

General Terms and Conditions of Sale, Delivery and Payment (as from 8/2014)

1 Area of Application

- 1.1 Our General Terms and Conditions of Sale, Delivery and Payment given below (hereinafter referred to as GTCs) shall exclusively apply for all deliveries and services performed for natural persons and legal entities by our company. General terms and conditions of sale, delivery and payment of contractual partners that deviate from this and are not expressly recognised by us shall have no validity.
- 1.2 Our GTCs also apply, in the context of ongoing business relationships, to any future sales that may be made.
- 1.3 The prescriptions of the HGB (Handelsgesetzbuch [German Commercial Code]) on commercial sales shall in the first instance apply and in the next order of priority the prescriptions of the BGB (Bürgerliches Gesetzbuch [German Code of Civil Law]) relating to sales, provided that our GTCs include no regulations that depart from these prescriptions.

2 Form and Content of Sales Contracts

An order coming from a contractual partner is a legally binding offer, which we are at liberty to accept within a period of three weeks by sending either an acknowledgement of the order or the goods themselves. Additions, modifications or informal agreements carry no weight without written acknowledgement on our part.

3 E-commerce:

Prior to selling any DICK product on the Internet, the retailer must be granted explicit approval by Friedr. Dick Company by entering into a corresponding e-commerce agreement. This agreement shall stipulate in particular the fulfilment of our sales guidelines in the existing CD manual and regulate the copyright of graphic material and texts.

4 Prices and Terms of Payment

- 4.1 The list prices valid on the day on which the contract is concluded shall apply. If the delivery time agreed upon should be longer than four months, the list prices valid at the time the deadline for delivery of the goods expires shall apply insofar as they are in general use by us and can be achieved on the market. The prices are to be understood with addition of VAT at the currently valid rate, with delivery from the Deizisau warehouse, exclusive of packaging, carriage and insurance costs. The minimum order value for orders within Germany and for orders coming from EU member states shall be EUR 200.00 net; for all other orders from abroad EUR 1000.00 net. In the case of orders for less than these thresholds a handling charge of EUR 15.00 for orders from Germany and EU member states plus VAT at the current rate will be charged to cover the additional outlay; for all other orders from abroad there will be a handling charge of EUR 50.00.
- 4.2 Contractual partners shall only be permitted to offset amounts due to them if they have counterclaims that have been successfully asserted before a court or that are uncontested or have been recognised by us as valid. On the other hand, contractual partners shall only be entitled to exercise the right to withhold if their counterclaims are based on the same contractual relationship.
- 4.3 If, after the conclusion of a contract, the financial circumstance of a contractual partner should deteriorate to a significant degree, § 321 BGB shall apply for the securing of our claims, with the particular proviso that any delay occurring in the fulfilment of an existing obligation to us shall be seen as a case where our claims are demonstrably put at risk.

5 Time of Delivery, Scope of Delivery, Place of Delivery

- 5.1 If we do not succeed in delivering the goods ordered punctually or within the time agreed, the contractual partner's right of withdrawal shall exclusively be as defined by § 323 BGB. Withdrawal without the setting of a period of grace (c.f. § 376 HGB) is however excluded. In this context, the term of grace offered to us for delayed performance or fulfilment of our obligations must be a reasonable one, and must be set down in writing if it is to be effective.
- 5.2 If no delivery date or time has been agreed upon, we will deliver within the scope of our existing manufacturing and delivery capacities and, at the latest, within a period of four months from the time of the contract's coming into effect. Thereafter section 5.1 above shall apply.
- 5.3 If ambiguities should exist, or should come into being, in respect of the scope or content of an order, the delivery time agreed upon shall only commence following complete resolution of the ambiguity. The same shall apply in case of changes to the contract that come about at the instance of the purchaser.
- 5.4 Even though we make use of EAN [European Article Number] codes to identify our goods (country of origin, supplier, article number, unit quantity) and make these known to contractual partners, these shall not count as belonging to the scope of the agreed delivery. We will therefore not admit liability for any incorrect coding that may occur.
- 5.5 In cases of specially commissioned manufacture, a quantity of 10% over or 10% under the quantity ordered shall be allowable, as occasioned by the conditions of manufacture. The overall price shall as a result be modified in accordance with the actual quantity delivered. No other additional legal consequences shall result from this. In the case of catalogue products we reserve the right to make adjustments to the order quantity to correspond to our packing unit specifications. Only those packing units specified in our catalogues shall be delivered. Partial deliveries shall be allowable to an extent that our contractual partner may reasonably be expected to accept. These will be invoiced for separately.
- 5.6 We deliver "ex-works", at cost and risk of the purchaser. Thus the risk of possible loss or deterioration shall pass to the contractual partner with the delivery of the goods to the transport company or haulage contractor or whatever person may be appointed to carry out the conveyance, even in a case where we undertake the delivery ourselves. In case of delays in despatch for which the contractual partner is responsible, the risk shall already pass to him at the time when we communicate to him that the goods are ready for despatch.
- 5.7 We shall be entitled to determine the means of transport and the route. We will admit no liability for damages or losses during transport. In order to cover transport and other damages caused during transit we will conclude transport insurance at the cost and charge of the contractual partner. Costs will be calculated at 0.1%, or in case of transport abroad 0.5%, of the value of the goods plus VAT at the current rate. The contractual partner shall notify the haulage contractor, or whatever person or company shall have been charged with the delivery, of any damage that has occurred during transport at the first opportunity and in writing.
- 5.8 With the exception of pallets, packaging for transport or any other packaging, as defined by the German Verpackungsordnung [Directive on Packaging], will not be taken back. The purchaser shall be obliged to arrange for the disposal of such packaging at his own cost.

