

# TERMS AND CONDITIONS

## VALIDITY OF THE CONDITIONS

1. Our deliveries and performances are conducted exclusively on the basis of these terms and conditions. Terms and conditions of the partner which deviate from these terms and conditions and which are not expressly recognised by us have no validity.

## OFFER AND CONTRACT CONCLUSION

2. All offers are non-binding for us, do not oblige us to accept an order and apply subject to the possibility of goods procurement. Due to the normally short-term dispatch of the orders, order confirmation generally takes place with the invoice. We reserve the right to make technical changes.

3. The details, drawings, figures and performance descriptions contained in catalogues, price lists or the documents belonging to the quotation details, are approximate industry-accepted values, unless expressly described as binding in the order confirmation.

## PRICING

4. Unless otherwise specified, prices contained in our offers are valid for 30 days after the date of issue. The prices in the order confirmation are subject to VAT at the applicable rate. Any further deliveries and performances are charged separately.

5. Our prices are non-binding recommended prices. If not otherwise agreed our prices are DAF Germany. Any costs arising from opening a commercial letter of credit are charged to the customer.

Unless otherwise agreed we deliver orders within Germany free to the receiving centre from € 375 net goods value and free to the customer's premises from € 500 and/or for orders abroad free to the German borders from € 750. Small orders require the same amount of handling as normal orders. From this reason the minimum order value within Germany is € 125 net, and/or € 750 in the case of orders abroad or within the EU and EFTA area. The minimum order value in the case of orders from non-EU countries is € 2500 and/or according to agreement. Any costs arising from opening a commercial letter of credit are charged to the customer

6. If exchange rates alter substantially we are entitled to request that prices be revised accordingly to take these factors into account.

## DELIVERY

7. The delivery time is agreed as being approximate. Even if a fixed delivery date is agreed, this does not constitute a fixed date purchase according to the terms of § 376 section 1 HGB. This requires that the contract partners additionally agree that in the case, e.g. of seasonal goods or promotions, the contract ends immediately through withdrawal in the case of non-compliance with the delivery date and damages for non-fulfilment can be claimed if we are deemed responsible. In addition, delivery dates or deadlines, which can be agreed as being binding or non-binding, require the written form.

8. We are not liable for delivery or performance delays on the basis of force majeure nor on the basis of events which render delivery substantially more difficult or impossible for us - including in particular labour disputes, unrest, official actions, failure to deliver on the part of our suppliers etc. - even in the case of deadlines and delivery dates agreed as binding. These circumstances entitle us to delay the delivery and/or performance for the duration of the hindrance plus an adequate start-up period or to withdraw wholly or partially from the contract due to the as yet unfulfilled part, without assigning the partner the right to make damage claims. Should the partner experience the aforementioned hindrances, the same legal consequences apply to the duty of acceptance.

9. The contract partners are obliged to notify the other party immediately of the start and end of hindrances of the aforementioned type.

10. Part deliveries and part performances are, where commercially acceptable, admissible and are itemised separately in the invoice. They are not allowed in certain circumstances if partial fulfilment of the contract is of no interest for the partner.

11. Should subsequent revisions of the contract by the partner influence the delivery date, this can be extended for a suitable period.

12. Should the delivery be delayed by one of the circumstances in section 8 or by an action or omission of the partner, an extension of the delivery date appropriate to the circumstances is to be granted. This rule applies irrespectively of whether the reason for the delay occurs before or after the agreement of the delivery date.

## EXTENDED RESERVATION OF TITLE WITH PROCESSING CLAUSE

13. The product remains the property of the seller, until its present and future claims against the buyer, as far as these relate to the goods supplied, are fulfilled.

14. The buyer is entitled to sell on the conditional commodity as far as this complies with the normal business procedures. He cedes however, all debts to the seller from this selling on. This applies irrespectively of whether the conditional commodity is sold on without or after treatment or whether or not it is associated with a plot of land or movable goods. If the conditional commodity is sold on after joining, treatment or together with other goods the debt of the buyer against his receiver is regarded as having been ceded to the amount of the price agreed between the seller and buyer for the conditional commodity.

15. The buyer is entitled to collect this outstanding debt. This does not affect the authority of the seller to collect the debt ceded to him on his own behalf. The seller is nevertheless obliged not to avail himself of this right as long as the buyer duly honours his payment obligations.

16. Treatment or reforming of the conditional commodity takes place for the seller as manufacturer in the terms of § 950 BGB, without obligation to him.

17. If the goods in the property of the seller are processed with other objects, the seller acquires joint ownership of the new item in the proportion of the commercial value of his goods to the value of the other processed items at the time of the treatment. The buyer shall hold the new item in safekeeping with due care at no cost for the seller.

18. The seller shall release the securities assigned to him on request as long as their value exceeds the debts outstanding to be secured and not yet settled by more than 20 percent.

