

General Terms and Conditions for Sales of DURUM Verschleiss-Schutz GmbH

1. Scope

1.1 These General Terms and Conditions for Sales of DURUM Verschleiss-Schutz GmbH (referred to below as "DURUM") apply to all contracts between DURUM and its customers on the sale and/or delivery of movable objects (also referred to below as "products") and provision of services, where the customer is

- a) a corporate entity or individual carrying on their trade or profession (entrepreneur) at the time of conclusion of the contract, or
- b) a corporate entity established under public law or a special fund under public law.

1.2 These General Terms and Conditions for Sales shall apply exclusively. General terms and conditions of the customer shall only apply if and to the extent that DURUM expressly acknowledges them in writing. In particular, silence on the part of DURUM shall not constitute acceptance of or consent to such deviating terms and conditions, even in the case of future contracts. These General Terms and Conditions shall also apply in place of any general terms and conditions of the customer (e.g. purchasing terms and conditions) even if they state that acceptance of the order constitutes unconditional acceptance of the general terms and conditions. By accepting the acknowledgement of order from DURUM, the customer expressly accepts that he is waiving his legal demurrer derived from the general terms and conditions.

1.3 These General Terms and Conditions for Sales in their latest version shall also apply as a framework agreement to future contracts on the sale and/or delivery of movable objects with the same customer, without DURUM being obliged to refer to them in each individual case.

1.4 To the extent that individual agreements have been made with the customer in individual cases, they shall have priority over these General Terms and Conditions for Sales. The contents of such agreements shall only be effective when stated in a written contract or confirmed in writing by DURUM.

1.5 Legally relevant statements and notifications which are to be made to DURUM by the customer after conclusion of the contract (e.g. setting of deadlines, reports of defects or declarations of withdrawal or price reduction) shall only be effective if made in text form.

2. Information, advice, characteristics of the products and guarantees

2.1 Information and advice and other services by DURUM are provided exclusively on the basis of experience to date. All statements on DURUM's products and services, and especially those in the illustrations, drawings, details of capacity and performance and other details contained in DURUM's quotations and publications are to be regarded as approximate average values.

2.2 The directions for application are compiled by DURUM with the due care exercised in the industry, but do not relieve the customer of his obligation to check the suitability of the products for the purpose which he intends.

2.3 The documents belonging to quotations, such as drawings, illustrations, technical data, references to standards and statements in advertising materials do not constitute statements of quality, warranties of characteristics or guarantees unless they are expressly designated in writing as such.

2.4 DURUM expressly retains all rights of ownership and copyright to catalogues, technical documentation (e.g. drawings, plans, statements of weights and dimensions, calculations and costings) and other product descriptions or documents, including those in electronic form. The customer undertakes not to make the documents listed in the previous sentence accessible to third parties unless DURUM issues its express written consent.

3. Samples

If agreed, DURUM will provide the customer with a sample of the ordered products prior to manufacture. DURUM will then only commence manufacture of all the products ordered when the sample has been inspected and confirmed to be acceptable by the customer. The characteristics of samples shall only become an integral part of the contract when this is expressly agreed in writing. The customer shall only be entitled to use and pass on samples with the express written consent of DURUM.

4. Conclusion of contracts

4.1 The communications from DURUM to the customer designated as "quotations" are non-binding and are made without engagement. They constitute an invitation to the customer to place an order for goods or services.

4.2 The order for the products from the customer shall constitute a binding offer of a contract. Unless otherwise stated in the order, DURUM shall be entitled to accept this offer of a contract within two weeks of its submission at DURUM.

4.3 A contract shall only come into effect – even in the course of normal business – when DURUM accepts the customer's order. Acceptance may either be communicated in text form (e.g. in an acknowledgement of order) or constituted by the despatch of the products to the customer. The content of the contract shall be determined by DURUM's acknowledgement of order.

5. Scope and risk of performance

5.1 DURUM shall only be obliged to supply goods which are on stock, unless otherwise expressly agreed in writing. The assumption of a procurement risk shall in particular not be imposed solely by DURUM's obligation to deliver an object defined by type only.

5.2 DURUM shall be entitled to deliver additional or reduced quantities or weights by up to 5% in relation to the order volume.

