

## **General Terms and Conditions of d.s.f. GmbH**

### **Section 1 General**

The respective current version of these general terms and conditions of d.s.f. GmbH applies to all current and future business relationships with our buyers and customers, even if they are not the subject of further separate agreements. All deliveries, services and quotes by us are subject exclusively to these general terms and conditions. The legal relationship between us as a seller and the customer is governed exclusively by the written purchase agreement concluded, including these general terms and conditions. These represent all agreements between the contracting parties regarding the subject matter of the contract. They therefore apply to all statements made in connection herewith in brochures, price lists, advertisements, etc., regardless of whether these are made verbally, in writing, by fax or online. Deviating, conflicting or additional terms and conditions do not form part of the contract unless we expressly agree to them in writing. This is especially true for purchase or order confirmations of the buyer if they conflict with the terms and conditions herein, extend or amend the scope of seller obligations in anyway, or exclude individual provisions. Even if we refer to a letter from the buyer/customer that contains the terms and conditions of the customer or of a third party or refer to such, this shall not constitute agreement with such terms and conditions.

### **Section 2 Quote and conclusion of contract**

The purchase agreement signed by the buyer overleaf is a binding quote. By placing an order for goods, the buyer makes a binding declaration of intent to purchase the goods. Reasonable technical changes in shape, colour and/or weight are reserved. Technological changes that do not impair the function of the goods to be delivered are reserved. We have the right to make partial deliveries. The scope of the obligation to supply is determined exclusively by our order confirmation. The contract conclusion is subject to proper and timely delivery to us by our suppliers. This applies only if we are not responsible for any non-delivery. The buyer shall be notified immediately if goods/services are unavailable. Any payment already made shall be refunded immediately. Amendments to a concluded contract must be made in writing. This clause regarding the written form may be revoked only in writing. Sections 454 and 455 of the BGB [German Civil Code] (purchase on approval) shall not apply. All quotes are subject to change and are non-binding unless otherwise agreed. Goods are subject to prior sale. We reserve the property- and ownership rights to cost estimates, drawings and other documents under our ownership, even those that we obtain in relation to a quote. These documents must not be disclosed and/or made available to third parties. Drawings and other documents used for quotes must be returned to us immediately on request unless an order is placed.

### **Section 3 Payment/prices**

The prices of d.s.f. GmbH relate to the scope of services described in each quote and are binding. The prices pursuant to the respective applicable price list on the day of delivery (list price) shall apply, taking into account the prices of our suppliers at the time the purchase quote was made. The purchase price includes the statutory VAT applicable when our invoice is issued. Otherwise, the specified product price does not include any shipping or insurance costs, expenses or taxes; these costs shall be charged separately. Our services are payable immediately and without deduction. Payment of the purchase price or service shall be made only to the account stated in the invoice. Deduction of a discount is permitted only if especially agreed in writing. Unless otherwise agreed, the purchase price is payable immediately and

without deduction after invoicing but no later than 30 days after invoicing/the date the goods or services are rendered. Interest on arrears due to non-payment shall be charged at 5% above the respective base rate p.a. The right to make claims for further damages from arrears is reserved. In the event that we make a higher claim for damages from arrears, the customer has the opportunity to prove to us that the damages claimed from arrears did not occur at all or at least only to a significantly less extent. Should the buyer enter arrears, we reserve the right to withhold deliveries and/or services until full payment of any outstanding claims, to demand interest on arrears and damage incurred due to the arrears. Purchase price arrears or circumstances which are likely to reduce the creditworthiness of the buyer render all other claims arising from the business relationship payable immediately. In this respect, we are entitled to deliver outstanding deliveries only against advance payment or by payment on delivery. After setting a reasonable grace period, we are also entitled in these cases to withdraw from the purchase agreement or demand damages due to non-fulfilment of obligations. We are entitled to prohibit the buyer from reselling the goods delivered by us and to take possession of these goods. For orders amounting to over EUR 30,000. -- (in words: thirty thousand euros), 1/3 of the purchase price/order total must be paid as an advance payment into our account specified overleaf upon the order being confirmed. Bills of exchange and remittances shall not be accepted by us. Payment by cheque is only considered to have been completed after the cheque has cleared and been credited to us.

#### **Section 4 Transfer of risk**

The risk of having to pay the purchase price, even in the event of loss or damage, shall pass to the buyer upon the goods being dispatched to the buyer. This also applies in the event of partial deliveries or if we have assumed the costs of transportation or assembly. If dispatch is delayed due to circumstances beyond our control, the risk shall pass to the buyer upon notification that the goods are ready for dispatch.

#### **Section 5 Rights of set-off and retention**

The buyer can exercise a right of retention only if his/her counterclaim is based on the same contract and the counterclaim is legally established, undisputed or acknowledged. If, when placing an order, the buyer has deceived us with regard to his/her creditworthiness or creditworthiness is lacking, and these circumstances were not apparent to us, we may withdraw from the contract without granting a grace period. If such circumstances arise after the order has been placed, we are only obliged to carry out further services against a reasonable instalment payment.

