

Durophan Handelsgesellschaft mbH - General Terms Of Sale And Delivery

1. General terms; scope; collision clause; written form

- 1.1. All deliveries, services and offers of the Durophan commercial company Ltd. (referred to hereafter as "Durophan") towards clients (referred to hereafter as "clients") are made solely based on the following general terms and conditions of sale and delivery. These conditions become a part of the purchase agreement with the customer. They apply for all future deliveries, services and offers towards clients, even if they are not specifically agreed to again.
- 1.2. Terms and conditions of the clients, including general purchase conditions or other conditions or terms of the clients altering the contract, are not valid, even if Durophan does not expressly object to their application in each individual case. Even if Durophan refers to a typing which includes the terms and conditions of the client, or refers to these terms and conditions, this does not suggest any agreement to the validity of such terms and conditions.
- 1.3. These general conditions of sale and delivery shall apply solely for companies within the meaning of § 310, paragraph 1 BGB (German Civil Code).
- 1.4. In the event of a conflict of the general conditions of sale and delivery and the relevant technical information and/or the form testing and processing recommendations, solely the regulations, which are stated here, apply.
- 1.5. Insofar as notifications and declarations need to be made in writing, in accordance with these general conditions of sales and delivery, the transmission by private courier service, letter or fax is sufficient, unless a special form is prescribed. E-mail is not enough.

2. Offer and contract conclusion

- 2.1. All offers made by Durophan are subject to change and non-binding, unless expressly marked as binding.
- 2.2. An agreement with the client shall only take effect when Durophan confirms purchase orders or orders in a written form, respectively when a dispatch note, or bill of delivery invoice was issued. Durophan reserves the right to cancel clients' orders of purchase and orders within 14 days.
- 2.3. Durophan reserves the property and/or copyright and copyright utilization right on all provided offers and quotations and on drawings, diagrams, calculations, brochures, models, samples, sketches, drafts, examples, additional material and other documents and materials. The client is not permitted to provide this material to third parties, without the express written consent of Durophan, or to allow third parties to disclose, use or reproduce the provided material. The client is required to return the material upon request by Durophan and to destroy any copies or duplicates of such items, if he no longer needs them in the proper course of business, or if negotiations do not lead to the conclusion of a contract

3. Prices

- 3.1. The prices are valid for the scope of goods and services listed in the order confirmations. Any additional or extra deliveries will be charged separately.
- 3.2. All prices are in Euro, unless another currency is explicitly appointed in the confirmation of the order.
- 3.3. The prices offered are in net, to which the legal sales tax is added. Regarding the cost of transportation, insurance, import and export and other public duties and expenses, please see clause.
- 3.4. If delivery is affected more than four months after the conclusion of the contract, the parties shall agree to an adequate price correction, if in the meantime the calculation basis of Durophan demonstrably changes, especially if changes in regard to labor, material or distribution cost occurred.

4. Terms of payment; assignment of claims

- 4.1. All payments are to be transferred to an account specified by Durophan, without cash discounts, remittance fees, costs related to letters of credit or other deductions. The client releases Durophan from any costs, fees and expenses, which come up in the case of payment in another currency than Euro.
- 4.2. The deadline for payments is 30 days from the date of invoice, unless agreed otherwise in writing by both parties. Payments are assumed to be fulfilled on the date of the payment entry on the bank account specified by Durophan.
- 4.3. For the delay of payment, we calculate interest on late payments amounting to 8 percentage points over the base interest rate applicable at that time. The assertion of damages going beyond such late payment damages shall be reserved to Durophan. D
- 4.4. Durophan is entitled to only make deliveries against prior payment or security deposit, if after the conclusion of the contract, circumstances become known which significantly reduce the credit worthiness of the client.
- 4.5. The client does not have the right to offset their own claims against invoices of Durophan, or to exercise a right of retention, unless the claims have not been disputed by Durophan or have been finally determined by a court.
- 4.6. Durophan is entitled to assign its claims from the business relationship with clients from Germany and countries from the EU to Coface Finanz GmbH, Isaac-Fulda-Allee 1, 55124 Mainz, for refinancing. The client will be informed when concluding the contract if an assignment of claims is made. In such cases, payments with debt-discharging effect can only be assigned to Coface Finanz GmbH. The according bank details will be given to the client when the contract is concluded.

