

# General Terms and Conditions

## Dr. Demuth Derisol Lackfarben GmbH & Co. KG

### § 1 Contract Conclusion / Jurisdiction

1. Our General Terms and Conditions apply to all relationships between the 'Dr. Demuth Derisol Lackfarben GmbH & Co. KG' (hereinafter referred to as 'Dr. Demuth') and our clients, which are entrepreneurs pursuant to § 14 of the German Civil Code, Public Law legal persons and Public Law Special Funds. These general terms and conditions do not apply to consumers.
2. Different, contrary or integrative General Terms and Conditions of the client are not an integral part of the contract, unless the validity of these business clauses is expressly approved by us.

### § 2 Contract Conclusion

1. The offers of Dr. Demuth are not binding, unless otherwise expressly agreed upon. Technical changes as well as changes in the form, colour and/or weight are excepted, to the extent they represent no fundamental difference of the contractual or of the usual quality.
2. A contract conclusion takes place under the reserve of the correct and timely supply via the sub-suppliers of Dr. Demuth. The client is informed immediately of the non-availability of a service; a consideration for instance already received is reimbursed immediately by Dr. Demuth. The same applies for the case of operational malfunctions and/or service interruptions that are significant, unforeseeable and for which Dr. Demuth is not responsible.

### § 3 Delivery

1. The delivery terms are therefore binding only if they have been agreed upon with the client. Dr. Demuth is however authorized for the delay and/or cancellation of delivery obligations affected by strike, lock-out, other service breakdowns of any type or subsequently occurring difficulties in the supply of raw and operating materials, by the shipment or the transportation of the goods; unless, Dr. Demuth, their organs or those agents, to whom special managerial tasks are entrusted, had caused the delay by intent or by gross negligence. The same applies in case of absence of correct or timely self-delivery and by the occurrence of other, hindering circumstances, for which Dr. Demuth is not responsible. Dr. Demuth, in the cases in which a delay of the service is foreseeable, shall immediately inform indicating the causes and notifying the foreseeable time of delivery, that the service cannot be supplied within the given term.

2. Even by agreement of a fixed delivery period or of a fixed delivery date, for the occurrence of a default it is necessary that a reasonable extension is set. After its expiration without any result, the client can withdraw for the delivery or the partial delivery, which by the expiration of the extension is not signalled ready for shipment.
3. Partial deliveries are allowed, as far as they are reasonable for the client.
4. The risk of accidental loss and of accidental deterioration of the goods passes to the clients in case of the agreed withdrawal by the client with the notice of the readiness to the client. In the case of sale to destination, the risk passes with the handover of the goods to the person identified for the execution of the shipment.
5. For the delivery and invoicing, the measures, weights and quantities given in the shipment consignment note are decisive. Complaints of delivered measure, weight and quantity are to be made validly at the latest immediately at the delivery after the entrance of the goods into the destination point.
6. In case the delivery is effected in steel containers, these steel containers shall be returned empty 6 months after the receiving of the delivery at the latest. Loss and damages of the steel containers shall be borne at the expense of the client if the client is responsible therefore. The steel containers may not be used on other purposes or for carrying other products. They are solely determined for the transport of the delivered goods. Inscriptions/ Markings shall not be removed. One-way packages are non-returnable. We will name a third party to the client, who will recycle the packaging in accordance to the legal and official provisions instead.

## § 4 Prices / Payment Terms / Compensation

1. The agreed prices are in general meant net excluding the corresponding, statutory VAT, which has to be indicated in one of the legal requirements of the relative invoice.
2. The client is not authorized to delay or to compensate the payments due to any counterclaims from defects, unless such counterclaims are recognized, legally established or ready for a legal decision or arise from the same contractual relationship. The client is authorized to exercise the right of retention, only when its counterclaim is based on the same contractual relationship.
3. As long as not otherwise agreed, the requests of Dr. Demuth for the effected deliveries and services rendered are due for payment within 14 calendar days from the invoice date without any deduction. A discount provision must be agreed expressly.
4. In case of non-compliance with the payment maturity, Dr. Demuth is authorized, according to § 353 of the German Commercial Code, to request interests from the day of the maturity on. Besides, Dr. Demuth is authorized in case of delay, to calculate late payment interests at 9 percentage points over the corresponding basic interest rate of the European Central Bank. The client owes in case of delay with a request for payment also a flat amount for damages of 40.00 Euros. This applies also if the partner is late with an advance payment invoice or another instalment. The flat amount of 40.00 Euros shall be debited on one owed payment for damages, to the extent the damages with legal costs is established. The enforcement of a continuing damage caused by delay remains reserved. Besides, Dr. Demuth

can in case of late payment, after a written communication to the client, suspend its obligations until the receipt of the payment.

5. In case of circumstances in which the creditworthiness of the client is reduced (for instance non-payment of a cheque), Dr. Demuth may declare due all its credits from the business relationship without consideration of the payment terms and require payment without delay. Deliveries can be made dependent on a concurrent payment.

