

**General Terms and Conditions of Delivery by
Der Grüne Punkt – Duales System Deutschland GmbH (DSD)
Status: July 2016**

§ 1 General

- (1) If Der Grüne Punkt – Duales System Deutschland GmbH ("DSD") refers to its General Terms and Conditions in bids, orders, or order confirmations in respect to delivering materials, the following conditions shall be valid for the contract. The General Terms and Conditions apply only to clients/parties as defined by Section 14 of the German Civil Code (BGB).
- (2) If DSD does not agree in writing with the validity of contrary or diverging contract conditions by the contract partner, these conditions are not valid. The unconditional performance of contract services by DSD with the knowledge of contrary or diverging general contract conditions by the contract partner does not affect the exclusive and overriding validity of the General Terms and Conditions.
- (3) Bids by DSD pertaining to prices, amounts, and quality are subject to confirmation. Oral agreements must be made in writing in order to be valid. Collateral agreements or other agreements before, during, or after concluding the contract must be made in writing in order to be valid. Waiving the right to written agreements must also be made in writing.

§ 2 Extent of the Deliveries

- (1) The mutual written declaration and the mutually concluded contract are authoritative for the type and extent of the deliveries. If the contract has been concluded without DSD presenting such mutual declarations or formal contracts, then the written order confirmations by DSD shall prevail unless they are immediately rejected by the buyer.
- (2) DSD does not accept any procurement risk. DSD is entitled to withdraw from the contract in respect to outstanding deliveries if DSD does not receive the delivery items in spite of having previously concluded an appropriate purchasing contract; the liability of DSD for intent and negligence in terms of the remaining provisions of this contract remains unaffected. DSD shall immediately inform the buyer about the delivery items that have not been made available on time and, if DSD wants to withdraw from the contract, shall immediately use its right of withdrawal; in the event of withdrawal, DSD shall reimburse the buyer for corresponding return service - provided this service has already been provided.

§ 3 Prices and terms and conditions of payment

- (1) Remuneration for the supply or provision of the waste which is the subject of the Agreement or other materials shall be deemed to be net and subject to statutory value-added tax.
- (2) DSD shall invoice the remuneration to be paid by the Buyer. These invoices shall be due for payment within 10 working days following receipt of the invoice without discounts. If the Buyer comes into arrears on payments, interest in the statutory amount shall be charged. The right remains reserved to claim further damages.
- (3) The Buyer shall only be entitled to set off amounts if its counterclaims have been recognised by a court of law or DSD.

§ 4 Reservation of title

- (1) The materials which are the subject of the Agreement shall be supplied subject to reservation of title. They shall remain the property of DSD all amounts have been paid to DSD in full and all receivables have been paid, including any receivables of DSD from the business relationship which come about in the future.
- (2) The Buyer cannot acquire any title to the materials supplied by processing such to turn it into a new object. The Buyer shall always be deemed to undertake processing or any other change in the form of the materials on behalf of DSD.
- (3) The reservation of title shall also range to include the complete value of products which come about through processing, mixing or connection with the materials which are the subject of the Agreement. If the materials supplied are processed, mixed or connected with objects to which DSD does not hold title, DSD shall acquire co-title to the new object in the ratio of the value of the materials supplied to the other processed, mixed or connected objects at the time of the processing, mixing or connection. If the object of the Buyer must be deemed to be the main object, co-title shall be transferred to DSD in the appropriate ratio.
- (4) The Buyer shall be entitled to dispose over the materials which are the subject of Agreement in proper commercial traffic. The Buyer cedes any receivables which come about through resale already here and now in the full amount or in the amount of the possible co-title share of DSD as collateral to DSD. DSD accepts this cession here and now. The Buyer shall be authorised to collect this until cancellation or discontinuation of its payments to DSD. The same shall apply to any receivables which replace the materials which are the subject of Agreement or which come about in this connection such as, for example, insurance claims or claims from unlawful acts in the case of loss or destruction.
- (5) DSD shall release the collateral as stipulated above as it sees fit if it exceeds the value of the secured receivables by more than 20%.
- (6) Any pledges or transfers by way of law are not allowed. The Buyer shall keep and hold the materials supplied for DSD free of charge. DSD can moreover demand that collateral material be kept separately or be labelled at any time if there is a danger of confusion or it is difficult to distinguish between said materials and collateral material of other parties.
- (7) In the event that third parties have access to the materials which are the subject of Agreement, the Buyer shall inform such parties that the material is the property of DSD and shall conform DSD hereof so as to allow DSD to satisfy its rights of title. If the third party is not able to reimburse DSD for any court or out-of-court expenses in this connection, the Buyer shall be liable to DSD.
- (8) In the event of arrears on payments, DSD shall be entitled to demand information on where the material to which DSD reserves title is located or to whom the Buyer has resold such.