6 Liability for Defects and other Breaches of Obligation, Statutory Limitation

- 6.1 If we are obliged to deliver the goods in accordance with the designs, specifications, plans etc. of the purchaser, the latter shall bear the risk that the goods may be unsuitable for the purpose envisaged.
- 6.2 We will not admit any liability for defects caused by unsuitable or inappropriate use; incorrect assembly or start up by the partner or by third parties; normal wear and tear or by incorrect or negligent treatment, nor for the consequences of inappropriate modifications or servicing of the goods by the partner or by third parties if undertaken without our express consent.
- 6.3 Any liability on our part for defects, incorrect delivery or incorrect quantity (amounting to departure from the terms of the contract) shall at all times be conditional on the purchaser's having punctually fulfilled the obligations incumbent on him to carry out investigation and submit formal complaint, as defined in §§ 377, 378 HGB. In this connection any further complaints must be expressed in writing in order to be valid. If a prior sampling or inspection of the goods has been agreed upon, complaints subsequent to this shall not be allowable to the extent that the purchaser could have established the departure from the terms of the contract if he had carried out the prior sampling or inspection with due care.

- 6.4 We shall be allowed the opportunity to confirm the departure from the terms of the contract that has been complained of, this complaint having been made in good time and in writing, and in case of a bulk delivery to remove the faulty goods. Goods that have been objected to shall only be sent back to us at our request and then without delay. If the contractual partner fails to adhere to these obligations, he shall lose any claims under guarantee that he may have. If the complaint is unfounded, the contractual partner shall bear the cost of any return of goods.
- 6.5 If a complaint is well founded; has been made in good time and in writing, we shall have the choice of fulfilling our obligations at a later date either by remedying the defect or by delivering substitute goods that are defect-free. Either option is permissible so long as we fulfil our contractual obligations. If performance at a later date should be refused, unsuccessfully carried out or in any other way unacceptable as defined by § 440 clauses 1 and 2 of the BGB, the contractual partner shall be entitled, having recourse to statutory prescriptions, to insist on a lowering (reduction) of the purchase price or else to withdraw from the contract altogether.
- 6.6 Claims by the purchaser for compensation are excluded, irrespective of their legal basis. Claims for compensation from loss of life, injury or loss of health are excluded from this if we are responsible for a breach of duty. We are also liable for other damages, which are caused by a culpable or grossly negligent breach of duty by us, i.e. by our statutory representatives or vicarious agents. In addition, we are liable in the event of slight negligence for damages, which result from the breach of a material contractual duty (duty, the fulfilment of which facilitates the proper implementation of the contract and on which the contractual partner regularly relies and may rely). In this case, our liability is limited to replacing the foreseeable, typically occurring damage.
- 6.7 In so far as we admit no liability for deliberate or grossly negligent action, and provided that damages jeopardising the life, person or health of an individual are not in question, any claims made against us shall be subject to the statutory limitation of one year. For the rest, the statutory prescriptions on the start, suspension, suspension of period of validity, commencement of period of validity and associated legal consequences shall apply.
- 6.8 Claims made against us on the basis of the mandatory prescriptions of the Produkthaftungsgesetz [Product Liability Act] shall remain unaffected. As defined by § 444 of the BGB our liability in accordance with legal regulations shall also remain unlimited insofar as we have fraudulently concealed the defect or have taken on a guarantee for the characteristics of the item.
- 6.9 Insofar as our liability is excluded or subject to limitation, the same shall apply also to the personal liability of our employees, workers, colleagues, legal representatives and vicarious agents.