5. Delivery; Place of fulfillment; Packing; Passage of risk

- 5.1. Unless otherwise agreed, goods with a value of € 1.500,00 or higher (net) will be delivered CPT (carriage paid to), all goods with a value under the above stated amount will be delivered EXW (ex-works), in accordance to Incoterms 2010.
- 5.2. The place of performance for all obligations arising out of the contractual relations is the registered office of Durophan.
- 5.3. The type of dispatch and the packaging are subject to the discretion of Durophan.

- 5.4. The risk shall pass to the client with the handover of the delivery item to the hauler, freight carrier, or any other third party commissioned with delivering the goods (whereby the beginning of the loading process is decisive).

- 5.5. Transport packaging and all other packaging, with the exception of euro-pallets, will not be taken back by Durophan.

6. Delivery period; force majeure; partial delivery

- 6.1. Deadlines and dates for deliveries specified by Durophan apply only approximately, unless a fixed deadline or a fixed date is expressly consented and agreed on.
- 6.2. Durophan may - without limiting his further rights resulting from a delay of the client - demand a prolongation of delivery and performance period from the client, for the period of which the client does not meet its contractual obligations towards Durophan.
- 6.3. Durophan is not liable for impossibility of delivery or for delays in delivery as a result of force majeure or other events that were not foreseeable (e.g. breakdowns, difficulties in the procurement of materials and energy supply, transport delays, strikes, lawful lockouts, deficiency of manpower, energy or raw materials, difficulties in procuring necessary official approvals, official measures or non-delivery or incorrect or late delivery by suppliers), which Durophan cannot be held responsible for. So long the circumstances make the delivery or service difficult or impossible to fulfill, and the period of delay is longer than two months, Durophan may withdraw from the contract by immediate written declaration. In the event of impediments that are of temporary duration the deadlines for delivery or performance shall be extended or the delivery or performance dates shall be postponed by the period of the impediment plus a reasonable start-up period. If as a result of the delay the client cannot reasonably be expected to accept the goods or services, the client may cancel the contract by immediate written declaration to Durophan.
- 6.4. Durophan shall only be entitled to partial deliveries, if
 - a) the partial delivery is not useless for the client
 - b) the supply of the remaining ordered goods is guaranteed, and
 - c) the client does not become subject to significant extra or additional cost (unless Durophan agrees to assume these costs)

7. Quantity tolerance; dimensional deviations

- 7.1. Durophan reserves the right to quantity tolerances to the normal extent within the industry, unless specifically agreed otherwise in writing. Clients cannot challenge overruns or shortfalls of up to 2% in orders.
- 7.2. Dimensional deviations in the measurements due to the properties of the foils will not justify any complaints made by the client.

8. Quality deviations; use and processing; preliminary tests

- 8.1. All information issued by Durophan concerning the delivery or service (e.g. weights, dimensions, values in use, resilience, tolerances and technical data) as well as representations of the same (e.g. drawings and illustrations), are to be understood as mere descriptions and not as quality guarantee or warranty.
- 8.2. Any customary or technically unavoidable deviations resulting from technical requirements, or which constitute a technical improvement, as well as the replacement of components by other, equivalent components, will not justify any complaints made by the client.
- 8.3. The technical advice provided by Durophan, spoken and written, correspond to the best of our knowledge and the current state of the art. Such advice, unless expressly agreed otherwise, must however be regarded as noncommittal and in no way exempts the contracting party from the need to independently verify that the goods supplied by Durophan are suitable for the intended processes and purposes. The same also applies with regard to the risk of violation of protective rights of third parties.
- 8.4. The client is required to perform pre-tests under original conditions according to the form testing and processing recommendations, before any kind of treatment or processing of Durophan products. For this purpose, Durophan will provide the client with supplementary material on each delivered roll. Damages arising from the clients' failure to appropriately perform such pre-tests are to be borne by the client.

