

**Terms and Conditions of Delivery of the Dauphin-Group
for contracts with enterprises (B2B)
edition October 2014**

1. Scope of Delivery Terms

1.1 These Terms and Conditions ("T&C's") shall be applicable on contracts with enterprises ("B2B") concluded by the following companies of the Dauphin Group:

- Dauphin office interiors GmbH & Co. KG (Holding company), with its seat in Offenhausen, Germany
- Dauphin HumanDesign Group GmbH & Co. KG (Sales), with its seat in Offenhausen, Germany
- Bosse Design Gesellschaft für innovative Office Interiors mbH & Co. KG (Manufacturing), with its seat in Höxter, Germany
- Züco Bürositzmöbel AG (*Manufacturing and Sales*), with its seat in Rebstein, Switzerland
- Bürositzmöbelfabrik Friedrich-W. Dauphin GmbH & Co. (Manufacturing), with its seat in Offenhausen, Germany
- Dauphin Entwicklungs- u. Beteiligungs-GmbH, with its seat in Hersbruck, Germany
- Dauphin Components GmbH & Co. KG (Manufacturing), with its seat in Pößneck, Germany
- Artifex Büromöbel GmbH (Manufacturing), with its seat in Neukirchen, Germany

The relevant company of the Dauphin Group shall be specified by the document that makes reference to the T&C's and such company shall be referred to hereinafter as Contractor ("CO"). These T&C's shall only apply to contracts concluded between CO and enterprises.

1.2 The T&C's shall apply to deliveries and services of CO ("Delivery") to the contracting party of CO ("Ordering Party" – "OP") on the basis of the contract ("Contract") concluded between CO and OP ("the Parties").

1.3 Terms and conditions of OP shall only apply insofar as they have been expressly approved in writing by CO. All provisions which differ in wording from the T&C's – to the extent that they are not stipulated in CO's whole offer – shall not apply.

1.4 The CO shall be entitled to avail himself of third Parties, in particular, of Dauphin-Group enterprises, in order to meet its contractual obligations.

1.5 The term "claim for damages" used in the T&C's shall also include claims for indemnification for useless expenditure.

2. Offer

2.1 Specifications of Delivery are set out exclusively and finally in CO's sales documents (as defined in the next sentence) and shall remain unaffected by supplies and services rendered by OP either to CO or a third party involved with the delivery ("Supplies and Services rendered by OP or a third party"). "Sales Documents" shall be all documents valid at the time of conclusion of the Contract, prepared by CO in connection with the distribution of its deliveries, specifically operating manuals as well as the respective parts in the prospectuses: options, (product) features, (product) specifications and descriptions of materials. Promotional material shall not be considered Sales Documents.

2.2 Should the Delivery include an erection or assembly instruction or instructions for use („Manual“), CO may fulfill its obligation to submit such Manual to OP by providing OP with an Internet address, where OP can download the Manual free of charge.

2.3 CO shall reserve all of its rights of ownership and copyrights to all cost estimates, drawings and other documents („Documents“) included in its offer. The Documents may only be made available to third Parties upon CO's prior approval and, should the offer not be awarded to CO, shall be handed over to him without delay. OP shall have no right of retention. Sentences 1 and 2 shall apply mutatis mutandis to OP's documents;

these may, however, be made accessible to those third parties to whom CO has rightfully subcontracted Deliveries.

2.4 CO shall be committed to the offer for 45 calendar days as of the date of the offer.

2.5 Any advance performances (including cost estimates) provided within the scope of an offer by CO at OP's request shall be billed by CO, even if no subsequent Contract is concluded.

3. Reservation as to Obtaining Delivery Ourselves

If the contractually agreed Delivery is not available on grounds that CO did not receive delivery from its own suppliers or CO's stock necessary for the Delivery is run down, CO shall be entitled to provide a Delivery which is equivalent in quality and price. Should CO be unable to provide a Delivery equivalent in quality and price, it may rescind the Contract and shall return in such case without delay considerations received, if any. 7.2.3 shall remain unaffected.

4. Terms of Delivery

4.1 All prices are Ex Works of CO, Offenhausen, Germany (EXW according to Incoterms 2010) („Place of Performance“). *In case Züco Bürositz-möbel AG is the CO, prices are EXW Rebstein, Switzerland.*

4.2 All prices are net prices in EUR, plus the turnover tax valid at the time of performance of the Delivery, without further deductions.

In case Züco Bürositzmöbel AG is the CO, the net prices for deliveries in Switzerland are in CHF, plus the sales tax valid at the time of the Delivery, without further deductions.

