

Conditions of Purchase of DIOSNA Dierks & Söhne GmbH



1. General Conditions – Scope of Application

- 1.1. Our Conditions of Purchase apply exclusively and for all our orders of goods of all kinds, for all deliveries and services without regard to whether the supplier manufactures the goods himself, purchases from other suppliers or manufactures and supplies for us, possibly also with tools that have been provided. They apply to businesses, legal entities under public law and special assets under public law and they also apply for all future business without renewed explicit reference. We do not recognize contrary or deviating conditions of the supplier unless we approved the validity of the contract expressly and in writing. Our Conditions of Purchase shall also apply if we, in the knowledge of conflicting conditions of the supplier, unconditionally accept his delivery / service.

2. Offer – Scope of Services – Conclusion of Contract

- 2.1. Our orders are always subject to change without notice. The supplier is obligated to submit to us immediately after receipt of an order an offer in writing that conforms to the order and is identical in content. Any deviations from our order must be clearly indicated by the supplier in writing. We may accept the offer within 14 days of receipt. Only our acceptance leads to the conclusion of the contract. Verbal agreements – also those from and with our employees – only take effect upon our confirmation in writing.
- 2.2. We may demand changes to the delivery item after the conclusion of the contract, insofar as this is reasonable for the supplier. Both sides are to take into consideration the effects of any such change to the contract, in particular with regard to additional or reduced costs, product quality and delivery dates.
- 2.3. The supplier shall ensure that the delivered goods comply with the sample and that contractual agreements / specifications such as illustrations, drawings, dimensions, weights, his and / or our product descriptions and other performance data match exactly and are suitable for the intended use, which must always be inquired by the supplier if it is not clearly recognisable to him from the order / order confirmation. If the supplier changes materials, components or manufacturing processes, he must report this in writing to DIOSNA at least 6 months prior to the implementation of such changes and obtain the required approval in writing. Otherwise, a change is not permitted unless it is based on legal or regulatory requirements. In the quality information and other specifications included in the order / order confirmation, there are contractually agreed conditions. The supplier is responsible for inspection of 100% of outgoing goods.
- 2.4. The supplier is further obliged to inspect drawings, calculations, descriptions and other documents for completeness and correctness and to report to DIOSNA immediately if statements are incomplete, unclear, erroneous or otherwise to be criticised.
- 2.5. The supplier shall ensure that all deliveries comply with the latest state of the art, the legal regulations and ordinances in force in Germany, and the regulations and guidelines of authorities, professional associations and trade associations, in particular the health and food law regulations valid at the time of delivery. The supplier shall continuously obtain the necessary knowledge for the fulfilment of these obligations during the delivery period and, if necessary, adjust the contract products in accordance with the current provisions.
- 2.6. The supplier is obliged to stockpile spare parts for the period of the normal lifetime of the delivery items and to deliver them within a reasonable period of time as usual in the business relationship. Furthermore, the supplier is obligated to immediately inform in writing, in the event that he is ceasing to produce spare parts, when he will discontinue deliveries. He has to announce this at least six months prior to the discontinuation, so that DIOSNA can still reorder spare parts for stocking to the extent necessary.
- 2.7. Partial deliveries and services are only permitted if agreed accordingly in writing. DIOSNA is not obliged to accept partial deliveries or partial services.
- 2.8. Complete fulfilment of the contract also requires the delivery of goods, the handing over of a delivery note that contains the order number and an indication of the quantity of contract products, shipping documents, installation instructions, operating instructions, maintenance instructions, design drawings and all required technical documentation, which allow us to further process / install / assemble the contract product. Complete fulfilment also requires the delivery of long-term supplier declarations, certificates of origin, operating instructions, maintenance instructions and other technical documentation. If a manufacturer's declaration or declaration of conformity is required, the supplier must create it and make it available upon request at its own expense.