9. Obligation of inspection and complaint; warranty; material defects

- 9.1. The delivered products must be inspected immediately after delivery to the client or a third party designated by him with diligent and professional care. Detected defects or wrong deliveries must be reported to the company no later than 7 working days after delivery by a written notice of defects. If the client fails to send such notification, the goods shall be deemed approved, unless the defect was such that it could not be detected upon thorough inspection. Such a hidden defect is to be reported to Durophan immediately after discovery. Otherwise the product is considered to be approved even in consideration of this defect. The proof that it is a hidden defect is to be provided by the client.
- 9.2. In the event of a complaint, Durophan is entitled to verify the defects on site, either it, or by a third party designated by Durophan. At the request of Durophan, the item subject to complaint is to be returned to Durophan on a freight-prepaid basis. If the notice of defects is justified, Durophan will reimburse the costs of the cheapest method of dispatch; this does not apply if the costs increase because the item of supply is located at a place other than that of the intended use.
- 9.3. In the event of material defects, Durophan is obliged and entitled to repair or replace the items according to its choice, which is to be made within a reasonable period of time. If the repair or replacement delivery fails within a reasonable period, the client is entitled at his option, either to cancel the contract or to reduce the purchase price appropriately.
- 9.4. If the defect is due to a fault of Durophan, the client may claim damages under the conditions specified in clause 10.

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9.5. The warranty period amounts to 6 months from the point of delivery, or, in so far that an acceptance needs to take place, from the point of acceptance. The legal statute of limitations for the right of recourse, specified in § 478 BGB, shall remain unaffected. The same applies in the case of willful intent or grossly negligent breach of duty, if a defect is fraudulently concealed, in case of liability arising from guarantee commitment or under the German Product Liability Act (ProdHaftG), as well as in the case of death, injury or damage to health.

10. Liability

10.1. Compensation claims, for whatever legal reason, are excluded in cases of slightly negligent violation of obligations, unless the breach of duty concerns obligations fulfillment of which makes the due performance of the contract possible in the first place, where the customer regularly relies on and may rely on compliance with such obligations.

10.2. Liability by Durophan is excluded with respect to unpredictable damages and damages which are non-typical for the contract, except in the case of gross negligence or intent.

10.3. The above-mentioned liability restrictions are applicable in the same way in favor of the organs, legal representatives, employees and other vicarious agents of Durophan.

10.4. The previous restrictions do not apply to damages relating to injury to life, body or health, as well as in cases of liability under the German Product Liability Act, a previously specified guarantee or malice.

11. Reservation of proprietary rights

11.1. The following agreed reservation of proprietary rights serves as security for all and any demands of Durophan against the client, arising out of the supply relationship of foil products existing between the contracting partners (including account balance claims in the event of the operation of open accounts for deliveries of goods)

11.2. All goods delivered by Durophan to the customer remain property of Durophan until paid in full. The delivered goods, as well as those taking their place in accordance with this clause 11, as well as the goods included in the reservation of ownership, will hereinafter be referred to as "reserved goods".

11.3. The client stores the reserved goods free of charge on behalf of Durophan.

11.4. The Buyer has the right to process and sell the reserved goods in the normal course of business, up to the point of instigation of recovery (see clause 11.9).

11.5. If the reserved goods are processed, it is agreed that the processing shall be effected on behalf and on the account of Durophan as manufacturer, and that Durophan acquires ownership, or if the processing involves materials provided by a number of owners or the value of the processed materials exceeds that of the reserved goods, co-ownership (fractional ownership interest). For the case that no such acquisition of ownership should occur for Durophan, the client shall transfer his future ownership or co-ownership in the newly created items to Durophan for reasons of security. If the reserved goods are connected with other goods to homogeneous goods or inseparably mixed and if the other goods are to be considered as the principal item, Durophan shall grant the client proportionate co-ownership (specified in clause 11.5 phrase 1) as far as the main item is his.

