

# General Conditions of Sale and Delivery

## *DEFINITIONS AND INTERPRETATION*

1. In these General Conditions of Sale and delivery:
  - unless the context otherwise requires
  - "Company" means Dameca a/s and includes a successor in title to the business of Dameca a/s.
  - "contract" means a contract under the terms of which the Company is liable to supply goods and/or services of any description
  - "Customer" means the party having the right to enforce the supply by the Company of goods and/or services of any description under the terms of a contract.

## *PRICES, QUOTATIONS AND ESTIMATES*

2.
  1. Quotations/estimates in writing alone shall bind the Company; they remain valid for 60 days from their date of issue and then expire, unless renewed in writing by the Company.
  2. Unless the Company stipulates, or agrees otherwise, the Company's prices are ex-works prices.
  3. The Company's list prices are subject to alteration without notice.
  4. Quoted prices relate to the quantity of goods quoted for, and may not be applicable if a different quantity of goods is ordered.
  5. Unless another currency is expressly specified, all prices shall be in Danish kroner (DKK) and exclusive of value-added tax.

## *CONTRACTS*

3.
  1. A contract shall not come into existence until the Company despatches its written acceptance of the Customer's order, or commences delivery of the goods, whichever shall occur the sooner.
  2. The terms and conditions of the contract shall be such as are contained in the Company's quotation/estimate together with these General Conditions of Sale and such other terms and conditions as the Company may stipulate or agree to.
  3. The terms and conditions of the contract shall be limited to such as are expressed in writing, to the exclusion of all oral expressions whether of advice, opinion or otherwise.
  4. Where a term of an estimate or quotation, or any other express term of a contract, is found to be in conflict with any one or more of these General Conditions of Sale, the terms of the estimate or quotation, or the other express term of the contract, as the case may be, shall, unless the context otherwise requires, prevail.
  5. The Customer acknowledges that he has not been induced to enter into the contract by any representation made by or on behalf of the Company, except such as may be contained in, or endorsed by the items of the contract.
  6. The Company's general conditions are subject to alteration with 3 months' notice.

## *TAX*

4. Unless otherwise quoted or agreed the Company's prices do not include Value Added Tax, or any other tax, levy, duty or surcharge, whether imposed before or after the making of the contract.

## *CREDIT LIMITS*

5.
  1. Where the Company has granted the Customer a credit facility, the Company may withdraw the same without either giving any reason for so doing or thereby incurring any liability to the customer.
  2. If the Customer takes goods from the Company in excess of the Customer's credit limit, the Company may require payment on demand for such excess goods.

## *PAYMENT*

6.
  1. The Company's invoices are due for payment strictly in accordance with the terms shown on the acknowledgement of the order and the invoice.
  2. Except as the Company's quotation/estimate may provide, no discounts are allowable, or may be taken, against amounts invoiced by the Company, nor shall the Customer be entitled to any commission or rebate in respect thereof, and this notwithstanding any previous course of dealing between the Company and the Customer.
  3. When payment of any of the Company's invoices is overdue, the Company may suspend its performance of the contract to which the invoice relates and/or of any other contract then subsisting between the Company and the Customer for the period until the invoice is paid.
  4. The Company reserves the right to charge interest in the case of any invoice being overdue.

## *DELIVERY*

7.
  1. Delivery shall be in accordance with Inco-terms 2000.
  2. Delivery dates are quoted in good faith and as accurately as possible, but are not guaranteed.
  3. When the Company is required to deliver goods, the Company shall have the sole discretion as to the mode of transport to be adopted.
  4. Goods held by the Company pending delivery instructions may be subject to a storage charge.
  5. The company may deliver goods by instalments.

#### *NON-DELIVERY AND DAMAGE IN TRANSIT*

8.
  1. Claims for non-delivery, shortage in delivery and damage in transit will be entertained only if the customer has observed whichever of the following procedures is appropriate.
    - a. Examine the goods immediately on delivery in order to establish any loss or damage. In the event of apparent damage or shortage make a reservation on the Consignment Note/ Delivery Note stating nature and cause of loss or damage. This reservation is to be followed up by a written claim to Carriers, Hauliers or other Third Parties. If the loss or damage was not apparent at the time of taking delivery, give notice in writing to the Carriers, Hauliers or other Third Parties within 3 days of delivery.
    - b. When delivery is made by container ensure that the container and its seals are examined immediately by a responsible official.  
  
