

# General Terms and Conditions of Sale

Dolan GmbH, Regensburger Str. 109 D-93309 Kelheim

## Section 1 General – Scope of Application

1. These General Terms and Conditions are applicable to all present and future business relations.  
**Customers** within the meaning of the General Terms and Conditions are exclusively companies in the sense of the German Civil Code, i.e. natural or legal persons or partnerships with legal status who become business partners and who act in pursuance of a commercial or self-employed activity.
2. General terms and conditions which differ to, conflict with or supplement these General Terms and Conditions of Sale - even if we are aware of them - do not become part of any contract unless their validity has been expressly agreed in writing.

## Section 2 Conclusion of contract

1. No offer made by Dolan GmbH is binding. We reserve the right to make technical changes and changes in shape, colour and/or weight within reasonable limits. The BISFA specifications of the international association for synthetic fibre standards apply to all orders.
2. By ordering a product, the customer makes a binding agreement to purchase the product(s) ordered. We have the right to accept the contractual offer included in the order within three weeks of receipt. Orders may be accepted either by written confirmation by Dolan GmbH or by delivery of the product(s) to the customer.
3. Contracts are confirmed subject to correct and punctual delivery by our suppliers. This is only applicable in cases where Dolan GmbH is not responsible for the failure to deliver and in particular where a specific contract relating to the order has been agreed with the supplier. The customer will be informed of the non-availability of the product or service immediately. Any consideration already paid will be refunded immediately.
4. If, after conclusion of the contract, we become aware of circumstances which raise doubts about the customer's creditworthiness, we have the right to ask for cash before delivery or for security.

## Section 3 Retention of Title

1. We retain the right of ownership of the goods until all claims resulting from a current business relationship have been settled in full.
2. The customer must treat the goods with due care.
3. The customer is obliged to notify us immediately of any access of third parties to the product, such as attachment, and of any damage to or destruction of the goods. Furthermore, the customer shall inform us immediately of any change in possession of the goods and any change in his place of business.
4. If the customer breaches the contract, particularly in the event of payment default or infringement of one of the obligations under paragraphs 2 and 3 of this section, we have the right to cancel the contract and require return of the goods at the customer's expense.
5. The customer is entitled to resell the goods within the ordinary course of business. Any receivables due as a result of any subsequent resale of the goods to a third party are assigned to Dolan GmbH at the point of the conclusion of the contract between Dolan GmbH and the Customer. We accept this assignment. We authorise the customer to collect such receivables after assignment. We reserve the right to collect these receivables ourselves if the customer fails to meet his financial obligations and defaults on payment. Upon request of Dolan GmbH, the customer shall disclose the name and address of the third party and shall provide all other information required for collecting the receivables, including associated documents. In addition, Dolan GmbH may require the customer to notify the third party of assignment.
6. Processing of the goods by the customer is in all cases carried out in the name of and on behalf of Dolan GmbH. If the goods are processed with items that are not the property of Dolan GmbH, we acquire joint ownership of the new product in the ratio of the value of the goods delivered by us to that of the other items processed. This also applies if the goods are mixed with items that are not the property of Dolan GmbH.
7. In order to avoid excessive collateral, Dolan GmbH undertakes to release, at their discretion, such realisable securities as exceed the outstanding amounts due by 20%.
8. The realisable value (collateral value) is the basis for valuation of securities.
9. The goods to which retention of title applies must be insured with due care and diligence and in a prudent manner. All claims relating to the goods under such insurance are assigned to Dolan GmbH. We accept this assignment.
10. If our retention of title ceases to be valid in the event of deliveries to foreign countries or for other reasons, the customer must immediately supply collateral on the goods or provide another form of security which is effective pursuant to the law of the country concerned and which is as close as possible to retention of title under German law.

## Section 4 Prices

1. If no contrary agreement has been made, our prices are based ex works excluding packaging.
2. Any bank or similar charges incurred in the process of payment are to be borne by the customer.
3. Costs for shipping and packaging and other incidental expenses are payable by the customer. Dolan GmbH will charge the prices or values valid on the date of dispatch or performance of the contract, these being in Euros ex place of dispatch if nothing contrary has been agreed.
4. Our prices exclude statutory value-added tax. VAT is always shown separately on invoices.

5. Taxes and customs duties are excluded and are payable by the customer.
6. All costs, including fees, taxes and customs duties, which are incurred in connection with the contract in the customer's home country or upon exportation to the customer's country and were not known at the time of conclusion of the contract will be paid by the customer.

