costs, in accordance with statutory regulations and these terms and conditions if a defect actually exists. Otherwise, the Seller may demand reimbursement of the costs incurred from the Buyer's unjustified request for defect rectification if the Buyer knew or negligently did not know that no defect actually exists.

(9) In urgent cases, such as endangerment of operational safety or to prevent disproportionate damage, the Buyer has the right to rectify the defect themselves and demand reimbursement from the Seller for the warranted expenses incurred. The Seller must be notified immediately, if possible beforehand, of such self-performance. The right of self-performance does not apply if the Seller would be entitled to refuse corresponding subsequent performance under statutory provisions.

(10) If a reasonable deadline set by the Buyer for subsequent performance has expired unsuccessfully or is dispensable under statutory provisions, the Buyer may, according to statutory regulations, withdraw from the purchase contract or reduce the purchase price. However, there is no right of withdrawal for an insignificant defect.

(11) The Buyer's claims for damages or reimbursement of futile expenses exist only in accordance with § 8 and are otherwise excluded.

## **§ 8 Other Liabilities**

(1) Unless otherwise provided in these terms and conditions including the following provisions, the Seller shall be liable for breaches of contractual and non-contractual obligations in accordance with statutory provisions.

(2) The Seller shall be liable for damages – regardless of the legal basis – within the scope of liability for intent and gross negligence. In cases of ordinary negligence, the Seller shall only be liable, subject to statutory limitations of liability (e.g., due diligence in its own matters; insignificant breach of duty),

a) for damages resulting from injury to life, body, or health, b) for damages resulting from a breach of a significant contractual obligation (an obligation whose fulfillment enables the proper execution of the contract and on which the contractual partner regularly relies or may rely); in this case, however, the Seller's liability is limited to compensation for the foreseeable, typically occurring damage.

(3) The liability limitations arising from paragraph 2 also apply to third parties as well as in cases of breaches of duty by individuals (also to their benefit) for which the Seller is liable under statutory provisions. They do not apply to the extent that a defect has been fraudulently concealed or a warranty for the quality of the goods has been assumed, and for claims of the Buyer under the Product Liability Act.

(4) The Buyer may only rescind or terminate the contract due to a breach of duty that does not consist of a defect if the Seller is responsible for the breach of duty. The Buyer's right to terminate the contract at will (especially pursuant to §§ 650, 648 BGB) is excluded. Otherwise, statutory conditions and legal consequences apply.

## **§ 9 Limitation of Actions**

(1) Deviating from § 438 para. 1 No. 3 BGB, the general limitation period for claims arising from defects in quality and title is one year from delivery. If an acceptance has been agreed upon, the limitation period begins with acceptance.

(2) If the goods are a building or an item that has been used according to its usual purpose for a building and has caused its defectiveness (building material), the limitation period pursuant to statutory regulations is 5 years from delivery (§ 438 para. 1 No. 2 BGB). Other statutory special provisions on limitation periods (especially § 438 para. 1 No. 1, para. 3, §§ 444, 445b BGB) remain unaffected.

(3) The aforementioned limitation periods under sales law also apply to contractual and non-contractual claims for damages by the Buyer arising from a defect in the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would result in a shorter limitation period in an individual case. The Buyer's claims for damages under § 8 para. 2 sentence 1 and sentence 2 (a) as well as under the Product Liability Act shall only be subject to statutory limitation periods.

## **§ 10 Choice of Law and Jurisdiction**

(1) German law, excluding the UN Convention on Contracts for the International Sale of Goods, shall apply to these terms and conditions and the contractual relationship between the Seller and the Buyer.

(2) If the Buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law, or a special public fund, the exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the Seller's place of business in Wuppertal. The same applies if the Buyer is an entrepreneur within the meaning of § 14 of the German Civil Code. However, the Seller is also entitled to file a lawsuit at the place of performance of the delivery obligation according to these terms and conditions or any prior individual agreement, or at the general place of jurisdiction of the Buyer. Mandatory legal provisions, especially regarding exclusive jurisdictions, remain unaffected.