



## Terms and Conditions of Sale

**ODU Steckverbindingssysteme  
GmbH & Co. KG**

**Otto Dunkel GmbH**

**ODU Automotive GmbH**

### I. General

1. The following terms and conditions of sale shall apply with respect to ODU Steckverbindingssysteme GmbH & Co. KG, Otto Dunkel GmbH and ODU Automotive GmbH. They shall apply to the exclusion of others to our offers, deliveries, services and other legal acts that are part of our business operations. Terms agreed between the parties that deviate from the contract and from these terms and conditions and collateral agreements must be in writing.
2. The general terms and conditions of the customer shall not be part of the contract. They are hereby excluded. They shall not apply even if goods are delivered or payments accepted without a further objection to the customer's terms and conditions of business.
3. We reserve the title to and the copyright in all drawings, designs, estimates etc. They may not be made available to any third party or modified without our express consent in writing. If no order is placed, all documentation shall be returned without delay.

### II. Offers, consignments, passing of risk

1. We will be bound by our written offers for eight weeks. In placing an order, the customer makes a binding declaration that it intends to acquire the goods ordered. When we confirm the order, we accept this offer to contract made by the customer. We will send the confirmation of order immediately after we have internally clarified the production possibilities in the operation planning stage, but at the latest within four weeks after receiving the order. Acceptance may be made in writing by a confirmation of order or by delivery of the goods to the customer.  
Our employees in the sales department shall not be authorized, when a contract is entered into, to make oral collateral agreements or give oral warranties that go beyond the contents of the written contract.
2. All notes and confirmations – including those in writing – are merely approximate product descriptions, unless they are specifically marked with the text "agreed quality: ...". The

explanations or descriptions in our brochures do not constitute an agreement to supply a particular quality. The same applies to all drawings, illustrations, measurements, weights, and other performance specifications. We do not grant guaranties in a legal sense (e.g. according to Sect. 443, 444, 639 German Civil Code).

We reserve the right to make technical changes and alterations in form, colour and/or weight to a reasonable degree. We reserve the right to permit deviations in the course of technical progress. The customer may derive no rights against us as a result of this.

3. Delivery shall be ex works. Shipping shall be for the account of the customer, unless expressly otherwise agreed in writing. Our goods and services shall be owed to the customer at our place of business. The risk of destruction shall pass to the customer when the goods are dispatched. This shall also apply if there has been an agreement on free shipping. On customer's request and costs, we will effect a transport insurance policy. The choice of the shipping route and the means of transport shall be made at our reasonably exercised discretion, however we are not responsible that the cheapest shipping method will be chosen, unless the customer gives express instructions in writing as to the shipping.
4. If we cancel an order on customer's request, customer shall bear the costs incurred until this date, but at all events at least 5 % of the invoice value. All rights under contracts with us may not be assigned.

If we become aware of circumstances that cast doubt on the customer's creditworthiness, in particular if the customer's bank does not pay a cheque or the customer has ceased to make payments, we shall be entitled to rescind the contract and immediately call in all invoice amounts still outstanding, even if we have accepted cheques to pay them. In this case we shall also be entitled to require payments in advance or the provision of security. Furthermore we may also withdraw from a deferral of repayment or an extension of the term of payment in this case.

### III. Quantities delivered

All deliveries, even part deliveries in connection with current transactions, shall in each case be deemed to be independent contracts. They shall be charged separately, shall be payable separately and shall have no influence on other deliveries.



**IV. Delivery date, compensation for damage resulting from delay**

1. The delivery date or week shall be noted in our confirmation of order on the basis of the provided information. Such note is generally non-binding and serves only for orientation purposes. However, a specific delivery date may be agreed in writing with the note "Delivery guaranteed by ...".

The delivery date shall be deferred by the period of time that is necessary to fully clarify all commercial and technical details and to obtain all the documentation and supplies to be provided by the customer.

In the case of delays in delivery that are attributable to circumstances of which we were not aware at the date when the order was placed and for which we are not responsible, the delivery periods shall be extended to a reasonable extent. We shall not be liable for delays in delivery as a result of force majeure and similar events even if binding delivery dates have been agreed. This shall include but not be restricted to strikes, lockouts, official orders and similar, even if they affect our suppliers.

2. When our warehouse has dispatched the goods or if it is impossible to dispatch the goods in good time because the customer does not provide a means of transportation in good time (default in acceptance), we are deemed to have achieved the delivery dates. In this case, the risk of accidental loss or accidental deterioration of the goods shall pass to the customer from the time when they are made available.

3. If the delivery dates are exceeded and we are responsible for this, the customer shall be entitled to set an additional period of time of four weeks for the delivery in writing. At the expiry of this period, the customer may assert warranty claims.

