

Standard Terms and Conditions

Scope of Application

The following terms and conditions are applicable for all contracts, deliveries and other services, unless explicitly derogated from or opted out by one of the Parties. All rights and obligations hereunder shall apply also when contradicting with the terms and conditions of the other party.

Unless otherwise agreed, all notices which are required to be given hereunder shall be in writing and shall be sent by first class post to the address of the recipient set out in the Contract or such address in Germany (F. W. Daum GmbH & Co. KG, Fischer Str. 30, 42859 Remscheid) as the recipient may designate by notice giving in accordance with provisions of this clause.

The Supplier reserves the right to vary from the Conditions without prior notification.

Offer and Acceptance

All offers are non-binding offers. No contract shall come into existence until the Customer order being accepted by the earliest our written confirmation or the receipt by the Customer of the Goods. Insofar as employees or selling agents conclude on side-agreements exceeding the written contract our written confirmation is required.

Technical Specifications

Technical specifications and information, tools and blueprints (engineering detail drawings and mechanical drawings) or other illustrations or images, indications of weight and dimensions are not binding. Design modifications remain reserved. Data and information on the suitability and the use of our products are non-binding and do not release the buyer from the duty to examine and assess these information.

Technical specifications and information, including any kind of drawing and other documents relating to the supplied or offered products by us remain the property of F.W. Daum GmbH & Co. KG. No special permission in writing is needed only if it relates the agreed purpose. A written permission by the company F.W. Daum GmbH & Co. KG is required if such information or property is transferred to a third party. The drawings and other documents shall be returned upon request.

Tools, auxiliary tools and any equipment for the manufacture of the goods shall remain our property, also in case where the buyer had additional costs. We hold objects for the first two years after purchase only free of charge for further orders before, when each year at least 80% of the original offer's annual purchase quantity.

Prices and Term of Payment

The price does neither include the value-added tax nor transportation costs nor packaging costs. The price is determined in accordance with the price list as valid at the time of delivery, or if agreed otherwise, in accordance with the price agreed upon by the Parties in the contract. We accept payments by bill of exchanges and checks, eligible for discount, only if agreed upon in the written contract.

Invoices must be paid within thirty (30) days net. Commission processing (German: *Lohnarbeit*) has to be paid immediately after receipt of the invoice. In exceeding the payment terms, an additional legal interest is payable, which is at least 2% above the discount rate of the Bundesbank (German: *Bundebankdiskontsatz*).

A offsetting of any counter claims that are contested by us is not permitted. Detentions (withholding of payments) shall not be enforced if they are based on counter claims that are contested by us that are not recognized or not legally established, unless such claims are based on the same terms and conditions. Enforcements of claims of defects allow detentions only to the extent that is proportional to the claimed defect. If the contract belongs to the commercial enterprise of the buyer, the buyer may only withhold payments if the notice of defects is made and when there is no reason of doubt for its justification.

Credit Worthiness

If, after an order has been confirmed by us, there are founded doubts about the solvency or creditworthiness of the buyer, we are entitled to demand either cash payment or payment in advance (German: *Vorkasse*) or withdraw from the contract and demand compensation for our expenses.

Carriage and Risk-Passing

The means of shipment and the determination of shipment route are at our discretion, unless otherwise agreed. The shipment takes place uninsured at the expense and risk of the Buyer. If the shipment is at delay at the Buyer's fault or request, the goods are stored at the expenses and risk of the buyer. In this case, the readiness for shipment is treated equally than the shipment.

Packaging

Packaging is charged at cost price level at may not be returned.

Delivery terms, delay and impossibility of delivery

Delivery terms and delivery dates are firm only if confirmed by us in writing. Delivery periods are extended – also within a delay – in cases of *force majeure* and unforeseeable circumstances without our fault that occur after the conclusion of the contract, insofar as such circumstances impede the delivery of the sold goods. This applies as well when these circumstances are on the side our suppliers or subcontractors. This may apply especially in all cases of strikes or lockouts.

Delivery periods are extended for the time the Buyer has not fulfilled his contractual obligations also within a current business relation from other contracts. Orders on call will only be accepted with terms of acceptance (German: *Abnahmefrist*). If the acceptance does take place within the agreed period, we may deliver completed goods without further notice, or we may store the goods on the expenses of the Buyer, or we may withdraw in whole or in part from our obligation to delivery by giving notice to the Buyer, or we may in case of refusal of the delivery demand damages for non-performance.

In case we have – under the statutory provisions – pay damages for any delay of delivery or impossibility to deliver the goods, the compensation is limited to the amount foreseeable damage at the time of the conclusion of the contract, if the contract is connected with the commercial activity of the Buyer, but not more than 10% of the value of the part of the overall delivery that, due to the delay or non-performance of the supplier, may not be used according to the contract.

