



OTC Daihen Europe GmbH

General Terms of Sale, Delivery and Payment

I. General – Scope of Application

(1) The General Terms of Sales, Delivery and Payment of OTC Daihen Europe GmbH (herein-after also "the Supplier") apply only to companies as defined by § 14 BGB (German Civil Code), legal entities incorporated under public law and special public assets of the Federal Government (hereinafter also "the Orderer").

(2) Our terms of sale apply exclusively. We do not recognise or accept any terms or conditions of the Orderer that conflict with or deviate from our terms of sale, unless we have expressly acknowledged such terms and conditions in writing. Our terms of sale shall also apply even if we have performed delivery to the Orderer without reservation in awareness of terms or conditions of the Orderer that conflict with or deviate from our terms.

(3) All agreements concluded between the Supplier and the Orderer for the purpose of executing this agreement are recorded in writing in this agreement.

(4) The Supplier reserves the property rights and copyrights for all samples, estimates of costs, drawings, etc., information of a physical or non-physical type – including information provided in electronic form. Such materials and information may not be made available to any third party. The Supplier in turn undertakes not to make any information or documents designated as confidential by the Orderer available to a third party unless the Orderer has given his express permission in this regard.

II. Offer – offer documents

(1) The Supplier's offers are always without engagement and non-binding.

(2) Declarations of acceptance and all orders shall be effective in law only when the Supplier has issued confirmation in writing or by telecommunication.

(3) The same applies to any supplements, amendments or ancillary agreements.

(4) Agreements are entered into pending correct and punctual delivery by our suppliers. This provision shall apply, however, only to cases where we are not responsible for the failure to deliver, specifically to cases where we have concluded a congruent hedging transaction with our supplier.

III. Prices – Terms of Payment

(1) Unless some other arrangement has been agreed separately, the prices quoted by the Supplier shall apply "ex works", including loading in the Supplier's works but not including packing, freight, postage, insurance, unloading and other delivery costs.

(2) The prices quoted in the Supplier's offer apply with the reservation that the order data on which the offer was based do not change.

(3) Prices do not include the statutory amount of value added tax. This amount shall be indicated separately in the invoice at the rate relevant on the day of invoicing, provided the transaction is subject to turnover tax.

(4) The purchase price is payable in full without deductions, unless some other arrangement has been agreed.

(5) Bills of exchange and cheques shall be accepted only on the basis of prior express agreement and always only by way of settlement of amounts due. Acceptance of such means of payment must not be interpreted as a deferral of payment. The term to maturity of a bill may not be less than 10 days and not more than two months. Credit advice provided as bills or cheques shall in all cases be pending receipt and only on the day on which we can dispose of the relevant amount. We do not accept any liability for simultaneous presentation, protest, notification or return if a bill or cheque is not honoured, unless the Supplier or his discharge agents are guilty of malice aforesaid or gross negligence. Discount and collection charges shall be borne by the Orderer and paid by the Orderer in advance in cash.

(6) The Orderer shall be entitled to set off claims only if his counterclaim has been established in law, is undisputed or has been recognised by us. The Orderer is furthermore entitled to exercise a right of retention only insofar as this is based on the same contractual relationship.

IV. Delivery period, delay and default

(1) The delivery period shall be arranged between the parties to the agreement. Compliance with this period by the Supplier is subject to the condition that all commercial and technical questions have been clarified by the parties to the agreement and the Orderer has fulfilled all its relevant obligations, such as obtaining all necessary official certificates and permits or payment of a deposit in advance. If such obligations have not been fulfilled, the delivery period shall be extended accordingly. This shall not apply if the Supplier is responsible for the delay.

(2) The delivery period shall be considered fulfilled when the delivered goods have left the Supplier's works or warehouse by the time the period expires or the Orderer has been notified of the Supplier's readiness to deliver.

(3) If delivery or acceptance of the delivered goods is refused for reasons for which the Orderer is responsible, the Orderer shall be charged for the costs incurred due to this delay, starting one month after the notification of readiness to deliver or acceptance has been received.

(4) If delays in delivery or performance are due to force majeure, to industrial disputes or other events outside the influence of the Supplier, the delivery period shall be extended for the duration of the hindrance. The Supplier shall inform the Orderer of the beginning and the end of such hindrances as soon as possible. If such a hindrance lasts longer than three months, the Orderer shall be entitled, after a suitable period of respite has expired without result, to withdraw from the agreement with regard to the part not yet fulfilled. If the delivery period is extended or if we are released from our obligation, the Orderer shall not be entitled to any indemnity claims due to the delay.

