

Sales and Delivery Terms and Conditions of DKS Surface GmbH, Version: 01.01.2024

§ 1 – General Provisions

1. All our offers, deliveries, and services – including future ones – are made exclusively under the following terms and conditions. Upon receipt of our confirmation and/or acceptance of the ordered goods or services, the purchaser recognizes our sales and delivery terms.
 2. Any contrary business or purchasing terms of the purchaser are hereby expressly rejected. They are only binding for us if expressly acknowledged by us in text form. Neither absence of objection nor execution of deliveries and services constitute acceptance of the purchaser's business or purchasing terms.
 3. Side agreements and changes to these terms require text form to be effective.
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§ 2 – Offer and Conclusion of Contract

1. Our offers are non-binding. Orders from the purchaser only bind us after our written confirmation. The same applies to additions, amendments, and side agreements.
 2. Unless stated otherwise in the offer itself, our quoted prices are binding for a maximum period of 3 months.
 3. Offers and their attachments may not be made accessible to third parties without our consent.
 4. Offers based on inquiry drawings of the purchaser or third parties are made without checking or guaranteeing the functionality or suitability for processing of the parts. We only guarantee adherence to measurements in inquiry drawings if this is expressly agreed upon with the purchaser in text form.
 5. For offers concerning blanks provided by the purchaser via injection moulds, the purchaser guarantees the functionality of these injection moulds as well as the accuracy of their provided details regarding use and characteristics (such as shot numbers). If the purchaser violates these guarantees, we have the right to extraordinary termination of the delivery contract. In cases of culpable violation, we are also entitled to claim damages from the purchaser. In every case, we will inform the purchaser as soon as possible upon such findings.
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§ 3 – Prices

1. The prices stated in our order confirmation apply plus applicable VAT. Additional deliveries and services will be billed separately. Prices are ex works, excluding packaging, freight, postage, and insurance.
 2. Unless otherwise agreed, prices for delivered raw parts intended for standard processing are ex works, on the condition that the items provided for processing are supplied freight and expense paid.
 3. We reserve the right to reasonably change our prices if, after conclusion of contract, cost reductions or increases occur, in particular due to changes in raw material prices or wage agreements. We will demonstrate such cost changes to the purchaser upon request. We will notify the purchaser of cost changes that could lead to a price increase as soon as such changes become apparent to us.
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§ 4 – Payment Terms

1. Unless otherwise agreed in our order confirmation or credit is granted, our invoices are payable within 14 days from the invoice date without deduction to one of our bank accounts.
 2. If the agreed payment deadlines are exceeded, statutory default interest will be charged, without need for a separate reminder and reserving the assertion of further rights.
 3. Retention of payments based on counterclaims and set-off with counterclaims are not permitted, unless such counterclaims are undisputed or have been legally established. § 7(3) remains unaffected.
 4. Payment default or endangerment of our claims due to deterioration of the purchaser's creditworthiness entitles us to demand immediate payment of all claims—regardless of the maturity of any bills—and to demand securities. Furthermore, in these cases, we are entitled to execute outstanding deliveries only against prepayment or provision of security.
 5. We reserve the right to assign our claims against the customer to third parties.
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§ 5 – Delivery Periods/Partial Deliveries/Delay/Acceptance Obligation

1. Delivery deadlines and dates are only binding if expressly agreed in text form.
2. Observance of delivery time requires clarification of all commercial and technical questions between the contract parties and that the purchaser has fulfilled all obligations (such as providing the necessary, defect-free parts or

making a down payment). Otherwise, the delivery period is extended accordingly. If the purchaser is late in fulfilling his duties, we are entitled, after expiry of a reasonable grace period, to withdraw from the contract and claim damages.

