

# **Terms and Conditions of Purchase and Delivery DURAL GmbH**

## **1. Applicable law**

1.1. The law of the Federal Republic of Germany, with the exclusion of the application of the UN Convention on the International Sale of Goods, except where otherwise agreed in individual cases, shall apply to the contracts concluded between Dural GmbH (hereafter Dural) and the supplier, their conclusion, their efficacy, their interpretation and their implementation, and to all other legal relationships arising between the parties, taking into account the following contractual terms and conditions.

1.2. Unless otherwise agreed, the valid and up-to-date version of the terms and conditions of purchase and delivery at the time of conclusion of the contract shall become part of the contract. If the terms and conditions of purchase and delivery are not enclosed with the offer or the order confirmation, they can be downloaded from the following link: [www.dural.de/en/agb](http://www.dural.de/en/agb).

1.3. The aforementioned terms and conditions of purchase and delivery shall apply only to contracts concluded between a contractor in accordance with Section 310 Para. 1 German Civil Code (BGB) and Dural and to other legal relationships of Dural with this contractor. They shall also apply to contracts and legal relationships for which/in which Dural interacts with a contractor on behalf of a third party.

1.4. Terms and conditions agreed on an individual contractual basis shall precede the terms and conditions of purchase and delivery if these individual agreements have been confirmed in writing by Dural prior to conclusion of the contract.

## **2. Ordering and order confirmation**

2.1. We will issue orders only on the basis of these purchase and delivery terms and conditions. Offers to the purchaser must be compiled in writing in the meaning of Section 126, 126a BGB. These offers must always be written in English. Fees or compensation for visits or the production of quotations, projects etc. shall not be guaranteed.

Offers shall be subject to review by the supplier with respect to any trade, finance and payment restrictions on the basis of Council Regulation (EC) No. 2580/2001 and on the basis of Council Regulation (EC) No. 881/2002 by Dural.

2.2. All prices must be indicated in the national currency of the supplier (if the national currency is not the Euro, also in Euros, and then if necessary, including currency hedging set out separately). Unless otherwise indicated, these are fixed prices. If the price information does not indicate whether the prices include VAT/sales tax, these prices are gross prices.

2.3. In the event of a request by Dural, the supplier is bound to its offer during the time frame specified in the pricing information, or during the period specified by the supplier. If a binding time frame has not been expressly named by both parties, this shall be 4 weeks further to receipt of the offer by Dural.

2.4. Orders must be made in writing. Agreements made verbally and by telephone will not be binding. Orders may only be accepted within 14 days of receipt of the order with written confirmation of the order (confirmations of orders are expected within 24 hours).

2.5. Any terms and conditions of business of the supplier, in particular in order confirmations, shall not become part of the contract, even if there is no express objection to their agreement when the

contract is concluded. Any other provisions shall only apply if Dural provides its written consent to the inclusion of the terms and conditions of business of the contractual partner.

2.7. Order confirmations containing prices, delivery dates or production data which deviate from the orders should be understood as a rejection of the order.

2.8. If these terms and conditions of business are included in a contract concluded with the supplier, then they shall also apply to all types of subsequent contract which are concluded with this supplier in the future, if there is no express reference to the validity of the terms and conditions of purchase.

### 3. Prices

3.1. All prices shall include free delivery, unless otherwise agreed. Transportation, dispatch, packaging and insurance costs – unless otherwise agreed – are included in the indicated prices. Otherwise the Incoterms 2010 apply.

3.2. If the packaging price is calculated separately due to a prior written agreement, then the purchaser shall be entitled to return this packaging and to deduct at least 2/3 of the packaging price from the total invoice.

### 4. Invoicing and payment

4.1. Invoices should be sent as a single copy to the following address:

Dural GmbH  
Südring 11  
56412 Ruppach-Goldhausen  
Germany

4.2. Invoices sent to Dural should indicate the order number, the request number and the purchaser. All necessary invoicing documentation must be enclosed. VAT/sales tax must be stated separately.

4.3. For invoices which are not sufficiently identifiable, in particular if references are incomplete and number information is missing from the order, the time frame for settlement of the payment by the due date shall not commence until full clarification has been provided by the supplier, provided that the supplier has been notified by us of the lack of identifying information immediately after receipt of the invoice. If certificates, documentation etc. which expressly form part of the order are not enclosed with the invoice or delivery, the deadline for settlement of the payment by the due date shall commence on the date of the complete receipt of this documentation. The invoice must be sent to Dural separately upon departure of the shipment – even for partial deliveries.

4.4. Payments shall be made by Dural within 30 calendar days with a 3% discount, or within 60 calendar days without deductions, further to the complete delivery and service and receipt of the purchaser's invoice. Any deviations from the above must be agreed in writing with the purchaser. Payments will be made by bank transfer to a bank or post office account. Timely payment shall be deemed to be made according to the postmark date, or the debit date for bank transfers.

