

# DYNACAST Deutschland GmbH Sales and Delivery Conditions for Export

(Stand 1.1.2018)

## I. General, Scope

- (1) All current and future quotations, deliveries and other services provided by DYNACAST Deutschland GmbH to purchasers named in paragraph 2 are subject exclusively to these "Sales and Delivery Conditions for Export". General terms and conditions of the purchaser, which are inconsistent therewith, shall be without effect in respect of the supplier. We do not recognize any of the Customers conditions contrary to, diverging from or not included in this Sales and Delivery Conditions.
- (2) Our "Sales and Delivery Conditions for Export" apply exclusively to purchasers outside the Federal Republic of Germany who are trading in their normal professional or business capacity when they sign the contract. They do not apply to purchasers who are natural persons who enter into a legal transaction for purposes that predominantly are outside their trade, business or profession.
- (3) Our domestic purchasers are subject to the "Sales and Delivery Conditions for Domestic Business" (Verkaufs- und Lieferbedingungen für Inlandsgeschäfte).

## II. Contract Content, Contract Conclusion

- (1) Particulars and information contained in product catalogues and price lists only become a binding part of the contract provided that they are expressly referred to therein.
- (2) Subsidiary agreements, verbal statements by employees or representatives and changes to confirmed orders (including changes to delivery items) must be made in writing by us to be applicable.

## III. Subject of Contract

The subject of the contract shall be exclusively determined by the product description contained in the quotation or in our purchase order confirmation.

## IV. Prices

Except if otherwise agreed, prices shall be understood to be ex-works (EXW) including packaging but not including transport and insurance costs as well as taxes and other charges related to the delivery. Payments shall be made in the currency stated in our quotation or order confirmation.

## V. Payment

- (1) Payments must be made to the account stated in our invoice within 30 days from date of invoice free of charges and without any discount. If the purchaser should default in the payment of an earlier delivery the invoice becomes payable immediately (date of invoice) without any deduction whatsoever. Independently of the means of payment, the payment shall only then be accepted as having been made when the full amount on the invoice has been credited irrevocably to our account so that we have access to it (receipt of payment). The purchaser shall bear all additional costs that arise from his choice of means of payment.
- (2) The costs invoiced by us for tools and processing equipment in accordance with section XI, paragraph 1 must, diverging from section V, paragraph 1, be paid for net without any deduction, one half on order confirmation and the rest immediately after delivery of initial samples.
- (3) Should the purchaser fail to make payment within the 30 days stated in paragraph 1 above, we can demand interest of 9% p. a. over the main refinancing operations rate of the European Central Bank without prejudice to any other remedies. We are also at liberty to prove actual greater damages.
- (4) An offset or netting off of counter claims or the right to withhold payment is only permitted with our approval or if the purchaser has obtained a final judgment on legal claims which are recognized, uncontested and accepted by us.

## VI. Delivery, Credit Worthiness, Acceptance

- (1) The delivery date specified has been met if prior to its expiry the conditions for the transfer of risk in accordance with section VII, paragraph 2 have been fulfilled. The fulfillment of our delivery commitment is subject to the prompt and orderly fulfillment of the purchaser's obligations.
- (2) The delivery date specified shall be extended accordingly if we are unable to meet our delivery obligations at all or in time for reasons that lie beyond our control and which could not be reasonably foreseen by us at the time the contract was concluded. The start and end of the obstacle will be communicated as soon as possible to the purchaser. If the delay is in excess of three months or if it appears likely that it will be more than three months, then the purchaser or we can declare the contract as avoided.
- (3) Notwithstanding section VI, paragraph 2 our delivery obligations are with reservation of timely and proper delivery of material from our suppliers.
- (4) If after the conclusion of the contract we become aware of circumstances that lead us to have well-founded doubts about the credit worthiness or ability to pay of the purchaser and there is a consequent danger that payments due to us under the contract will not be made, then we have the right to deny our services so long until the payment is made in accordance with the contract or security is provided for the payment and the purchaser has discharged any other claims that arose from the business relationship and which are economically associated with the contract in question.
- (5) Unless otherwise agreed, the purchaser is obliged to take over the goods within 10 days after being notified of their being at his disposal at our place of business. Exceeding such period by more than 3 days constitutes a fundamental breach of contract and entitles us, without prejudice to other remedies, to arrange for the carriage of the goods to the purchaser and to charge him for it and for the associated formalities. Not taking over the goods does not release the purchaser from his obligation to pay the purchase price.
- (6) If we deliver a quantity of goods in excess of that provided for in the contract the purchaser may either take delivery or refuse to take delivery of the excess quantity. If the purchaser takes delivery of the excess quantity in whole or in part, he is obliged to pay for it in accordance with the contract rate. Provided that the variance in quantity delivered is not more than 10%, the purchaser is required to accept and pay for it despite the terms in sentence 1 above.
- (7) For orders with delivery on call where no validity period has been specified or where production lot sizes or acceptance deadlines have not been agreed to we can request a binding commitment at the latest three months after order confirmation. If the purchaser does not comply with this request within three weeks, then we are entitled to set a further deadline of two weeks for compliance, and after that has expired we can declare the contract avoided and/or claim damages.