3. The delivery period is met if, by its expiry, the goods have left our works or dispatch readiness has been notified. If acceptance is required, its date is decisive unless acceptance is unjustifiably refused; alternatively, it is the notification of readiness for acceptance. In the event of force majeure, labour disputes (especially strikes or lockouts), delays from suppliers, difficulties in obtaining materials for which we are not at fault, and other unforeseeable and unavoidable circumstances, we are entitled to extend the delivery period by the duration of the disruption. If such circumstances make delivery impossible or unreasonable for us, we may withdraw from the contract. The purchaser is entitled to withdraw if acceptance is unreasonable due to the delay. We will notify the purchaser as soon as possible of the start and end of such circumstances.
4. We are entitled to make partial deliveries or services unless this is unreasonable for the purchaser.
5. For all deliveries, we are permitted to exceed or fall short of the delivery quantity as may be required by production lots, unless otherwise agreed in text form. Only the actual delivered quantity is invoiced.
6. Where it is agreed that a set quantity is to be delivered within a specified period ("completion period") and the purchaser has the right to determine delivery dates, call-offs must be made at least 4 weeks prior to the desired delivery date. After expiry of the completion period, we may deliver and invoice any uncalled quantity.
7. If we are in default, the purchaser may withdraw from the contract after setting a reasonable period in text form. Further claims due to delay are governed exclusively by § 12.
8. If acceptance of goods is delayed for reasons attributable to the purchaser, we may claim a lump-sum compensation for delay. This is 0.5% per full week of delay, up to a maximum of 5% of the value of the portion of total goods not accepted on time. We reserve the right to claim additional costs for storage and preservation. The purchaser may prove that no (or less) damage occurred. We are only obliged to store and preserve goods for 3 months after the purchaser's delay in acceptance and only to the extent our own storage capacity permits. After 3 months, we may freely sell or scrap the goods.

§ 6 – Packaging/Shipping/Transfer of Risk

Risk passes to the purchaser upon dispatch ex works, regardless of who pays the freight costs. This applies even if delivery is by our own means of transport. If collection by the purchaser is agreed, risk passes with notification of readiness for dispatch.

For interpretation of delivery clauses, the Incoterms valid on the date of confirmation apply.

Pallets, containers, and other reusable packaging remain our property and must be returned promptly and carriage paid. Disposable packaging is charged at cost and will not be taken back.

Items delivered for which the purchaser provided raw parts will be shipped in the packaging in which the raw parts were delivered. Any damage due to unsuitable packaging is the purchaser's responsibility. If alternative packaging is used by agreement with the purchaser, we may charge for this.

§ 7 – Warranty/Claims for Defects

The statutory warranty rights of the purchaser according to § 437 (1) BGB apply subject to the following:

1. To preserve warranty rights, the purchaser must inspect goods immediately and notify us in writing of visible defects within a 12-day exclusion period from receipt, or of hidden defects immediately after discovery.
2. Defective goods will, at our discretion, be repaired or taken back and replaced with defect-free goods or credited.
3. In the case of complaints, the purchaser may withhold payments only to the value of the defective part. Withholding payment is allowed only if a defect is claimed whose validity is beyond doubt. If the complaint proves unjustified, we may claim associated costs from the purchaser.
4. The purchaser must give us the necessary time and opportunity to perform any work required for subsequent performance, including sorting out defective items. Otherwise, we are not liable for consequences. Only in urgent cases affecting operational safety, to prevent disproportionately large damages, or if we are in delay with repair, may the purchaser carry out repair themselves or have it executed by third parties, and demand compensation. We must be notified immediately in such a case.
5. No warranty applies, in particular, for unsuitable or defective raw parts or moulds provided by the purchaser. In such cases, the purchaser is obliged to take over the goods made with such items at the agreed price. The same applies if we provide moulds to third parties for production of blanks.
6. For small and mass parts, we accept no liability for scrap and shortages up to 3% of the delivered quantity, unless otherwise agreed in writing.
7. Claims for defects expire 12 months after delivery unless a longer statutory period is mandatory. Claims for defects and damages are excluded.

§ 8 – Special Limitations of Liability for Toll Injection Molding and Toll Electroplating

1. For toll injection moulding, warranty claims are excluded if defects are caused by normal wear of tools provided by the purchaser.
 2. For toll electroplating:
 - a) The purchaser is responsible for the plating suitability of raw parts provided free of charge. Warranty claims are excluded for defects due to defects (raw part faults) in the provided parts. Such goods are separated and invoiced as raw part faults. The purchaser must specify whether the scrap should be returned or scrapped by us.
 - b) To compensate for inevitable process-related electroplating scrap, the purchaser must provide, free of charge, an extra 10-20% of raw parts, calculated on the annual quantity. The required extra amount is settled bilaterally; if no amount is agreed, the default is 15%. Within this extra amount, warranty claims are excluded even for non-raw-part-related issues.
 - c) We do not verify the specific intended use of plated parts. We are therefore not liable for the functionality, tolerances, and/or fit with other parts.
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§ 9 – Retention of Title