4.5. If the supplied goods are defective, the deadline for the settlement of payment by the due date shall commence with the acceptance of the defect-free goods. Payments by Dural shall not signify any acknowledgement of the contractual conformity of the service, or the accuracy of the invoiced sum.

4.6. In the event of an earlier delivery than agreed, the payment term shall not commence until the day on which the delivery/service would have been due originally.

4.7. If, as an exception, prices are not indicated, the list prices of the supplier with the aforementioned deductions published at the time of the order shall apply.

4.8. The agreement on the place of fulfilment shall not be affected by the pricing method. Unless otherwise expressly agreed, the place of fulfilment for all obligations arising from the contractual relationship is the shipping point named by Dural. Otherwise the headquarters of Dural are the place of fulfilment.

## 5. Delivery and delivery dates

5.1. The delivery dates specified in the orders shall commence on the date of the order. The delivery deadlines must be observed. Dural must be informed immediately of any delivery delays, stating the reasons and the anticipated duration of these delays. A notification must be sent to Dural for each delivery on the dispatch date, to include precise indication of the order data and the exact delivery quantities.

5.2. The delivery date or delivery deadline is deemed to be met with the receipt of the goods at the place of reception or use as named by the purchaser, provided that the delivery takes place on a date in accordance with the contract, or the purchaser confirms that the delivery has taken place in a timely fashion.

5.3. In the event of an early delivery, the purchaser shall be entitled to either return the goods at the cost of the supplier, or to store the goods until the agreed delivery date solely at the cost and risk of the supplier. Partial deliveries will only be accepted by the purchaser further to written agreement. If partial deliveries have been agreed, the remaining quantities must be specified in writing at the time of the delivery.

5.4. In the event of a delayed delivery, Dural shall be entitled, without prejudice to any other statutory rights or claims, to set an appropriate period of grace for the supplier, and further to the expiry of this period, the purchaser – at its own discretion – may withdraw from the contract, or claim compensation for damages on the grounds of non-fulfilment.

5.5. If the supplier is unable to make a timely delivery, either in whole or in part, as a result of force majeure, strikes, lockouts, a manpower shortage etc., then Dural shall be entitled to withdraw from the contract further to an appropriate period of grace, to be defined by Dural, or if the delivery does not take place within the period of grace. In cases where it is, to a certain extent, temporarily or completely impossible to make a delivery, Dural shall be entitled to withdraw from the contract if partial deliveries are of no interest. If the delivery is of no interest for the purchaser as a result of the delay, or the supplier declares that it is unable to deliver within an appropriate time frame further to the due date, then the purchaser shall be entitled to withdraw from the contract without the need to define a deadline.

5.6. If the supplier is in delay with the delivery, then it shall be obliged to pay a contractual penalty of 0.1% of the contractually agreed price for the service per calendar day of the delay, however, such sum shall not exceed a maximum of 10% of the contractually agreed price. The purchaser can claim payment of the contractual penalty before the final payment, irrespective of whether it has reserved the right to apply a contractual penalty at the time of the handover/acceptance of the delayed service.

5.7. In the event that Dural is entitled to statutory compensation claims as a result of the delay, then the contractual penalty will be offset against the compensation claims in accordance with Section 341 BGB. This is without prejudice to the enforcement of a statutory compensation claim which exceeds the level of the contractual penalty.

5.8. The delivery quantities indicated in the orders and/or requests are fixed quantities. Over-deliveries exceeding 5% cannot be accepted unless they have been agreed with the purchaser. Under-deliveries exceeding 5% shall be deemed to be non-fulfilment.

## 6. Documentation

6.1. The purchaser reserves its right of ownership and copyright to all diagrams, drawings, sketches, samples, calculations and other documentation, as well as models and prototypes. These may be used solely for the fulfilment of the concluded contract and may not be made accessible to third parties without the express consent of the purchaser. After completion of the contract, these must be returned to Dural without prior request.

6.2. The use of the above for any purpose other than the specified intended purposes shall oblige the supplier to pay compensation for damages. Duplicates, carbon copies and photocopies may not be retained. Models, templates and similar shall become the property of Dural at the time of issue and shall be handed over to Dural with the delivery of the parts, unless otherwise agreed in writing.

6.3. The supplier undertakes to handle all commercial and technical details and specifications relating to and associated with the contract concluded with Dural as a trade secret. The obligation to maintain confidentiality shall also apply, irrespective of whether or not a contract is concluded, to the knowledge obtained during the offer phase and further to execution of the contract. This obligation expires if, and to the extent that, the circumstances have become general knowledge, in particular manufacturing know-how.

