

GENERAL TERMS AND CONDITIONS OF SALE, DELIVERY AND RENTAL

1. General

1.1 These terms and conditions are an integral part of all agreements (e.g. sales, delivery and rental agreements as well as contracts regarding planning and projection services) between the customer ("Customer") and Doka as seller, hirer and contractor of the work (hereinafter shortened to "Seller" or "Hirer").

1.2 Upon acceptance of an offer from the Seller or upon placing an order as well as by sending an offer to the Seller or Hirer the Customer shall expressly recognise the unrestricted validity of these terms of business and shall relinquish in full the application of his general terms of business or conditions of purchase.

1.3 The Customer shall be obliged to maintain confidentiality in respect of the content of the agreements concluded or which are to be concluded between the Customer and the Seller. This shall also apply to all information provided for the Customer by the Seller. This obligation shall also apply without restriction for the period after the termination of the agreement or, as the case may be, if contractual negotiations break down.

2. Conclusion of the Agreement

2.1 Offers from the Seller are not binding insofar as they are not expressly designated as binding.

2.2 Orders from the Customer must be accepted in writing by the Seller.

2.3 All amendments, changes and additions from or to these terms of business require the express written confirmation of the Seller.

2.4 Declarations which are submitted by employees of the Seller or other persons employed by the latter are only valid insofar as they are confirmed by the Seller in writing.

3. Price and Terms of Payment

3.1 The Seller's prices are net prices, i.e. they do not include any taxes and are quoted ex works, excluding packaging, carriage, insurance and customs duties.

3.2 The total purchase price is due upon receipt of the invoice without deduction irrespective of when the goods are received or checked.

3.3 Bills of exchange shall only be accepted by the Seller if agreed separately, and then only on account of payment, subject to receipt. Payment shall only be deemed to have been effected upon the day on which the Seller can finally make use of the funds on his account. All fees and charges, especially discount charges and promissory fees shall be borne by the Customer.

3.4 In the event of payment default, and irrespective of blame, the Customer shall undertake to pay interest on arrears of 4% p.a. above 3-month EURIBOR. The Customer shall also undertake to reimburse the Seller for all costs of the debt collection and legal action. Compensation claims of the Seller over and above this shall be unaffected.

4. Reservation of Title

4.1 All deliveries by the Seller shall be effected with reservation of title. The goods supplied shall remain the property of the Seller until the purchase price and extra charges are paid in full. Goods are deemed to include all tangible and intangible goods, especially also documents, planning services and software (e.g. programmes).

4.2 The reservation of title shall also extend to products arising from the processing of goods supplied by the Seller. If the goods are processed, combined or mixed, the Seller shall acquire joint ownership of the ensuing products in proportion of the value of the delivered product to the value of the new item.

4.3 The Customer is forbidden to order the goods supplied under reservation of title for third parties as collateral or as security by transfer of ownership or dispose of them in this or in any other way in favour of third parties. The resale of the goods subject to reservation of title is only permitted with the express written consent of the Seller.

4.4 All accounts receivable arising from any resale of the goods under reservation of title in respect of the Seller effected contrary to Clause 4.3 or with the Seller's consent are hereby assigned by the Customer to the Seller in payment. The Customer shall make the necessary notes in his books and outstanding items lists and is obliged upon the request of the Seller to notify the latter of names and addresses of his customers as well as the balance and amount of the accounts receivable arising from the resale and to advise his customers of the assignment of the claim. Profits realised by the Customer from the resale of the goods subject to reservation of title shall be passed on to the Seller without delay.

4.5 In the event that the goods subject to reservation of title are pledged or otherwise used by third parties the Customer shall be obliged to assert the right of ownership of the Seller and to notify the Seller without delay in writing. The Customer shall reimburse the Seller for all costs which arise in connection with safeguarding his right of ownership. The Customer shall provide the Seller upon the latter's request with all documents necessary for safeguarding and implementing the right of ownership.