- 2.9. DIOSNA reserves the exclusive property rights and copyrights or the sole rights of use as well as all registration rights of special rights to illustrations, drawings, calculations, instructions for use, product descriptions and other documents for the preparation of the contract products submitted by DIOSNA, jointly or by the supplier for us alone. They are subject to the secrecy obligation according to this declaration of conformity. The supplier undertakes to provide all received information and documents as well as those developed for DIOSNA exclusively for the execution of the contract and to use them only for DIOSNA, not for its own or foreign purposes and not to disclose to third parties, unless we agree in writing. The same applies to substances and materials as well as to tools, templates, samples and other items that we provide to the supplier for the production of contract products. Such goods shall be stored separately at the supplier's expense and insured to the extent necessary against destruction and loss at replacement value, the benefits of which are already hereby assigned to us for the insured event.
- 2.10. We also expressly refute any self-supply reservation of the supplier in the case of recurring orders. The supplier bears the procurement risk for his services and the material risk until acceptance of the delivery by us. We refute any embargo clause as well as any conditional fulfilment.
- 2.11. All DIOSNA suppliers that have converted to the supplier portal "POOL 4 TOOL" are obliged to handle all inquiries, orders and invoices via the portal. Other processing channels or media (e.g. fax, email, etc.) will not be accepted.

3. Prices – Terms of Payment / Supplier's Declarations

- 3.1. Unless agreed otherwise, payments are made in euros. The price stated in the order confirmation is binding. Unless otherwise agreed in writing, the price includes free delivery, including all ancillary costs, such as customs clearance, customs duties, packaging and the cost of transport insurance.
- 3.2. The legal value added tax will be shown separately for obligatory sales tax.
- 3.3. We can only process invoices if they – in accordance with the specifications in our order or order confirmation – state the order number and material number and position number shown there; the supplier is responsible for all consequences arising from non-compliance with this obligation, unless he can prove that he is not responsible for them.
- 3.4. Unless otherwise agreed in text form, we will pay the entire purchase price within 14 days with a deduction of 3% discount or within 30 days with deduction of 2% discount or within 60 days without deduction, but not before complete delivery and after receipt of the invoice. The discount period begins with our receipt of the invoice.
- 3.5. In the case of continuing obligations, we expressly refute price increase claims by the supplier, also if there is a period of time longer than four months between contract conclusion and delivery.
- 3.6. In the case of faulty delivery or service, including wrong delivery or reduced performance, we are entitled to retain a reasonable amount of due payments from the current account settlement. We are entitled to the rights of set-off and retention as well as the plea of the non-fulfilled contract to the legal extent.
- 3.7. The supplier is entitled to a right of retention only because of legally established or undisputed counterclaims from the same legal relationship.
- 3.8. The supplier undertakes to enable the customs authorities to check the proofs of origin and to provide the necessary information as well as to provide the necessary confirmation at its own expense.

4. Scope of Delivery, Delivery Time, Delay

- 4.1. In the absence of a deviating agreement in writing when concluding the contract, the regular DDP terms (Incoterms 2010) plus the costs of the transport insurance shall be deemed to have been agreed. In the event of claims arising from the transport insurance, the supplier assigns us irrevocably the condition of the occurrence of the insured event in the amount of advance payments received.
- 4.2. Deliveries must be accompanied by detailed accompanying documents stating the description of the goods, the order number, the quantity and the certificate on performed tests and the 100% initial inspection performed by the supplier, but if required also safety and conformity declarations / certificates, etc. Delays in processing and payment resulting from incomplete information are not charged to us and defer the due date of the payment claim.

- 4.3. The delivery time specified in the order confirmation is always binding and must be strictly adhered to. Delivery dates marked as fixed shall be deemed to be fixed commercial transactions. Delivery deadlines / deadlines are only met if the contractual delivery arrives completely at the contractually agreed place of delivery and is handed over.
- 4.4. The supplier is obligated to inform us immediately in writing if circumstances occur or become apparent to him, from which it emerges that the conditional delivery time cannot be met.
- 4.5. In case of default of delivery we are entitled to the legal claims. In particular, we are entitled, after fruitless expiry of a reasonable period, to demand damages instead of performance and rescission. If we demand damages, the supplier has the right to prove to us that he is not responsible for the breach of duty.
- 4.6. Irrespective of the statutory rights and claims in case of delay in delivery, DIOSNA is entitled – in addition to the fulfilment by the supplier from the time of default – to claim a contractual penalty of 1.5% of the order value per calendar week started, but a maximum of 5% of the gross total order value of the delivery / service as a minimum amount for damages. We can enforce the penalty until the final payment.
- 4.7. In the case of production restrictions and settings or business disruption on our part, which are based on unavoidable events, such as strike, lockout, breakdowns, etc., we are entitled to extend the acceptance period to a reasonable extent.
- 4.8. We expressly refute any limitation of claims for damages regardless of whether the supplier is responsible for the breach of duty or not. This disclaimer extends to any indemnity / limitation of liability of the supplier for all possible breaches of duty. We refute any liability exemption or limitation of liability e.g. in the form of an embargo clause in the case of obstacles to fulfilment.
- 4.9. If the supplier is unable to deliver / perform due to force majeure and, therefore, exceeds the contractually agreed delivery / commissioning / acceptance date or the delivery date set after a reminder, we are entitled in such cases of performance prevention to withdraw from the contract, in whole or in part, free of charge for us and without compensation, if and to the extent that for timetabling reasons a replacement procurement is absolutely necessary for us or the exceeding of the deadline leads to a complete or partial omission of the procurement requirement. Additional costs of a substitute procurement initiated for such reasons shall be borne by the supplier.

