

DOM Sicherheitstechnik GmbH & Co. KG

General conditions of supply and terms of payment

1. Scope of Application

Sales and supplies by DOM Sicherheitstechnik GmbH & Co. KG (hereinafter "DOM") are effected exclusively on the basis of the following General Conditions of Supply and Payment (hereinafter "Conditions of Supply"), which the Customer acknowledges by the placing of the order or the acceptance of the delivery. These Conditions shall also apply to all future business transactions with the Customer. The application of any deviating or supplementary business terms and conditions of the Customer shall be excluded, even if DOM do not expressly contradict these.

2. Concluding of Contract

2.1 Quotations by DOM are subject to review. Subject to the provisions in Item 2.2, a contract shall not come into being until written confirmation has been issued by DOM, and shall be based exclusively on the content of the confirmation of order and these Conditions of Supply. Oral agreements or undertakings shall require confirmation in writing from DOM in order to be deemed valid. DOM reserves the right to charge a handling fee amounting to 60.00 EUR plus value of goods in case of orders cancelled by the customer.

2.2 Even without written confirmation of order, a contract shall come into being at the latest with the delivery, if the object of contract is the supply of individual keys (replacement/spare keys) or if the supply is especially urgent (urgent order), and in the latter case the receipt of the goods at the Customer is to be effected within four (Vmax) or nine (urgent programme) working days respectively.

2.3 DOM shall reserve all rights to the sales documentation (in particular to illustrations, drawings, weight and measurement data, the software documentation and the samples, as well as copies of these (collectively "Documents"). The Documents may not be made accessible to third parties, and are to be returned to DOM forthwith on request.

3. Delivery Periods and Deadlines

3.1 Delivery periods and delivery deadlines shall only be binding if they have been confirmed in writing by DOM, and the Customer has notified or provided DOM in good time with all the information and documents required for the performance of the supply, and has paid any agreed advances in accordance with agreement. Agreed delivery periods shall begin with the date of the confirmation of order. In the event of additional or extension orders being issued later, all delivery periods shall be extended accordingly.

3.2 Unforeseeable, unavoidable events, and such as fall outside the scope of influence of DOM and which are not attributable to DOM, such as force majeure, war, natural disaster, or labour disputes, shall exempt DOM from their obligation to effect supplies or services within the due period for the duration of the event. Agreed deadline periods shall be extended for the duration of the event; from the onset of the event, the Customer will be advised in the appropriate manner. In the event of the end of the event not being foreseeable, or if it persists for longer than two months, each party shall be entitled to withdraw from the contract.

3.3 In the case of objects of supply which DOM do not manufacture themselves, the right is reserved for performance to be subject to correct delivery in due time to DOM.

3.4 In the event of deliveries from DOM being delayed, the Customer shall be entitled to withdraw if the delay is attributable to DOM, and a reasonable period of grace set by the Customer expires without success.

3.5 In the event of the Customer falling into delay with acceptance, or failing to respect other obligations of co-operation, DOM shall be entitled, irrespective of their other rights, to place the object of supply in storage in an appropriate manner, at the risk and expense of the Customer, or to withdraw from the contract.

3.6 DOM shall be entitled to undertake part deliveries if duly justified occasion arises.

4. Dispatch, Assignment of Risk, Insurance

4.1 Unless other provisions are stipulated by the Customer, dispatch shall be effected by an appropriate means of dispatch in the usual packing.

4.2 Risk shall be assigned to the Customer with the handover of the object of the contract to the transport company or to the Customer himself. In the event of handover or dispatch being delayed for reasons attributable to the Customer, risk shall be assigned to the Customer on the day of notification of readiness to dispatch the object of the contract.

4.3 Insurance shall be arranged only at the wish and expense of the Customer.

4.4 The Customer shall bear the costs of any proof he may require of the dispatch of the object of the contract (proof of dispatch) to the delivery address provided by the Customer.

5. Prices, Terms of Payment

5.1 In the event of the contracting parties not having agreed on a specific price, the price shall be determined in accordance with the DOM price list in force at the time of the concluding of the contract.

5.2 All prices from DOM shall be understood to be ex works, exclusive of statutory Value Added Tax in each particular case, and exclusive of the costs of packing and dispatch, which shall be invoiced separately. The Customer shall bear such public levies as may be incurred in connection with the import of the object of the contract, such as Customs duty.

5.3 DOM shall be entitled to issue part invoices for part deliveries in the meaning of Item 3.6.

5.4 Each invoice from DOM shall be due for payment within 30 days from the date of invoice, without deduction. In the event of this period expiring without payment being effected, the Customer shall be deemed to be in arrears. Payments by the Customer shall not be deemed to have been effected until DOM has availed of the sums concerned.