19. Should the seller accept bills of exchange as a means of payment the reservation of title continues until it is determined that no further claims may be made on it from this bill of exchange. On the basis of the ceded debt in the case of the buyer, incoming bills of exchange are hereby ceded to the seller and endorsed. The buyer holds the endorsed bills of exchange for the seller in safe custody.

## WARRANTY

20. We guarantee problem-free manufacture of the products supplied by us. Claims resulting from damage in transit and consequential quantity defects must be directed to the respective haulage contractor. Complaints about the goods must be made in writing within 8 days after receipt of the goods. Hidden defects must be notified in writing within 8 days of their detection. Where complaints are justified and indicated in time we are obliged at our own discretion either to replace the goods at no charge or provide a credit note. All other damage claims beyond this are excluded. Section 31 of our general business terms applies accordingly. No further warranty claims can be made 6 months after the delivery date. We cannot accept liability for errors due to incorrect handling or natural wear and tear. Nor can we accept liability for custom products or drilling machinery with reversed stocks.

## RETURNED GOODS

21. EGoods may only be returned after previous consultation and only with our express permission. In this case, except in the case of legitimate quality defects, 85 % of the original invoice value is credited.

## CONDITIONS OF PAYMENT

22. Unless otherwise agreed all invoices are due for payment after completed delivery within 30 days of the invoice date.

23. In the event (uncontested) that we have supplied partly defective goods our partner is nevertheless obliged to pay for the fault-free portion of the order. The partner may otherwise offset only with legally determined or uncontested counter claims.

24. Where deadlines have been exceeded we are entitled to add interest for delays at standard bank credit interest rates, but at least 3 % above the respective base rate of the ECB.

25. If payment is delayed we may withdraw from the fulfilment of our obligations after written notification to the partner until receipt of the payment.

26. Bills of exchange and cheques are accepted only after agreement and only for the sake of fulfilment and provided they can be discounted. Discount charges are calculated from 7 days of the due invoice amount. There is no guarantee for the correct submission of the bill of exchange and for lifting of bill protest.

27. Should the partner involve a central regulating company, the invoice settlement resulting in the discharge of debt takes place at the moment the payment enters our account.

28. Should the asset and credit situation of the partner deteriorate with the result that the payment claim is threatened we are entitled to demand immediate payment of the outstanding amount. In this event we are entitled to demand preliminary payments or security performances of respectively appropriate amounts within a suitable period of time and to cease our performance until fulfilment of our demands. Should the partner refuse or the deadline expire we can withdraw from the contract or request damage compensation on the basis of non-fulfilment.

## SALES AIDS

29. Sales and presentation aids that we make available to the partner free of charge remain our property and can be requested back at any time. While using the sales and presentation aids the partner assumes all associated risks. He is obliged to stock the sales and presentation aids only with our goods and to make good any loss or damage caused by him.

## OTHER CLAIMS

30. Unless otherwise stipulated hereafter, all other claims of the partner against us are excluded. This applies in particular for damage compensation claims resulting from delay, from inability to deliver, from culpable infringement of additional duties, from faults in contract agreements and from impermissible behaviour. We are not therefore liable for damages which do not arise from the supplied goods themselves. We are above all not liable for lost profit or other asset losses of the partner.

31. Existing liability limitations do not apply if we are found responsible for loss through intent or gross negligence or if we have infringed substantial contract duties. If we have infringed a substantial contract duty we are liable only for the loss which might have been sensibly foreseen in relation to such a contract.

32. Existing liability limitations do not apply if we are found responsible for loss through intent or gross negligence or if we have infringed substantial contract duties. If we have infringed a substantial contract duty we are liable only for the loss which might have been sensibly foreseen in relation to such a contract.

33. In so far as our liability is excluded or limited, this also applies for the personal liability of our legal representatives and assistants.

## CONFIDENTIALITY

34. Unless otherwise expressly agreed in writing, the information on which this contract relationship is based is not regarded as confidential.

## APPLICABLE LAW, PLACE OF JURISDICTION, PARTIAL INVALIDITY AND TRANSFERABILITY OF THE CONTRACT RIGHTS

35. German law applies for these business conditions and overall legal relationships between the contract partners. The application of the agreement of the United Nations of 11th April 1980 over contracts relating to the purchase of goods (CISG - „Vienna Purchasing Law „) is excluded.

36. For all legal disputes including within the framework of the bill of exchange and/or cheque process our registered office is the place of jurisdiction, in so far as the partner Vollkaufmann is a legal entity of the public right or a public-law special fund. We are also entitled to complain to the registered office of the partner.

37. Should a condition in these terms and conditions or a condition within the context of other agreements be or become unworkable this does not affect the rest of the contract. In this case the contract partners are obliged to substitute the unworkable condition by a condition which will have the equivalent economical outcome as far as possible.

38. The mutual contract rights may be transferred only subject to mutual agreement.

**Any printing errors or changes do not give rise to any claims. Reproduction is only permitted with written permission.**