5. Transfer of Risk – Documents

- 5.1. The risk of delivery shall pass to us only upon delivery to the contractually agreed place of delivery and after unloading the goods. In the absence of a deviating agreement upon conclusion of the contract in written form, the place of delivery is always the place of performance.
- 5.2. Unless otherwise agreed, we take over the disposal of the transport packaging for the supplier, with the supplier reimbursing us for the disposal costs. If we return reusable packaging free of freight costs to the supplier, we are entitled to a refund equal to the value of the packaging. We are entitled to offset this refund claim with current payment claims.

6. Inspection of Defects – Liability for Defects – Limitation period

- 6.1. In order to maintain the due quality, we are entitled to enter the supplier's factory and carry out a corresponding quality audit after prior notification and during the normal hours of operation and business hours. Incidentally, this right shall always apply to new product launches and also whenever justified doubts exist regarding compliance with the necessary quality assurance measures, in particular in the event of defects / deviations. The supplier – if he himself has acquired the defective goods or parts thereof from a third party – is obliged to name us the subcontractor and assigns to us, already at this stage, corresponding recourse claims for our own assertion as a precaution. However, this does not create a duty of recourse for us.
- 6.2. For all material and legal defects including wrong and short delivery, improper installation, faulty installation, operating or service instructions and other breaches of duty by the seller, the statutory provisions expressly apply, unless otherwise stated below: According to the statutory provisions, the supplier is liable in particular for ensuring that the goods have the agreed quality upon transfer of risk to us. Deviating from section 442 para. 1 sentence 2 BGB [German Civil Code], we are also entitled to claims for defects in full if the defect remained unknown to us at the conclusion of the contract due to gross negligence.

- 6.3. The commercial investigation and complaint obligations are excluded because the supplier owes a 100% inspection of outgoing goods. The investigation by us without any legal obligation is limited to defects that become obvious from external view at the time of receipt of the goods including the shipping documents by random sampling (e.g. transport damage, incorrect deliveries and short deliveries). We will produce a corresponding complaint within 4 weeks.
- 6.4. The legal claims arising from liability for defects remain with us in their entirety. In any case, we are entitled to request remedy of defects or replacement at our own discretion. In this case, all expenses for the removal of defects or replacement delivery shall be borne by the supplier including inspection, travel, installation and removal costs, etc. The right to claim damages – in particular the right to claim damages instead of the performance or in addition to rescission – remains expressly reserved.
- 6.5. The costs incurred by the supplier himself for the purpose of testing and repair, including, for example, any inspection, removal and installation costs including freight, transport and travel costs, shall be borne by the supplier, even if it later turns out that there was a defect in his delivery. Our liability for damages in case of unjustified removal of defects remains unaffected; however, we are liable only if we recognized, or on account of gross negligence failed to recognise, that there was no defect.
- 6.6. If the supplier does not remedy the defect immediately after being requested by us, in urgent cases, in particular to avert acute dangers or avoid major damage, we have the right to have these carried out at the expense of the supplier or have them carried out by third parties regardless of the law, in the above-mentioned urgent cases at the expense of the supplier to initiate the replacement action itself. We are also entitled to demand a reasonable advance for the implementation of such measures.
- 6.7. The limitation period for all warranty rights is 36 months, calculated from the transfer of risk / commissioning / acceptance in our legal relationship with the supplier. For newly delivered or repaired parts by way of subsequent delivery, the statute of limitations begins to run again if it is a material defect, but no longer than 42 months in total. In the case of insignificant defects that can be easily remedied, the warranty is extended by the duration of the repair service from the notification of defects until the removal of the defect plus a period of 3 months.