1. We retain ownership of all delivered goods until all claims from the business relationship have been settled (“reserved goods”). In case of current accounts, this also secures the balance claim.
2. Processing by the purchaser is for us as manufacturer according to § 950 BGB, without obligation for us. Processed goods are considered reserved goods under § 9(1).
3. If the purchaser combines reserved goods with their own property into a single item, it is agreed that the purchaser transfers co-ownership to us without charge. Our share is determined by the value ratio.
4. The purchaser may resell reserved goods in ordinary business. Already now, claims from such resale are assigned to us. If reserved goods are sold with other items, the assigned claim is the value of the reserved goods. If sold goods are only partially owned by us, the assigned claim is proportional.
5. The purchaser is authorized to collect the claim only in proper business and only revocably. We will use our right of revocation if the purchaser defaults on payments or if their creditworthiness deteriorates. In this case, the purchaser is obliged, upon request, to inform his customers of the assignment and provide all necessary information and documents.

6. In case of breach of contract by the purchaser, payment default, unauthorized dispositions of reserved goods, substantial deterioration in financial situation, protests of bills or checks, or if insolvency is applied for or refused for lack of assets, we may prohibit processing and sale, take possession of reserved goods, enter the purchaser's premises, demand useful information, and examine records.
 7. If the reserved goods are seized or our rights impaired by third parties, the purchaser must notify us immediately.
 8. We are obliged to release securities if their value exceeds our claims by more than 10%.
 9. For parts provided by the purchaser and refined by us in the toll electroplating area, we acquire co-ownership, proportionate to value. Otherwise, § 9 applies.
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§ 10 – Drawings/Tools/Racks

1. Our drawings, samples, models, and tools remain our property and may not be made available to third parties.
 2. Tools produced by us on behalf of the purchaser also remain our sole property even if the cost is paid in part or full by the purchaser. Wear costs are the responsibility of the purchaser, as are insurance costs.
 3. Costs for racks made by us or on our behalf are borne by the purchaser unless otherwise agreed. Racks, being produced with our protectable know-how, remain our property before, during, and after the purchaser's order. No right of delivery or transfer arises even if the purchaser pays the full cost.
 4. We undertake to use moulds, tools, and racks only for the purchaser's orders. Should the purchaser default, we may use them as we wish.
 5. Our storage obligation for moulds, tools, and racks ends two years after the last purchaser's order.
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§ 11 – Intellectual Property Rights

If we manufacture according to the purchaser's samples, drawings, models, etc., the purchaser accepts liability for infringement of third-party rights. If a third party asserts a claim, we may, without examining the legal situation, cease manufacture and delivery and demand compensation.

§ 12 – Limitation of Liability

1. If goods cannot be used as contractually intended due to our fault in omitted or faulty execution of advice before or after conclusion, or breach of other contractual secondary obligations, only §§ 7 and 12(2) and (3) apply to the exclusion of further claims.
 2. For damages not to the goods themselves, we are only liable, regardless of cause
 - a) for wilful breach of duty,
 - b) gross negligence by our legal representatives or senior managers,
 - c) culpable injury to life, body, or health,
 - d) fraudulent concealment of defects or guarantee of condition,
 - e) culpable breach of essential contractual obligations—if due to gross negligence by non-managers or slight negligence, liability is limited to the typically foreseeable damage,
 - f) defects giving rise to liability under the Product Liability Act for personal injury or damage to privately used property.
 3. Unless otherwise stipulated in § 5(7), § 7, or § 12(1) and (2), all other liability is excluded.
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§ 13 – Jurisdiction / Applicable Law / Partial Invalidity

1. Jurisdiction is Montabaur. However, we may also sue at the purchaser's headquarters.
 2. All legal relationships between the purchaser and us are governed by German law, excluding the conflict of laws. The applicability of the UN Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.
 3. Should any provision of these conditions be or become invalid, this shall not affect the validity of the other provisions. The parties shall replace the invalid provision with a valid provision that most closely approximates the original intent. This also applies in the event of gaps in these business conditions.
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