5.3 In the case of call orders or delays in acceptance by the customer, DURUM shall be entitled to make performance immediately, and in particular to procure the necessary material for the entire order and manufacture and offer the entire ordered quantity or fulfil the order. Any wishes for modifications by the customer cannot therefore be taken into account after the order has been placed, unless this has expressly been agreed in writing.

5.4 The customer is to inform DURUM in writing and in good time prior to the conclusion of the contract of any special requirements he has for DURUM's products or services.

6. Delivery periods and delays in delivery

6.1 Delivery periods for goods or services shall only be binding when they have been expressly confirmed as binding in writing by DURUM.

6.2 Delivery periods for goods and services shall commence on the date of the acknowledgement of order. Unless otherwise agreed, the delivery period shall be deemed to have been met if the customer has received the notice of readiness for despatch of the objects to be supplied at the agreed time or within the agreed period, and in the case of other services, if the service has commenced within the period. It shall be permissible to deliver goods and provide services before the end of the delivery period.

6.3 Compliance with delivery periods for goods and services shall be dependent on the clarification of all technical questions, and in particular on the prompt receipt of all documents, necessary approvals and releases to be provided by the customer, and compliance with the agreed terms of payment and other obligations of the customer. Should the above conditions not be fulfilled, the periods shall be appropriately extended; this shall not apply to the extent that the delay is within DURUM's control.

6.4 DURUM reserves the right to make partial deliveries to a reasonable extent.

6.5 Should the delivery period for goods or services be exceeded for reasons within DURUM's control, the customer shall be entitled, after setting a reasonable period of grace without result, to withdraw from the contract for the non-fulfilled part. Claims for damages shall be governed by the provisions of section 12 of these General Terms and Conditions.

6.6 Should the customer cause a delay in delivery of the objects to be supplied or in the performance of other services, DURUM shall be entitled to require compensation for the losses or damages it has incurred in this respect, including any additional expenses. The right to make further claims or assert further rights is reserved.

6.7 In the case of default in payment by the customer, DURUM shall be entitled to exercise a right of retention for further deliveries or other services.

7. Delivery by suppliers and force majeure

7.1 To the extent that DURUM cannot meet binding delivery periods for reasons beyond its control (non-availability of the goods), it shall inform the customer of this without delay and at the same time notify him of the prospective new delivery period. If the goods are still not available within the new delivery period, DURUM shall be entitled to withdraw from the contract in whole or in part; any consideration already paid by the customer shall be refunded by DURUM without delay.

7.2 DURUM shall in particular be entitled to withdraw from the purchase contract if it is not correctly and punctually supplied by its suppliers for reasons beyond its control and in spite of having concluded a corresponding covering transaction.

7.3 In the case of force majeure, the provisions set out in clause 7.1 shall apply accordingly. This applies in particular in the event of conflict with German, European or American export, import, customs and payment regulations (e.g. embargos) that directly or indirectly preclude the performances of services by DURUM and/or the purchase of the