#### **Section 6 Time and place of delivery**

The delivery period specified by us shall only start if all obligations of the buyer are duly met in good time. Compliance with the delivery time is particularly conditional on the timely receipt of all documents, necessary consents and approvals to be provided by the buyer, the timely clarification/explanation and approval of plans, as well as compliance with the terms of payment and other obligations. If the buyer does not fulfil these obligations in good time, the delivery time shall be replaced by a reasonable one. The right to assert the defence of breach of contract is reserved. The delivery time shall commence on the day on which we receive the written order agreement between the buyer and us. We shall undertake to give the buyer notice thereof. Unless otherwise agreed, the delivery time shall particularly be considered as observed when and to the extent that, in the case of delivering goods to be assembled/installed, the completed postal item has left our site within the agreed delivery time. Insofar as the delivery is delayed due to the buyer, the delivery time shall be deemed

observed if we have informed the buyer in writing that the goods are ready for dispatch. When delivering goods that are to be assembled / installed, the delivery time is deemed observed as soon as the system has been assembled within the agreed delivery time. In the event of force majeure, war or other circumstances for which we are not responsible, we are entitled to a reasonable extension of the delivery times and/or withdraw from the contract in full or in part. If the buyer defaults in acceptance or culpably breaches other obligations to cooperate, we are entitled to claim compensation for damages we incur as a result, including any additional expenses. The right to make further claims remains reserved. The buyer reserves the right to prove that the amount of damage demanded was not incurred or the damage incurred was at least significantly less. The risk of accidental loss or accidental deterioration of the purchase goods shall pass to the buyer the moment that the buyer enters into default of acceptance or payment. We are entitled to carry out partial deliveries. The order of the buyer must include where the goods are to be supplied. The goods shall be delivered in standard packaging suitable for normal delivery. If the buyer defaults in acceptance, the buyer bears all costs associated therewith, particularly storage and labour costs. Unless otherwise agreed, we reserve the right to choose the route and means of transportation. As a rule, all deliveries are made ex warehouse from Neu-Isenburg, exclusive of packaging and transport costs, and at the expense and risk of the buyer. The buyer shall also bear the risk of transportation if the shipping costs are exceptionally borne by us. In return for reimbursement of expenses, the goods can be insured against damage in transit. The shipping method is at our discretion.

## **Section 7 Guarantee/warranty**

Unless the quote states otherwise, we give a two-year guarantee for new goods supplied by us, calculated from the date of delivery. This guarantee applies to the proper operation of the new unit unless the defect is due to the improper handling and/or operation of the device. This guarantee declaration only applies to brand new goods supplied by us. This guarantee does not apply to used or repaired items delivered. The buyer is initially entitled to a remedy to correct a defect; buyer has the right to choose between having the defect rectified (repair) or getting replacement defect-free goods. The seller may refuse to repair or provide a replacement if this is only possible at a disproportionate expense and the other type of remedy does not create significant disadvantages for the buyer. The buyer can withdraw from the contract or demand a reduction of the purchase price if the remedy fails or was not provided within a reasonable period of time, or has been ultimately rejected by the seller. The buyer has no right of withdrawal in the event of only minor defects. If the buyer chooses to withdraw, he/she must return the defective goods and pay compensation for the use derived from them. Calculating this value depends on pro-rata straight-line depreciation by comparing the actual service and expected total service life. The warranty does not cover such damage caused by the buyer, such as damage incurred by the buyer due to natural wear, moisture, excessive room heating, intensive exposure to sunlight or artificial light, other temperature and weather conditions or improper handling. Costs for error detection, and dismantling and reassembly of defective new goods material, as well as transportation costs under the guarantee shall be borne by the buyer. Furthermore, we are not liable for costs due to production downtimes or for damages due to a malfunction and in accordance with the guarantee for our goods. In addition, we are not liable for transportation and installation costs of the new replacement goods supplied under the guarantee. Warranty claims shall expire in accordance with the relevant statutory provisions; the warranty period shall commence upon the goods being handed over. Liability for the agreed quality remains unaffected. All items and products that are listed separately with a single price in an invoice/order confirmation shall be considered as independent goods, any warranty rights to which shall apply separately. The buyer must notify us in writing of any obvious defects immediately, but no

later than within two week from receipt of the goods; in any case, notification must be given prior to the goods supplied being resold by the buyer to third parties, processed, installed or converted in any other way. Failure to comply with this revokes the right to assert claims under the guarantee. The timely sending of defect notifications is enough to ensure the deadline is met. Where construction, assembly or installation is carried out by us, the buyer is obliged immediately after completion to check the executed work or have it checked by an authorised representative. Defects must be queried in the presence of our representative or installer. We are not obliged to check work carried out previously by third parties and shall not be liable for work carried out previously by third parties and any resulting damage. In case of justified and timely defect notifications, the buyer is entitled to have any defect rectified that we have acknowledged. We are entitled to provide replacement goods or reduce the purchase price. The buyer can only claim for damages under the following conditions due to a defect if the remedy failed or we have rejected the remedy. This shall not affect the buyer's right to assert further claims for damages under the following conditions.