5.5 In the event of the Customer being in arrears, DOM shall be entitled to demand arrears interest up to the statutory limit. The right to claim further compensatory damages shall remain unaffected thereby.

5.6 Bills of exchange and cheques in fulfilment of payment shall only be accepted by DOM by special agreement, and free of any costs or charges for DOM.

5.7 The Customer shall only be entitled to offset payments if his counterclaim is undisputed or has been determined with force of law.

5.8 The Customer shall be entitled to claim a right of retention only to the extent that his counterclaim is based on the same contract and is undisputed or has been determined with force of law.

5.9 In the event of DOM recognising the risk of Customer being unable to meet his payment obligations after the concluding of the contract, DOM shall be entitled to carry out any deliveries still outstanding only against payment in advance or the provision of a surety. In the event of advance payments or surety payments still not being provided after the expiry of an appropriate period of grace, DOM shall be entitled to withdraw in whole or in part from individual or all of the contracts concerned. The right of DOM to pursue further rights shall remain unaffected.

6. Right of retention of ownership

6.1 Until payment is effected in full of all claims on the part of DOM arising from the commercial relationship with the Customer, the products supplied shall remain the property of DOM.

6.2 In cases of current invoice, the right of retention of ownership shall be deemed to constitute surety for the claim on the balance accruing to DOM.

6.3 The Customer shall only be permitted to effect the sale of the products subject to retention of ownership ("Retention of Ownership Products") by way of due and proper commercial transactions. The Customer shall not be entitled to offer the Retention of Ownership Products in pledge, to assign them as surety, or to arrange for any other availments which might prejudice the right of ownership of DOM. The Customer shall hereby assign to DOM claims arising from onwards sale, and DOM shall hereby accept this assignment. In the event of the Customer selling the Retention of Ownership Products after combining them with other goods or together with other goods, then the assignment of claim shall be deemed to be agreed solely in the amount of the part which corresponds to the price agreed between DOM and the Customer plus a safety margin of 10 % of this price. The Customer shall be empowered, subject to possible revocation, to collect the claims assigned to DOM in the Customer's own name in trusteeship for DOM. DOM shall be entitled to revoke this empowerment, as well as the entitlement to resale, if the Customer is in arrears with substantial obligations, such as payment in respect of DOM; in the event of revocation, DOM shall be entitled to collect the claim themselves.

6.4 In the event of the Retention of Ownership Products being combined with other objects, DOM shall acquire joint ownership in the new item in the proportion of the value of the Retention of Ownership Products to the other objects at the time of their combination. In the event of the combination being effected in such a manner that the Customer's item is to be regarded as the main item, it shall be deemed to be agreed that the Customer shall assign proportional joint ownership to DOM. The joint ownership thus engendered shall be held in safekeeping by the Customer on behalf of DOM.

6.5 The Customer shall provide DOM at any time with any information required in respect of the Retention of Ownership Products or in respect of any claims which have been assigned to DOM in relation thereto. Interventions or claims by third parties to Retention of Ownership Products are to be made known to DOM by the Customer forthwith, with the necessary documents being handed over. The Customer shall at the same time advise the third party of DOM's right of retention of ownership. The costs of defence against such interventions and claims shall be borne by the Customer.

6.6 The Customer shall be obliged to treat the Retention of Ownership Products with all due care for the duration of the retention of ownership.

6.7 In the event of the realisable value of the sureties exceeding by more than 10 % the total of the claims by DOM which are to be secured, the Customer shall be entitled to request exemption to this extent.

6.8 In the event of the Customer falling into arrears with substantial obligations in respect of DOM, such as payment, and DOM withdraws from the contract, DOM shall be entitled, irrespective of other rights, to demand the return of the Retention of Ownership Products and to make use of them elsewhere for the purpose of satisfying any claims due against the Customer. In this case, the Customer shall grant DOM or the agents of DOM immediate access to the Retention of Ownership Products, and shall hand them over.

6.9 In the event of deliveries to places respecting other legal systems, in which the foregoing ruling regarding retention of ownership does not have the same surety effect as in Germany, the Customer shall do everything to arrange corresponding surety rights for DOM forthwith. The Customer shall co-operate in all measures such as, for example, registration, publication, etc., such as may be necessary and required for such surety claims to be rendered effective and implementable.

6.10 At the request of DOM, the Customer shall be obliged to insure the Retention of Ownership Products in an appropriate manner, to provide DOM with the corresponding proof of insurance, and to assign claims from the insurance contract to DOM.