4.3 Partial Deliveries are possible insofar as they are acceptable for the OP.

4.4 Except if otherwise agreed by the Parties, if CO has agreed to carry out the erection or the erection including preceding assembly ("assembly"), OP shall bear, apart from the agreed prices, all extra charges (e.g. travel costs, transportation costs, allowances) arising in connection with such assembly or installation.

5. Terms of Payment

5.1 Unless the Parties have agreed on other payment conditions, invoices shall be payable without delay and without any deductions to the payment.

5.2 OP may only set off claims which are undisputed or have been finally determined in a legally binding manner.

6. Retention of Title

6.1 CO shall retain ownership of the delivered items („Retained Goods“) until OP has fulfilled all its obligations from the business relation. Should the total value of CO's legitimate securities exceed the total value of all claims to be secured by more than 20 percent, CO shall, at OP's request release a corresponding part of the securities. CO shall be entitled to choose which security interest it wishes to release.

6.2 For the duration of the retention of title, OP shall not be entitled to pledging or transfer of security.

6.3 OP may resell the Retained Goods within the scope of normal business operations and only under the condition that OP receives payment from his buyer or provides for the reservation that the transfer of ownership onto the buyer does not take place until the buyer meets his payment commitments.

6.4 Already today, CO and OP agree that if Retained Goods are combined or amalgamated with other

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| | items that are not the property of CO, CO shall acquire co-ownership in the new item in proportion of the value of the Retained Goods combined or amalgamated to the other items at the time of combination or amalgamation. In this respect, the new items are considered as Retained Goods. | 7.2.2 | virus attacks or other attacks on the CO's IT systems occurring despite protective measures were in place that complied with the principles of proper care; |
| | | 7.2.3 | non-receipt by CO of its own supplies ordered from third Parties in due time or due form; |
| 6.5.1 | Should OP resell Retained Goods, it assigns to CO, already today, all claims it will have against its customers out of the resale or if the goods are sold on together with other combined or amalgamated item such fraction of the total price claim as is attributable to the price of the Retained Goods, as security, without any subsequent declarations to this effect being necessary. The duty of CO to release the security interest as per 6.1 shall remain unaffected. | | such delivery times shall be extended accordingly. |
| 6.5.2 | Until notice of withdrawal of CO's permission for good reason, OP may collect assigned claims relating to the resale. Good reason shall include, but not be limited to delayed payments, suspension of payments, start of insolvency proceedings, bill protest or justified indications for overindebtedness or pending insolvency of OP. In addition, CO may, upon expiry of an adequate period of notice, disclose the assignment and demand that OP informs its customer of the assignment. | 7.3 | Should CO be in delay, OP may, if he can substantiate any damage on its part resulting from such delay, claim a compensation for each completed week of delay amounting to 0.5 percent of the price of the part of the delivery which could not be used due to the delay, but not more than a total of 5 percent of the said price. |
| 6.6 | In the event of a levy of execution, seizure or any orders of third Parties OP shall inform CO without delay. | 7.4 | Any claims for compensation for delayed Delivery or claims for compensation to replace a Delivery on the part of OP which are beyond the limits of 7.3, shall be excluded in all events of delayed Delivery. This shall also apply in the event of the expiry of a deadline set by OP. It shall not apply, however, where there is obligatory liability, in the event of willful misconduct or gross negligence or due to injury to life, body or health. OP may only rescind the Contract if the Delivery delay is caused by CO. No shift in the burden of proof to the detriment of OP is connected with the above provisions. |
