

General Terms of Sale of DreBo Werkzeugfabrik GmbH

Status: March 2010

1. Application of the terms

These General Terms of Sale apply for all sales and delivery contracts between DreBo Werkzeugfabrik GmbH ("DreBo" or "we") and its customer ("Buyer"), provided a divergent agreement has not been concluded in writing.

A contract only comes into effect on our written order confirmation which defines the contract in content and scope.

Terms of the Buyer that contradict, supplement or deviate from the terms in these General Terms of Sale are invalid, also when they are contained in or attached to an order or delivery confirmation of the Buyer. This equally applies when DreBo has not or not expressly contradicted the application of such contract terms of the buyer.

These General Terms of Sale also apply for future deliveries of DreBo to the Buyer.

2. Prices

Prices are quoted ex works, not including packaging and other fees. The prices are exclusive of the statutory VAT valid at the time.

3. Deliveries

Stated delivery times and dates are non-binding, unless an individual deadline or delivery date has been expressly agreed on as binding.

Delivery is always effected at the Buyer's risk and expense. Insurance is only provided at the express wish of the Buyer and at his expense. Packaging is additionally charged.

An individually agreed delivery time begins, at the earliest, with the mailing of the order confirmation by DreBo, however, never before all documents or materials to be provided by the Buyer for performance of contract (drawings, instructions or samples) have been supplied and not before receipt of the agreed payment deposit with DreBo.

An individually agreed and binding delivery time is appropriately extended in the case of unexpected and hindering circumstances beyond our control, provided such circumstances are of influence for completion or delivery of the goods. We are equally not liable for such circumstances when they occur during an already existent delay. We are to advise the Buyer of the beginning and end of such hindering circumstances.

If our delivery is delayed and the Buyer grants us an appropriate extension with the express assertion that he will reject acceptance of the delivery on expiry of this extended delivery time and delivery is then not effected within this extended delivery time then the Buyer is entitled to rescind the contract.

If delivery or collection of the goods is delayed at the wish of the Buyer then DreBo is entitled to charge the Buyer for costs arising from the storage (at least 1/2 % of the invoice amount, for each month, possibly proportionally) and beginning 1 month after advice of readiness to deliver.

The Buyer is legally obliged to accept ordered goods. In the case of a delay of acceptance at the fault of the Buyer, DreBo is entitled, after setting an appropriate date for acceptance and expiration of this date, to rescind the contract. In this case, the Buyer is liable for damages.

Alternatively, in the case of a delay in acceptance at the fault of the Buyer, DreBo is entitled (i) to dispose of the goods in question by other means and to deliver goods of a similar kind and quality within a reasonable time period to the Buyer, unless this cannot be reasonably expected of the Buyer in an exceptional case, or (ii) to rescind the contract.

Observance of the agreed delivery times in exceptional cases requires the Buyer's fulfilment of his contract obligations.

Partial deliveries are allowed, provided this may be reasonably expected of the Buyer.

DreBo assumes no supply risk. We reserve the right to undertake the correct and timely delivery ourselves. For other cases in which unavailability of the goods cannot be prevented through reasonable efforts, DreBo reserves the right to rescind the contract. In the case of unavailability, DreBo will inform the Buyer without delay and, in the case that the contract is rescinded, any payments made will be reimbursed without delay.

4. Reservation of title

We reserve the title to the goods until all due payments from the current business relationship, including all owed receivables from the current account have been received and until cheques and bills of exchange have been honoured.

The Buyer is entitled to resell the reservation-of-title goods in the ordinary course of business, provided he is not in arrears in payment with DreBo. The Buyer is, however, not entitled to use the goods subject to reservation of title as a pledge or assignment as security. The Buyer assigns to us, already now, all such claims as are due to it from resale, including all current account receivables. We hereby accept the assignment.

Notwithstanding the assignment, the Buyer is only entitled to collect the assigned claims on his own behalf and in his own name for as long as he duly performs his obligations toward us and, in particular, is not delayed in payment. The Buyer may not assign the claims in order to collect them through factoring unless he irrevocably obliges the factor to directly pass on the sales proceeds to us for as long as we hold claims against the Buyer.

Our own right to collect the claims remains unaffected by the authorisation to collect. We will, however, not assert the claims ourselves or revoke the authorisation to collect as long as the Buyer fulfils his payment obligations toward us on time and in full. In the case of a revocation of authorisation, the Buyer is obliged to provide us with information regarding assigned claims required for collection of the assigned claims (in particular: the sum of the claim and identity of the debtor), to release all relevant documents to us and to advise the debtor of the assignment.

Goods with reservation of title are always to be processed or modified by the Buyer on our behalf.

If the goods with reservation-of-title are processed, combined or mixed with other goods not belonging to us then we are entitled to the resultant part-ownership of the new product in relation to the value of the reservation-of-title goods (invoice sum including VAT) to the other goods at the time of processing, combination or mixing. Furthermore, for the processing of resultant new products, the same applies as for the reservation-of-title goods.

If the Buyer acquires exclusive ownership of the new product, the contracting parties herewith agree that the Buyer is to grant us part-ownership of the new product in accordance with the value of the processed, combined or mixed goods with reservation of title. We hereby accept this assignment.

The Buyer is to store any new product for which we are granted part-ownership free of charge.

If the reservation-of-title goods are resold together with other goods, regardless of without or after processing, joining or combining, then the assignment as per above only applies to the extent of the value of the reservation-of-title goods which are resold with the other goods.

We oblige, as per the above provisions, to release the security interests furnished to us as per the above provisions at the Buyer's request to the extent the value of the security interests exceeds our claims by more than 10 %. We may freely select the security interests to be released.