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- products by the customer, regardless of whether these were foreseeable or not. Force majeure shall include war, civil disturbances, natural disaster, terror, riot, industrial disputes, strikes, lock-outs, official directives or actions, unavoidable shortages of energy or raw materials, transport bottlenecks beyond DURUM's control, unforeseeable disruptions to operation, for example due to fire, flood and damage to machinery, and all other hindrances which, when viewed objectively, have not been culpably brought about by DURUM.
- 7.4 If a delivery date or delivery period has been agreed as binding and if the agreed delivery date or delivery period is exceeded as a result of events as set out in clauses 7.1 to 7.3, the customer shall be entitled, after setting a reasonable period of grace which expires without performance, to withdraw from the as yet unfulfilled part of the contract if he cannot in an objective view be reasonably expected to continue to adhere to it. In such a case, further claims by the customer, including in particular claims for damages, shall be excluded.
- 8. Delivery, transfer of risk, acceptance and default in acceptance**
- 8.1 Unless otherwise agreed, delivery shall be made ex-works (as defined in Incoterms® 2010) at the registered office of DURUM, which shall also be the place of performance. In the case of international sales, unless otherwise agreed, delivery shall be made free carrier ("FCA" as defined in Incoterms® 2010) at the registered office of DURUM, which is also the place of performance.
- 8.2 On request by and at the cost of the customer, the products will be consigned to a different destination (sale by despatch) with the consent of DURUM. Unless otherwise agreed, DURUM shall be entitled to determine the method of consignment (and in particular the carrier, transport route and packaging) itself. In case of an agreed sale by dispatch, the shipment can be insured against theft, breakage, transportation, fire and water damages as well as against other risks that may be insured exclusively upon express request by and at the cost of the customer.
- 8.3 The risks of accidental destruction and accidental deterioration of the products shall be transferred to the customer for ex works deliveries and free carrier deliveries on the day of notification of readiness, at the latest, however, on handover of the products to the customer or to a person or organisation appointed by the customer for acceptance at the registered office of DURUM. In the case of sale by despatch, however, the risks of accidental destruction and accidental deterioration of the products and the risk of delay shall be transferred no later than on handover of the products to the forwarding agent, carrier or other person or organization appointed to effect the shipment. When an acceptance inspection has been agreed, the transfer of risk shall take place at that time. For the rest, any agreed acceptance inspection shall also be governed by the provisions of the law on contracts to produce a work. Should the customer be in default of acceptance, this shall be equivalent to handover or acceptance. Insofar as an acceptance of the products has to take place, the delivery or service shall be considered accepted if:
- the delivery and, in case DURUM is also responsible for service, the performance of service is concluded,
 - DURUM notifies the customer thereof with the reference to the provisions of deemed acceptance as per 8.3 and requests the acceptance of the delivery,
 - ten working days have ensued since delivery or service, or the customer has started using the product (e.g. the supplied equipment has been put into operation) and in this case since delivery or performance five working days have ensued, and
 - the customer failed to take acceptance of delivery within the stipulated period of time because of reasons besides the ones indicated to DURUM, that make the delivered item impossible to use or considerably affects.
- 8.4 Should the acceptance inspection of the products or their despatch be delayed for reasons within the customer's control, DURUM shall be entitled at its own option, after setting a 14-day period of grace and its expiry without result, to require immediate payment of the purchase price or to withdraw from the contract or to refuse performance and require damages in lieu of performance in its entirety.
- 8.5 Should the customer be in default of acceptance or fail to provide assistance or should DURUM's delivery be delayed for other reasons within the customer's control, DURUM shall be entitled to require compensation for the resulting damages including additional expenses (e.g. storage costs). This will be charged as lump-sum compensation in the amount of 0.25% of the agreed net invoice amount per calendar week or part thereof, commencing on the delivery date or – in the absence of a delivery date – on notification of the readiness for despatch of the products. This shall not prejudice the demonstration of any greater damages and pursuit of further claims by DURUM (including in particular reimbursement of additional expenses, appropriate compensation and termination of the contract); the lump sum shall however be set off against any further monetary claims. The customer shall be permitted to demonstrate that DURUM has incurred no losses or damages or significantly lower losses or damages than the above lump sum.