7. Quality, Rights of the Customer in the event of Deficiencies, Inspection Obligation

7.1 The object of supply shall be of the agreed quality at the time of assignment of risk. This quality shall be measured exclusively in accordance with the specific agreements reached between the parties in respect of the properties, features, and performance characteristics of the object of supply ("Quality Agreement").

7.2 Details given in catalogues, price lists, and other information material provided to the Customer by DOM, as well as information describing the product, are under no circumstances to be understood as being a guarantee for a particular quality of the object of supply; such quality guarantees must be expressly agreed in writing.

7.3 Rights of the Customer arising from deficiencies in the object of supply shall be subject to the precondition that he has examined the object of supply after handover, and advises DOM in writing of any deficiencies forthwith, but at the latest two weeks after handover. Concealed defects or deficiencies must be notified to DOM in writing forthwith after their discovery.

7.4 In the event of any complaint, DOM shall be availed of the right to view and inspect the object of delivery which is the subject of complaint. The Customer shall grant DOM the time and opportunity necessary for this. DOM shall also be entitled to require the Customer to return the object of supply which is the subject of complaint to DOM at DOM's expense. In this case the most cost-efficient mode of dispatch has to be selected. In the event of a complaint by the Customer proving to be unfounded, and in the event of this having been identifiable by the Customer before making the complaint, the Customer shall be obliged to reimburse DOM for all the expenditure incurred in this connection, e.g. costs of travel or dispatch.

7.5 DOM shall rectify any deficiencies at their own discretion by rectifying the defect free of charge for the Customer, or providing an item free of any defects by way of replacement supply (jointly referred to as "Subsequent Fulfilment").

7.6 The Customer shall accord DOM appropriate time and opportunity necessary for Subsequent Fulfilment. Only in urgent cases of impairment of operational safety or the avoidance of disproportionately serious damage, or if DOM is in arrears with the rectification of the defect, shall the Customer have the right, after immediate notification to DOM, to rectify the defect himself, or arrange for it to be rectified by third parties, and to demand from DOM the reimbursement of the costs required for this.

7.7 Parts replaced by DOM are to be returned to DOM at their request.

7.8 The Customer's rights in the event of deficiencies shall not apply if deficiencies arise for reasons attributable to the Customer, e.g. due to unsuitable or inappropriate use, and in particular failure to follow the operating instructions, faulty commissioning, incorrect combination for not intended components, incorrect handling (e.g. excessive force), or erroneous installation by the Customer, unsuitable accessories, unsuitable spare or replacement parts, with application of illegal produced keys, unsuitable repair measures, or natural wear and tear, provided that the deficiencies are not attributable to DOM.

7.9 The costs of transport, travel, labour and materials incurred for the purpose of Subsequent Fulfilment shall be met by DOM.

7.10 In the event of Subsequent Fulfilment not succeeding, being unacceptable to the Customer, or if DOM has declined to act in accordance with Art. 439, Para. 3 BGB (Civil Code), the Customer shall be entitled, at his discretion and in accordance with the provisions of the law, to withdraw from the contract, or to reduce the purchase price, and/or to demand compensatory damages in accordance with Item 8, or the reimbursement of his expenses.

7.11 The statute of limitations for the rights of the Customer in respect of deficiencies shall be twelve months from the delivery of the object of supply to the Customer. For claims for compensatory damages by the Customer for reasons other than deficiencies in the object of supply and in respect of purchaser's rights in cases of aggravated concealed deficiencies or deficiencies caused by wilful negligence, the statutory periods of limitations shall remain in effect. The statute of limitations provisions of Article 479 BGB shall remain unaffected.

8. Liability and Compensatory Damages

8.1 Subject to the ruling under Item 8.2, statutory liability for DOM for compensatory damages shall be restricted as follows:

- DOM shall be liable, limited in the amount concerned to the typical damages foreseeable at the concluding of the contract, for the infringement due to minor negligence of major obligations arising from the indebtedness relationship;
- DOM shall not be liable for the infringement due to minor negligence of insubstantial obligations arising from the indebtedness relationship.

8.2 The foregoing restriction of liability shall not apply in cases of mandatory statutory liability (in particular in accordance with the Product Liability Law), as well as in the event of the undertaking of a guarantee or culpably incurred physical injury.

8.3 The Customer shall be obliged to take appropriate measures to protect against damage and reduction in value.

9. Product Liability

In the event of the Customer selling the object of supply unaltered or after combination with other merchandise, he shall keep DOM safe and harmless in the internal relationship from product liability claims by third parties, provided that he is responsible for the error or defect which incurred the liability.

