



General Terms and Conditions of Sale

1. Applicability of the Terms and Conditions

1.1 The present General Terms and Conditions of Sale (Terms) apply to all business relations between Dcubed GmbH, Burgweg 6, 82110 Germering (hereinafter referred to as "Seller") and its customers (hereinafter referred to as "Customer"). These Terms apply only if the Customer is a businessperson, a legal entity under public law or a special fund under public law. The Seller does not enter into business relations with consumers.

1.2 These Terms apply in particular for sales and/or deliveries of movable objects (hereinafter referred to as "Goods"), regardless of whether Seller manufactures the Goods itself or purchases them from other suppliers. The relevant applicable version of the Terms applies as framework agreement also to future contracts for the sale and/or delivery of movable objects with the same Customer without the Seller having to make express reference to this fact in each individual case; the Seller will inform the Customer in case of changes to these Terms without delay.

1.3 These Terms of Seller apply exclusively. Deviating, conflicting or supplementary terms of business of the Customer do not become part of the contract unless and until the Seller expressly agrees to their application. These Terms apply in every case, i.e. even if the Seller delivers without reservations to the Customer while being aware of the Customer's terms and conditions of business.

1.4 Individual agreements made with the Customer in the individual case (including collateral agreements, addenda, and amendments) always take priority over these Terms. Regarding the contents of such individual agreements a written contract or the written confirmation of the Seller shall be authoritative.

1.5 Declarations and notifications of legal relevance to be given by the Customer to the Seller after conclusion of the contract (e.g. setting of deadlines, notices of defects, declaration of withdrawal or reduction) must be in writing (written form or electronic form) to be valid.

1.6 References to the application of statutory provisions have clarifying effect only. Accordingly, the statutory regulations apply even without such clarification, unless they are modified or expressly excluded in these Terms

2. Conclusion of Contract

2.1 Offers from the Seller are not binding and without obligation. This shall also apply if the Seller provides to the Customer catalogues, technical documentations (e.g. drawings, plans, calculations, accounts, references to DIN-standards), other product descriptions or records – also in electronic form – regarding which the Seller reserves all proprietary rights and copyrights. Changes in construction, design and color vis-à-vis the technical documentation and product descriptions contained in other documents which are based on technical improvement or legal requirements are reserved to the extent such changes are not essential or otherwise unreasonable for the Customer.

2.2 Orders for the Goods made by the Customer are deemed to be a binding offer of contract. Unless otherwise stipulated in the order, the Seller is entitled to accept this offer within two (2) weeks from the date of receipt thereof.



2.3 The acceptance may be declared either in writing (e.g. by an order confirmation) or by means of delivery of the Goods to the Customer.

3. Delivery Period and Default

3.1 The delivery period will be agreed upon individually or specified by Seller in the acceptance of the order. If this should not be the case the delivery period will be four (4) weeks from the date of conclusion of the contract.

3.2 If, for reasons other than those for which the Seller is responsible for, the Seller is unable to adhere to the agreed delivery dates (unavailability of performance) Seller will notify the Customer accordingly without delay while at the same time informing the Customer of the estimated new delivery period. If performance is also not available within the new delivery period, then Seller is entitled to withdraw from the contract partially or completely; any consideration already received from the Customer will be refunded to Customer without delay. Unavailability of performance within this meaning shall be deemed to have occurred in particular in the case of late delivery from reliable suppliers of the Seller, if the Seller concluded a congruent covering transaction and the Seller is not at fault or the Seller is not obliged to procurement in the individual case.

3.3 Occurrence of default in delivery by the Seller is determined according to the statutory provisions. In any case the Customer is obliged to issue a reminder. If the Seller gets into default and the Customer suffers damage therefrom, the Customer may demand liquidated damages for its damage caused by default. The liquidated damages amount to 0.5 % of the net price (delivery value) per completed calendar week, however, overall not more than 5% of the delivery value of the Goods delivered with delay. The Seller shall be entitled to prove that no or only substantially lower damage than the aforementioned liquidated damages has occurred.

