

Dadco - General Terms and Conditions of Delivery and Payment

1. Definitions

The following words have the following meanings:

“Agreement”	the agreement to which these conditions apply and any appendices thereto;
“Buyer”	the buyer specified in the Agreement;
“Material”	the commodities specified in the Agreement;
“Seller”	the seller specified in the Agreement.

2. Conclusion and Contents of Agreements

These General Terms and Conditions of Delivery and Payment (the "Terms") shall form an integral part of any Transactions (Sales Agreement).

Buyers' purchase terms shall not be binding upon Seller, even if these are not expressly objected to and the Buyer does not expressly agree with these Terms. Upon the acceptance of any delivery, these Terms and the order confirmation shall in any event be deemed accepted.

All offers made by Seller shall be subject to change. Ordering shall be deemed a binding offer. Seller can accept this offer at its choice within a period of 4 weeks by sending of an order confirmation or by supplying the Buyer with the ordered goods – in full or in the form of part of the delivery – within this period. The Buyer may only assign claims deriving from this Agreement to third parties after receiving the Seller's written consent.

3. Prices, Freight and Packing

Provided that the order confirmation does not state otherwise, Seller's prices shall be effective exclusively *tel quel* EX WORKS on a bulk basis. The Shipping Terms shall be as defined in INCOTERMS 2010, published by the International Chamber of Commerce, Paris, France.

Freight and packing of the Material will be defined in a signed Agreement between Buyer and Seller. Unless otherwise defined, the freight and packing shall remain the responsibility of the Buyer. In the absence of specific instructions from the Buyer, the Seller shall determine the freight and packing necessary, at the Buyer's expense. The freight payable by the Buyer will include all loading and delivery. If for any reason, increased freight charges are charged to Seller then these amounts are fully for the account of the Buyer.

4. Payment

Payment shall be effected as specified in the Agreement, free of any deduction. Payment shall be considered to have been made when the amount has actually been received by Seller as cleared funds. Failure by Buyer to pay within the agreed period shall have the effect of placing the Buyer in default.

Seller may charge Buyer interest on any unpaid amount as from the due date until the date of receipt of payment, calculated at a rate of five (5) percent. However, Seller shall be entitled to claim for higher interest or further damages in case of default of Buyer.

Seller may change the payment terms in the event of circumstances which, in the reasonable opinion of Seller, have a material adverse effect on the creditworthiness of Buyer (being a pre-condition to the execution of the Agreement), and / or Buyer's ability to perform its obligations. Seller shall be entitled to request advance payment or performance security regardless of any agreements previously entered into. Seller may specify a reasonable period in which Buyer must pay in advance or provide security. If the period ends without result, Seller may revoke the contract

All bank charges shall be for the Buyer's account. All costs relating to non-compliance with the Agreement by Buyer, including the costs of collection of payments, shall be for the Buyer's account.

5. Taxes

Buyer shall pay all taxes and duties, if applicable, imposed by any national, state or local government authority on the Material delivered hereunder or on its transportation after the point where title and risk passes to the Buyer.

6. Quality, Sampling and Quality Analysis

The Material shall conform to Seller's standard specifications and which the Seller may amend from time to time.

Sampling and quality analysis procedure is done in accordance with international standard practices. A copy of the report of the analysis and a portion of the analysed Material shall be provided to the Buyer upon request.

7. Acceptance and Passing of Risk

If the Material is subject to special checking requirements, acceptance shall be effected on Seller's premises. Any factual acceptance costs will not be charged, and any personal travel and accommodation expenses of the person authorised to receive the Material as well as any charges and fees relating to any official agencies consulted by the Buyer or incurred otherwise shall be borne by the Buyer. If acceptance on the Seller's premises is waived, the Material shall be deemed accepted as soon as it leaves the Seller's premises.

In accordance with the general obligation to deliver EX WORKS, the risk shall pass to the Buyer as soon as the Material leaves the Seller's premises or is made available to the Buyer.

Seller shall be liable for any transport damage attributable to the Seller only if a duly prepared expert loss report pursuant to Section 438 (2) of the German Commercial Code (*Handelsgesetzbuch*; "HGB") is submitted to the Seller. If the Material is returned for reasons not attributable to the Seller, the risk shall remain with the Buyer until the Seller receives the Material.