| 6.7 | In the event of breach of duty, in particular a default of payment, on the part of the OP, the following provisions shall apply: | 7.5 | OP shall only have a right of rescission if it has granted CO an appropriate time deadline for performance and declares that it shall refuse to accept the performance upon the expiry of the deadline, and after the deadline has unsuccessfully expired. |
| 6.7.1 | After unsuccessful expiry of an appropriate deadline set by CO for the rectification of the default, CO shall be entitled to rescind the Contract and to take back the Retained Goods; OP shall be obliged to hand over the Retained Goods. This shall not affect the statutory regulations concerning the dispensability of fixing a time-limit. | 7.6 | At CO's request, OP shall declare within an appropriate time limit whether it shall rescind the Contract due to the delay or whether he insists on delivery. |
| 6.7.2 | The enforcement of the reservation of title and the taking back of the Retained Goods is not subject to a prior rescission of the Contract on the part of CO; such action or a levy of execution of the Retained Goods by CO shall not be considered as a rescission of the Contract, unless expressly stated otherwise. | 7.7 | If, at OP's request, dispatch or consignment is delayed after readiness to dispatch has been notified, CO may invoice to OP the storage cost in adequate amount for the duration of the storage. |
| 6.8 | <i>For Deliveries of Züco Bürositzmöbel AG the following shall apply in addition: CO shall retain ownership of the whole Delivery until it is in full receipt of the contractual owed payment. OP shall co-operate in taking all measures necessary for the protection of CO's ownership. With conclusion of the contract OP specifically entitles CO to register at OP's cost CO's ownership or CO's reservation of title in the public registers, books or the like as prescribed by applicable laws and to fulfill all respective formalities. For the duration of the retention of title, OP shall at its own cost maintain in good order the Delivery and insure it against theft, rupture, fire, water and other risks. In addition OP shall take all measures necessary to protect CO's entitlement to ownership against any impairments or endangerments.</i> | 8. Passing of risk | |
| | | 8.1 | Subject to the provisions of 8.2 the passing of risk onto OP shall take place: |
| | | 8.1.1 | in case of delivery without assembly or installation, at the moment the goods to be delivered have been made available for dispatch by CO at the Place of Performance; |
| | | 8.1.2 | in case of Delivery with assembly or installation, at the moment assembly or installation is completed. |
| | | 8.2 | The passing of the risk onto OP shall take place at the moment the dispatch or the beginning of assembly or installation are delayed due to reasons caused by OP or the occurrence of any other events causing a default in acceptance by OP. |
| 7. Delivery time | | 9. Assembly or Erection | |
| 7.1 | Compliance with the agreed Delivery time requires the timely receipt of all documents, necessary permissions and releases, in particular concerning blueprints to be provided by OP, as well as the observance of the agreed terms of payment and other obligations by the OP. If these conditions are not fulfilled, Delivery times shall be appropriately extended; this shall not apply if the delay is caused by CO. | | Should the Parties in addition to the Delivery agree upon an assembly or erection of the items (hereinafter referred to as "Assembly"), the following provisions shall apply: |
| | | 9.1 | OP shall provide and bear the costs of: |
| | | 9.1.1 | any secondary work alien to the industry, including the necessary specialist and auxiliary workers, construction materials and tools; |
| | | 9.1.2 | appropriate, dry and lockable space of sufficient size for the storage of the delivered items, tools etc. at the place of assembly. |
| 7.2 | If non-observance of the Delivery times is due to force majeure, such as mobilization, war, terror attacks, rebellion or other obstacles due to export restrictions on the basis of either German law, other national export laws or European or any international export restrictions (such as but not limited to: embargos) or any other similar events (e.g. strike or lockout); | 9.2 | Prior to the commencement of the assembly work, OP shall unsolicitedly make available to CO all necessary information concerning the place of assembly (stairs, ramps and their respective angle of inclination, lifts and their respective maximum load etc.) as well as all required statistical data. |