3.4 The rights of the Customer according to clause 8 of these Terms and Seller's statutory rights, in particular in case of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or supplementary performance) remain unaffected.

4. Delivery, Passing of Risk

4.1 Delivery is made ex stock which also is the place of performance. At the request and expense of the Customer the Goods may be delivered to a place other than the place of performance ("Sale by Dispatch"). Unless otherwise agreed, Seller is entitled to determine the type of delivery (transport company, dispatch route, packaging).

4.2 The risk of accidental loss or deterioration of the Goods passes to the Customer at the latest at the time of handing over of the Goods to the Customer. In case of Sale by Dispatch the risk of accidental loss or deterioration of the Goods as well as the risk of delay passes at the time of dispatch of the Goods to the freight forwarder, carrier or to another person or institution appointed to carry out the dispatch. If an acceptance is agreed, it shall be decisive for the passing of risk. Statutory provisions on contracts for work and labor apply accordingly for an agreed acceptance. Handing over or acceptance shall be deemed to have occurred if the Customer gets into default with acceptance.

4.3 If the Customer gets into default with acceptance or if he fails to perform an act of cooperation or if delivery is delayed for other reasons the Customer is responsible for, the Seller is entitled to demand



compensation of damages resulting there from including additional expenses (e.g. expenses for storage). In any case the Seller will charge a lump sum compensation in the amount of the costs of storage customary at the respective place, commencing with the delivery time respectively – in the absence of a delivery time – with the notice of the readiness for dispatch of the Goods. If the Customer cancels the contract without cause the Seller is entitled to demand 20 % of the gross order value as liquidated damages (damages in lieu of performance). The proof of a higher damage and statutory claims of the Seller (in particular additional expenses, reasonable compensation and termination) remain unaffected; however, liquidated damages are to be credited against further monetary claims. The Customer is entitled to prove that no or only substantially lower damage than the aforementioned liquidated damages have occurred.

5. Price, Terms of Payment

5.1 Unless agreed otherwise the purchase prices of the Seller effective at the time the contract is concluded shall apply, namely ex stock plus VAT.

5.2 In the case of Sale by Dispatch (Clause 4.1) the Customer shall bear the costs of transport and storage and the costs of an insurance of the transport if an insurance is required by the Customer. The Customer shall bear any customs duties, fees, taxes and other public levies. Seller will not take back transport packaging and all other packaging according to packaging regulations, they become property of the Customer; this shall not apply to pallets.

5.3 Unless otherwise agreed, the purchase price is due for payment within fifteen (15) calendar days from the invoice date and delivery, respectively acceptance, of the Goods.

5.4 The Customer shall be in default with payment if the aforementioned period for payment is exceeded. During default the purchase price is subject to default interest in accordance with the statutory interest rate. Seller reserves all rights to claim further damages resulting from default. Seller's claims for commercial maturity interest (§ 353 German Commercial Code - HGB) against merchants remain unaffected.

5.5 The Customer may exercise a right of retention or set-off only on account of receivables or claims of the Customer that are undisputed or have final and legally binding effect. In case of defects of the delivered Goods counterclaims of the Customer, in particular those according to the second sentence of clause 7.6 of these Terms remain unaffected.

5.6 Insofar as circumstances arise after conclusion of the contract which appear to put the creditworthiness of the Customer in doubt (e.g. filing for initiation of insolvency proceedings), the Seller is, in accordance with the statutory provisions, entitled to refuse performance and – as the case may be after setting a deadline – to withdraw from the contract. In case of contracts of the production of custom-made products, the Seller may withdraw from the contract immediately; the statutory provisions regarding the dispensability of setting a deadline remain unaffected.

6. Reservation of Title

6.1 The Seller retains title in the Goods delivered (reserved-title Goods) until full payment of all current or future accounts receivable arising from the business relationship with the Customer (secured claims).