- 8.6 The customer is obliged to comply with the European Trade Policy and with the restrictions of the Dual-Use Export, available at http://ec.europa.eu/trade/import-and-export-rules/export-from-eu/dual-use-controls/index_en.htm. The direct or indirect resell of the products in the countries which are under export restrictions is strictly forbidden. In case of resell, the customer is obliged to certify to DURUM the final destination of the products in written form prior to resell pursuant to the valid export regulations.
- 8.7 The customer is obliged to comply with the relevant legal regulations regarding the anticorruption.
- 9. Prices, terms of payment and defence of insecurity**
- 9.1 All prices are stated in euros, ex-works excluding packaging and freight, and net of the value added tax to be borne by the customer at the applicable statutory rate. The price calculations are performed at the generally applicable prices of DURUM as at the day of delivery unless otherwise agreed. DURUM is entitled to adjust the agreed price in accordance with the wages and prices of raw materials without any specific agreement, if this applies to the products and services, which are delivered or performed either later than four months after the conclusion of the contract or in the course of a continuing obligation.
- 9.2 In the case of sale by despatch (clause 8.2), the customer shall bear the transport costs ex-warehouse and the costs of any transport insurance desired by the customer. Any customs duties, fees, taxes and other public charges shall be borne by the customer. DURUM will not take back any transport packaging or any other packaging covered by the German Packaging Ordinance, which shall become the property of the customer, with the exception of pallets.
- 9.3 Unless otherwise agreed, works which are not part of the agreed scope of supply will be performed on the basis of DURUM's general price list valid at the relevant time.
- 9.4 The purchase price shall be due and payable within 14 days. A prompt payment discount deduction requires written agreement with the customer. The timeliness of payment shall be determined by the time of receipt of the payment in DURUM's account. An agreed prompt payment discount to be deducted shall be calculated on the basis of DURUM's net receivable and shall only be permissible when all other liabilities resulting from the customer's business relationship with DURUM which are over 30 days old have been settled.
- 9.5 DURUM shall be entitled to require an advance payment in the amount of 30% of the purchase price. The advance payment shall be due and payable within 14 days of the invoice date.
- 9.6 Even if no reminder is issued, the customer shall be deemed in default with payment if he fails to pay within 30 days of receipt of the invoice and payment being due. During the period of default, the purchase price shall bear interest at the applicable statutory default interest rate. DURUM reserves the right to pursue claims for further damages from default. This shall not prejudice DURUM's entitlement in dealings with merchants to the interest counting from the due date (Section 353 of the German Commercial Code (HGB)).
- 9.7 The customer shall only have a right of setting-off or retention with respect to claims which are undisputed or recognized by declaratory judgement or in case the counterclaims arising from the same contractual relation are reciprocal to DURUM's claims. This shall not prejudice clause 11.5 in the case of defects in the supply.
- 9.8 Should it become apparent after conclusion of the contract that DURUM's entitlement to the purchase price is at risk from inability of the customer to pay (e.g. as a result of an application to institute insolvency proceedings), DURUM shall be entitled as provided for in law to refuse performance and – after setting a period of grace, if necessary, and its expiry without result – to withdraw from the contract (Section 321 of the German Civil Code (BGB)). In the case of contracts for the production of non-fungible things (individual custom-made items), DURUM may declare its withdrawal immediately; this shall not prejudice the statutory provisions on the dispensability of setting a period for performance.
- 10. Retention of title**
- 10.1 All products supplied by DURUM shall remain the property of DURUM ("goods subject to retention of title") until all present and future sums owing to DURUM as a result of the purchase contract and a continuing business relationship are paid in full.
- 10.2 The customer is to insure the goods subject to retention of title sufficiently, in particular against fire and theft. Claims on the insurance policy resulting from damage to the goods subject to retention of title are assigned here and now to DURUM in the amount of the value of the goods subject to retention of title.
- 10.3 The customer may neither pledge the goods subject to retention of title to third parties nor assign them as security until all the sums owing as stated in clause 10.1 have been paid in full. The customer is to notify