### **Section 5 Payment**

1. The purchase price, the prices for additional services and any advance costs are due for payment upon delivery of the object sold, but no later than on receipt of the invoice by the customer.
2. 7 days after receipt of goods or invoice, the customer is deemed to be in default even if no demand for payment has been made.
3. During payment default, the customer will pay interest on the money owed at 8% above the base interest rate [p.a.](#). We reserve the right to provide evidence of and claim from the customer any greater damage caused by default.
4. Payment instructions, cheques and bills of exchange will only be accepted by special agreement and subject to irrevocable receipt of funds by Dolan GmbH with all collection and discount charges to the customer's account.
5. If the customer has defaulted on payment of an invoice, all outstanding liabilities become due for payment with immediate effect, and Dolan GmbH is entitled to demand advance payment for the deliveries still outstanding or cash payment on delivery of goods without allowing the agreed period for payment. This also applies in the event of payment by a cheque which is not honoured, discontinuation of payments, bankruptcy, a request to reschedule payments or similar requests by the customer.

### **Section 6 Offsetting and Rights of Retention**

1. The customer only holds an offsetting right if his counterclaims have become legally final and absolute or have been recognised by us.
2. The customer is only authorised to exercise a right of retention if his counterclaim applies to the same contractual relationship.
3. Prior to payment of invoiced amounts due, including interest on defaulted payment, Dolan GmbH is not bound to perform any further delivery under any current contract.
4. If it becomes clear to Dolan GmbH after conclusion of the contract that their claim to counter-performance is at risk due to the customer's lack of ability to pay, Dolan GmbH has the right to refuse to render their performance until counter-performance is effected or security provided.
5. Within two weeks the customer shall, at his discretion, either render counter-performance or provide security, against which Dolan GmbH is then required to effect performance.

### **Section 7 Delivery and default on delivery**

1. Delivery dates and periods may be agreed on a binding or non-binding basis and shall be recorded in writing.
2. Before any agreed delivery period can commence, all technical matters must have been clarified and all obligations of the customer duly and punctually met.
3. Contractual obligations are fulfilled by Dolan GmbH within the limits of Dolan GmbH capabilities. Obligations may be fulfilled in the form of partial deliveries. This only applies if each partial delivery can be identified as a discrete unit and if such partial delivery is reasonable for the customer.
4. A delivery date or period is deemed to have been met if the goods have left our works or sales warehouse by the end of the delivery date/period. In cases in which goods cannot be shipped or shipment is not required, it is sufficient to have given notice of readiness for collection by the end of the delivery date/period.
5. 2 weeks after the end of any non-binding delivery date or a non-binding delivery period, the customer may request Dolan GmbH in writing to deliver within a reasonable period of time. As a rule, a period of 4 weeks for domestic deliveries and a period of 8 weeks for export deliveries is reasonable.
6. If this extension of the delivery time ends without delivery, the customer is entitled to cancel the sales contract by making a written declaration in accordance with the applicable law and to claim damages instead of performance. These rights only apply to partial deliveries that have already been made if the customer provides evidence that they are of no longer usable as a result of the failure to deliver the balance of the order.
7. A claim to damages pursuant to Section 7 Paragraph 6 of this section only arises in the event of gross negligence or malicious intent and if there has been no injury to life, body or health.
8. If Dolan GmbH defaults, the customer's claim for damages is restricted to the invoice value of the goods. The claim for damages is not restricted in the event of gross negligence or malicious intent and if there has been injury to life, body or health.
9. During default, Dolan GmbH is still liable under Section 7 Paragraphs 6, 7 and 8 for any accidental loss relating to performance, unless the loss would have also occurred if the goods had been delivered in due time.
10. If a binding delivery date or binding delivery period is not met, Dolan GmbH shall be deemed in default as soon as the delivery date or delivery period expires. Paragraph 6 as well as paragraphs 7, 8 and 9 of this section apply accordingly.
11. If the customer defaults on accepting delivery of goods or infringes other duties of co-operation, we are entitled to claim customer compensation for the damage we have incurred including possible extra expenses. In the event of default on accepting delivery of goods, the risk of accidental loss of or of accidental damage to the goods sold is transferred to the customer at the point of default.

12. In the case of force majeure or other unforeseeable and extraordinary circumstances for which Dolan GmbH is not responsible - such as difficulties in material sourcing, plant interruptions, strikes, lockouts, lack of means of transportation, problems with energy supplies etc., even if they occur with sub-suppliers - the delivery period will be lengthened to a reasonable extent if Dolan GmbH is unable to comply with their obligations in due time. If such delay in delivery lasts for more than 2 months, the customer has the right to cancel the contract. Force majeure or other similar circumstances may only be invoked if the customer is notified without delay.