6.2 The reserved-title Goods must not be pledged or assigned as security to third parties until full payment of the secured claims. The Customer shall inform Seller without delay in writing if and insofar as third parties have access to Goods belonging to the Seller.

6.3 If the Customer is in breach of its contractual duties, in particular in case of non-payment of the due purchase price, the Seller is entitled, pursuant to the statutory provisions, to withdraw from the contract and/or to demand restitution of the Goods by reason of the retention of title. The claim for restitution does not imply the declaration to withdraw from the contract; rather the Seller is entitled to only demand restitution of the Goods and to reserve its rights to withdraw from the contract. If the Customer does not pay the due purchase price, the Seller may only claim these rights if it has set a reasonable deadline for payment before or if setting a deadline is dispensable under applicable law.

6.4 The Customer is entitled to resell the reserved-title Goods only in the normal course of business and/or to process them. In this case, the following additional provisions apply.

(a) The reservation of title extends to the goods which are manufactured by processing, mixing or combining the Goods from the Seller, whereas the Seller is deemed to be the manufacturer of the goods. In case the Goods are processed, mixed or combined with goods of third parties whose title in the goods persists, the Seller shall become the co-owner of the goods *pro rata* based on the invoice value of the processed, mixed or combined Goods. For the rest, the manufactured items are subject to the same provisions as are the delivered reserved-titled Goods.

(b) The Customer already now assigns to the Seller all its receivables against third parties arising from the resale of the Goods or the manufactured good in total or in the amount of a possible co-ownership share as security. The Seller accepts this assignment. The obligations of the Customer stipulated in clause 6.2 apply accordingly with regard to the assigned receivables.

(c) The Customer is authorized to collect the receivables in addition to the Seller. The Seller undertakes not to collect the receivables as long as the Customer is not in default with its payments, a petition for insolvency is not filed and no other lack of performance capacity exists. If, however, this should be the case the Seller may request that the Customer informs the Seller of the assigned receivables and the debtors, provides the Seller with all information necessary for the collection, hands over all corresponding documents and informs all debtors (third parties) of the assignment.

(d) If the realizable value of the securities exceeds the receivables of the Seller by more than 10 %, Seller will at the request of the Customer release securities at its choice.

7. Defects

7.1 Unless otherwise determined below, the statutory provisions govern the rights of the Customer in the event of material defects or legal defects in the Goods (including wrong or short delivery, improper assembly and defective assembly or operating instructions). The special provisions in case of final delivery of Goods to consumers shall not be affected in any case.

7.2 Basis for the liability for defects of the Seller mainly is the agreement on the properties of the Goods or services. Deemed to be an agreement on the properties are in any case those product descriptions which are incorporated as subject matter of the relevant contract, or which were incorporated into the contract in the same manner as these Terms. Declarations made by the Seller on



the properties of Goods or services only constitute a guarantee if the Seller expressly designates them as such.

7.3 Insofar as the parties did not agree on the properties, the existence of a defect is determined by the statutory provisions. However, the Seller shall not be liable for public statements made by the manufacturer or other third parties (e.g. advertising messages). The Customer cannot derive any further rights from material defects that do not affect the value or suitability of the Goods for the purpose recognizable for the Seller or which do so merely to a negligible extent.

7.4 Claims resulting from the delivery of defective Goods are subject to the Customer having complied with its statutory duties of examination for defects and submission of any necessary complaints under sec. 377 HGB. If during the examination or later defects become apparent the Customer is obliged to notify the Seller thereof in writing without delay. The notice is deemed to be without delay if given within one week, whereby the timely dispatch of the notice is sufficient in order to meet the deadline. Irrespective of the duties of examination and to give notice the Customer must notify the Seller of all evident defects (including wrong and short delivery) within two (2) weeks from the date of delivery and in doing so the timely dispatch of the notice is sufficient in order to meet the deadline as well. If the Customer does not comply with its duty of examination and/or to give notice, then the Seller shall not be liable for the defect which has not been notified.