## VII. Delivery, Dispatch and Risk Transfer

- (1) The place of delivery is determined in accordance with the delivery clauses, drawn up under the currently valid Incoterms and agreed between us and the purchaser. Unless another special delivery clause has been agreed, delivery shall be made ex-works (EXW) at our place of business. Carriage of goods to the purchaser shall be at his expense and risk.
- (2) Unless otherwise agreed, risk shall pass to the purchaser at the time that the goods are made available to him. If the goods are transported to the purchaser the risk shall pass to the purchaser at the latest at the time when the goods are handed over to the first carrier for transmission to the purchaser. If the carriage of the goods should be delayed as a result of circumstances beyond our control, then risk shall pass to the purchaser at the time when our readiness for dispatch is communicated to him.
- (3) At the request of the purchaser all goods may be insured at his expense from the point in time of risk transfer. In case of a claim we shall immediately transfer the purchaser's rights under the terms of the insurance to perform those services expected by the purchaser (including refunding the insurance premium) to the purchaser.

## VIII. Lack of Conformity of Goods or Documents, Warranty

- (1) In case of a lack of conformity of goods or documents we are entitled to remedy it by repair or replacement even after the agreed date of delivery. Unless otherwise agreed to in the contract or as a result of circumstances relating to the conclusion of the contract, in particular the negotiations that took place, a lack of conformity does not exist if the goods do not correspond to the valid technical and other standards in the country of destination (location of the purchaser) or if the goods are not fit for the purposes for which goods of the same description would ordinarily be used.
- (2) Insofar as the lack of conformity of goods or documents is not remedied by repair or replacement within a reasonable time, the purchaser is entitled to request a reduction in the purchase price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time.
- (3) In case of a lack of conformity of goods or documents the purchaser is not entitled to declare the contract avoided instead of a reduction of purchase price except unless the lack of conformity amounts to a fundamental breach of contract. No fundamental breach of contract shall exist if we remedy the lack of conformity within a reasonable period of not less than six weeks to be fixed by the purchaser.
- (4) The purchaser must give us notice in writing of a lack of conformity of the goods or documents discovered on receipt within as short a period as is practicable in the circumstances but no later than one week of taking them over and by specifying in detail the nature of the lack of conformity. Insofar as a lack of conformity is not discovered when the goods are taken over, the purchaser has a duty to examine the goods or documents promptly but no later than one week of taking them over. If a lack of conformity of the goods or documents is discovered as a result of the examination or at a later point in time it must be reported to us in writing within one week specifying in detail the nature of the lack of conformity. Written notice of defects discovered must be dispatched to us by the purchaser no later than one week of taking over the goods or of the discovery of a lack of conformity. Additionally the notice of defects, promptly dispatched by the purchaser, must actually reach our hands.
- (5) If the notice of defects does not meet the requirements of paragraph 4 above, then the purchaser loses his right to rely on the claimed lack of conformity of the goods or documents notwithstanding the reasons the purchaser may have for not adhering to the requirements.
- (6) The purchaser's rights to warranty claims expire within six months after dispatching a proper notice of defects, in any event at the latest one year after taking over the goods.

