

DFT Digital Film Technology GmbH General Sale and Delivery Terms and Conditions for Merchants ¹



1. General; Scope

The terms and conditions delineated herein shall be the sole terms and conditions which apply to all of DFT's current and future business transactions.

Unless DFT has approved of such in writing, any terms or conditions which conflict with, deviate from or modify the terms and conditions delineated herein shall not be binding on DFT irrespective of whether DFT had prior notice of such terms or conditions. DFT hereby expressly objects to any such conflicting, deviating or modified terms or conditions.

2. Contract Formation

2.1 Any offers made by DFT shall be without obligation and subject to change without notice provided that the parties have not agreed to a lock-up period.

2.2 The customer is bound to its order for a period of four weeks after its receipt by DFT. A contract is deemed to exist upon the customer's receipt of DFT's written confirmation regarding the order or the effective delivery of the applicable goods to the customer pursuant to the terms hereof.

2.3 The scope and type of delivery for an order shall be established solely through DFT's written confirmation relating to such order. Any errors or omissions in DFT's sales prospectus, pricelists, offer documents or other related documentation may be amended without DFT incurring any liability for damages or compensation in relation to such errors or omissions.

3. Payment, Set-Off, Withholding

3.1 The purchase price for the contract shall be that price which is specified by DFT for such contract and shall apply ex works, exclusive of any value-added tax; if the price is not indicated, the pricelist then in effect shall apply. If the sale has occurred through delivery to a place other than the place of performance (at the customer's request), any costs incurred for packaging, shipping, freight, customs or other related costs will be charged separately. If the customer fails to accept delivery when tendered by DFT, it must nevertheless make payment.

3.2 In the event that the manufacturing costs for the contracted goods (including, but not limited to, wages, salaries, materials or production costs) rise subsequent to formation of the contract, DFT shall have the right to increase the purchase price in accordance therewith.

3.3 Invoices from DFT are due upon DFT making the goods available to the customer and are payable without deductions within 10 days of the issuance thereof. Upon a default in payment, any overdue amounts will accrue interest at a rate of 8% above the basic interest rate. DFT reserves its right to assert any further claims regarding damages resulting from a default.

3.4 The customer can offset its payments only if its counterclaim thereto have been judicially sustained or recognized by a declaratory judgment. A right to withholding shall only apply to counterclaims arising specifically from the contract which is the subject of such withholding.

4. Delivery

4.1 The dates for delivery and/or the making available of the goods are not binding unless a date for such has been agreed to in writing by DFT.

4.2 DFT is entitled to carry out advance and/or partial deliveries of the goods.

4.3 In the event that DFT is unable to deliver or make the goods available to the customer due to events of force majeure lasting for a period of three months or more, DFT's obligation to deliver or make the goods available shall be deemed extinguished in its entirety.

4.4 DFT shall be entitled to postpone delivery or availability of the goods for the entire duration of the force majeure events.

4.5 Events of force majeure shall be deemed to be any events which are beyond DFT's control and which make delivery impossible or unreasonably difficult, including, for example, strikes, lawful lockouts, war, import or export prohibitions, scarcity of energy supplies or raw materials, or the delayed delivery to DFT of goods required for the performance of its obligations hereunder for reasons beyond DFT's control. If DFT is released from its obligations as described in Section 4.3 above, the customer shall be entitled to rescind the applicable contract. Compensation for damages for non-performance can be claimed by the customer only if the default in delivery is due to DFT's gross negligence or is intentionally caused by DFT.

5. Transfer of Risk

5.1 The risk of loss or damage to the goods passes to the buyer as soon as DFT has dispatched the goods from its premises (i.e., plant, factory or warehouse) or upon the surrendering of the goods to the applicable carrier or to the customer itself, as the case may be. The above shall also apply in the event that DFT serves as the carrier for the goods.

5.2 If the forwarding or collection of the goods is delayed due to reasons attributable to the customer, the risk of loss shall be transferred to the customer upon the readiness of the goods for dispatch.