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- DURUM in writing without delay if and to the extent that the goods subject to retention of title are seized by third parties.
- 10.4 On conduct by the customer in contravention of the contract, and in particular non-payment of the purchase price due, DURUM shall be entitled as provided for in law to withdraw from the contract and/or require the surrender of the products on grounds of the retention of title. The demand for surrender shall not automatically constitute a declaration of withdrawal; DURUM shall rather be entitled merely to require surrender of the products and reserve the right to withdraw from the contract. Should the customer fail to pay the purchase price due, DURUM may only exercise these rights when it has previously set the customer a reasonable period for payment without result, or when the setting of such a period is dispensable under the terms of the law.
- 10.5 The customer shall be entitled to resell and/or to process the goods subject to retention of title in the normal course of business. In such a case, the following provisions shall additionally apply.
- 10.6 The retention of title shall also extend to the full value of the goods created by processing, mixing or joining DURUM's products, with DURUM deemed to be the manufacturer. Should, on processing, mixing or joining the products with products from third parties, the ownership rights of those third parties persist, DURUM shall acquire co-ownership in proportion to the invoice values of the processed, mixed or joined products. For the rest, the same shall apply to the goods created as to the products delivered subject to retention of title.
- 10.7 The customer hereby assigns his receivables from third parties resulting from the resale of the products or the goods created therefrom in full or in the amount of DURUM's co-ownership share as applicable in accordance with the previous paragraph to DURUM as security. DURUM accepts the assignment. The obligations of the customer set out in clause 10.3 shall also apply with regard to the assigned receivables.
- 10.8 The customer, together with DURUM, shall be entitled to collect the receivables from the resale. DURUM undertakes not to collect the receivables as long as the customer fulfils his payment obligations to DURUM, is not in default with payments, no application for institution of insolvency proceedings has been made and there is no other deficiency in his ability to pay. If this should however be the case, DURUM may require the customer to notify DURUM of the assigned receivables and the relevant debtors, to provide all the information necessary for collection, hand over the corresponding documents and notify the debtors (third parties) of the assignment.
- 10.9 Should the realizable value of the securities exceed DURUM's receivables by more than 10%, DURUM shall release securities of its choice on request by the customer.
- 11. Customer's claims based on defects**
- 11.1 The customer's rights in the case of defects of quality and defects of title (including incorrect deliveries and shortfalls, and incorrect installation or defective installation instructions) shall be governed, unless otherwise stipulated below, by the provisions of the law.
- 11.2 The basis of DURUM's liability for defects shall be above all the agreement reached concerning the quality of the products. The product descriptions (including those of the manufacturer) which were provided to the customer before he placed his order or were adopted in the contract in the same way as these General Terms and Conditions shall constitute agreements on the quality of the products when they are designated as such. A particular application or usage purpose can only become part of the quality agreement exclusively with a prior express consent of DURUM.
- 11.3 The statutory obligations to examine the products and report defects (Sections 377 and 381 of the German Commercial Code (HGB)) shall apply. The delivered goods shall be thoroughly inspected for any defects immediately upon delivery to the client or to the third party designated by the client. The customer must report defects immediately and no later than within two working days after the possible defect has or should have become evident upon inspection.
- 11.4 If the objects delivered are defective, DURUM may first opt to effect a cure either by rectifying the defect (reworking) or by supplying objects without defects (replacement delivery). This shall not prejudice DURUM's right to refuse the selected method of cure when the legal conditions for such refusal are fulfilled.
- 11.5 DURUM shall be entitled to make the cure owed dependent on the customer paying the purchase price due. The customer shall however be entitled to retain a reasonable portion of the purchase price in proportion to the defect.
- 11.6 The customer is to give DURUM the necessary time and opportunity to effect the cure owed, and in particular to hand over the products which have been found defective for test purposes in its unchanged and unprocessed state. In the case of a replacement delivery, the customer is
- to return the defective objects to DURUM in accordance with the provisions of the law.
- 11.7 The expenses required for the purposes of testing and effecting a cure, including in particular transport, travel, labour and material costs, shall be borne by DURUM when there is actually a defect. Should, however, a request by the customer for defects to be rectified prove unjustified, DURUM may require the customer to reimburse DURUM for the costs incurred.
- 11.8 If the installation of the products by DURUM has not been expressly agreed upon with the customer, DURUM, in case of product defectiveness, shall be liable neither for deinstallation of defect products and for installation of the ones delivered as replacement or subsequently improved within the cure, nor for reimbursement of the customer's expenses incurred for installation and deinstallation, unless DURUM is responsible for the defectiveness of the product. In this case clause 12 shall apply. Upon the customer's request, DURUM will name its manufacturer/pre-supplier.
- 11.9 Clause 11.8 will remain applicable also if the customer is liable towards its purchaser for expenses incurred for installation and deinstallation, unless the purchaser is a consumer.
- 11.10 Recourse claims of the customer according to Section 445a, 445b of the German Civil Code (BGB) shall be excluded, unless the last contract in the supply chain is a sale of consumer goods. The rights of the customer pursuant to this clause remain unaffected.
- 11.11 If the cure fails or a reasonable period to be set by the customer for the cure expires without result or such period is dispensable under the terms of the law, the customer may withdraw from the purchase contract or reduce the purchase price. There shall however be no right of withdrawal in the case of a minor defect.
- 11.12 Claims by the customer for damages or compensation for futile expenditure shall only be entertained as provided for in section 12 and are for the rest excluded.
- 11.13 The place of cure performance is the registered office of DURUM. Deviating from that, DURUM can choose the location of the products as place of cure performance.
- 12. Other liability**
- 12.1 Unless otherwise stipulated in these General Terms and Conditions for Sales, including the provisions below, DURUM shall be liable in accordance with the relevant provisions of law for infringement of contractual and non-contractual obligations.
- 12.2 DURUM shall be liable for damages – on whatever legal grounds – in the cases of malicious intent and gross negligence. In the case of ordinary negligence, DURUM shall only be liable
- a) for damages resulting from fatalities, personal injury or damage to health,
- b) for damages resulting from infringement of a material contractual obligation (an obligation whose fulfilment makes the orderly implementation of the contract possible in the first place and compliance with which is and can be normally expected by the parties); in such a case DURUM's liability shall however be limited to compensation for the foreseeable loss or damage which typically occurs.
- Further claims for damages are excluded.
- 12.3 None of the above shall prejudice any liability for fraudulent concealment of a defect, the provision of a guarantee or the acceptance of a procurement risk, liability under the German Product Liability Act and under other mandatory provisions of the law.
- 12.4 The above exclusions and limitations to liability shall apply to the same extent to DURUM's managers and employees, other agents and subcontractors.
- 12.5 The above stipulations are not associated with any reversal of the burden of proof.
- 13. Limitations**
- 13.1 In deviation from Section 438, paragraph 1, no. 3 of the German Civil Code (BGB)), the general period of limitation for claims based on defects of quality and defects of title shall be one year from delivery. To the extent that an acceptance inspection has been agreed, the period of limitation shall commence on acceptance.
- 13.2 If, however, the product is a building structure or an object which has, in accordance with its normal purpose, been used for a building structure and has caused the defectiveness of that building structure (construction material), the period of limitation shall be 5 years from delivery as provided for by the statutory regulation (Section 438, paragraph 1, no. 2 of the German Civil Code (BGB)). None of the above shall prejudice the