(5) The limitation of liability pursuant to paragraph (4) shall not apply if a commercial firm bargain has been agreed; the same shall also apply if the Orderer can claim, on the basis of a delay for which we are responsible, that his interest in fulfilment of the agreement has lapsed.

(6) If the Orderer is in delay in acceptance of delivery or in breach of some other obligation to co-operate, we shall be entitled to demand compensation for damages including for any additional costs we have incurred.

(7) If the Supplier is in default and if the Orderer incurs damage as a result, the Orderer shall be entitled to demand a fixed sum of compensation for default. The amount shall measure 0.5% for each full week of the delay, but in total a maximum of 5% of the value of the part of the total order that cannot be used in time or in accordance with the agreement because of the delay.

V. Transfer of risk – Acceptance

(1) Deliveries shall be "ex works" (EXW of Incoterms in the version valid at the time the agreement is concluded). If the goods are to be accepted by the Orderer, the time of acceptance shall be the time risk is transferred. Acceptance must be carried out immediately at the preordained date, if possible following notification of readiness for acceptance by the Supplier. The Orderer may not refuse acceptance if only an insignificant fault is established.

(2) If the delivery or acceptance is delayed or fails due to circumstances for which the Supplier is not responsible, the risk shall be transferred to the Orderer on the day he is advised that the goods are ready for delivery or acceptance. The Supplier undertakes to take out insurance as requested by the Orderer and at his cost.

(3) Part deliveries are admissible if such are reasonable for the Orderer.

VI. Retention of title

(1) The Supplier shall retain title of the delivered goods until all payments due from the delivery agreement have been received.

If we agree with the Orderer that due purchase prices can be paid by means of cheque/bill of exchange, the above retention of title shall be extended to cover the time until the cheque/bill of exchange we have accepted by the Orderer has been cashed and shall not expire when the cheque/bill of exchange has been credited to our account.

(2) The Orderer is obliged to treat the delivered goods with all due care, and specifically to carry out any necessary maintenance work in good time.

(3) The Supplier is entitled to insure the delivered goods against theft, breakage, fire, flooding, and other damage at the cost of the Orderer, provided the Orderer has not himself taken out the necessary insurance, in which case he shall provide the relevant proof of insurance.

(4) The Orderer is not entitled either to sell, pledge or transfer the delivered goods as security. The Orderer shall inform the Supplier immediately of any pledge or seizure or other transfer of rights of disposal to a third party.

(5) The Orderer shall provide comprehensive support to the Supplier in protecting his rights and property in the country to which the delivered goods were transported and shall make all declarations necessary in this regard.

(6) The goods shall be processed and worked by the Orderer always in the name of and on behalf of the Supplier. If the goods are processed together with objects or materials that do not belong to us, we shall acquire joint ownership of the resulting object according to the value of the goods we delivered in proportion to the other processed objects or materials. The same shall apply if the goods are combined with other objects or materials that do not belong to us.

VII. Warranty against faults

(1) We provide warranty against faults in the delivered goods in the form of either improvement or replacement delivery [so-called subsequent fulfilment ("Nacherfüllung")] according to our discretion.

(2) The Orderer shall allow sufficient time and opportunity, by agreement with the Supplier, for the performance of the improvement work or replacement delivery deemed necessary by the Supplier. If the Orderer fails to provide this opportunity, the Supplier shall be released from his liability and from the relevant consequences. Only in urgent cases of risk to plant safety or to protect against disproportionately high amount of damage, in which case the Supplier is to be informed immediately, shall the Orderer be entitled to remedy the fault itself or have it removed by a third party and demand compensation from the Supplier for the expenses thereby incurred.

(3) If the subsequent fulfilment should fail, the Orderer shall always be entitled to demand reduction of the remuneration due ("Minderung") or to withdraw from the agreement ("Rückgriff"). The Orderer shall, however, not be entitled to withdraw from the agreement in cases of only minor infringements of the agreement, specifically in cases of minor faults.

(4) Companies must comply with their obligations regarding complaints pursuant to § 377 HGB (German Commercial Code) and to notify us in writing of any conspicuous faults within a period of ten days of the goods being delivered; the Orderer shall otherwise lose its right to claim warranty. Notification shall be on time if it is sent within the specified period. The full onus of proof shall be on the company regarding all claim factors, specifically regarding the fault itself, regarding the period the fault is discovered and regarding the punctuality of fault notification.

(5) If the Orderer chooses to withdraw from the agreement due to some deficiency in title or a redhibitory defect after subsequent fulfilment has failed, he shall not have no additional claim to compensation for damages incurred. If the Orderer chooses to claim damage compensation after subsequent fulfilment has failed, the goods shall remain with the Orderer, provided he can reasonably be expected to retain them. Damage compensation shall be limited to the difference between the purchase price and the value of the faulty goods. The above shall not apply if we are responsible for the infringement by malice aforesaid.

