

## Conditions of Delivery

duller-partner gmbh

Registered Office: A-9020 Klagenfurt, Theaterplatz 5

### I. Scope:

These general Conditions of Delivery shall apply exclusively to all offers, supplies and services arranged between the client (hereinafter referred to as the Client) and business enterprises of the company duller-partner gmbh (hereinafter referred to as DE) unless otherwise agreed in writing. The Client's terms and conditions shall only apply if DE, i.e. a person authorised to represent DE, accepts these or parts thereof in writing. If this is the case, these Conditions of Delivery shall nevertheless continue to apply on a subsidiary basis. The Client shall be deemed to have agreed to these Conditions by placing an order, returning an order confirmation or, at the latest, by accepting the goods. Any agreements that deviate from or are additional to these Conditions must be made in writing to be valid. These Conditions of Delivery shall also be deemed as agreed for all future business transactions with DE. The version that is current at the time shall apply.

### II. Offer and Conclusion of the Contract:

If not otherwise stated, all of DE's offers are subject to financial and technical changes without notice, are non-binding and based on the costs at the time of the initial offer, or on DE's current price lists. Commissions and orders from the Client require acceptance and written confirmation by DE. In the event that changes in the Client's personal or financial circumstances subsequently become known, DE shall be entitled to withdraw from the delivery contract or to demand collateral. The Client is liable for any damages to DE that arise from this.

The contract shall be legally binding as soon as the Client has signed the order confirmation (the legally binding company signature is required) and returned it to DE. In the event that DE's order confirmation deviates from the Client's order, the changes in the order confirmation shall be deemed to have been approved by the Client, unless the Client objects in writing. All agreements, undertakings, amendments or additions to the contract, as well as any subsidiary agreements, require DE's written confirmation to be legally effective. Verbal statements or information shall only be binding if the order confirmation makes written reference to them.

### III. Order Placement and Order Execution:

The nature and scope of the agreed services shall be as specified by the contract and these general terms of business.

Changes and additions require DE's written confirmation in order to become subject to this contractual relationship.

DE is obliged to properly perform the contract for the order in compliance with the generally accepted technical standards and guidelines and in accordance with the principles of sound financial management.

DE may draw on others who are duly authorised to fulfil the contract, and may place orders with them on behalf and for account of the Client. However, DE is obliged to offer the Client an opportunity to object within a week of such an order placement to a third party. In the event that such a contract is awarded in the name and for account of DE, the Client shall not be entitled to object.

### IV. Prices:

If not otherwise agreed, prices are in EUR ex works or warehouse, exclusive of packaging, loading, disposal, customs duties, insurance and value-added tax. In the event that the period between order and order completion exceeds 100 days, any price adjustments for increased materials and labour costs shall be deemed to have been agreed.

In the event that the Client requests changes in the goods and services which require an increase in performance and affect the agreed price, DE shall be entitled, although not obliged, to amend the price as appropriate. Insofar as these goods and services did not form part of the specification of goods and services, especially as regards the functional specification and the product requirement document or product specification, standard market prices shall be deemed appropriate.

### V. Payment Terms:

Unless otherwise agreed, 50% of the price for work performance is payable on receipt of the order confirmation, 40% on delivery and 10% on acceptance. Monthly invoices for services are due for payment immediately on receipt of each monthly invoice.

By work performance we mean services the results of which are a direct part of the provision of services and lead to tangible, material results such as production and manufacturing plants, product and design models, functional prototypes and development projects with partial or complete serial production.

By services we mean services the results of which form part of the provision of services and do not lead to direct, tangible, material results such as concept studies, design concepts, product specifications and product documentation.

Part payments that relate to partial invoices become due for payment on receipt of each respective invoice. The Client may not offset due payments under warranty or guarantee claims, claims for damages or other counterclaims that have not been accepted by DE, nor may the Client withhold payments by pleading any legally enforceable instrument whatsoever.

In the event of late payment DE is entitled to charge default interest from the due date at a rate of 8% above the respective base rate of the European Central Bank in accordance with the European Union Directive 2000/35/EC of 29 June 2000. In the event that the Client does not discharge his obligation to pay after a period of grace, DE shall be entitled to withhold any outstanding deliveries, demand payment of all outstanding debts arising from this or other business transactions, or to withdraw from the contract. The assertion of further claims for damages caused by delay such as dunning and collection costs is excluded. The assignment of the Client's claims against DE to third parties – not including factoring banks – is excluded.