4.6 In the event of payment default of the Customer the goods subject to reservation of title shall be returned to the Seller immediately upon request from the same. Insofar as the Customer does not comply with this request immediately, the Seller shall be entitled to collect the goods subject to reservation of title. In any case the Customer shall bear the costs and risk of transportation of the goods to the Seller. The return or collection of the goods in this respect does not imply withdrawal from the agreement. The Seller is entitled to sell the recovered goods elsewhere and to offset the profits against his claims on the Customer. The Customer shall be advised of the intended resale and the amount of the sale price and has the option of identifying other customers to the Seller within four weeks who would acquire the goods under the terms announced or under terms more favourable to the Seller.

5. Delivery

5.1 Delivery periods and dates announced by the Seller are approximate and are always ex works. Should the delivery date or delivery period be delayed by more than two weeks for reasons other than those mentioned under Clause 5.3, the Customer can withdraw from the agreement after setting an additional deadline without success of at least two weeks by registered letter. A partial default by the Seller shall only entitle the Customer to a partial withdrawal accordingly from the agreement. Additional claims of the Customer are excluded unless the Seller acted with wilful intent or blatantly gross negligence.

5.2 The delivery is on time if the goods are made available for dispatch as at the delivery date or by the end of the agreed delivery period by the Seller at his works or, insofar as dispatch by the Seller is agreed in writing, if dispatch has commenced by this date.

5.3 Force majeure or other unforeseen hindrances at the works of the Seller and his suppliers which prevent delivery on time or according to schedule and which are not due to at least blatantly gross negligence on the part of the Seller, shall entitle the Seller to an appropriate extension of the delivery period or postponement of the delivery date. The Customer shall have no rights of performance, compensation and/or withdrawal in this case.

5.4 For the duration of the delay of the Customer in paying invoiced amounts due, interest on arrears and/or charges, the Seller shall not be obliged to make any further deliveries.

5.5 The Customer shall be obliged to accept partial deliveries from the Seller.

6. Documents and Software

The Customer is not entitled to use documents provided by the Seller (e.g. planning and/or project documentation) and software for any purposes other than the purposes envisaged in the agreement. The know-how included in the documents shall be supplied to the Customer only for these purposes.

7. Bearing the Risk and Dispatch

7.1 The risk of loss and damage to the goods shall pass to the Customer as soon as the goods are actually made available by the Seller for dispatch. Insofar as dispatch by the Seller has not been agreed, the Customer shall ensure immediate collection of the goods.

7.2 The dispatch or carriage of the goods shall be effected in all cases at the risk and costs of the Customer, even if the transportation is effected or organised by the Seller or if carriage is paid or carriage without obligation is agreed.

7.3 The Customer shall observe the requirement to give notice of defects in respect of the carrier for damage in transit. Transport insurance shall only be arranged if the Customer expressly orders this and assumes the costs.

8. Warranty and Liability

8.1 The Customer is obliged to inspect the goods for proper quality without delay and to notify the Seller of any defects immediately in writing, within eight days at the latest upon delivery of the goods/performance and before processing or using them, with an accurate description of the faults. This shall also apply for - in any respect - insufficient deliveries. The Seller must be notified in any event of defects detected at a later time at the latest within the same 8 days period. In case defects are not notified in time, the goods/performance shall be deemed approved even with respect to such defects. Notwithstanding this notification duty, any warranty claims must be asserted by court action within six months of delivery of the goods/performance, otherwise such claims will be excluded. Recourse of the Customer pursuant to Sec. 933b Austrian General Civil Code ("ABGB") is excluded. The Customer shall also exclude the right to recourse pursuant to Sec. 933b ABGB with respect to its respective purchasers, as far as permitted by compulsory law.

8.2 Notification of the defects shall not release the Customer from his payment obligation. It is a condition of the warranty of the Seller that the Customer has met all obligations, especially his payment obligations and has specified and advised the defects on time.