## 7. Liability for defects

7.1. The supplier shall guarantee that all components it supplies and all services it provides correspond to the state-of-the-art technology, the relevant legal provisions and comply with the guidelines and directives of official bodies, authorities, professional and trade associations and EU standards. All product characteristics are determined in accordance with the EU standards and material data sheets, unless other norms or standards have been expressly agreed in writing with Dural. In the event that EU standards and material data sheets exist, or are no longer valid, the corresponding DIN standards shall apply, or if no DIN standards are in place, the customary trade practices, provided that these are not superseded by the state-of-the-art technology. The content and scope of the technical documentation follows the EU directives, and where applicable, the EU member states in which the product is sold. The supplier shall expressly guarantee its own references to norms, standards, material data sheets or factory test certificates, as well as information on qualities, dimensions and usability, in writing to Dural.

7.2. If, in individual cases, deviations from these requirements become necessary, then the supplier must obtain the written consent of Dural for this purpose in a timely fashion. The contractual obligations of the supplier shall not be affected by any such agreement. If the supplier has concerns with respect to the type of execution desired by the purchaser, then it must inform Dural immediately and in writing, indicating the reasons.

7.3. The purchaser shall not be obliged to inspect the goods, nor to open the packaging. Payment of the invoice shall not constitute an acknowledgement that the goods have been ordered, are complete or are free from defects, and does not exclude claims for defects or the rights arising from a delayed delivery. All quality defects and quantity and dimensional differences shall be deemed to be latent defects and shall oblige the supplier to be liable for defects, even if such defects have only been determined by the purchaser's end user. The supplier shall thereupon be entitled to refer to the lack of complaints by Dural in the event of delivered goods which are defective if it has first asked the purchaser, close to the time of delivery, and has set a reasonable deadline, to check that the delivered goods are free from defects, and to notify the supplier of its findings.

7.4. In the event of the liability for defects, and in cases of unauthorised partial delivery, Dural shall have the right to demand supplementary performance from the supplier, consisting either of the delivery of a defect-free item, or the rectification of the defect. The supplier shall bear all costs required for the purpose of the supplementary performance, including inter alia travel, labour and material costs, as well as the costs of sending and returning the goods. If the supplementary performance fails, Dural shall also have the right to demand further supplementary performance. In such a case, the supplier may then only refuse to employ the method of supplementary performance chosen by Dural if such method would only be possible at disproportionate costs. In such a case, the claim by Dural shall be limited to the other method of supplementary performance if the supplier is able to provide Dural with written verification of the disproportionate costs. If the supplier is unable to fulfil the obligation of supplementary performance within the appropriate time frame set by Dural, Dural shall be entitled to either carry out the replacement procurement itself, at the supplier's own cost, or to rectify the defects in the goods independently, or to appoint another party to do so, at the supplier's own cost. Furthermore, Dural can also reduce the price, provided that a decrease in value remains thereafter. This shall not affect any claims for compensation by Dural.

7.5. The defect liability period shall not commence until the date of handover of the goods to Dural, or to the third parties or place of reception or use named by Dural, unless a later date has been expressly agreed. From this date, the defect liability period shall be 3 years, however, it shall be 5 years from this date if these are deliverables which have been used for construction purposes in accordance with their usual intended purpose and which have caused its defectiveness. The aforementioned rule shall also apply to deliveries of spare parts. If, as part of the supplementary performance, parts are delivered, repaired or improved, the general requirements of the German Civil Code (BGB) shall apply to the new start date of the limitation period, or its suspension as regulated here. For deliveries of machinery, machine parts and machine-like facilities which are to be assembled/installed at Dural by the supplier, or by the third parties appointed by the supplier, the complaint period shall commence with the start of operability further to the complete and successful assembly/installation.

## 8. Product liability, recall costs

8.1. If, further to a violation of official safety requirements, or due to national or foreign product liability regulations or legislation, a claim is raised against Dural as a result of the defectiveness of its product that can be traced back to the goods delivered by the supplier, then Dural shall be entitled to demand compensation for this damage from the supplier to the extent that this has been caused by the product(s) which it supplied. This damage shall also include the costs of any precautional recall action.

8.2. The supplier shall indemnify Dural for any claims by a third party arising from manufacturer liability and on the basis of product liability law, to the extent that the supplier is responsible for the defect which has given rise to the liability.

#### 9. Infringements of proprietary rights

At all times during and after the term of this contract, the supplier shall hold Dural and its customers harmless for any damages, costs and disadvantages (including lost profit, loss of use, downtimes, penalties, legal costs etc.) which are incurred for the purchaser or its customers in relation to the use, sale, processing, connection or resale of the parts to be delivered by the supplier as a result of alleged patent rights, registered designs, copyrights, trademarks or other similar infringements of proprietary rights, and shall compensate Dural or its customers immediately for all costs and damages arising as a result of such infringements.