10. Commercial Protective Rights

In the event of the Customer specifying, by way of specific instructions, information, documentation, drafts or drawings, as to how DOM is to manufacture the products to be supplied, then the Customer shall undertake a guarantee that the rights of third parties, such as patents, utility models, and other protective rights and copyrights, will not be infringed by DOM. The Customer shall keep DOM safe and harmless in respect of all claims by third parties which may be pursued against DOM as a result of such infringement.

11. Lump-sum Compensatory Damages

DOM shall be entitled, in the event of non-fulfilment of the contract by the Customer, to demand from the Customer a lump sum in compensatory damages in the amount of 10 % of the price to be paid by the Customer. The Customer shall however be entitled to provide proof that DOM has not incurred any damages, or substantially lesser damages.

12. General Provisions

12.1 The Customer shall only be entitled to assign any rights and claims arising from this Contract to third parties after obtaining written approval from DOM.

12.2 Amendments and supplements to this Contract and/or these Conditions of Supply, as well as any ancillary agreements, shall be required to be in writing. This shall also apply to any change in this requirement for the written form.

12.3 In the event of a provision of the Contract and/or these Conditions of Supply becoming unworkable in whole or in part, the effectiveness of the remaining provisions shall remain unaffected thereby.

12.4 Exclusive court of jurisdiction for any disputes arising from the contractual relationship shall be Brühl bei Köln. DOM shall, however, be entitled to claim against the Customer at any other statutory place of jurisdiction.

12.5 The law of the Federal Republic of Germany shall apply, to the exclusion of the United Nations Agreement in respect of International Purchase of Merchandise (CISG).

Supplementary general conditions of business for order production

1. Scope of Application

The performance of works services (e.g. the galvanizing of the Customer's products or the production of individual lock systems) for the Customer shall be effected exclusively in accordance with the following Supplementary General Conditions of Business for Order Production ("Supplementary Conditions"), which the Customer shall acknowledge by the issue of the order or the acceptance of the goods. These shall apply in addition to the General Conditions of Supply and Payment ("Conditions of Supply") set out heretofore. Inasmuch as these Supplementary Conditions may not feature any specific provisions, the rulings of the Conditions of Supply shall apply accordingly.

2. Assignment of Risk, Acceptance of the Work

- 2.1 The Customer shall bear the risk of accidental destruction as from the time of acceptance of the work.
- 2.2 The Customer shall be obliged to accept the contractually-manufactured work, as soon as DOM advise him of the manufacture thereof.
- 2.3 The Customer shall not be entitled to decline to accept the work due to minor defects
- 2.4 Acceptance shall still be deemed to have been effected if the Customer does not take charge of the work within a reasonable period of grace set by DOM, although he is obliged to do so.

3. Prices, Conditions of Payment

- 3.1 In the event of the parties not having agreed on a specific price, and the price list in effect at the time of the concluding of the contract not specifying any price for the work performed, the usual remuneration shall be regarded as being agreed.
- 3.2 In addition to this, Items 5.2 to 5.9 of the Conditions of Supply are to be applied accordingly.

4. Rights of the Customer in the event of Deficiencies

- 4.1 DOM shall manufacture the work in due and proper manner, in accordance with the state of the art.
- 4.2 Acceptance of the work without reservations shall exclude all rights and claims by the Customer for any defects or deficiencies identifiable at the time of acceptance. The pursuit of rights for defects and deficiencies not identifiable at the time of acceptance shall be excluded if DOM is not advised by the Customer of the deficiency forthwith and in writing immediately upon the detection of the deficiency.
- 4.3 DOM shall rectify deficiencies at their own discretion by the elimination of the deficiency free of charge for the Customer, or by the repeat provision of the work performance owed (jointly referred to as "Subsequent Fulfilment").
- 4.4 Rights of the Customer due to deficiencies in the work shall be nullified if these deficiencies are caused by the Customer or third parties and are not attributable to DOM. This shall be the case in particular in the case of deficiencies caused by a defect in the material supplied by the Customer or as a result of instructions issued by the Customer.
- 4.5 In the event of Subsequent Fulfilment not succeeding, being unacceptable to the Customer, or if DOM has declined to act in accordance with Art. 635, Para. 3 BGB (Civil Code), the Customer shall be entitled, at his discretion, to withdraw from the contract, or to reduce the purchase price, and/or to demand compensatory damages (in accordance with Item 8 of the Conditions of Supply), or the reimbursement of his expenses.
- 4.6 The statute of limitations for the Customer's rights in the event of the work proving deficient shall be one year from the time of acceptance.

5. Right of Lien

DOM shall be availed of a contractual right of lien, on the basis of the claim from the order for the performance of the work, on the objects which pass into their possession on the basis of the order. The right of lien shall also pertain on the basis of claims from work, deliveries, and other services carried out earlier, provided that they are connected with the item which the performance of the work has brought into existence.

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