In case of non-compliance with a written guaranteed date of delivery for reasons that we are responsible for, the customer may claim compensation for damages resulting from default at the rate of 0.5 % for each complete week of default, but in total a maximum of 5 % of the invoice value of the consignments affected by the default. Late delivery claims of the customer going beyond this shall be excluded unless the delay is a result of our gross negligence or intention.

**V. Price, packaging**

Packaging will be invoiced separately at cost price. We will not take back the packaging. Our prices do not include value-added tax. Value-added tax at the statutory rate on the invoice date is stated separately.

**VI. Payment conditions**

1. Payment shall be made without discount to the bank accounts stated by us. Unless the confirmation of order states otherwise, the purchase price shall be payable within thirty days after the receipt of the invoice.

2. If the total purchase price is paid within ten days after receipt of our invoice, we will grant 2 % discount. No discount is granted in case of payments in advance required by us according to our terms and conditions of sale.

3. After expiration of a period for payment, customer shall be in default of payment. During the period of default, the customer shall pay default interest at the rate of 8%-points above the base rate of the European Central Bank. We reserve the right to prove any greater loss incurred as a result of the default.

4. We shall not be obliged to accept cheques instead of a money transfer. If we take a cheque, the payment shall be deemed to have been made only when the cheque has been irrevocably credited to our account.

5. Customer shall be entitled to set-off against our payment claims or to exercise a right of retention or price reduction only if the counterclaims have been finally and non-appealably established or are undisputed.

6. We shall be entitled – even if the customer's terms of business provide otherwise –, to first set off payments against the customer's older debts. If, as a result of the default of the customer or other breaches of obligation, claims to interest or costs have already arisen, we shall be entitled to set off the payments first against the costs, then against the interest claim and last against the main payment obligations.

**VII. Reservation of Ownership**

1. We shall reserve the ownership of all and any goods delivered until all our existing claims, including conditional and subsidiary claims, against the customer from our business relation have been satisfied; all deliveries shall be considered as one inclusive delivery transaction. The reserved ownership shall be security for our current account claims. All



aforementioned stipulations shall also apply to future claims.

2. The customer shall be entitled to resell or process the purchased item or mix or combine it with other goods in the scope of its ordinary business only; however, he will thus now assign to us all claims resulting from resale, processing, mixing, combining or other causes in law related to the purchased item (in particular from insurance contracts or unlawful acts) in the amount of the mutually agreed final invoice total (incl. VAT). The same applies if an item is not sold but subject to a contract for work and materials or a contract for work and services.
3. Reservation of ownership shall also apply to such new products resulting from the processing, mixing or combining of the purchased items with other goods in their full amount. These processes shall be performed on our behalf so that we shall be deemed to be the manufacturer. If third-party ownership rights extinguish after processing, mixing or combining with goods from those parties, we shall acquire joint ownership at a ratio of the objective value of those goods. If our ownership ceases as a result of combining or mixing, customer shall transfer to us now its ownership and/or expectant rights of the new stock or item to the extent of the invoice value of goods delivered by us, and shall hold them in custody on our behalf at no charge.
4. Customer shall be authorised to collect debt claims from the resale despite the assignment, as long as we have not revoked this authority. We will not collect debt claims ourselves, as long as customer meets its payments with us in due course. Upon our first written request customer shall be obliged to inform us about the debtors of assigned claims as well as to notify debtors of the assignment.
5. We shall have the right to revoke the customer's authority for resale according to section 2. and collection of assigned claims with immediate effect if the customer is in arrears with payments to us, experiences a shortage of liquid funds due to a significant deterioration of financial circumstances or does not carry out mutually agreed contractual obligations properly. In case that customer becomes insolvent or subject to bankruptcy proceedings, reorganisation proceedings, or comparable proceedings, discontinues payments, gives statements in lieu of an oath according to Sec. 807 German Code of Civil Procedure (ZPO), or if due to a shortage of liquid funds a change of ownership occurs in customer's business, the authority for resale

and collection of assigned claims will cease automatically.

6. Customer shall hold our (jointly) owned materials in custody on our behalf at no charge with due care and diligence as a prudent businessman and shall insure them against fire, burglary and other usual risks.
7. Any pledge or assignment as security by customer of goods delivered under reservation of ownership is forbidden. Prior to any pledge or any other infringement of our ownership rights by third parties the customer shall notify us immediately and confirm the right of ownership in writing both to us and the third parties. Any residual costs arising from resulting legal action despite our winning a case shall be covered by the customer. In case the third party is not able to pay the out of court as well as costs of a law suit pursuant to Sec 771 German Code of Civil Procedure (ZPO) customer shall indemnify us from any loss.
8. If customer violates the contract, in particular by delays in payment, we shall be entitled to recover the goods; the customer hereby gives his advance consent to this recovery in such case. The recovery shall be considered as a termination of contract only if explicitly stated by us. Customer waives all rights pursuant to sec. 858 German Civil Code and allows us access to his premises where the respective goods are located. All costs incurred by the recovery (in particular transport costs) shall be charged to customer. We shall be entitled to sell the goods we have taken back. This may be done either by sale on the open market or by a credit note at market price (obtainable proceeds) or by credit at the contract price – less all rebates, discounts and other reductions granted and less a figure of 30% for depreciation in value. Customer may demand the delivery of goods recovered without an express notice of withdrawal only once the purchase price and all costs have been fully paid.
9. If we are entitled to securities that exceed the value of the claims secured by more than 20% for more than a temporary period, then at customer's request we will release the value of securities that exceeds this amount.