If the container is delivered damaged or with seals broken or missing or tampered with or seals other than as stated in the Shipping Documents, clause the Delivery Receipt accordingly and retain all defective or irregular seals for subsequent identification. In no circumstances give clean receipt where container or goods is in doubtful condition, except under written protest.
    - c. If the loss or damage may result in a claim under the insurance, immediate notice must be given to the Average Agent named by the Company in order that he may examine the goods and issue a Survey Report.  
  
For damage below US\$ 1,000.00 only it will be sufficient if a Statement is made by the Consignee.
  2. In any case contact the Company for further guidelines for handling above.

#### *VARIATION AND CANCELLATION*

9.
  1. Subject to condition 2 below, the terms of a contract may not be varied, nor may the contract be suspended or cancelled without the prior consent in writing of the Company, which may be given on terms.
  2. The Company reserves the right to vary by way of improvement, the specification of any of its products, and to supply goods to a specification as so varied in fulfillment of any order.

#### *RETURNS*

10. Goods sold to the Customer may only be returned to the Company provided that the following conditions have been met:
  - a. The written consent of the Company must have been given prior to any return.
  - b. The goods must be in new and unused condition, of current type or model and must not have been made or obtained to the Customer's special order.
  - c. Return to the Company is made within three months of the invoice date.
  - d. In all cases where goods are returned to the Company, it is a condition that they are returned in the original packaging and are shipped for the Customer's account and risk. If the goods are returned in order for the Company to repair them or provide a replacement delivery, the repaired or new goods shall be delivered in the same manner as the original consignment.

#### *TIME FOR PERFORMANCE*

11.
  1. No provision or stipulation as to the time within which the Company shall perform its obligation under a contract shall be, or be deemed to be, of the essence of the contract.
  2. The Company shall not be liable to the Customer if, and to the extent that, the delivery of goods and/or the provision of services is hindered by circumstances outside the Company's control, which shall be deemed to include, but shall not be limited to, fire, accident, industrial disputes, shortages of material and power and failure on the part of the Company's suppliers.

#### *WARRANTY*

12. The liability of the Company under its warranty in relation to goods shall be subject to the following:
  - a. The Company warrants that, except for rubber articles and anaesthesia valves with plastic parts, each of the Company's products is free from defects in material and workmanship under normal use and service (in accordance with user's manual) for a period of one year after delivery has been effected by the Company to the first purchaser. If any defect might occur during the period of warranty, the first purchaser is to contact the local agent/distributor and/or the Company directly.
  - b. No warranty will apply for goods which have been modified without the Company's approval.
  - c. Upon receipt of the defective goods, the Company undertakes to arrange for repair and replacement, respectively, within the terms of the warranty. The defective products are to be returned properly packed, freight prepaid. Loss or damage to the goods, while in transit from the Customer to the Company, are at Customer's risk.  
  
Returned items must always be accompanied by a proforma invoice, a copy of which is to be forwarded to the Company under separate cover.
  - d. The Company's express warranty set out above is given in lieu of, and excludes, all other warranties, guarantees and assurances, whether express or implied, statutory or otherwise.

#### *LIABILITY FOR INJURIES (PRODUCT LIABILITY)*

13.
  1. The Company is responsible for injuries to persons in accordance with the law of product liability.
  2. The Company is not responsible for any injury to real property or movable property which may occur, when the product is in possession of the Buyer. Neither is the Company liable for any damage to products manufactured by the Buyer or to products where these form part. Apart from these limitations the Company is only liable for damage to real or movable property, in the event that it can be proven that the damage is due to mistake or negligence made by the Company or others for whom the Company is liable.
  3. The Company is not liable for loss of profits, loss of earnings or any other indirect losses.

4. In the event that the Company might be imposed product liability towards a third party, the Buyer is liable to indemnify the Company to the same extent as the Company's liability is limited according to the previous items.

These limitations of the Company's liability are not valid if the Company has shown gross negligence.

If a third party presents a claim for liability for damages against one of the parties according to this point, the first party is obliged to inform the other party of the claim immediately.

The Buyer is obliged to let legal action be taken against him in a court of law or court of arbitration that tries the claims for damages made against the Company on the grounds of damage which is maintained to have been caused by the product.