§ 5 Delivery and Pick-Up Dates

- (1) The contractual agreements are authoritative in terms of the legal deadlines for the delivery. If the delivery is delayed for reasons for which the buyer is responsible, then the deadline for reporting the delivery readiness or the possibility of pick-up is considered valid within the agreed upon deadline. Pick-up dates are binding for the buyer. If the buyer does not perform his services within the required period of time, then DSD is entitled to avail itself of its legal rights.
- (2) In the event of intentional or gross negligence, DSD is liable in accordance with legal regulations. In other cases of delay of performance, the liability of DSD for damages is limited to 5% of the value of the delivery in addition to performance.
- (3) The right of the buyer to withdraw from the contract remains unaffected after a grace period given to DSD passes without result.

- (4) The buyer is required to notify DSD immediately if circumstances arise or are foreseeable for the buyer which result in the buyer not being able to observe the agreed-upon pick-up dates.

§ 6 Obligation to Accept the Goods/Obligation to Inspect and Notify about Defects

- (1) DSD must examine the condition of the goods in accordance with the contract. Notification of defects due to obvious deficiencies must be reported immediately. Defects which could not be determined after careful examination during this period must be reported immediately to DSD after their discovery.
- (2) The rejection of a faulty delivery which is properly reported does not explicitly entitle the buyer to also reject subsequent deliveries.

§ 7 Warranty and Liability of DSD

- (1) A defect only exists if there are deviations from the agreed-upon specifications in the respective contract.
- (2) For defects to which the warranty claims also apply as defined by Section 434 Subsection 1 of the German Civil Code (BGB), DSD is liable as follows:
 - a) The buyer must observe the contract obligations incumbent upon him, in particular the agreed-upon terms of payment. If claims are made in respect to a defect, payment by the buyer can be withheld to the extent which is in adequate proportion to the defects which have arisen. However, if the contract falls under the operation of a business, then the buyer can only withhold payment if a claim is made in respect to a defect about which there can be no doubt of its justification.
 - b) The buyer must grant DSD the necessary time and opportunity that is reasonable to remedy the defect. If this is refused, DSD is relieved of its liability for the defect. If DSD allows an adequate grace period granted to it to expire without having remedied the defect, the buyer can demand cancellation of the contract or a reduction (lowering) of payment.
 - c) The right of the buyer to make claims due to defects falls under the statute of limitations in all cases after six months.

§ 8 Liability of DSD

- (1) Legal regulations apply without restriction for culpable injury to life, body, and health; compulsory liability under the Product Liability Act remains unaffected.
- (2) DSD is also liable for damage claims made by the buyer for intentional or gross negligence by DSD, its legal or business representatives, or its vicarious agents in accordance with legal regulations. Except in cases of intentional contract violations, DSD is liable only for replacement of foreseeable, typically incurred damage.
- (3) Damage claims are ruled out unless otherwise stipulated in Subsections 1-2. This also applies to damage claims for fault at conclusion of the contract, violation of collateral duties and other duties, as well as tortious claims for the replacement of material damage in accordance with Section 823 of the German Civil Code (BGB).
- (4) The limits of liability for damages also apply to claims involving the replacement of wasted expenditures.
- (5) If the liability of DSD is ruled out in accordance with the preceding Subsections, the personal liability of the legal and business representatives, employees, co-workers, and vicarious agents of DSD is also ruled out.

§ 9 Assignments

- (1) DSD shall be entitled to assign its receivables from the Buyer to third parties.
- (2) If the Buyer is in arrears on payments with respect to a receivable, all other receivables may be made due from the Buyer.
- (3) The Buyer shall bear the costs of all fees, costs and expenses which arise in connection with the successful pursuit of legal rights outside of Germany against it.

§ 10 Final Provisions

- (1) Should one or more of the above-mentioned provisions be or become invalid, the validity of the remaining provisions of the contract shall remain unaffected by this. The invalid provision - provided that no legal regulation exists - shall be replaced by a valid provision which implements the economic purpose of the contract as far as possible. The same procedure is to be followed if a loophole is discovered while implementing the contract.
- (2) Changes to the contract must be made in writing. Waiving the right to written agreements must also be made in writing.
- (3) Cologne has been agreed upon as the exclusive place of jurisdiction for all disputes resulting directly or indirectly from the contract relationship.
- (4) German law applies to the contract relationship. The UN Sales Convention is not applicable.