## IX. Liability, Compensation

- (1) Our liability for compensation, in particular consequential loss due to late delivery or a lack of conformity of the goods or documents, is specifically excluded except if it results from intention or gross negligence.
- (2) Our liability in accordance with applicable and contractually unchangeable legal product liability regulations remains unaffected.

## X. Reservation of Title

- (1) Title to the delivered goods is retained by us until the purchase price of the goods has been paid in full in accordance with section V, paragraph 1, provided such a reservation of title is legal under the applicable laws.
- (2) The purchaser must take all measures that are necessary to secure this right to property title or to procure equivalent security rights in the country of his place of business. Non-compliance by the purchaser of this duty constitutes a fundamental breach of contract.
- (3) The arrangements for the reservation of title do not affect the conditions for the transfer of risk stated in section VII, paragraph 2.

## XI. Tools and Processing Equipment

- (1) Insofar as separate costs are invoiced for tools and/or processing equipment that are manufactured or procured by us by order of the purchaser, we retain ownership of the tools and/or processing equipment until the invoice has been paid in full. If equipment based on specific Dynacast technology is used by us for the installation of the tools and/or processing equipment then, diverging from sentence 1, these remain our exclusive property even after the end of the delivery phase. If the costs quoted in sentence 1 are below the fair market value of the tools and/or processing equipment, the purchaser is obliged, at the end of the delivery phase, to pay for the difference in the proportion of the number of items supposed at the time the contract was concluded to the number of items finally not ordered and not paid for. The purchaser can only then demand the handover or issue of the tools and/or processing equipment (with the exception of the equipment based on specific Dynacast technology) when the number of items agreed to in the contract has been accepted and paid for, or, if a minimum number has not been contractually agreed to, after the balancing payment stated in sentence 3 has been paid in full.
- (2) Once the purchaser has become the owner of the tools and/or processing equipment we are only liable within the limits stated under section 9 with the proviso that we must only exercise the care that we would apply in matters of our own concern. At the same time the danger of accidental deterioration and decline of the tools and/or processing equipment passes to the purchaser. At the purchaser's request we shall insure his tools and/or processing equipment at his expense. Provided that nothing to the contrary results from the above conditions, the purchaser is responsible for all costs of maintenance and replacement of the tools and/or processing equipment at the latest from the point in time where the lifetime of tools ("number of cycles") contractually guaranteed by us is exceeded.
- (3) If deliveries are made in accordance with purchaser plans or other purchaser instructions and if as a result industrial property rights of third parties are infringed, the purchaser agrees to indemnify us against all ensuing claims. Plans and documents handed out by us to purchasers as well as our suggestions for the efficient creation and production of castings must not be passed on to third parties and it may be demanded that they be returned to us at any time. The purchaser can only exercise his claims to copyright or protection of industrial property rights to tools and/or processing equipment supplied by him to us or made or acquired by us for him if he has made us aware of such rights at the time the contract was concluded.

## XII. Place of Jurisdiction, Applicable Law

- (1) Any legal disputes arising from this contract shall be governed exclusively by the courts in our place of business. Notwithstanding sentence 1 we are also entitled to take the purchaser to court in his place of business.
- (2) The contract shall be governed by the laws of the United Nations Convention on the International Sale of Goods (CISG) dated April 11 1980. Legal questions concerning matters which are not governed by this Convention or which cannot be settled in conformity with the general principles on which it is based, shall be subject to the provisions of Swiss law.

## XIII. Final Provisions

- (1) In the event that any individual term or provision of the present sales and delivery contract or any agreement made based thereon should for any reason be held to be invalid or legally unenforceable in any respect, such invalidity or unenforceability shall not affect any other term or provision of the contract. In case of such an invalid or legally unenforceable term or provision the parties shall jointly seek an arrangement having a legal and economic effect, which will be as similar as possible to the invalid or legally unenforceable provision.
- (2) The parties are jointly obliged to undertake whatever measures are necessary to achieve the purpose of the contract and to refrain from any activities that could have an adverse effect.