#### 10. Assignment of claims, rights of retention and offsetting

10.1. The assignment of a claim, irrespective of its content, shall always require the written consent of the purchaser. Without the required consent, any assignments made will be ineffective. Dural may only refuse to give its consent if, after reviewing the individual case, the interests of Dural in maintaining the claim relationship outweigh the interests of the supplier in the intended assignment.

10.2. A limitation of the rights of Dural, with respect to claims by the supplier, to enforce a right to retention, or to offset claims towards the supplier, shall be ineffective.

10.3. The supplier shall waive the right to contradict determination of the claims to be settled by Dural in the event of several co-existing claims.

#### 11. Liability insurance

11.1. The supplier shall be obliged to provide industrial public, product and environmental liability insurance, with the appropriate coverage per damage event for personal, material and financial damages, at its own cost, for damage which it has caused, or which has been caused by its legal representatives, its management employees, or by other vicarious agents in relation to the fulfilment of the contract, and shall maintain this insurance policy for the entire contract term and for a minimum period of 5 years following the date of the order. The insurance policy must be submitted to the purchaser on request.

11.2. To the extent that the insurance policy provides a maximum compensation sum for all damage events within one insurance year, this sum must correspond to at least twice the total of the insured sums available for each damage event. The insurance policy, including the relevant insurance terms and conditions, and evidence of the completed premium payment(s), must be submitted to Dural on request within two weeks. At the request of Dural, evidence of the continued coverage of the insurance must also be provided during the term of the contract. A lack of evidence shall entitle Dural to terminate the contract on important grounds.

#### 12. Transportation risk

12.1. Every shipment shall be carried out solely at the risk of the supplier.

12.2. The supplier shall bear the risk of accidental loss or deterioration of the goods until their acceptance by Dural.

### 13. Delivery note

13.1. A delivery note must be enclosed with each delivery. In particular, the delivery note must contain:

- a) an exact breakdown of the content of the shipment and
- b) all order data from Dural.

### 14. Goods receipt

Goods may only be received from Monday to Friday between 8 am and 4 pm.

### 15. Subcontractors

Unless otherwise specified by separate agreement, or identifiable for Dural based on the content of the order with respect to the performance capacity of the supplier, the supplier shall undertake to fulfil the obligations arising from the order within its own operations. Any employment of a subcontractor by the supplier may only take place with the prior consent of Dural – irrespective of whether Dural was able to recognise or foresee this at the time of conclusion of the contract.

### 16. Data privacy/data storage

Dural GmbH shall be entitled to collate and store data on the respective contracting partner and the individual contractual relationship, taking into account the respective applicable requirements of data privacy in commercial transactions as part of the respective intended purpose.

### 17. Undue distortions of competition

Within its own organisation, the supplier undertakes, by means of appropriate organisational measures, to guarantee that its employees dealing with Dural do not commit any criminal offences against competition in the meaning of the German Criminal Code (StGB) and in accordance with Sections 17 and 18 of the German Unfair Competition Act (UWG).

### 18. Confidentiality obligations and advertising

18.1. The supplier shall also undertake to maintain confidentiality regarding the business relationship with Dural and to treat all obvious commercial or technical details disclosed to it as part of the business relationship as confidential and to refrain from disclosing such information to a third party.

18.2. Where, as an exception, the advertising of the supplier refers to the business relationship with Dural, this may not take place until Dural has granted its express consent in writing. In such cases, the written consent granted as an exception shall also be limited to the advertising presence of the contracting partner which is actually shown to obtain the consent.

18.3. In the event of an infringement, Dural reserves the right to claim compensation for damages. The supplier undertakes to surrender all uses from which it has benefited due to its failure to honour these obligations and to provide compensation for any damages arising as a result.

#### 19. Partial ineffectiveness

In the event that one or several clauses of these terms and conditions of purchase and delivery, or a clause within other agreements, is or becomes ineffective, this shall not affect the validity of all other clauses, provisions or agreements. In place of the ineffective provision, a provision shall be agreed upon which most closely matches the original economic intent of the parties. Otherwise the statutory legal provisions shall apply.

#### 20. Court of jurisdiction

The exclusive court of jurisdiction for all and any disputes arising from these terms and conditions and from any orders of goods which take into account these terms and conditions, shall be the competent court for the headquarters of Dural. However, Dural shall be entitled to take legal action at the competent court for the headquarters of the supplier.

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Dural GmbH  
Südtring 11  
56412 Ruppach-Goldhausen  
Germany