In the case of an attachment of the reservation-of-title goods by third parties and/or with imminent, declared or commenced foreclosure proceedings of third parties on the reservation-of-title goods or the claims assigned in advance, the Buyer is to inform the third party and/or executing authority of our property or our authorisation to collect the claim; we are also to be advised immediately so that we may assert our property or claims. The documents required for this are to be provided without delay and all required information is to be supplied without delay.

5. Payment

As no special agreements have been made, the Buyer is obliged to remit payment within 10 days from the date of invoice with a 2 % discount or within 30 days strictly net. The Buyer is considered delayed in payment 30 days after the invoice date, provided no payment has been received by DreBo up until this point.

If the payment deadline is exceeded, we are entitled to charge interest to the amount of 8 percentage points

above the base interest rate of the European Central Bank. DreBo reserves the right to provide evidence of greater damages.

If the Buyer's due payment is delayed, we may demand immediate cash payment for the deliveries effected and the due deliveries with voidance of the payment terms granted.

We reserve the right to decide whether we will accept cheques or bills of exchange. Bills of exchange and cheques will only be accepted on a conditional basis and are only valid after clearing as payment. Discount charges are to be borne by the Buyer.

If a bill of exchange is accepted, we assume no liability for the timely protest of the bill.

6. Material defects and defects of title

The Buyer is to inspect the delivered goods without delay and, in the case of recognisable defects, to submit a written complaint within 10 days after arrival at the place of destination. In the case of defects not discovered during meticulous inspection, a written complaint is to be submitted without delay after ascertainment of the defect, normally within 10 days. § 377 HGB remains unaffected.

Should, at the passing of the risk, the goods delivered by DreBo present more than a slight deviation from the contractually agreed quality ("material defect"), then DreBo is liable for the material defect as per the provision of Clause 6. For all products which DreBo regularly offers, the contractually agreed quality may be taken from the product catalogue.

DreBo will replace the defective parts of the goods free of charge.

For replacement delivery, the parts affected are to be shipped to the works at the expense and risk of the Buyer.

Only in the case that demands are subsequently failed twice may the Buyer terminate the contract; the right to reduce the contract price is excluded. For claims arising from material defects or defects of title, the liability limitation applies as per Clause 7.

No claims related to material defects may be asserted

- for wear effects on objects which, due to their material quality or type of usage, are subject to short-term wear;
- for all damages resulting from natural use, wrong handling, insufficient maintenance, excessive use or the use of unsuitable operation materials;
- for damages resulting from wrong handling, in particular with non-observance of the technical user instructions.

Costs incurred by the Buyer for removal of remedy-obligated defects by third parties are only reimbursed by DreBo when the third party's work has been concretely permitted by DreBo in advance or when the remedy was immediately required to remove an endangerment of operating safety (danger in delay); in the last case, the Buyer is obliged to advise us of the defect remedy undertaken by the third party without delay.

Claims for material defects or defects of title expire within 12 months after the statutory beginning of limitation. § 478 Paragraph 4 BGB remains unaffected.

Complaints do not entitle the Buyer to set off or assert a right of retention.

Any legally binding statutory claims of the Buyer as per § 478 BGB are not limited by this Clause 6.

7. Limitation of liability

Regardless of the legal reason, the following applies for the liability of DreBo in the case of claims:

DreBo is liable without limitation for all damages caused by intentional or grossly negligent conduct.

For damages caused by simple or light negligence, DreBo is only liable when an essential contractual duty has been violated; this is a duty with which fulfilment thereof is fundamentally required for fulfilment of the contract and with which the breach thereof endangers achievement of the purpose of the contract and in the observance of which the Buyer regularly trusts (cardinal duty). Liability is, however, limited to damages which could typically have been foreseen at the time of conclusion of contract.

The above liability limitations do not apply if DreBo has assumed a warranty for the quality of the delivery or performance, provided it involves damages caused by DreBo to life, body or health, or if the product liability law applies.

Provided the liability of DreBo is excluded or limited as per the previous paragraphs then this equally applies to the benefit of employees, legal representatives, managers and other assistants and authorised representatives of DreBo in the case of their direct use by the Buyer.

The assuming of a warranty requires an express, written agreement in which the promised performance is referred to as "warranty".

8. Order based on drawing etc.

For orders based on drawings, samples, models etc., the Buyer is obliged to advise DreBo in writing and in a correct and timely manner of all important measurements, specifications etc. which are important for processing the order. Any subsequent revisions must be confirmed in writing by DreBo in order to be considered effectively agreed.

9. Place of performance and jurisdiction

Place of performance for delivery is the individual place of lading; place of performance for payments is exclusively Altshausen.

Exclusive place of jurisdiction for all disputes arising from or connected to the General Terms of Sale is Ravensburg. DreBo is, however, entitled to assert claims against the Buyer in other places of jurisdiction as well. This equally applies to claims arising from conditionally accepted cheques and bills of exchange.

The law of the Federal Republic Germany exclusively applies with exclusion of the UN uniform law for international sales (CISG).

10. Set-off and right of retention

The Buyer is not entitled to set-off in relation to payment claims of DreBo or to exercise a right of retention unless the claims of the Buyer are undisputed or have been legally ascertained.

11. Written form requirement and severability clause

Any amendments or additions to these General Terms of Sales are only valid when made in writing.

Should a provision of these General Terms of Sale become void or impracticable, or should this Agreement present a gap, this does not affect the validity and practicability of the remaining provisions of these General Terms of Sales.

The Parties are obliged, in place of the invalid provision or to fill the gap, to agree on the valid provision which most closely corresponds to the provision in question or which most closely corresponds to the economic purpose of these General Terms of Sale.

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