- 9.3 Prior to the commencement of the assembly, all preparatory work must be completed to an extent sufficient to allow the beginning and uninterrupted carrying out of the assembly as agreed. Access roads and the place of assembly must be cleared.
- 9.4 Should the assembly be delayed due to reasons not caused by CO, OP shall bear, to an appropriate extent, the costs for waiting times and additional travels of CO's staff caused by the delay.
- 9.5 If formal acceptance of the Assembly or erection is not a condition expressly agreed upon by the Parties the Assembly or erection shall be considered as complete as soon as CO reports its completion or the delivered goods come into use (the earlier event being decisive) and OP has not raised any objections against the Assembly within reasonable period of time, not to exceed in the maximum two weeks from the aforementioned earlier event.
- 10. Receiving Supplies**
OP shall not refuse to receive Deliveries due to minor defects.
- 11. Material Defects**
CO shall be liable for all material defects of newly manufactured products according to 11.1 – 11.11. CO's liability for material defects shall not apply if (i) the item delivered is not a newly manufactured product (e. g. second-hand goods, samples, exhibits), or (ii) PO has combined the newly manufactured product with supplies rendered by OP or a third party (2.1).
- 11.1 The parts of the Delivery concerned which show material defects within the term of limitation (if such defects were not caused after the passing of the risk) must, at CO's discretion, be repaired at CO's cost, newly delivered or newly provided ("Subsequent Performance").
- 11.2 The Subsequent Performance does not initiate a new term of limitation (11.3).
- 11.3 Claims for repair or replacement are subject to a statute of limitations of 24 months calculated from the start of the statutory statute of limitations. For Deliveries in Germany this shall not apply where longer periods are prescribed by law according to Section 438, para. 1, No. 2, (buildings and things used for buildings). Section 479, para. 1 (rights of recourse) and Section 634a, para. 1, No. 2 (defects of a building) of the German Civil Code [Bürgerliches Gesetzbuch], and in the event of injury to life, body or health, in the event of intentional or gross breach of duty by CO or fraudulent concealment of a defect. This shall not affect the statutory regulations concerning the suspension of the running, the suspension or the new beginning of the limitation periods.
- 11.4 OP shall complain about material defects to CO without delay in writing. The complaint must include information on the data of the concerned Delivery - name and number of the model, number of CO's confirmation of order, date of manufacture, description of the fault or defect.
- 11.5 In the event of complaints of defect OP may retain payments to an extent appropriate in proportion to the defects occurred. OP shall only be entitled to retain payments if it is able to assert a complaint of defect justified beyond any doubt. PO has no right to withhold payments to the extent that its claims regarding a Defect are time-barred. If the complaint of defect proves to be unjustified, CO shall be entitled to request payment of any expenses incurred to it by such complaint.
- 11.6 CO must be granted the opportunity of Subsequent Performance within an appropriate period of time. Otherwise it shall be freed of any liability for material defects.
- 11.7 In the event of unsuccessful Subsequent Performance, OP may – notwithstanding any provisions on claims for compensation (14.) rescind the Contract or reduce the
- payment. For rescission and reduction of price the statute of limitation as per 11.3 shall apply accordingly.
- 11.8 Warranty claims shall not be admissible in the event of insignificant deviations from the agreed composition, insignificant impairment of the practicability, natural wear and tear or damages caused after the passing of risk as a result of faulty or negligent treatment, excess utilisation, inappropriate service equipment, or damages caused by exceptional external factors, which are not provided for in the Contract. Should OP carry out inexpert alterations or repairs, no warranty claims shall be admissible for such alterations, repairs or consequences thereof.
- 11.9 Any claims of OP for expenses necessary for the Subsequent Performance, in particular transportation, labour and material costs, shall be excluded, if such expenses should be caused because the Delivery has been transferred to a place other than the Place of Performance, unless doing so complies with the normal use of the Deliveries.
- 11.10 Claims under a right of recourse of the OP against CO shall only be admissible insofar as OP has not agreed with its buyer any arrangements beyond the scope of the statutory warranty claims. For the scope of the claims under a right of recourse according to paragraph 478, section 2 of the German Civil Code [Bürgerliches Gesetzbuch], 11.8 shall apply respectively.
- 11.11 OP shall have no claim for damages based on Defects. This shall not apply to the extent that a Defect has been fraudulently concealed, the guaranteed characteristics are not complied with, in the case of loss of life, bodily injury or damage to health, and/or intentionally or grossly negligent breach of contract on the part of CO. The above provisions do not imply a change in the burden of proof to the detriment of OP. Any other additional claims of OP exceeding the claims provided for in this Section 11, based on a Defect, shall be excluded.
- 12. Infringements of Intellectual Property Rights, Other Legal Defects**
- 12.1 Unless agreed otherwise, CO shall carry out the Delivery free of industrial property rights and copyrights of third Parties ("Intellectual Property Rights" – "IPR"). Should a third party set up a justified claim against OP for infringement of an IPR caused by the utilisation of a delivery of CO as per agreement, CO shall be liable towards OP within the statutory time limit set out in 11.3 as follows:
- 12.1.1 CO shall, at its discretion and cost, acquire the right of use for the Delivery concerned, alter the Delivery concerned to ensure that the IPR is no longer infringed, or replace the delivery. In the event that CO is not able to do so under appropriate conditions, OP shall be entitled to use the statutory rights of rescission or rights to a reduction in price.
- 12.1.2 CO's obligation to compensate shall be pursuant to 14.
- 12.1.3 The above mentioned obligations of CO shall only apply, if OP makes immediate written notification to CO of the claims set up by a third party, if he does not recognise the infringement and if CO's rights to take countermeasures and settlement negotiations remain unaffected. Should OP cease to utilise the delivery due to loss mitigation or other significant reasons, it shall point out to the third party that the cessation of utilisation is no acknowledgement of any infringement of IPR.
- 12.2 OP shall have no right to claims for the infringements of IPR which were caused by itself.
- 12.3 Claims shall also be inadmissible, if the infringement of IPR was caused by special instructions of