#### *DESCRIPTIVE MATTER*

14.
  1. Descriptive matter contained in the catalogues, brochures and any other publication or display is believed correct and up-to-date, but is not warranted so, unless specifically confirmed in writing by the Company.
  2. Colour indications, whether given by means of provision of samples or derived from colour charts or descriptions, are necessarily approximate, by reason of inevitable variations in the processes of manufacture and reproduction.

#### *PASSING OF PROPERTY AND RISK*

15.
  1. The risk in goods supplied by the Company shall pass to the Customer on delivery of the goods to or to the order of the Customer in accordance with the terms of the contract.
  2. Whether or not the risk in goods sold shall have passed to the Customer, the property in goods sold shall be and remain in the Company until the Company has received payment in full for them together with payment in full for any other goods supplied by the Company to the Customer the price for which is overdue for payment. Pending receipt by the Company of such payments, the Customer shall hold the goods for the Company as fiduciary bailee.
  3. When payment for the goods is overdue or the Customer suffers distress or execution to be levied against his or its effects, makes an arrangement or composition with creditors or, being a corporate body, enters into liquidation (otherwise than for the purpose of amalgamation or reconstruction where the corporate body, as amalgamated or reconstructed, accepts in full the Customer's liability to pay for the goods), or has a receiver appointed for the whole or any part of its undertaking or, being an individual, has a receiving order in bankruptcy made against him, then:
    - a. if the Customer remains in possession of the goods, whether or not the Customer has sold them, the Company shall be entitled to recover the goods from the Customer or
    - b. if the Customer has parted with possession of the goods by way of sale, whether or not the goods have been mixed with or incorporated into other goods, the Customer, having sold them as fiduciary bailee, shall hold in trust for the Company so much of the proceeds of sale of the goods as represents the Customer's liability to the Company in respect of them.

#### *FITNESS FOR PURPOSE*

16. Except where goods are supplied on the express advice of the Company, given in writing, that they are suitable for any particular purpose, it shall not be a term of a contract that goods are sold as fit for any particular purpose, and this notwithstanding that the Company may have, or be deemed to have, knowledge of the purpose for which the goods are required.

#### *THIRD PARTY RIGHTS*

17.
  1. The Company does not warrant, nor shall it be an implied term of a contract, that goods and designs sold or employed by the Company do not infringe the rights of any third party.
  2. Where information, instruction or guidance received from the Customer is the direct or indirect cause of any assertion by, or on behalf of a third party that the Company is in breach of any right of that party, the Customer shall be deemed to have agreed to indemnify the Company against all costs incurred by the Company as a result of such assertion.

#### *CUSTOMER'S INSOLVENCY*

18. Except where payment for goods to be supplied has been made or secured in advance of their delivery to or to the order of the Customer, the Company shall be entitled to withdraw from a contract if and when the Customer suffers distress or execution to be levied against his or its goods or effects, makes an arrangement of composition with creditors, enters into liquidation (otherwise than for the purpose of amalgamation or reconstruction) has a receiver appointed for the whole or any part of its undertaking, or if a receiving order in bankruptcy is made against him. When the Company elects to withdraw from the contract in any such circumstances, the Company shall thenceforth cease to have any liability to the Customer thereunder but shall remain entitled to claim from the Customer a due proportion of the contract price in respect of such part of the contract as the Company shall have performed.

#### *DRAWINGS AND DESCRIPTIONS*

19. Designs, drawings, descriptions, models and the like delivered to the Customer before or after the making of the agreement shall remain the property of the Company. They must not without the permission of the Company be used by the Customer or be copied, reproduced, handed over or in any other way be brought to the notice of any third party.

#### *MISCELLANEOUS*

20.
  1. The Customer may not assign its rights or liabilities under a contract without the prior consent in writing of the Company.
  2. Failure by the Company to enforce a term of a contract as soon as it may be enforced shall not prevent the subsequent enforcement of that or any other term of the contract.
  3. Sale of goods contracts shall be governed by the general rules of Danish law.
  4. Any disputes which may arise in connection with a contract entered into shall be settled by arbitration with final and binding effect for both parties at the Arbitration Tribunal of the Danish Chamber of Commerce in accordance with the tribunal's rules (version dated 1st January, 1991 or later). The language of the arbitration proceedings shall be English, unless the parties agree otherwise.