7.5 If the Goods are defective, the Seller may first elect, at its discretion, whether subsequent performance shall be implemented by subsequent improvement or by replacement delivery. The right of the Seller to refuse subsequent performance in accordance with the statutory provisions remains unaffected.

7.6 The Seller is entitled to make the subsequent performance owed conditional upon the Customer paying the due purchase price or remuneration. However, the Customer is entitled to withhold a reasonable part of the purchase price or remuneration in relation to the defect.

7.7 The Customer must give the Seller the opportunity and time necessary for the subsequent performance, in particular hand over the rejected Goods for the purpose of examination. In case of replacement delivery the Customer must return the defective Goods pursuant to the statutory provisions. Subsequent performance does not include the removal of the defective Goods nor the new installation if the Seller originally was not obliged to perform the installation.

7.8 The Seller shall bear the costs of examination and subsequent performance, in particular transport, labor, and material costs (not the cost of installation and removal) in case a defect actually exists. If the demand for rectification of a defect by the Customer turns out to be unjustified, the Seller is entitled to claim reimbursement of the costs incurred therefrom from the Customer.

7.9 In urgent cases, e.g. threat to the operational safety or for the avoidance of disproportional damages, the Customer has the right to rectify the defect itself and to claim compensation of the objectively necessary costs incurred therefrom from the Seller. Any such rectification by the Customer must be notified to the Seller without delay, if possible, in advance. The Customer does not have the right to rectify the defect itself if the Seller is entitled to refuse subsequent performance pursuant to statutory provisions.

7.10 If subsequent performance is unsuccessful, does not take place within a reasonable deadline set by the Customer or if setting a deadline is dispensable pursuant to statutory provisions the Customer may, at its discretion, withdraw from the contract or require a reduction in the purchase price. The Customer has no right to withdraw from the contract in case of an insignificant defect.

7.11 The Seller has no liability for defects in the event and to the extent that the defects are caused by the Customer's failure to comply with the operating and maintenance instructions of the Seller, the use by the Customer of replacement parts or materials that do not conform to the original specifications or interference by unqualified personnel. If a defect is present and if one of the aforementioned situations occurred, the Customer must prove that the defect was not caused by one of the above situations.

7.12 Claims for damages of the Customer or reimbursement of frustrated expenses are subject to clause 8. Further claims are excluded.

8. Liability

8.1 Unless otherwise agreed in these terms and conditions, including the following provisions, the liability of the Seller for a breach of contractual and non-contractual duties is determined by the pertinent statutory provisions.

8.2 Regardless of the basis in law, the Seller is liable to compensate for damages only for intent and gross negligence. The Seller is liable in the event of simple negligence only

1. a) for damages arising from death or personal injury,
2. b) for damages arising from the breach of a fundamental contractual duty; in this event, however, the liability of the Seller to compensate for damages is limited to the foreseeable damages that would typically have occurred. Deemed to be a fundamental contractual duty for this purpose is an obligation without which proper performance of the contract would be impossible and on the performance of which the other party relies and is entitled to rely.
- 3.

8.3 All other claims of the Customer based on contract or tort are excluded. For this reason, the Seller is in particular not liable for damage that did not occur to the Goods delivered; the Seller is similarly not liable for lost profits or other economic loss of the Customer.

8.4 The limitations of liability arising from the above clauses 8.2 and 8.3 do not apply if the Seller has fraudulently concealed defects or given a guarantee for the condition and quality of the Goods. The same applies to claims of the Customer under the German Product Liability Act (Produkthaftungsgesetz).

8.5 In case of breaches of duties others than those constituting a defect the Customer may only withdraw from, or terminate, the contract if the Seller is responsible for the breach. An independent right to terminate the contract of the Customer is excluded. For the rest, statutory prerequisites and statutory consequences apply.