### VI. Right of Retention:

Rights of retention as regards individual invoice components or as regards compensation for works or services provided are strictly excluded.

The only possible option is a differently worded written agreement between the Client and DE for the event that the Client has already taken delivery of DE's goods and services, including their remediable defects. In this event the Client shall be entitled to retain fee moneys up to twice the sum of the expected costs required to remedy the defect, but no more than 10% of the net contract value. Submission of two independent quotes by appropriate companies shall be submitted as evidence of the costs for the remedial works. Such demonstrably justifiable costs are only deductible from the final account.

### VII. Delivery and Period of Delivery:

As far as possible the delivery deadlines shall be met and shall be deemed to have been met when the delivery has left the works on time or the Client has been informed of DE's readiness to deliver or assemble. In the event that unforeseeable circumstances make it impossible to meet the agreed delivery deadlines, the delivery deadlines shall be extended by the appropriate amount of time or DE shall be relieved of its delivery commitment, and the Client shall not be entitled to withdraw from the contract or to make claims for damages. Each party to the contract is obliged immediately to inform the other party in writing when an obstruction or such an event occurs and when it is expected to come to an end.

Unless otherwise agreed, the delivery period commences on receipt of the part payment due when the order is confirmed. If this prepayment is not made, the start of DE's agreed service provision could be delayed, which could in turn delay delivery and all subsequent deadlines. Furthermore, standard or agreed delivery time could be considerably prolonged by the Client's delayed approval of the plans and release for manufacture, in which case DE excludes all liability. In any event, the delivery period shall be delayed by the period of time that the Client is in arrears as regards payment obligations in respect of DE. If necessary, the time frame can be considerably extended. In the event that a delay is caused by the Client, especially tardy data transfers and delays in making project-related decisions that affect DE, the subsequent interim and principal production dates shall be delayed by at least the period of time in which the Client is behind schedule in his obligations towards DE. If necessary, the time frame can be considerably extended. In any event, the delivery period shall be delayed by the period of time that the Client is behind schedule as regards his obligations in respect of DE. If necessary, the time frame can be considerably extended.

DE is entitled to make part or preliminary deliveries and to invoice for these. Agreed deliveries or services must be accepted by the Client within the agreed time frame, otherwise the Client may face the legal consequences inherent in default of acceptance. In particular the Client shall be liable for any costs arising as a result of a default of acceptance. If necessary, the transfer of risk shall begin with DE's readiness to deliver.

The Client shall ensure that DE is able to make delivery and provide services without obstruction.

### VIII. Third Party Powers:

Third parties contracted by DE are in no way authorised to make binding declarations or, in particular, to accept notices of defects.

### IX. Transfer of Risk:

Unless otherwise agreed, the goods shall be deemed sold ex works (readiness for collection). In the event that delivery and assembly of the work performance and/or services by DE was agreed, the risk is transferred on completion of commissioning, but at the latest on the Client's appropriation of the benefit of the work performance and/or services. If dispatch or acceptance is delayed for reasons that lie within the Client's sphere of responsibility, the risk shall transfer to the Client on receipt of notification of readiness for dispatch or delivery.

### X. Inspection Testing and Acceptance:

Any service trial that has been agreed shall be deemed to have been completed within 3 months after the service trial's commencement, even if a formal completion had been agreed.

If the Client requires an inspection test to be carried out, he must agree this with DE at the contract conclusion stage. Subsequent to an inspection test both parties must sign an acceptance certificate to confirm that the facility is fully functional and has been manufactured in accordance with the contract. Defects that do not seriously impair the functionality or use of the facility do not give the Client the right to refuse acceptance. In the event that the Client or his authorised representative is not present despite timely notice, the acceptance certificate shall merely require signing by DE. A copy of this certificate shall be forwarded to the Client and its veracity may not be disputed. Unless otherwise agreed, the Client shall bear the costs for the acceptance test. In the event that parts of the service are completed and the Client makes use as intended of such parts prior to the planned acceptance, it shall be deemed two weeks later that acceptance has occurred. In the event that, prior to acceptance, the Client or a third party, with the Client's consent, uses parts of the service that have not yet been completed in line with the contract, any resulting damage shall be the Client's responsibility. In addition, the Client shall also bear the running costs, service costs and the consequences of wear and tear. DE shall not be liable for any consequential damages.