8.3 The warranty period is six months. The Seller is entitled to rectify defects and/or damages at his option by replacement or improvement within a reasonable period. As long as the Seller makes use of this right the Customer has no right of cancellation, price reduction or monetary compensation.

8.4 Further processing, treatment or utilisation of the goods by the Customer or third parties (other than the person of the Seller) to whom the Customer has made available the goods shall negate the warranty.

8.5 Should the Customer refuse to accept the delivered goods, he shall ensure that the goods are properly unloaded, stored and held at the disposal of the Seller.

8.6 In negotiations about notices of defects the Seller does not waive the right to claim that the defect was notified late or not in sufficient detail.

8.7 The Seller shall only be liable if the Customer is able to prove that the Seller acted with blatantly gross negligence or wilful intent; this shall not apply to personal injury. Any other liability is excluded as is compensation for consequential loss, damage to property and losses based on the claims of third parties against the Customer. The Seller is not liable either insofar as permissible under mandatory law, for loss of or damage to data. The Customer shall assert any claims for damages in court within six months of knowledge of the damage and the party who caused the damage but not later than within two years of delivery by the Seller.

8.8 The Seller is only liable for the faults of his vicarious agents insofar as the latter are incorporated into the operational organisation of the Seller. Liability of the Seller is therefore excluded also especially for the fault of his suppliers or of carriers.

8.9 Insofar as the product liability law is applicable, the liability of the Seller or of his suppliers and subcontractors is excluded for damage to property which a business owner suffers.

8.10 The Customer shall undertake to bind his customers to the limitation of liability of these terms of business in full who shall also undertake to pass on this obligation.

8.11 If the goods are produced in accordance with plans, documents or instructions of the Customer, the Customer shall be exclusively liable for the infringement of industrial property rights of third parties and shall indemnify the Seller insofar as claims are made against him on the basis of the infringement of such industrial property rights.

8.12 The Customer shall recognise that it is not possible in respect of the current state of technology to produce software programmes which are completely error-free. The Seller shall not guarantee therefore that the software will function without interruption or be error-free or that errors can be completely eliminated.

8.13 The Seller shall not guarantee the completeness and/or accuracy of information on the products of third parties. It is the responsibility of the Customer to seek information accordingly from the respective manufacturer.

9. Technical Instructions

9.1 The goods shall be used in accordance with the technical instructions (e.g. user information, formwork drawings, etc) of the Seller or shall otherwise be excluded from warranty and compensation claims.

9.2 It is the responsibility of the Customer to obtain the Seller's technical instructions necessary for the former's purposes at his own expense.

9.3 Technical advice from the employees of the Seller is restricted to an explanation of the written instructions of the Seller; the Seller shall not be liable for information from his employees over and above this. Only the department responsible at the registered offices of the Seller is authorised to give information beyond an explanation of the written instructions of the Seller, in particular appropriate solutions for specific applications. The Customer shall only obtain such information from this department.

10. Cancellation

10.1 The contractual parties are entitled if there are important reasons (e.g. commencement of insolvency proceedings or the existence of the prerequisites for the commencement of such proceedings with the exception of the availability of cost-covering assets, the infringement of material terms and conditions of the agreement, payment arrears despite an additional period of time of at least 14 days), to cancel the agreement by registered letter.

10.2 The Seller can additionally withdraw from the agreement if his performance of the contract is unreasonable even if only temporarily so.

11. Return of the Goods

11.1 Goods already supplied by the Seller (Clause 4.1) and any copies shall be returned to the Seller within 14 days of the cancellation of the agreement, installed software (e.g. programmes) shall be deleted. Insofar as the Customer does not comply with this obligation, the Seller is entitled to collect the goods at the expense and risk of the Customer and delete the software himself.