8.6 To the extent to which the liability of the Seller is excluded or limited according to the aforementioned provisions, this also applies in respect of the personal liability of its employees, representatives and agents.

9. Statute of Limitations

9.1 Claims from defects shall become time-barred after twelve (12) months of passing of risk. Insofar as an acceptance has been agreed the limitation period shall commence with the acceptance.

9.2 The aforementioned limitation periods of the sales of goods law also apply for contractual and non-contractual claims for damages of the Customer resulting from defect of the Goods, unless the applicability of the regular statutory period of limitation would, in the individual case, lead to a shorter limitation period. The limitation periods of the German Product Liability Act remain unaffected. Apart from that, claims for damages of the Customer according to clause 8 shall exclusively be subject to the statutory limitation periods.

10. Intellectual Property

10.1 The Customer shall examine the possibility of infringements of intellectual property rights resulting from specifications provided by the Customer together with a placed order and inform the Seller that the ordered items are protected by intellectual property rights. The Customer shall assume liability for claims made by third parties due to the use of specifications provided by the Customer.

10.2 The Customer shall inform the Seller at the earliest time possible in writing if a third party alleges the infringement of intellectual property rights or other rights with regards to the delivered Goods or claims the infringement judicially or extra-judicially. The Customer shall give the Seller the possibility to give its opinion before admitting the claim. If required by the Seller, the Seller may conduct negotiations or litigation with the third party on its own account and own responsibility.

10.3 If at the time of passing of the risk an infringement of intellectual property rights is given for which the Seller is responsible and liable, the Seller shall warrant supplementary performance by way of

- altering the Goods concerned in a manner that intellectual property rights of third parties are not infringed anymore and the function respectively the fitness of the Good is not unreasonably impaired;
- replacing the infringing Goods by products which do not infringe intellectual property rights if they are used as agreed in the contract and if it is acceptable for the Customer and its clients;
- licensing the appropriate or sufficient rights for the purpose of the contract.

Further rights or claims for reduction, withdrawal and/or damages exist only by reason of this contract.

10.4 The Customer shall indemnify the Seller for the damage resulting from a culpable breach of its obligations in clause 10.2. Claims according to clause 10.3 are excluded insofar.

11. Export Control

11.1 Each party shall comply fully with all relevant applicable export or import laws, regulations and rulings so as to ensure that the Goods shall not be transferred, disclosed or re-exported directly or



indirectly in violation of such laws, regulations and rulings to a third country without the written prior approval of the other party.

11.2 The Seller shall not be deemed to be in breach of these Terms if it is prevented from fulfilling its obligations under these Terms due to a restriction resulting from applicable export or import laws, regulations and rulings including delay of the granting or extension of an import or export license or other governmental authorization, provided that the Seller has used its reasonable efforts to fulfil its tasks and to apply for any necessary license or authorization in time. The Seller will notify the Customer of any such restriction or delay without undue delay.

12. Confidentiality

All business and trade secrets and all confidential information of the Seller shall be kept strictly confidential and must not be made available to third parties without the Seller's express authorization unless the Customer demonstrates that it may use the confidential information legitimately.

13. Choice of Law and Jurisdiction

13.1 The law of the Federal Republic of Germany shall govern these Terms and all legal relations between the Seller and the Customer to the exclusion of all international (contractual) law systems, in particular the UN Convention on Contracts for the International Sale of Goods (CISG). Prerequisites and consequences of the reservation of title according to clause 6 are subject to the law applicable at the relevant location of the Good insofar as it renders the choice of law in favor of German law invalid or ineffective.

13.2 If the Customer is a registered merchant for the purposes of the commercial register, a legal entity under public law or a public-law special fund then the exclusive – also international – place of jurisdiction for all disputes arising from or in connection with the present Contract is the registered office of the Seller. The Seller, however, is also entitled to raise action against the Customer at the Customer's general place of jurisdiction.

[Issue 1 as of Oct. 27, 2022]