## § 5 Retention of Title

1. The goods remain our property up to the execution of all the reciprocal and future rights from the business relationship with the client. This applies also when the individual request is included in the current invoice and the balance is recognized.
2. The client is obliged to store carefully the reserved goods and to insure them at its own expense against loss and damage. It hereby assigns in advance to Dr. Demuth its rights to the insured amounts. Dr. Demuth accepts this assignment. The client is obliged to the separate warehousing and labelling of the goods belonging to us.
3. A processing or transformation of the reserved goods is effected by the orderer for us, without this resulting in obligations on our side. If the client connects, mixes, blends or processes the reserved goods with other goods or it transforms them with other goods, then we have the right to the co-ownership of the thus resulting, new goods in proportion of the invoice value of the reserved goods to the other goods values. The new goods are considered in this respect as reserved goods in the meaning of these conditions.
4. A disposal of the reserved goods is admissible only in the regular course of business. Other disposals, such as pledging and chattel mortgaging of the reserved goods are not allowed. Altogether, the client hereby assigns in full in advance to Dr. Demuth claims in favour of the client with reference to the reserved goods from resale or resulting from other legal reasons. In case of co-ownership, the assignment applies only to our co-ownership corresponding claim share. Dr. Demuth hereby accepts the assignment. A resale is admissible only under guarantee of this assignment.
5. The client is revocably authorized to the confiscation of the assigned claims in the regular course of business. On demand of Dr. Demuth, the client has to communicate the assignment to its debtors. Dr. Demuth is authorized, to make at any time this communication of the assignment, if the client falls behind in its payment obligations.
6. The authorization of the client to the disposal of the reserved goods as well as the processing, transformation, connection, mixing and blending, also to the collection of the assigned claims, terminates in case of non-compliance of the payment terms, of unauthorized disposals, of draft and cheque protests as well as, when insolvency proceedings are started against the client or Dr. Demuth becomes aware of a significant worsening of the financial position of the client.
7. In these cases under no.6, Dr. Demuth is authorized, to take immediate possession of the reserved goods without cancellation of the contract, to access for this purpose the premises of the client, to request appropriate information over the reserved goods and possible claims from their resale and to take a look at the books of the client, to the extent this

serves to securing the rights of Dr. Demuth. Then a cancellation of the contract is undertaken only if Dr. Demuth so expressly states.

8. If the value of the collaterals given to Dr. Demuth exceeds the claims of Dr. Demuth in total by more than 10%, then Dr. Demuth is obliged to release the surplus collaterals at its reasonable discretion and its choice.

## § 6 Defects

1. All the data and information over the suitability and utilization of the goods provided by Dr. Demuth do not release the client from its own testing and inspections relative to the suitability of the products for the processes and purposes intended by the client. These own testing obligation of the client applies especially to deliveries of varnishes, when components not obtained from Dr. Demuth, such as thinners, hardeners and similar are mixed with the products of Dr. Demuth. The client has to test in these cases via a test run if the delivered goods are suitable for the foreseen use. If the client is a retailer, it has to indicate expressly in writing to its clients the obligation for a test run in these cases.
2. A quality or shelf life warranty applies only therefore as assumed by Dr. Demuth, if Dr. Demuth expressly declares its assumption thereof. Should a contract object not show any agreed quality, then the client has the legal rights due to a defect. A special warranty, from which extra rights result, is not assumed. Also an agreement over the quality of a good creates no stronger liability than the one provided for by the law.
3. If primers, varnishes and other components, which are not obtained by Dr. Demuth, are mixed with the delivered product or utilized with it, Dr. Demuth cannot assume any liability for the contractual quality of the delivered product. The same applies to the processing of lacquers. Dr. Demuth assumes no liability for it.
4. Public statements, promotions or advertising of Dr. Demuth represent no contractual quality data of the goods.
5. The client is obliged, to report in writing or in textform any defect immediately, at the latest 7 days after the entry of the goods into the destination place. Hidden defects are to be reported in writing or in textform immediately 7 days after their discovery. In case of non-compliance with the reporting term, the goods are considered as accepted. If Dr. Demuth has no opportunity to test the reported defects or the client makes, without the approval of Dr. Demuth inappropriate or improper changes to the contested goods, then the client loses its right to claim for defects.
6. In case of documented defects, Dr. Demuth eliminates at its choice the defects for free or delivers a free replacement against return of the contested goods. If Dr. Demuth does not comply with these obligations or does not act according to the contract within a reasonable term, then the client has to set in writing or in textform a reasonable term, within which Dr. Demuth has to comply with its obligations. After an unsuccessful expiration of this term, the client can request a reduction in the price or withdraw from the contract. For defects which reduce only negligibly the value or the suitability of the goods, there is no claim for defects with the exception of requests for reduction.