#### XV. Withdrawal from the Contract:

- a) Withdrawal from the contract is only permitted for good reason.
- b) In the event that DE is responsible for a delay in performance, the Client shall only be entitled to withdraw from the contract after a reasonable period of grace of at least one month following notification by DE. The notification of a grace period must be conveyed by registered post.
- c) In the event that the Client is in delay with part of a performance or an agreed co-operation, in particular any tardiness in transferring data or delays in taking project-related decisions, which makes it impossible for, or seriously obstructs the ability of DE to fulfil the contract, DE shall be entitled to withdraw from the contract. DE shall reserve the right to claim the full agreed fee in the event that its withdrawal from the contract is justified, as well as in the event that the Client withdraws from the contract without justification. A fee reduction as provided by § 1168 ABGB (Austrian Civil Code) is only applicable insofar as DE has made concrete, project-related savings. In the event of the justified withdrawal from the contract by the Client, the Client shall pay DE only the fees due for the services provided up to that time.

#### XI. Contract Penalties:

Unless otherwise agreed in writing, contract penalties (for delays, defective performance etc.) are excluded. Furthermore, should a written agreement have been drawn up, such penalties will be limited to 0.1% of the net contract value per working day, and to a cumulative maximum of 3% of the net contract value. However, the Client must be able to demonstrate that DE was at fault and responsible for the penalties. In case of doubt, causation by DE shall be excluded.

#### XII. Reservation of Ownership:

Reservation of ownership is deemed to have been agreed. Until such time as the full purchase price and all related costs and expenses have been paid, the work performance or service or the goods shall remain the property of DE. In the case of a resale, the buyer of the reserved property shall be obliged to inform the third party purchaser of the reservation of ownership. The reservation of ownership remains in force even if the supplied goods or services – or parts thereof – have been installed in a building, changed, further processed or resold.

In the event that there is even a partial failure to pay on the due date, DE shall be entitled to collect the goods without the consent of the purchaser or the Client.

#### XIII. Warranty:

DE guarantees that the work performance or service supplied is functional and conforms to the relevant technical standards and rules.

Should the use or creation of commercial computer programmes be required for the service provision, DE shall not accept liability for consequential damages in the event of programme error or any other software error.

Any notice of defects relating to obvious defects must be substantiated in writing and submitted to DE within two weeks of the receipt or commissioning of the work performance or service. The same applies to hidden defects, in which case the defects liability period shall begin immediately on discovery. In the event that the Client does not inform DE without delay and if the Client remedies the defect himself or has a third party remedy the defect, the Client shall bear the costs incurred in remedying the defect. DE cannot accept liability for any such remedy undertaken by the Client or third parties. When a defect appears the Client shall only become entitled to remedy the defect himself or contract third parties to do so if DE does not comply with a request to do so within a reasonable period of time.

The period of limitation for warranty claims begins with the transfer of risk subsequent to initial commissioning at the latest, or 2 months after enjoyment of benefit at the latest. The warranty is valid for a maximum of 24 months after initial commissioning.

Neither the supply of a replacement or remedy of defects shall cause an extension of the original warranty period.

Parts subject to wear, small parts and any defects arising from the Client's improper use, from use that does not accord with the intended use, or from unsuitable use of the facility shall not be covered by the warranty. Thus liability is excluded for any defects arising from operations outside the scope of the performance specification and such defects shall not be covered by warranty.

The reversal of the burden of proof in accordance with § 924 ABGB (Austrian Civil Code) is also excluded.

The warranty is also conditional on the facility's steady condition and on its operation and maintenance in accordance with our operating instructions, in particular compliance with the specified cleaning, inspection and service intervals. In the event that DE issues a security (for possible claims for defects) in the form of a warranty bond or bank guarantee, it shall become valid on the same day as the guaranteed sum is credited, or at the earliest on acceptance of the work performance or service and payment of the total final account, and shall expire at the latest on expiry of the warranty period.

#### XIV. Liability:

No liability shall be accepted for any production downtime, delayed production start, delayed product launch, lost profits, loss of use, loss of contract, purely pecuniary losses or any other economic or indirect consequential damage etc.

DE shall only be liable for damages arising from work undertaken by DE or its vicarious agents in cases of intent or extreme gross negligence. The level of liability is limited to 10% of the net contract value. Liability for slight negligence is also excluded.