7 Reservation of Property Rights

- 7.1 We reserve the property rights to goods delivered until all claims arising from the business relationship with the contractual partner shall have been fulfilled.
- 7.2 The contractual partner shall be entitled, in the normal course of business, to sell the reserved goods and/or incorporate or link them with other articles, provided that we do not revoke this entitlement as defined in article 7.3 below. He is not permitted, however, either to give the reserved goods in pledge or to deposit them as security. In order to safeguard our interests the contractual partner shall already at this stage assign to us any claims and rights arising from the sale of goods delivered by us - even insofar as these have been incorporated or linked with other articles - and we hereby accept this assignment. The contractual partner shall retain the right to collection of the assigned claims so long as we have not revoked this entitlement as defined in article 7.3 below. We shall be entitled to request from the contractual partner, at intervals of three months, a comprehensive listing in writing of the claims currently assigned to us; this listing shall include both the exact claim amounts and the names and addresses of the debtors.
- 7.3 If our contractual partner falls into delay with the payment of a claim due to us, or if other circumstances arise which would entitle us, in accordance with article 4.3 above, to invoke our rights in reliance on § 321 of the BGB, we shall be entitled to revoke with immediate effect the rights of sale and collection as defined in article 7.2 above; to make public the assignment of claims in respect of our contractual partner's customers and to insist on direct payment to ourselves. At the same time our contractual partner shall be obliged to inform us of the assigned claims and the names of the debtors involved; to provide all necessary information required for collection of the claims; to issue the relevant documents to us and to give notice to his debtors of the assignment of claims and of our exclusive entitlement to collect.
- 7.4 The contractual partner is to inform us immediately of any enforcement measures on the part of third parties affecting the reserved goods or the claims assigned to us, providing us with the documents required to enable us to intervene. The same shall apply to any other kind of encroachment on our interests.
- 7.5 At the request of our contractual partner, we will release the securities that are due to us in accordance with the above provisions, insofar as their realisable value exceeds the claims to be secured by more than 10%. The selection of the securities that are to be released shall be our responsibility.

8 Waste Disposal (§ 10 clause 2 ElektroG (Elektronikgerätegesetz [Electrical and Electronic Equipment Act]))

Old machines and replacement components and packaging are made up of valuable, recyclable materials. The owner shall be obliged to dispose of these items correctly and in an environment-friendly manner in accordance with legal regulations and at his own cost.

9. Place of Fulfilment, Court of Law

- 9.1 The place of fulfilment shall be Deizisau.
- 9.2 For all cases of litigation, even in the context of proceedings relating to cheques or currency exchange, the responsible court of law shall be that of Munich. We shall also be entitled to bring suit at the place where the contractual partner has his principal office.
- 9.3 Article 9.2 above shall not apply to contractual partners who are not merchants [Kaufleute] as defined by the HGB and who have a place of general jurisdiction in the Federal Republic of Germany as defined by the German Zivilprozessordnung [Code of Civil Procedure].

10 Applicable Law

With the exception of international civil law only the law of the Federal Republic of Germany shall apply to this contractual relationship. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG, also known as Vienna Sales Law) of 11 April 1980 shall be excluded.

Friedr. Dick GmbH & Co. KG Stahlwaren- und Feilenfabrik Esslinger Strasse 4-10 DE-73779 Deizisau/Germany

The company is a private limited partnership [Kommanditgesellschaft] headquartered in Deizisau/Germany, Stuttgart District Court Commercial Register Excerpt 722301. Partner with unlimited liability Friedr. Dick Geschäftsführungs GmbH headquartered in Deizisau, Managing Directors: Wilhelm Leuze, Stuttgart District Court Commercial Register 725163