- OP, an utilisation which could not be foreseen by CO, or if OP alters the Delivery or uses it with products which were not delivered by CO.
- 12.4 As far as infringements of IPR are concerned, the respective provisions of 11.5, 11.6, and 11.10 shall always apply to all claims of OP set out in 12.1.1.
- 12.5 In the event of other legal defects the provisions of 11. shall apply respectively.
- 12.6 Further claims on grounds of legal defects of OP against CO or claims other than those set out in 12. shall be excluded.
- 12.7 Unaffected by the preceding regulations in 12. all CO's intellectual property rights to and in the goods delivered shall remain exclusively with CO, unless otherwise expressly agreed in the respective Contract (1.2).
- 13. Impossibility, Adjustment of Contract**
- 13.1 Should delivery be impossible, OP shall be entitled to request compensation, unless CO is not responsible for the impossibility. However, OP's claim for compensation shall be limited to 10 percent of the value of the part of the Delivery which cannot be used due to the impossibility of CO. This limitation shall not apply where there is obligatory liability due to willful misconduct, gross negligence, initial inability or injury to life, bodily injury or damages to health. No shift in the burden of proof to the detriment of OP is connected with the above provisions. OP's right of rescission shall remain unaffected.
- 13.2 Should events within the meaning of 7.2 substantially alter the economic significance or the contents of the Delivery or substantially affect CO's business, the Contract shall be appropriately adapted under good faith. If this is not economically acceptable, CO shall have a right of rescission. Should CO wish to make use of such right, he has to notify OP after realization of the consequences of such incidents without delay, also if the Parties had agreed to an extension of the Delivery time beforehand.
- 14. Other Claims for Compensation**
- 14.1.1 Claims for compensation of OP, irrespective of their cause in law, but in particular claims arising from the breach of duties resulting from obligation or tort, shall be excluded.
- 14.1.2 This shall not apply if CO's liability is based on:
- the German Product Liability Act ("Produkthaftungsgesetz");
 - intent;
 - gross negligence on the part of the owners, legal representatives or executives;
 - fraud;
 - failure to comply with a guarantee granted;
 - negligent injury to life, limb or health;
 - negligent breach of a fundamental condition of contract ("wesentliche Vertragsverletzung").
- 14.1.3 However, claims for damages arising from a breach of a fundamental condition of contract shall be limited to foreseeable damage intrinsic to the Contract, unless no other case as per 14.1.2 applies.
- 14.2 The exclusion or limitation of CO's liability as set out in 14. shall also apply to the personal liability of its workers, employees, co-workers and other persons employed, but not to the personal liability of legal representatives and executives.
- 14.3 The claims for compensation OP is entitled to according to 14., shall expire upon the expiry of the term of limitation applying to material defects according to 11.3 In the event of the cases mentioned in 14.1.2 the statutory terms of limitation shall apply.
- 14.4 No shift in the burden of proof to the detriment of OP is connected with the provisions of 14.
- 15. Confidentiality**
- 15.1 The Parties shall undertake not to make available to third Parties any documents, knowledge and information, tools, moulds, samples, models, profiles, drawings, standard sheets, photomasters and other technical documentation („Information“) received within the scope of the contract and irrespective of the carrier medium without written approval of the respective other party, or use them for other than contractual purposes. Such Information must be secured against unauthorised inspection or use. With reservation of further rights, each party may request the return of such Information, should the other party breach such duty.
- 15.2 The obligation according to 15.1 shall commence upon the first receipt of Information and expire 36 months after the termination of the Contract.
- 15.3 The obligation according to 15.1 shall not apply to Information which is generally known or which was known to the respective party at the moment of receipt without the party being obliged to confidentiality or to Information which was passed on by a third party authorised to submit such Information or which was developed by the receiving party without utilisation of confidential Information of the other party.
- 16. Severability Clause**
- The legal invalidity of one or more provisions of these T&C's shall in no way affect the validity of the remaining provisions. This shall not apply if it would be unreasonably onerous for one of the Parties to be obligated to continue the contract.
- 17. Jurisdiction**
- The exclusive place of jurisdiction – also for cheques and notes receivable – shall be CO's place of business. However, CO may also bring an action at PO's place of business.
- 18. Applicable Law**
- The material law of the Federal Republic of Germany shall apply on all Deliveries, *except that for Deliveries of Züco Bürositzmöbel AG Swiss law shall apply.* The UN Convention on Contracts for the International Sale of Goods of 11 April 1980 shall not apply.