In any case DE shall only be liable for direct loss. In the case that operations are interrupted as a result of DE's extreme gross negligence, DE's liability shall be limited to the direct loss and a maximum of 10% of the net contract value.

Liability can only apply if the work performance or service is operated for its intended use under normal conditions. DE shall not be held liable for the correctness of implementation documents supplied by the Client, but only for their proper implementation in accordance with the instructions supplied. DE shall not accept liability in the event that it is impossible to determine which party has caused an instance of damage. DE shall also not be liable in cases of force majeure. In such cases DE shall wholly or in part be relieved from fulfilling the contract on schedule.

Claims for rescission or price reduction are excluded. DE shall deal with claims for improvements or for making up deficiencies within a reasonable period of time, generally deemed to be one third of the agreed time required to perform the service. Claims for damage due to delayed performance cannot be made during this period of time.

The Client accepts liability for all his subcontractors and vicarious agents.

The Client must provide DE with the documents required for DE's proper service provision, and must make these available with sufficient time for DE to be able to provide its services properly and on schedule. In this respect DE shall be exempted of liability. In particular this applies to data transfer delays and decisions that delay the project and have an effect on DE.

DE shall not provide any warranties or be in any way liable for any work or services provided on the part of the Client.

In any event, the total sum of all DE's liabilities is limited to DE's liability insurance cover.

#### XVI. Confidentiality Obligation on the Part of DE

Both contractual parties are obliged to maintain strict confidentiality as regards any reciprocal provision of information.

It shall be deemed as agreed that contravention of this clause shall incur a penalty of € 10,000.00 for each infringement.

#### XVII. Industrial Property Rights and Copyright:

All of DE's plans, prospectuses, reports, technical documentation, software, data carriers and the like are protected by copyright. All plans and other documents transmitted from DE to the Client are and shall remain DE's intellectual property. Unless otherwise agreed, the Client shall only be permitted to use the work results within the scope of this specific project and may not pass them on to third parties. The whole or partial publication or repeated use by third parties or by the Client is also prohibited.

DE has the right, and the Client is obliged, to credit DE (company, trade name) in any publication or announcement.

In the event that the Client provides plans, sketches or any other technical samples for the execution of delivery, the Client shall indemnify and hold harmless DE in the event that a third party should infringe any industrial property rights.

It shall be deemed as agreed that contravention of this clause shall incur a penalty of € 10,000.00 for each infringement.

#### XVIII. Place of Jurisdiction, Applicable Law:

All disputes shall be subject to the jurisdiction of the local court in Klagenfurt with jurisdiction as regards the subject matter. Austrian substantive law shall apply, with the application of the UN Convention on Contracts for the International Sale of Goods (UNCITRAL) being excluded by mutual agreement as are the international conflict of laws rules.

DE is also entitled to file an action in the Client's general place of jurisdiction.

In the event that the total contract value exceeds € 1,000,000.00, the following arbitration clauses shall be deemed to have been agreed:

The following arbitration clauses shall be deemed to have been agreed with respect to national contracts:

Any dispute arising from this contract or from its violation, cancellation or invalidity shall be finally settled under the Rules of Arbitration and Conciliation for the Economic Chambers' Permanent Courts of Arbitration by a senate consisting of three arbitrators. The proceedings shall be conducted at the Permanent Arbitration Tribunal of the Economic Chamber in Vienna. The number of arbitrators shall be 3. The language to be used in the arbitration proceedings shall be German.

The following arbitration agreements shall be deemed to have been agreed with respect to international contracts:

Any dispute arising from this contract or from its violation, cancellation or invalidity, shall be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) by one? or more arbitrators.

The number of arbitrators shall be 3?

Austrian substantive law shall apply.

The application of the UN Convention on Contracts for the International Sale of Goods (UNCITRAL) is excluded by mutual agreement.

The language to be used in the arbitration proceedings shall be German.

The place of performance shall always be DE's registered office, even when the delivery takes place as per agreement in a different place.

Errors and technical adjustments are excepted. This means that it is possible that parameters in tender documents etc. shall change during the course of project development in order to optimise the facility.

In the event that the Client brings an action before a court against DE, for whatever cause in law, DE shall have the right to stop all work and shall not be subject to any claims for damages as a result.

#### XIX. Severability Clause:

In the event that individual provisions of this contract or these terms should become invalid, the validity of the remaining provisions and the validity of the contracts that form the basis of these provisions shall not be affected.