7. Product Liability – Indemnification – Liability Insurance

- 7.1. The supplier guarantees product liability insurance cover amounting to at least € 1 million, otherwise to the amount that corresponds to the risk to be insured. The insurance is to be proven on request. Missing proof substantiates a right of retention of compensation claims up to the amount of the coverage.
- 7.2. Insofar as the supplier is responsible for product damage, he is obligated to exempt us from claims for damage of third parties upon first request insofar as the cause is set in his sphere of control and organisation and he is liable in the external relationship himself. The supplier has to reimburse us for the expenditures connected with the defence of these claims.
- 7.3. Within the scope of his liability for claims in the sense of clause 7.1, the supplier is also obliged to reimburse any expenses pursuant to sections 683, 670 BGB or sections 830, 840, 426 BGB arising out of or in connection with a recall carried out by us. We will inform the supplier – as far as possible and reasonable – about the content and scope of the recall measures that we deem necessary at our discretion and give him the opportunity to comment. This does not affect any other statutory claims.
- 7.4. The supplier undertakes to maintain product liability insurance with an adequate coverage amount per personal injury / property damage as a lump sum; if we are entitled to further claims for damages, these remain unaffected. We are entitled to refuse acceptance of the delivery, unless the supplier, upon timely request, discloses the relevant proof of insurance.

8. Property Rights to the Contractual Products and Legal Infringements

- 8.1. In all development services for DIOSNA, DIOSNA acquires a worldwide exclusive right of use excluding third parties. This includes the right to protect special rights for DIOSNA (patents, etc.).
- 8.2. The supplier ensures that no third-party rights in Germany or abroad are violated in connection with his deliveries and services.

Conditions of Purchase of DIOSNA Dierks & Söhne GmbH



- 8.3. If he violates this obligation and if claims are asserted against us by a third party, the supplier is obligated to indemnify us, at first request, in writing, from these claims; we are not entitled to make any agreements with the third party without the consent of the supplier, in particular to conclude a settlement.
- 8.4. The indemnification obligation of the supplier refers to all expenses that necessarily accrue to us from or in connection with the claim by a third party.
- 8.5. The period of limitation for these claims is three years, beginning with our claim for such violations in the unrestricted period by third parties.

9. Property – Completion Consequences – Secrecy – Competition

- 9.1. All deliveries and services of the supplier pass into our sole ownership upon receipt / acceptance. The supplier guarantees that he, as the owner, can dispose of his goods including the packaging without restrictions.
- 9.2. If we provide the supplier with parts, he has to confirm the quantity and quality according to the agreement with receipt in text form. In the event of a breach of this obligation, the supply according to the content of our delivery note shall be deemed to be in conformity with the contract. All supplies must be insured against new risks at their original value. The sum insured is subject to the claim assigned to us. We accept the assignment. We reserve ownership of all supplies. Processing or transformation by the supplier is made for us. If our reserved goods are processed with other objects that do not belong to us, we acquire (co-)ownership of the new object in proportion to the value of our goods (purchase price plus VAT) to the other processed objects at the time of processing.
- 9.3. If the item provided by us is inseparably mixed with other items not belonging to us, we shall acquire co-ownership of the new item in proportion of the value of the reserved item (purchase price plus VAT) to the other mixed items at the time of mixing. If the mixing takes place in such a way that the supplier's item is to be regarded as the main item, it shall be deemed to have been agreed that the supplier assigns proportional co-ownership to us; the supplier keeps the sole ownership or co-ownership for us and guarantees all-risks insurance cover.
- 9.4. Insofar as the security interests to which we are entitled pursuant to Section IX 1 and / or IX 2-3 exceed the purchase price of all our unpaid reserved goods by more than 10%, we shall be obliged to release the security interests at our discretion upon request of the suppliers.
- 9.5. We retain ownership of tools; the supplier is obliged to use the tools exclusively for the production of the goods ordered by us. The supplier is obligated to insure the tools belonging to us at replacement value at his own expense against all risks, in particular against fire, water and theft. At the same time, the supplier hereby assigns to us all claims for compensation under this insurance with a condition precedent to the claim; we hereby accept the assignment. The supplier is obliged to carry out any required maintenance and inspection work on our tools as well as all maintenance and repair work at his own expense in good time. He must report any incidents immediately to us in writing; if he fails to do so culpably, claims for damages remain unaffected. The supplier must immediately hand over the tool to us without any right of retention at our first request.
- 9.6. The supplier shall immediately inform us in writing of access by third parties, in particular of foreclosure measures and other impairments of the property of DIOSNA in the means of production / tools; the same applies with regard to the filing of an insolvency petition for the supplier's assets by the supplier or third parties, even in the event of insolvency filing. The supplier will take all steps to safeguard the rights of DIOSNA.
- 9.7. The manufacture of the tool by the supplier or on his behalf is always carried out for us. The supplier therefore transfers to us ownership, co-ownership, expectancy rights and any other rights to the tools. The rights which are justified at a later date are acquired by us upon creation. All legal transfers made above occur without further ado and without the need for another transmission act. Rather than transfer of ownership, the supplier keeps the tool carefully and free of charge for us.
- 9.8. The supplier is obliged to keep strictly confidential all illustrations, drawings, calculations and other documents and information received, both in connection with the tools provided, with tools manufactured for us by him and with the products to be produced for us. They may only be disclosed to third parties with our express consent in written form. The secrecy obligation also applies after completion of this contract; it expires if and insofar as the manufacturing knowledge contained in the provided illustrations, drawings, calculations and other documents has become generally known.

