

## **General Sales Conditions for the Product Segment Dynameco**

### **§ 1 Scope - Area of Application**

- (1) These terms and conditions represent the general sales conditions of Dynamit Nobel Defence GmbH (Seller) for the product segment Dynameco. The terms shall be valid for companies, legal entities under public law or special funds under public law.
- (2) Each and any of Buyer's terms and conditions are hereby expressly repudiated and will apply and bind the Seller only after Seller's written approval.
- (3) Subject to any revision, these terms and conditions shall form an integral part of all and any individual future sales contracts between the parties.

### **§ 2 Order / Quality of the Goods**

- (1) The Seller is allowed to accept Buyer's order within 14 days after its receipt.
- (2) The acceptance of the order shall be made by an order confirmation by mail, telefax or email.
- (3) Unless specified otherwise, Seller will not give a guarantee for quality, i.e. an unconditional promise to be performed by the Seller regardless of its fault. These promises shall be marked distinctly as "guarantee for quality" or "guarantee". However, Seller warrants that all of its documents describing the goods and all information given on Buyer's request and all other declarations describing the goods and characterizing its area of application only represent a quality description.
- (4) The Buyer shall be responsible for the accuracy of its submitted order, and shall give the Seller any and all necessary information within a timely manner to enable the Seller to a complying performance. In particular, the Buyer shall inform the Seller about all relevant national technical provisions applicable for the goods respectively fire extinguishing generators.
- (5) After prior notification, the Seller reserves the right to make any changes in the specification of the goods, which are necessary to conform to any applicable statutory requirements.

### **§ 3 Price of the Goods**

- (1) The price of the goods shall be the Seller's quoted price or, where there is doubt, the price listed in Seller's issued valid price list.
- (2) Except as otherwise stated, all prices are net ex works plus applicable VAT, if any. If Seller agrees to deliver the goods otherwise, Buyer shall be liable for all additional costs, such as for example transportation, packaging and insurance.
- (3) The Seller reserves the right, after notifying the Buyer in a timely manner before delivery and invoicing of the goods, to increase the agreed sales price to the extent changes in raw material costs or prevailing economic circumstances substantially increase the manufacturing and/or procurement costs of the goods with regard to those valid at the time the prices were agreed upon. In this case, the Buyer is allowed to cancel the relevant order within two weeks after notification of the price increase.

### **§ 4 Terms of Payment**

- (1) The price of the goods shall be paid without deduction after Buyer's receipt of the invoice. The costs of payment transaction shall be borne by the Buyer. The Buyer shall only be entitled to offset payments against claims that are undisputed or recognized by final judgement; the same shall apply in respect to claims of rights of retention.
- (2) After expiry of the period of payment or at the latest, at the time of default, the Seller has the right to demand interests at a rate of eight percentage point over the base rate set out by the European Central Bank, unless higher rates have been agreed upon. The right to assert further damages is expressly reserved.
- (3) At the latest 10 days after the invoice becomes due, the Buyer shall be in default of payment without further notice.
- (4) The Seller is entitled to offset payments against all claims due from the Buyer against all claims that Seller for whatever legal reasons may be entitled to.

### **§ 5 Delivery**

- (1) The delivery time is subject to punctual and correct fulfillment of all of Buyer's contractual obligations. All rights concerning a plea of non-performance are reserved.

(2) In absence of any other agreement, the goods shall be taken over ex works at the premises of the Seller as per the contractually agreed time stated in the readiness for shipment advice, or at any further place explicitly agreed between the parties.

(3) Should the Buyer be in default of acceptance or negligently violates any of its other co-operation obligations, the Seller shall be entitled to ask for compensation of the damage so incurred, including any suffered extra costs and expenses. The right to assert further claims is expressly reserved.

(4) The delivery time shall be reasonably extended due to an event of force majeure and any other incident, which considerably impede the delivery or render it impossible within the agreed time (e.g. strike, lockout, official order or unforeseen disruption of operations). This shall also be valid for sub-suppliers. Seller shall immediately after its occurrence inform the Buyer. Should the further performance of the contract be unreasonable to one of the parties, the affected party may then rescind the contract.

## **§ 6 Transfer of Risks**

The risk of loss and damage shall pass to the Buyer as follows:

- a) upon ex works delivery at the time stated in the readiness for shipment advice,
- b) in all other cases, at the time of transfer of the goods to the carrier, or in case of Buyer's default of acceptance at the time of Seller's offering to transfer the goods.

## **§ 7 Retention of Title**

(1) Irrespective of the delivery and the transfer of risk or any other provisions of these general sales conditions, the goods shall fully remain the property of the Seller until all claims out of the sales contract have been paid. This shall also apply to all future sales contracts, even if the Seller makes no express reference hereto. The Seller is therefore entitled to repossess the reservation goods, for which the title remains vested in the Seller, to the extent the Buyer is in breach of contract.