7. In the case of entrepreneurial recourse (§445 a BGB) it is presumed that no defects were present at the time of the transfer of risk to the client, this shall apply only if the client has dutifully examined the delivered goods in accordance to §6 No. 5 of these general terms and conditions but did not indicate any defaults. This does not apply if the presumption is irreconcilable with the kind of the object or the default.
8. In case the client claims for his right of recourse he will have to be treated towards Dr. Demuth as if he has implemented all legal admissible contractual prospects (e.g. the refusal of the supplementary performance because of disproportionality or limitation of the reimbursement of expenses to a reasonable amount) towards his contractual partner.
9. Dr. Demuth is entitled to reject the client's right of recourse, with the exception of the claims for a new delivery of the goods, as far as Dr. Demuth grants an equivalent compensation for the exclusion of the client's rights to the client. Dr. Demuth is liable for any claims for compensation from consequential harm caused by a defect in accordance to § 7 of these general terms and conditions.
10. Claims for defects prescribe in twelve months from the handover of the goods at the respective destination place. This does not apply as long as the law dictates mandatorily longer terms (intention or gross negligence, loss of life, physical injury or damage to health, guarantee or liability according to the Product Liability Act) especially for goods which according to their usual manner of use would be utilized for a building and have caused the defectiveness thereof.

## § 7 Limitations of Liability

1. Dr. Demuth gives an unlimited warranty for damages to the life, body and health, which depend on a willing or negligent violation of the duties by Dr. Demuth, its legal representatives or agents, as well as for damages, which are included in the liability according to the Product Liability Laws, as well as for damages, which depend on willing or gross negligent violation of duties, as well as on fraudulent intent or assumption of a warranty.
2. Dr. Demuth warrants, apart from that, also for damages which are caused via simple negligence, to the extent this negligence concerns the violation of such contractual obligations, the fulfilment thereof authorizes mainly only the proper execution of the contract and their compliance matters for the realisation of the contract purpose (major obligations). Dr. Demuth warrants however only, to the extent the damages typically are connected with the contract and foreseeable and limited to a maximum amount of € 1.0 million per damage respectively maximum € 1.5 million per year.
3. The limitations of liability contained in the previous sentences apply also, to the extent the liability for the legal representatives, management staff and other agents of Dr. Demuth is concerned. Any further liability is excluded regardless of the legal nature of the asserted claim. To the extent the liability of Dr. Demuth is excluded or limited, this applies also to the personal liability of their staff, employees, workers, representatives and other agents.
4. Claims for damages prescribe after a calendar year from the handover of the item or the provision of services independently from the knowledge of the client of the cause of damage and/or damaging parties. The short prescription term does not apply, if gross negligence or intent exist on Dr. Demuth's part, as well as in case of culpable injury or death to

persons which are the responsibility of Dr. Demuth or because of a guarantee or liability according to the Product Liability Act.

## § 8 Third-Party Rights / Copyrights

1. If the deliveries take place according to plans, drawings, models, analytical specifications or other data of the client and Third Party rights, especially property rights, are thereby violated, then the client is contractually obliged to exempt Dr. Demuth from these claims upon first request and commits to make available to Dr. Demuth, if necessary, a solvent guarantee in form of a directly enforceable, unlimited bank guarantee.
2. Dr. Demuth reserves the property and copyright over all samples, illustrations and other documents. These items and/or information may be used only in connection with the goods delivered by Dr. Demuth and not made available to third parties without the express consent of Dr. Demuth.

## § 9 Application-Technical Advice / Disclosure

1. Instructions, proposals and advice for the use of the products of Dr. Demuth as well as the application-technical advice of Dr. Demuth are made and provided according to the know-how of Dr. Demuth and the one of the data indicated by the clients, without that for this reason the client is exempt from its own tests and inspections.
2. The testing and the decision whether the goods are suitable for the intended application, use or processing, is only up to the client and lies in its exclusive area of responsibility; unless Dr. Demuth had delivered expressly a warranty statement. Dr. Demuth warrants neither for the results to be achieved and intended purposes, nor Dr. Demuth assumes the warranty that the property rights of Third Parties are not violated.

## § 10 Place of Execution / Place of Jurisdiction / Applicable Law

1. The place of execution is Katlenburg-Lindau unless by law another place of execution is mandatory.
2. The place of jurisdiction for all the controversies out of, or in connection with, this contract and its interpretation and these General Terms and Conditions is Katlenburg-Lindau, as long as an exclusive place of jurisdiction is not mandatory by law. This applies also for complaints in the draft and cheque process. Dr. Demuth is however authorized to file a suit in the seat of the client.
3. For all the legal relationships between Dr. Demuth and the client find application exclusively the laws of the Federal Republic of Germany in its respectively current version with the exception of the conflict-of-law rules of the international civil law and of the UN-Sales Law.

**Dr. Demuth Derisol Lackfarben GmbH & Co. KG - Version 20.12.2017**