(6) If the Supplier has not fraudulently concealed a fault, the warranty period shall be for one year from the date the goods are delivered or, if acceptance is required, from the date the goods are accepted. This shall not apply if the Orderer has failed to notify us of the fault within the specified period (see paragraph 4 of this section).

(7) The Supplier accepts no liability specifically for the following cases: unsuitable or unprofessional use of the goods, incorrect assembly or start-up by the Orderer or a third party, natural wear, incorrect or careless treatment, incorrect maintenance, use of unsuitable equipment, faulty construction work, unsuitable building foundation or chemical, electro-chemical or electrical influences on the goods. This exclusion of liability shall apply only if the circumstances were not caused by the Supplier.

(8) If the Orderer or a third party carries out incorrect improvement work on faulty goods, the Supplier shall not be liable for any resulting damage or loss. The same applies in the case of the Orderer carrying out modifications to the delivered goods without the prior consent of the Supplier.

(9) If the Orderer receives a faulty set of operating instructions, we shall be liable only to provide a correct set of instructions and only when the fault in the original instructions prevents correct use of the delivered goods.

(10) The Supplier accepts no warranty obligation for goods delivered as not new by prior agreement. There shall also be no warranty obligation for secondary goods.

(11) Only the product description provided by the Supplier shall apply as the agreed condition of the delivered goods. Public statements, marketing or advertising by the Supplier shall moreover also not constitute a contractual undertaking regarding the condition of the delivered goods.

(12) We do not provide to the Orderer any guarantees in the legal sense.

VIII. Limitations of liability

(1) In the case of failure to fulfil our obligations due to slight negligence, our liability is limited to the direct and average damage that could be foreseen and are typical according to the nature of the delivered goods. This shall also apply to cases of failure due to slight negligence on the part of our legal representatives, discharge agents or employees.

(2) We are not liable to companies for cases of infringement of insignificant contract obligations due to slight negligence.

(3) If and insofar as we are liable for damage due to slight negligence on our part, our liability is limited to the maximum amount of our commercial third-party liability insurance (current insurance value available on request). For any damages in excess of this amount, we shall take out additional third-party liability insurance by special request of the Orderer in some specific case, whereby the Orderer shall bear an appropriate share of the additional costs, which shall be agreed in advance in each case.

(4) The above limitations of liability do not apply to claims by the Orderer pursuant to German product liability law ("Produkthaftungsgesetz"). The limitations of liability furthermore also do not apply in cases of injury to health or limb or loss of life of the Orderer for which we are responsible.

(5) The Orderer's indemnity claims due to a fault are subject to a statute of limitations of one year from the date the goods are delivered or from the date of acceptance if acceptance is necessary. This shall not apply if we are guilty of malice aforesaid or in cases of injury to health or limb or loss of life of the Orderer for which we are responsible.

IX. Use of software

If software is included in the scope of delivery software, the Orderer shall be granted a non-exclusive right to use the delivered software including the relevant documentation. This software shall be provided for use on the delivered goods for which it is intended. The Orderer shall not use the software on more than one system. The Orderer is entitled to duplicate the software, or process, translate or convert it from the object code to the source code only within the scope admissible in law (§§ 69 a ff. UrhG – German Copyright Law). The Orderer undertakes not to remove any manufacturer's signs or information – specifically copyright markings – or to change these without the express written permission of the Supplier. All other rights to the software and the documentation including the relevant copies shall remain with the Supplier or the Software supplier. The Orderer is not entitled to grant sublicenses.

X. Concluding provisions

(1) Place of performance ("Erfüllungsart") and legal venue ("Gerichtsstand") for all claims arising from or in connection with this business relationship between the parties, specifically our deliveries, is the official domicile of the Supplier. This legal venue shall also apply in the case of disputes regarding the establishment or legal effectiveness of the contractual relationship. The Supplier is, however, entitled to take legal action at the principal business location of the Orderer. If the Orderer has its official location in a country that is not a signatory to the European Treaty on the recognition and execution of court rulings, signed in Lugano on 16 September 1988, all disputes shall be resolved, with exclusion of due legal process, by the International Court of Arbitration in Paris in accordance with the regulations on arbitration issued by the ICC.

(2) The language of the agreement is German.

(3) This agreement is subject exclusively to the non-standardised law of the Federal Republic of Germany with exclusion of international private law (IPR) and the CISG.

(4) If any provision of these terms and conditions are or become void or ineffective in law either in part or in full, this shall not affect the validity of the remaining provisions. The void or ineffective provision shall in such cases be replaced by the relevant statutory provision.