This restriction does not apply in cases we are liable for cases of intent or gross negligence. This does not affect the right of the Buyer to withdraw from the contract after the expiry of a statutory period of grace. The right to withdrawal inherently extends only to the part of the contract that has not yet been fulfilled.

Title Retentions

We have the following securities until all claims against the Buyer now or in the future are fulfilled, and until we may release upon request, if the value exceeds sustainably 20% of our claim.

Delivered or supplied goods remain our property. Any processing or transformation of the goods is done for us being the manufacturer of the goods. If the goods supplied by us are being processed or transformed with goods not being in our property, we shall acquire co-ownership of the new item in relation to the invoice value of the supplied goods against the invoice value of the other items that are used in processing or transforming of our supplied goods (at the time of processing or transforming).

If our goods are being merged or inextricably mingled with other movable objects into one single item whereas the other item is being regarded as the main item and as the principal object, the Buyer agrees that we acquire proportionately co-ownership. Items or objects for which we hold ownership rights or co-ownership rights are referred to as “goods subject to retention of title”.

The Buyer is entitled to divest the goods subject to retention of title in the ordinary course of business and he is entitled to merge or mingle the goods with other items. The claim arising out of the divestment, merger or

mixture or other legal cause as regards to the goods subject to retention of title is transferred to us already at the time of processing or transformation. This claim covers all current account balance claims.

When third parties access these goods, the Buyer will refer to our ownership and notify us immediately about the access of these parties.

We are entitled to redeem the goods subject to retention in case of breach of contract of the Buyer – especially in case of late payment – at the expense of the Buyer or, where appropriate, demand restitution of the claims against the third party arising of the sale or transfer of the goods. The redemption by us does not constitute a withdrawal from the contract, unless the redemption law of Germany (Abzahlungsgesetz, AbzG) is applicable.

Intellectual Property

All intellectual property rights associated with the goods and the supply of the goods, including all trademarks, patents, copyrights, designs, database rights, ideas, technical drawings, photographs or others, shall remain at all times the sole and exclusive property of the Supplier, F. W. Daum GmbH & Co. KG, unless otherwise agreed. The Buyer or Customer acknowledges that all information he receives relating to the goods and to the supply thereof is confidential and he agrees not to use, reproduce or disclose it. Unless otherwise agreed in writing, the Buyer or Customer shall neither have rights on the intellectual property nor shall he have a license. If not provided in these terms and / or expressly allowed, the use or reproduction is not permitted. All our services provided to the Buyer or Customer - including trademarks, patents, copyrights, designs, database rights, ideas, technical drawings, photographs or others - are intellectual property of F. W. Daum GmbH & Co. KG, unless a third party has rights thereto.

Over- and Underperformance, Warranty and Compensation Damages

Over- or underperformance shall be remained reserved to 100%.

We are only liable for defects as follows:

The Buyer or customer shall examine the goods upon delivery and shall within 7 days of delivery give written notice about obvious shortcomings or defects or non-conformities, which are established by the Buyer or Customer to the satisfaction of the Supplier. It is at our discretion either to subsequent improvement, to replacement or to show a credit. In order to remedy the defect, the buyer or custom has to grant us in his reasonable discretion to grant a reasonable time; otherwise will the warranty decay. If we do not provide within a reasonable period of grace a warrant by subsequent improvement, replacement or by showing a credit, the Buyer has the right to withdrawal from the contract or reduction of the purchase price.

All warranty claims shall expire after six month from the day of delivery. The warranty period for subsequent improvements is three month; the warranty period for replacements is six month. It shall not expire before the end of the original warranty period of the delivered goods or items.

Claims for Damages of the Buyer of Customer

Claims for damages are excluded for cases of fault at the conclusion of the contract, breach of contractual obligations and tort, unless they are based on intentional conduct or gross negligence. This disclaimer of liability applies also to consequential damages.

Claims for damages shall lapse after six month from delivery by the Buyer or customer. Our liability for the existence of other warranted characteristics are to be determined by the statutory provisions under German law.

Place of Performance, Jurisdiction and Applicable Law

Place of performance and exclusive jurisdiction for all deliveries and payments (including check and Bills of Exchanges) and all disputes arising between the parties is the place of our headquarter, Remscheid in Germany, if the Buyer is a general merchant, a legal entity under public law or special fund under public law.

Any contract between the Supplier and the Buyer or Customer shall be governed by the law Germany.

The Hague Convention (Convention on the Law Applicable to Contract for the International Sale of Goods, 1986) shall not apply to any contract between the parties, unless state otherwise and explicitly in the contract.

The United Nations Convention on Contracts for the International Sale of Goods (CISG, 2010 or newer) shall not apply to any contract between the parties, unless stated otherwise and explicitly in the contract.