6. Defective Goods

6.1 The customer must inspect the delivered goods immediately upon its receipt of such. The customer must notify DFT in writing of any apparent defects within one week of the goods' receipt. DFT must be notified of hidden defects in writing within two weeks of their emergence but in no event later than one year after delivery of such goods.

In the event that the customer fails to meet the aforementioned notification obligations, the goods shall be deemed to have been accepted and the rights set forth in Sections 6.2 and 6.3 below shall not be in effect.

6.2 In the event that the customer has notified DFT of defects in a timely manner and is thus eligible to make a claim for re-performance, DFT shall have the right, at its own cost, either to remedy the defect or to redeliver conforming goods.

6.3 If DFT twice fails to remedy a defect or if DFT is otherwise unable to accomplish its re-performance obligation or fails to do so within a time period reasonably set forth by the customer, the customer shall be entitled to reduce the purchase price under the contract or to cancel the contract. Instead of seeking performance, the customer can make a claim for damages or for compensation for expenses. However, if the customer elects to rescind the contract it shall have no right to make any claim for damages with respect to the defective goods.

6.4 Provided that DFT has not acted fraudulently, any claims of the customer regarding the goods shall become void and unenforceable one year after delivery of the applicable goods.

7. Liability

7.1 DFT shall be liable for any damage hereunder caused by it intentionally or caused by its gross negligence.

7.2 In the event of simple negligence by DFT, DFT shall be liable only for ordinary and foreseeable damage arising from the contract, and only to the extent that DFT has breached material contractual obligations. Further, in the event of simple negligence by DFT, DFT shall be liable for personal injury and/or health-related damage attributable to DFT.

7.3 DFT shall not be liable for consequential damages and unforeseen damages (including consequential damages resulting from defective goods) as well as loss of profits in the event it has acted with simple negligence.

7.4 DFT shall be subject to no liability beyond that which is delineated in this Section 7.

7.5 To the extent that DFT's liability is excluded or limited, such exclusion or limitation shall apply to any persons or entities employed by DFT in the performance of its contractual obligations.

7.6 The limitations of liability delineated herein shall not apply to any legally prescribed strict liability, in particular any such strict liability arising from laws regarding guarantees or product warranties.

8. Retention of Title

8.1 Ownership of the delivered goods shall remain with DFT until it has received full payment for such goods. Title to the goods shall first pass to the customer upon DFT's receipt of all payments which are due under the current applicable contract.

8.2 Prior to obtaining title to the goods, the customer is not entitled to pledge, to assign by way of security, to process or to alter the goods. The customer is, however, authorized to sell the goods to third parties in the ordinary course of business unless a non-assignability agreement regarding the consideration exists between the customer and the third party. If a third party acquires an interest in the goods through a resale to such party, the customer agrees to assign to DFT all of its correlating rights and claims against such third party. DFT hereby accepts such assignment.

8.3 Any combination, amalgamation and/or processing of the goods (sections 947, 948 and 950 BGB [German Civil Code]) shall be deemed to have been made on behalf of DFT. DFT shall acquire title to the resulting product in the ratio of the invoiced value of the goods and services provided by DFT to the total invoiced value of the resulting product. If the goods have been re-sold to a third party, the assignment of rights and claims performed in accordance with Section 8.2 above shall be valid solely up to the amount of the invoiced value of goods and services provided by DFT.

8.4 Upon a default in payment by the customer, DFT has the right to disclose to any applicable third party that it holds an interest in the goods pursuant to the assignment delineated above and to assert any of its claims directly. The customer is obligated to provide and deliver to DFT all documentation required for the assertion of such claims. The customer must also make available to DFT, completely and in a timely fashion, all information about any events that might affect the obligations described above.

9. Jurisdiction; Governing Law

9.1 The parties hereto agree that the exclusive jurisdiction for any transaction and/or contract between the parties is Darmstadt, Germany.

9.2 The relationship of the parties hereto shall be exclusively governed by and in all respects construed in accordance with the laws of the Federal Republic of Germany with no application whatsoever of the United Nations sales law.