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special statutory regulations for real rights of third parties to return of the object purchased (Section 438, paragraph 1, no. 1 of the German Civil Code (BGB)), fraud on the part of the seller (Section 438, paragraph 3 of the German Civil Code (BGB)) and recourse claims on suppliers on final delivery to a consumer (Section 479 of the German Civil Code (BGB)).

13.3 The above periods of limitation set down in purchasing law shall also apply to contractual and non-contractual claims for damages by the customer which are based on a defect in the products, unless application of the regular statutory period of limitation (Sections 195 and 199 of the German Civil Code (BGB)) would lead in an individual case to a shorter period of limitation. In no case shall any of the above prejudice the periods of limitation set down in the German Product Liability Act.

14. Concluding provisions

14.1 These General Terms and Conditions for Sales and all legal relationships between DURUM and the customer shall be exclusively governed by the law of the Federal Republic of Germany, excluding the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG). The conditions for and effects of retention of title as set out in section 10, in contrast, shall be governed by the law at the location where the objects are stored when in accordance with that law the choice of German law made is impermissible or ineffective.

14.2 If the customer is a merchant as defined by the German Commercial Code (HGB), a corporate entity established under public law or a special fund under public law, the exclusive venue for all disputes – including

international disputes – arising directly or indirectly from the contractual relationship shall be a competent court at the location of DURUM's registered office. DURUM shall however also be entitled to bring actions against the customer at the customer's general place of jurisdiction.

14.3 If the customer has its registered office neither in the European Union, nor in Switzerland, Norway or Iceland, all disputes arising in connection with the respective delivery contract or its validity shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS) without recourse to the ordinary courts of law. The place of arbitration is the location of DURUM's registered office. The language of the arbitral proceedings is German.

14.4 Amendments to the contract by individual agreements shall require no particular form to be effective. For the rest, amendments and additions to these General Terms and Conditions for Sales and supplementary agreements shall only be effective if made in writing. This shall also apply to any waiver or cancellation of this clause requiring written form.

14.5 Employees of DURUM are not entitled to complement or deviate from the content of the contract. This does not apply to DURUM's institutions and proxy holder ("Prokurist") as well as to the representatives authorised by those to do so.

14.6 Should any of the above provisions be or become ineffective, this shall not affect the validity of the remaining provisions. The parties shall be obliged to replace the ineffective provision with a stipulation which approximates to it as closely as possible in its commercial effect.