

General terms of business and delivery

I. Preliminary note

The purpose of our general terms of business and delivery is to rationalise and standardise day-to-day business. With their help business risks are calculable, and operational sequences are simplified. Terms serve both business partners by also clarifying spheres which are either not at all or only insufficiently settled by the legislative body.

II. General rules

1. Our general terms of business apply to all contracts, deliveries and services, including advisory and information services.
2. Differing terms of business of our client which we do not acknowledge in writing are not binding for us, also if we do not oppose them explicitly.

III. Offer

Our offers are subject to confirmation. Prices in our offers are not binding. A contract is only concluded by our written confirmation of order.

IV. Prices

Our prices are net cash plus freight and additional charges ex works plus obligatory VAT, if not otherwise agreed.

The extra costs caused by the order for the customer for express delivery or part delivery must be born by the client.

V. Terms of payment

If not otherwise agreed in writing, payment is due within 14 days from date of invoice with 2 per cent discount or net within 30 days.

If payment is in excess of the payment period, the buyer is in delay also without a reminder. In the case of delay in payment we have the right, unless a higher damage is claimed, to charge default interest of 4 per cent p.a. above the discount rate of the Deutsche Bundesbank plus the valid VAT. Interest payable on arrears can be fixed higher or lower, if we prove a performance with a higher rate of interest or the buyer a lower one. Bills of exchange or cheques are only accepted as a method of payment. Bills of exchange are exempt from charges and without cash discount.

Before older and already due invoices for earlier deliveries are paid, for new invoices no discount is granted. All incoming payments are utilized for balancing our invoices in the order of the dates of invoices. Otherwise stated purposes of the buyer are not binding on us. Offsetting counter demands as well as the right to keep payments are impossible, unless the demands were accepted explicitly by Duraplast GmbH or have already been legally established.

We reserve the right to offset all our claims against demands of the buyer, no matter from which legal basis the demands result.

VI. Times and dates of delivery

1. The stated time of delivery will be kept if possible. The time of delivery is kept, if the delivery item has left the plant within the time or notice has been given that the goods are ready for dispatch.
2. The time of delivery is prolonged reasonably due to measures in the case of industrial disputes, especially strike and lock-out as well as the start of obstacles which are beyond our intention or influence, as long as such difficulties can be proved to have a substantial influence on the production or delivery of the item. This also applies if the circumstances occur at our suppliers or component suppliers. In all important cases we will inform the buyer about the beginning and end of such impediments in an appropriate form as soon as possible.
3. The settlement of the contractual obligations by the customer is the precondition for compliance with the time of delivery.

VII. Reservation of property rights

1. The goods will remain our property until all our outstanding bills have been paid and until all bills of exchange and cheques which have been accepted as payment are redeemed, even if the price for the especially indicated demands has already been paid. In the case of an outstanding account the reserved property rights apply to the protection of our payment balance request.
2. The demand of the buyer from a resale or further processing of reserved goods is transferred to us already during the conclusion of contract as a protection of our demands from the current business connection, no matter if the reserved goods are sold to one or several buyers before or after a further processing.
3. The buyer only has the right and is authorized to resell the reserved goods, if the demands from the resale are transferred to us. The buyer is not authorized to give other directions about the reserved goods. The right or authorization to sell the reserved goods can be withdrawn at all times especially in the case of the delay in delivery. At our request the buyer is obliged to inform us about the transfer to a third party as payment.
4. We pledge to clear no longer necessary securities at the request of the buyer or a third party which has been affected by a probably exaggerated security. This pledge for clearance applies, if the value of our securities exceeds the demand against the buyer by more than 20 per cent, whereupon value means the nominal value of the goods.

VIII. Complaints, guarantee

1. Defects must be reprehended in writing immediately after receipt of the goods or in the case of hidden defects on their discovery. Complaints about open defects are not possible after three days from the arrival of the goods at the place of destination. In this respect for private buyers a period of two weeks is applicable.
2. Discrepancies in the thickness of the foil of up to plus or minus 10 per cent and in the breadth of the foil of up to plus or minus 5 per cent as well as minor deviations in transparency and colour do not justify complaints.
3. Damage during transport must be complained about to the forwarding agent on receipt of the goods, and at the same time this has to be certified in the freight documents together with damage claims.
4. In the case of a justified complaint in due course, at our own choice we will repair faulty goods free of charge or take them back and replace them by acceptable goods. At our own choice in these cases also a reduction is possible.

Should we fail to eliminate the claimed defects we reserve a renewed right to rectification or delivery-

On demand the buyer is obliged to allow us or our suppliers to get satisfied about the claimed defects on the spot. Should the buyer refuse this opportunity or in particular does not place the goods or samples complained about at our disposal immediately, all rights to complain are lost. The guarantee will also be lost if the goods that were found to be faulty are manipulated without our explicit consent.

5. All further claims for damage compensation, especially the demand of the buyer to replace damages which did not originate at the delivered object (consequential harm caused by a defect), and in our opinion unforeseeable damages are excluded. This does not apply as long as we are coercibly liable in cases of deliberate intention, gross negligence or lack of guaranteed qualities.

If not guaranteed explicitly in writing, a guarantee for the use of our foils in the case of special purposes is excluded. A differing delivery quantity of up to plus or minus 10 per cent of the ordered quantity is allowed and does not justify complaints.

IX. Cancellation of a contract, compensation for damages, limitation of liability

1. The buyer can only cancel a contract apart from the explicitly agreed right of cancellation in our general terms and conditions of business, if we do not deliver or repair due to a delay caused by us and after a reasonable extra period and notice of cancellation, or if two successive attempts of repair fail.
2. If the buyer can claim damages against us in the case of a justified right of cancellation or due to another legal reason we will replace the verifiably caused damage up to the value of the delivered item, as long as it is not a matter of damages caused by us deliberately or gross negligence.
3. The right of cancellation of the buyer is always limited to the part which has not been delivered or is damaged.
4. Apart from the rights to claim damages because of an unlawful act, all rights to claim damages against Duraplast GmbH, its assistants and agents become time -barred after six months.

X. Court of jurisdiction and place of fulfilment

1. The place of fulfilment and the only court of jurisdiction for deliveries and payments as well as all disagreements arising from the contract is Düren, insofar as the buyer is a registered trader.
2. For all legal dealings between us and the buyer the law of the Federal Republic of Germany is applicable, insofar as it is legally possible.
3. In case some of the regulations are or will become legally void, they are to be replaced by rules that most suitably fulfil the commercial purpose of the contract, ensuring the mutual interests of the two parties in due form. The other conditions remain entirely binding.