#### **VIII. Tools**

Tools remain in our ownership, unless the transfer of title regarding tools that have been developed, manufactured or provided by us in order to manufacture the products to be delivered to the customer has been explicitly agreed upon in written form. The customer is not entitled to claim the



transfer of title regarding such tools, even if the customer has partly or completely paid for the costs of developing, manufacturing and / or providing for such tools.

### **IX. Warranty**

1. The guarantee period shall begin the day when risk of loss or damage passes and shall end twelve months later irrespective of the duration of operation. This shall be without prejudice to express guarantee promises with a longer guarantee period.
2. The customer must inspect the goods immediately on receipt and inform us without delay in writing of defects, shortfall etc. (section 377 German Commercial Code). Apparent defects must be notified immediately after receipt of the goods; hidden defects must be notified without delay after they are discovered. Failing this, the guarantee claims may not be asserted. Where delivery is made by forwarders' vehicles, discernible damage that has occurred in transport shall be noted on the delivery note and bill of freight and be confirmed by the driver's signature. The customer must give us an opportunity to determine for ourselves the presence of the defect.
3. We will be liable for defects and will remedy them at our choice by subsequent performance or substitute delivery. If this subsequent performance is unsuccessful, the customer may as a general rule at its own choice require reduction of the purchase price or rescission of the contract. If the defects are immaterial, the customer shall not have a right to rescind the contract. If the customer declares that it is rescinding the contract, it shall not in addition have a right to damages for the defect. If, after subsequent performance has failed, the customer chooses damages, the goods shall remain in the customer's possession, if the customer can reasonably be expected to keep them. Damages shall be limited to the difference between the purchase price and the actual value of the defective goods. This shall not apply if the breach of contract was caused in bad faith.
4. If there is a complaint, the goods shall first be returned to us on our costs. If goods are defective, we are under an obligation to bear all expenses necessary to remove the defect, in particular costs of transport, workmen's travel, work and materials. This shall not apply to the extent that the costs are increased because the goods were taken to a place other than the place of performance.

Customer shall bear all costs of the examination and transportation (and where applicable expert's report) including all incidental expenses (travelling expenses, overnight accommodation etc.) in case the complaint is not covered by guaranty.

### **X. Liability**

1. We shall be liable for any damages, in particular resulting from culpa in contrahendo, breach of duty and unlawful acts (Sec. 823 ff. German Civil Code), insofar as we, our employees or assistants are charged with intent or gross negligence.
2. For damages resulting from injury to life, body or health, guarantees or violation of material contractual duties, we shall also be liable for slight negligence. In case of a violation of contractually relevant duties our liability shall be limited to the direct average damage, predictable and typical according to the type of goods. Aforementioned stipulation shall also apply to breach of duty by our employees and assistants.
3. We shall be liable for the infringement of third parties' industrial property rights in connection with the sale of our goods only if such third parties' industrial property rights are valid in the Federal Republic of Germany and have been published at the time of delivery and only to the extent that such third parties' proprietary rights are infringed upon when using the products as agreed. This shall not apply if we have manufactured the delivery items according to drawings, models, descriptions or other documents or data provided by customer and if we thus do not or need not have knowledge of any infringement of industrial property rights in connection with products developed by us. In this case our customer undertakes to warrant that there has been and will be no infringement of third parties' industrial property rights, to inform us without delay of any potential and alleged cases of infringement of third parties' industrial property rights which may become known to him, to indemnify us from third parties' claims and, to bear all costs and expenses incurred.
4. Our liability pursuant to the provisions of German Product Liability Act and Sec. 478, 479 German Civil Code (last seller recourse) shall remain unaffected by the aforementioned stipulations.
5. Otherwise we shall be exempt from any liability.



**XI. Place of jurisdiction, applicable law**

The place of performance and place of jurisdiction for deliveries and payments shall be Mühldorf am Inn, Germany. However, we shall also be entitled to take legal action against the customer at its place of residence.

The law of the Federal Republic of Germany shall apply. The UN Convention on Contracts for the International Sale of Goods is excluded.

**XII. Storage of data**

Under section 33 (1) of the German Federal Data protection Act (Bundesdatenschutz-gesetz), we hereby notify you that we have stored your data on our computer system for the purpose of doing business with you.