11.2 If the goods to be returned are not clearly identifiable from others, the Customer is entitled to select an item. The Customer shall indemnify the Seller in this respect from any claims of third parties.

12. Exclusion of Set-off

The Customer is not entitled to offset any claims in respect of the Seller against those of the Seller.

13. Severability Clause

If, for any reason, one or more of the provisions of these terms of business or of an agreement between the Customer and the Seller is invalid or unenforceable, the validity of the remaining provisions shall be hereby unaffected. In place of the invalid or unenforceable provision there shall be a provision which is closest to the intended purpose.

14. Place of Performance and Jurisdiction

14.1 The exclusive place of performance for all obligations arising from or in connection with contractual relationships between the Seller and the Customer shall be Amstetten.

14.2 All disputes between the Customer and the Seller including the question of the valid realisation of the agreement as well as its preliminary and subsequent contractual effects, shall be exclusively settled by the court having jurisdiction over the subject matter and Amstetten. The Seller shall also be entitled (but not be obliged) to bring the matter before a different court having jurisdiction pursuant to statutory provisions or, alternatively, before a court of arbitration as laid down in Clause 14.3.

14.3 Insofar as the Seller opts for a decision by a court of arbitration, the ICC Rules of Arbitration and Conciliation shall apply. The decision shall be made by a sole arbitrator and shall be final. The place of arbitration shall be Vienna, the language of arbitration shall be German. Austrian substantive law shall be applied and the Austrian Act on Private International Law [IPRG] and UN Sales Law shall be excluded. The contractual parties shall waive their right to appeal against the arbitration award, insofar as it is legally permissible to waive such a right. The arbitrator shall give the parties a draft of the arbitration award to comment upon.

15. Applicable Law and Interpretation

Legal disputes between the Customer and the Seller including the question of the valid conclusion of the agreement and the preliminary and subsequent contractual effects are subject exclusively to Austrian law. The Austrian IPRG and the UN Sales Convention are not applicable.

16. Waiver

As far as it is possible under mandatory law, the Customer and Seller shall waive the right to appeal against these terms of business as well as against agreements concluded between them and/or the right to demand the cancellation or amendment of the same. In particular an appeal on the grounds of a mistake or laesio enormis is excluded.

Supplementary Terms of Business for Rental

17. Collection and Return

The Customer shall ensure the collection of the rented goods from the place of business of the Hirer stipulated by the Hirer. Upon the termination of the rental agreement the goods shall be returned to the same place of business of the Hirer in a clean and completely usable condition. The Customer shall bear the costs of collection and return. If the rented goods are not returned immediately upon termination of the lease, the Hirer shall be entitled to collect the rented goods himself at the expense of the Customer.

18. Rental Term

18.1 The rental period shall commence upon the date on which the goods are made available for collection or use by the Hirer or, insofar as dispatch by the Hirer was agreed, on the date on which dispatch commenced. Unless there is an agreement to the contrary, the rental term shall be three months.

18.2 The rental period shall end upon expiry of the agreed period or at the date at which the goods are returned properly without necessitating a separate declaration.

18.3 If the goods are not returned by the end of the rental term, remuneration for use in accordance with the amount of the agreed rental shall be paid until the date on which the goods are actually returned to the Hirer.

19. Risk of Damage and Loss

The Customer shall bear the risk of any damage to or loss of the rented goods during the entire rental term as well as during transit from and to the Hirer. If the rented goods are lost or considerably damaged, the Hirer shall be entitled to demand compensation for the amount of the list price of the goods. Furthermore, in the event that the goods are damaged, the Hirer has the option of demanding either compensation for the costs of repair or for the loss in value.

20. Purchase of the Rented Goods

In the event that the Customer buys the rented goods, his payments shall be used firstly to cover outstanding rental for the pertinent goods, irrespective of a declaration to the contrary. Title to the goods shall not pass to the Customer until all outstanding rental, any interest and the purchase price have been paid. (Version August 2009)