- 9.9. In cases where the supplier manufactures tools according to our technical specifications on the basis of our own, not generally known, expertise and produces and supplies parts for us, the supplier undertakes expressly to refrain from any competition in this respect, from manufacturing or having manufactured products with equal and / or similar benefit to our competitors, or to cooperate in making such parts. For each case of a corresponding breach of duty, a contractual penalty shall be forfeited, the amount of which shall be at our discretion and which the supplier may have the competent court at our headquarters inspect in case of dispute.

10. Subcontractors – Contract Transfer

- 10.1. The supplier is not entitled to pass on the order to third parties in whole or in substantial parts without our prior written consent (subcontractor employment).
- 10.2. The supplier will notify us in writing immediately of any transfer of contract and / or change of the company occurring by law.

11. Special Termination Rights

- 11.1. We are entitled to terminate all or part of the contracts with the supplier for good cause without notice or to withdraw from all contracts concluded with the supplier for important reasons, in particular if after conclusion of the contract there is a significant deterioration in the supplier's economic situation, especially if sustained seizures or other foreclosure measures take place against him, through which our claims are endangered. The same applies in particular to the case in which the supplier requests the opening of insolvency proceedings or a similar legal procedure or such a procedure is opened or its opening is rejected for lack of assets or if the ownership of the company of the supplier change such that a new owner acquires the majority (change of control). In the latter case of change of control, notice of termination is effective immediately from knowledge of the change and up to 8 weeks thereafter.

12. Confidentiality / Secrecy, Return of Documents

- 12.1. The supplier is to treat each contract conclusion and the content and scope of such contracts confidentially.
- 12.2. All documents belonging to us (tools, material, drawings, samples, prototypes, etc.) are to be returned to us immediately upon request without any right to withhold; electronic data must be deleted at the end of the contract without request.
- 12.3. Publications may not refer to business relationships unless we have given our prior written consent.
- 12.4. This confidentiality obligation remains valid upon termination of the contractual relationship.

13. Jurisdiction – Place of Performance

- 13.1. For all disputes, including bills of exchange and checks, our place of business is the place of jurisdiction; however, we are entitled to sue the supplier at his place of residence.
- 13.2. Unless otherwise stated in the order, our place of business, "Osnabrück" is the place of fulfillment for all services under the contract.

14. Severability Clause

- 14.1. Should a provision in these terms and conditions be or become ineffective, this shall not affect the validity of the remaining provisions. In such a case, the parties undertake instead to agree on an effective clause that comes as close as possible to the economic purpose of the ineffective clause.

15. Choice of Law

- 15.1. The law of the Federal Republic of Germany applies to these business relationships and all legal relationships between us and the supplier. The application of the UN Sales Convention (United Nations Convention on Contracts for the International Sale of Goods of 11/04/1980, BGBl 1989 II, p. 588, 1990, 1699) is excluded. We expressly agree with the aforementioned Conditions of Purchase and in particular with the choice of law in Section XV.