### **Section 8 Transfer of Risk**

1. The risk of accidental loss of or accidental damage to the goods sold is transferred to the customer at the point that control of the goods is surrendered by Dolan GmbH; in the event of a sale to destination, this is the time of delivery to the forwarder, carrier or any person or institution charged with dispatch.
2. Should the customer default on accepting the goods sold, control of the goods will still be considered to have been surrendered.

### **Section 9 Warranties**

1. Warranty services will initially be rendered either by rectification of defects or by a substitute delivery, at our discretion.
2. If such subsequent performance is not successful, the customer may either require reduction of the purchase price or cancellation of the contract, at his discretion. In the case of a insignificant lack of conformity with the contract, particularly when there are only minor defects, the customer is not, however, entitled to claim cancellation of the contract.
3. Deviations from the specified properties of the goods supplied, such as base hue or colour shade, are not regarded as defects unless they result in a major impairment of the usefulness of the products made of these materials.
4. The customer must notify us in writing of any obvious defects within 7 days of receipt of the goods; otherwise any warranty claim will be void. The dispatch of such a notification in due time is sufficient for observance of the time limit. The full burden of proof for all aspects of the claim, particularly for the defect itself, for the time when the defect was found and for the timeliness of the letter of complaint, lies with the customer.
5. If the customer wishes to process or resell the goods despite visible defects, he must notify us immediately in writing.
6. If the customer decides to cancel the contract due to any defect after an attempt at subsequent performance has failed, he shall not be entitled to any additional damages as a result of the defect. If the customer decides to claim compensation after an attempt at subsequent performance has failed, the goods will remain with the customer if this is acceptable for the customer. Compensation is limited to the difference between the purchase price and the actual value of the defective item. This does not apply if Dolan GmbH have maliciously caused the breach of contract.
7. The warranty period is one year from delivery of the goods. This does not apply if the customer did not give us sufficient notice of the defect (see Paragraph 4 of this section).
8. Only the manufacturer's product description is understood to define the quality of the product. Public comments, recommendations or advertising by the manufacturer do not represent a contractual definition of the quality of the product.
9. The customer is not granted any extended warranties by us in the legal sense. This does not affect any warranties given by third party manufacturers.
10. We guarantee that the goods delivered do not infringe any German patents. We do not assume any additional liability in respect of patent law.

### **Section 10 Liability limitations**

1. We do not assume liability to the customer for slightly negligent infringement of insignificant contractual obligations.
2. Our liability is limited to the average level of damage which might be anticipated for the type of product concerned and typical of the type of contract, inasmuch as such damage is not caused by a grossly negligent or malicious and intentional breach of obligation. This also applies to infringements of obligations by our legal representatives or vicarious agents, unless they acted in a grossly negligent way or with malicious intent.
3. The limitation on liability described above does not exclude claims by the customer under product liability law. In addition, the limitations on liability do not apply in the event of injuries to body and health for which we are responsible or in the case of loss of life at the customer.
4. Claims for damages by the customer based on a product defect are subject to a statutory time limitation of one year from the time of delivery of the goods. This does not apply if the defect is due to gross negligence on our part and in the case of injuries to body and health for which we are responsible or in the case of loss of life at the customer.
5. Should specific comments or recommendations about products, in particular recommendations or instructions for use be ignored or disregarded by the customer, Dolan GmbH is freed from any liability as far as this is not already the case for other reasons.

### **Section 11 Final clauses**

1. The law of the Federal Republic of Germany shall apply. The provisions of the UN Sales Convention do not apply.

2. If the customer is a merchant, a legal person under public law or a special fund under public law, our seat of business is the exclusive place of jurisdiction for all disputes arising from this contract. This also applies if the customer does not have a general place of jurisdiction in Germany or if a permanent/habitual residence is not known at the time of commencement of legal proceedings.
3. Dolan GmbH is free to deviate from Paragraph 2 of this section and to choose some other place of jurisdiction provided that this conforms with legal requirements.
4. If any clauses of the contract concluded with the customer including these General Terms and Conditions are or become invalid or unenforceable in whole or in part, the validity of the other clauses will not be affected thereby. The partly or wholly invalid or unenforceable clause shall be replaced by a clause as close as possible to its original commercial and intended purpose.
5. In addition, the BISFA regulations of the international association for synthetic fibre standards govern performance of the sales contract inasmuch as nothing has been agreed to the contrary in these General Terms and Conditions. Customary regulations such as FOB and CIF – provided that they are agreed upon – shall be interpreted in compliance with the version of the INCOTERMS of the international Chamber of Trade applicable when the contract is made.
6. The brand names of the goods supplied must not be used for the products manufactured from these branded articles without our prior written approval.
7. In the case of doubt or lack of clarity as a result of translation, the original German version of the current General Terms and Conditions of sale will apply for the purpose of settlement of any dispute.

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