11.6. In case of resale of the reserved goods, the client immediately assigns the claims arising from the resale to the purchaser for security reasons - in case of co-ownership of Durophan of the reserved goods, proportionally in accordance with the share of co-ownership, these claims are assigned to Durophan. The same shall apply to any other claims that take the place of reserved goods or otherwise accrue with respect to reserved goods, e.g., insurance claims or tort claims resulting from loss or destruction of secured goods. Durophan authorizes the client revocable to collect such assigned claims in its own name. Durophan may only revoke the direct debit authorization in case of utilization.

11.7. If third parties take hold of the reserved good, in particular by garnishment, the client has to advise the third party immediately of the property of Durophan, and also inform Durophan to enable the assertion of the property rights. If the third party is not able to refund Durophan the judicial or extrajudicial costs arising hereof, the client will be liable to Durophan for these costs.

11.8. Upon request, Durophan shall release the reserved goods and the commodities that take their place, or any claims assigned, insofar as their value exceeds the amount constituted by the reserved goods by more than 10%.

11.9. If in the event of behavior contrary to the contract by the client - in particular late payment - Durophan withdraws from the contract in the case of continuing obligations or in the event of an extraordinary termination according to clause 13.2 (in the event of enforcement), Durophan is entitled to demand the return of the reserved goods.

12. Brands

Regarding the use of the delivered goods by Durophan, for manufacturing purposes or further processing, the client is prohibited to use product names of Durophan or companies connected to Durophan (as specified in §§15 ff. AktG), especially their trademarks on such goods, their packaging or in printed format and advertising material, without prior written authorization - in particular as information on component parts. The supply of products under a trademark shall not be deemed agreement to the use of this trademark for the products manufactured therefrom.

13. Termination of continuing obligations

13.1. Contracts for regularly recurring deliveries or services, especially framework contracts, can be terminated by either party with a notice period of three months at the end of each month.

13.2. The right to immediate termination of continuing obligations, should there be good reason, remains unaffected. Durophan in particular has the right to

terminate or suspend without notice continuing obligations (and to demand immediate and complete payment of all outstanding invoices), if

a) the client defaults on at least two successive invoices;

b) on part of the client the corporate control changes, unless an impairment of the interests of Durophan can be excluded;

c) circumstances on part of the client occur, having been reasonably assessed, causing to expect, that the client is unable to meet his contractual obligations;

d) in the context of a contract with Durophan, the client severely or repeatedly violates obligations under the contract with Durophan, and despite appropriate warning does not cease the violation, at the latest within a period of 14 days

A notification shall not be necessary if the client finally and seriously refuses the correction, or if there are special circumstances which justify an immediate termination without previous notification after weighing the interests of both parties.

13.3. The notification of suspension and / or termination must be in writing.

14. Miscellaneous

14.1. explanations within the scope of this contract may be held in German or English

14.2. The client is not permitted to assign or transfer rights and obligations arising from the contract to third parties, without the prior written consent of Durophan.

14.3. Changes or additions to the contract between the contracting party, including these general terms of sale and delivery, must be made in writing in order to be valid.

14.4. If individual clauses of these general terms of sale and delivery or of a contract are totally or partially invalid or impracticable for real or legal reasons, this will not affect the validity of the remaining terms. The ineffective clause is to be replaced by an effective, enforceable regulation, which comes closest to the commercial and legal purpose of the original clause. The same applies to regulation gaps.

15. Applicable Law and Jurisdiction

15.1. The laws of the Federal Republic of Germany shall apply with the exception of the UN Law on International Sales (CISG)

15.2. Disputes arising out of or in connection with these general terms of sale and delivery and / or any other contracts existing between the parties shall be submitted to the competent court of Berlin, Germany. Durophan is also entitled to assert claims at the place of general jurisdiction of the client.

USER:

Durophan Handelsgesellschaft mbH

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