(2) Until such time as the property in the goods passes to the Buyer, the Buyer shall hold the reservation goods as the Seller's fiduciary agent, and shall keep the reservation goods properly stored, protected and insured. The reservation goods shall be designated as the property of the Seller and be kept separately from the Buyer's other property and that of any third parties.

(3) Until the price of the goods has been paid in full, the Buyer is entitled to use and process and to resell the reservation goods in the ordinary course of its business, but shall keep any consideration (including any amounts received under insurance) for the Seller and keep the monies separate from its own assets and those of third parties.

(4) Should the reservation goods be subject to further processing with products to which the Seller has no ownership rights, then Seller shall acquire corresponding part-ownership of the so processed goods. The same shall apply to reservation goods inseparably mixed, combined or blended with other goods.

(5) If the goods have been attached or otherwise exposed to interventions of third parties, Buyer shall immediately notify the Seller, in order to enable the Seller to seek a court injunction. Where Buyer fails to comply with this obligation and in a timely manner, the Buyer shall be liable for all resulting damages.

(6) The Seller shall on demand of the Buyer release any part of the collateral to the extent that the actual value of the collateral exceeds the amount of all secured claims including accessory claims (interest, costs, etc.) of the Seller. The choice of the collateral to be released shall be made by the Seller.

## **§ 8 Warranty**

(1) Immediately on its receipt, the Buyer has to make a visual and, if appropriate, a functional examination of the goods and is obliged to make a complaint to the Seller in respect of any defects found.

(2) If a defect is found at the time of examination or becomes apparent later, the Seller shall at its choice repair or replace the goods within a reasonable time.

(3) In case the Seller does not fulfill its obligations within a reasonable time or within an agreed further extension of time, the Buyer is entitled at its choice to rescind from the contract or ask for compensation. However, if that defect is not considerable or substantial, the Buyer is only entitled to compensation. Further claims are excluded. § 9 remains unaffected.

(4) Except as otherwise agreed, claims for defects and all further contractual claims of the Buyer against the Seller on account of and in connection with the delivery of the goods, are subject to a limitation period of one year after delivery. This shall not affect the statutory periods limitation for goods used in accordance with their usual purpose for a building, which have caused a defect in the building. In addition, the first sentence of this paragraph shall not apply in cases of willful intent or gross negligence, culpable injury to life, body or health and in case of maliciously concealed defects.

Repair or replacement of goods shall not cause the period of limitation to recommence again.

## **§ 9 Limitation of Liability**

(1) The liability of the Seller towards the Buyer for damages not occurring on the goods itself and especially for indirect, special, incidental or consequential damages, including but not limited to loss of profit or revenue, loss of use of equipment, cost of capital, cost of substitute equipment, etc. or any other pecuniary loss and to the extent not covered by an insurance of the Seller, shall be limited to the following events:

- a) culpable injury to life, body or health,
- b) willful intent or gross negligence of the organs of the Seller or its employees responsible for execution of the contract,
- c) defects concealed maliciously by the organs of the Seller or its employees responsible for the execution of the contract,
- d) product liability, or
- e) culpable infringement of Seller's material contractual obligations if and to the extent that the fulfillment of the purpose of the contract is at risk.

(2) Apart from that and except for the preceding paragraph 1 lit a) – e), the liability of the Seller shall be limited to foreseeable direct damage, typical for this type of contract, and to be expected by the Seller at the time of contract conclusion considering all then known circumstances.

(3) In case Seller is liable for delay in delivery, which is not attributable to Seller's willful intent or gross negligence, the Buyer after a grace period of two weeks is entitled to charge liquidated damages at a rate of 0.3% of the value of the delayed goods for each

complete week, limited to 5% of the value of the delayed goods at maximum. Any exceeding

damages shall be substantiated by the Buyer. Where appropriate, the liquidated damages shall be offset against the due exceeding damages.

### **§ 10 Export Certificate, Sales Tax**

(1) Where a Buyer or its representative collects or transports or sends goods to a non-EU country, the Buyer shall furnish the Seller with the respective export certificate, which is required under German tax law. In case the Buyer does not submit this export certificate to the Seller and in a timely manner, the Buyer shall be liable to pay to the Seller the Value Added Tax (VAT) valid in Germany for the relevant invoice amount, if and to the extent the Seller could have claimed tax exemption for export deliveries.

(2) Where a Buyer or its representative collects or transports or sends goods to an EU country, the Buyer shall inform the Seller after contract conclusion but before delivery about its Value Added Tax Identification Number applicable for Buyer's profit and income tax purposes in the respective EU country. In case of non-compliance, the Buyer shall pay the VAT valid in Germany for the relevant invoice amount, if and to the extent the Seller could have claimed tax exemption for export deliveries.

### **§ 11 Miscellaneous**

(1) Place of payment is at the registered seat of the Seller.

(2) Place of jurisdiction is Siegen, Germany.

(3) The substantive law of the Federal Republic of Germany shall apply under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) dated April 11 1980.