### **Section 8 Liability**

The d.s.f. GmbH is only liable for intent and gross negligence and for breaching an essential contractual obligation, i.e. an obligation that must be met in order to ensure the proper execution of the contract and that the contracting parties may rely on to be met. In the case of gross negligence, and for any slightly negligent breach of an essential contractual obligation, our liability is limited to damage typical for such a contract and foreseeable at the time of the contract is concluded. Our liability is otherwise excluded. Insofar as our liability is excluded or limited, this also applies to our representatives and vicarious agents. The above liability exclusions and limitations shall not apply to liability under the German Product Liability Act (Produkthaftungsgesetz), liability for personal injuries, for fraudulent concealment of defects, for the assumption of a guarantee and insofar as further damage is covered by our business liability insurance policy. A change in the burden of proof to the disadvantage of the buyer is not associated with this. Buyer claims for damage for which liability is limited under this section shall expire in one year from the statutory limitation period.

### **Section 9 Withdrawal**

d.s.f. GmbH does not need to supply if the manufacturer has discontinued production of the ordered goods or cases of force majeure events arise, provided that these circumstances only occur after the contract was concluded, were not foreseeable at the time the contract was concluded and provided that we are not responsible for the failure to supply and can prove to have tried in vain to purchase similar goods. A right of withdrawal shall be granted to the seller if the buyer has given incorrect details regarding the facts essential for determining his/her creditworthiness which may justifiably jeopardise the payment claim of the seller. The same applies if the buyer stops his/her payments due to objective insolvency, or insolvency proceedings have been filed against his/her assets.

### **Section 10 Retention of title**

d.s.f. GmbH shall retain title to the delivered goods until full payment of all claims arising from the purchase contract. The buyer is expressly prohibited from pledging or assigning as a security the delivered goods under our ownership. The buyer is liable for damages in this regard. If, contrary to the previous provision, the buyer has disposed by sale or otherwise of our delivered goods subject to retention of title, he/she shall hereby assign the payment claims equal to our invoice amount from the total claims against the recipient of the goods subject to retention of title. We hereby accept the assignment. The buyer is obliged to give

us immediate written notification of the resale or other disposition and to provide us with a deed of assignment. The buyer is obliged to handle the purchase items with care as long as the ownership of the purchase item has not yet transferred to him/her. As long as ownership has not been transferred, the buyer must notify us immediately in writing if the object delivered is seized or subject to other interventions by third parties. If the third party is unable to reimburse us for the judicial and extra-judicial costs of proceedings pursuant to Section 771 of the ZPO (German Code of Civil Procedure), the customer shall be liable for the loss incurred by us. Every relocation and third party intervention, especially seizures must be notified to d.s.f. GmbH immediately in writing; in the case of seizures, this notification must include the seizure report. We are entitled to withdraw from the contract and demand the goods be returned if the buyer breaches the contract, particularly in the event of payment arrears or if the aforementioned obligation is breached. Neither asserting retention of title nor our seizing the delivered goods shall constitute withdrawal from contract.

### **Section 11 Place of jurisdiction and performance**

The legal provisions of the German Code of Civil Procedure (ZPO) and the German Civil Code (BGB) shall govern the place of jurisdiction and performance. If the buyer has no general place of jurisdiction in Germany, his/her domicile or habitual residence moves outside of Germany after the contract was concluded or his domicile or habitual residence is not known at the time of the legal proceedings are filed, the place of jurisdiction and performance shall be the headquarters of d.s.f. GmbH, Neu-Isenburg. This contract and the entire legal relationship between the parties shall be subject to the law of the Federal Republic of Germany, to the exclusion of the UN Convention on the International Sale of Goods (CISG). If individual provisions of this Contract are or become ineffective or the contract contains a loophole, this shall not affect the remaining provisions. By way of an adjustment, the invalid provision shall be replaced with another suitable provision which most closely reflects its economic purpose.

### **Section 12 Force Majeure**

All events attributable to force Majeure for example but not limited to war, civil unrest, natural disasters, orders from higher authority, strikes, lockouts, disruptions in the supply of energy and raw materials, unusual traffic and road conditions, damage to machines not caused by a lack of proper maintenance, late delivery or failure to deliver on the part of upstream suppliers and any other events and operating problems for which no blame can be ascribed to d.s.f. GmbH shall release d.s.f. GmbH from its contractual obligations for as long as such events last and for the scope of their effect.

The provisions also apply if the above circumstances occur at the premises of subcontractors. Where one or more force Majeure events have occurred during the term of the Agreement d.s.f. GmbH shall be entitled to extend the term of the Agreement for a period equal to the cumulative number of days during which force Majeure occurred during the original term of the Agreement.

If d.s.f. GmbH is not able to supply the Customer with product from its normal source of supply due to a force Majeure event d.s.f. GmbH has the right to supply the product to the customer from another source and charge all reasonable extra costs thereof unless the Customer notifies d.s.f. GmbH in writing that he does not need the product during the period of force Majeure.