8. Warranty

Seller warrants that the Material delivered shall conform to the specifications set out in the Seller's standard specification and shall be free from any rights of third persons. No other condition or warranty whatsoever shall apply to the Material delivered hereunder. The Material delivered is deemed to comply with the applicable specification unless Buyer notifies Seller, within fourteen (14) days of receipt of the Material, that the Material delivered does not conform to the applicable specification, and the nature of that non-conformity. If such non-conformity of the Material reveals itself only after its acceptance Buyer shall notify Seller of the non-conformity within fourteen (14) days of its discovery. Seller will then advise the Buyer, within fifteen (15) days, whether or not Seller agrees with the Buyer's analysis. In case of disagreement between Seller and Buyer about the conformity of the Material, a sample retained at the Load port will be analysed by an independent referee laboratory within three calendar months of the date of the shipment. The result of the referee analysis will be definitive as to the specification and nature of the Material as loaded at the Load port and binding on both Parties. With regard to the cost of the analysis, if the referee analysis confirms that the quality of the Material delivered is beyond the specification limits, then Seller shall bear the cost of the analysis; however, if the referee analysis confirms that the quality of the Material delivered is in conformity with the specification limits, then Buyer shall bear the cost of the analysis. If it is determined that the Material loaded at the Load port does not conform to the applicable specification, the Parties shall meet to reach an amicable settlement of the loss suffered (if any) by the buyer. If an amicable settlement on loss cannot be reached, Seller shall provide, at his choice, subsequent remedy or replacement of the quantities of Material for the non-conforming Material. In such case Seller shall bear all costs of the remedial action until, in particular costs of transport, work and material, as far as such costs are not increased by the fact that the Material has been transported to another place than the place of performance. If Seller's remedial action fails, Buyer shall be entitled, upon his choice, to revoke the Agreement or reduce the purchase price. The maximum period of warranty shall be 12 (twelve) months. Any liability shall be subject to the clause no. 9.

9. Liability

Seller shall be liable under the terms of this Agreement only in accordance with the provisions set out hereunder.

Seller's liability shall be unrestricted for losses caused intentionally or with gross negligence. The same shall apply for Seller's liability for death, personal injury or damage to health caused by the intent or negligence and for Seller's liability in accordance with the German Product Liability Act.

Seller's liability shall be unrestricted for the breach of a fundamental contractual duty. Fundamental contractual duties are such basic duties which form the essence of the Agreement, which were decisive for the conclusion of the Agreement and on the performance of which Buyer may rely.

Seller shall be liable for losses arising from the lack of any warranted characteristics up to the amount which is covered by the purpose of the warranty and which was foreseeable for Seller at the time the warranty was given. In the case of unintentional breach of this Agreement Seller's liability is limited to foreseeable and typical damages.

The exclusion or limitation of Seller's liability also applies to the personal liability of Seller's employees, associates, workers, agents and auxiliary persons.

10. Partial Deliveries and Call Periods

Unless expressly stated otherwise, the Seller shall be entitled to make partial deliveries. The Buyer may not derive any rights from any delays relating to partial deliveries. If an acceptance period has been agreed, the Seller shall be entitled, but not obliged, to make deliveries after its expiration.

Individual partial deliveries shall be called and specified at such regular intervals, in such regular amounts and in a timely matter so as to ensure that production and delivery is possible within the contractually agreed period.

11. Force Majeure

If either party should, despite all reasonable efforts, be prevented or hindered, directly or indirectly, by circumstances beyond its control ("*Force Majeure*") from performing any of its obligations under the Agreement it shall be relieved from performance of said obligations – except for the obligation to make payments – but only during the period that the *Force Majeure* and its consequences continue and to the extent so prevented or hindered, and it shall not be liable for any delay or failure in the performance thereof or loss or damage which the other party may suffer as a consequence of such delay or failure, provided always that the affected party shall as soon as reasonably

possible give notice to the other party with details and the expected duration of the *Force Majeure* and its consequences.

Force Majeure includes fire, explosion, flood, earthquake, extreme adverse weather conditions, riot, war or threat of war, accident, act of God, embargo, legislation, regulation or directive having the force of law, shortage of or a breakdown in transportation facilities, civil commotion, act or threat of terrorism, unrest or disturbance, compliance with any order or instruction of any port, transportation, local or other authority, non-availability or shortage electricity, gas, fuel or raw materials, failure of Seller's supplier to supply, breakdown or malfunction of plant or any other cause beyond the control of the affected party, whether similar or dissimilar to the causes mentioned above.

The affected party shall use all reasonable endeavours to terminate the *Force Majeure* and its consequences and upon termination shall give notice thereof to the other party.

Notwithstanding any other obligations of this clause 14, Buyer shall accept delivery of and pay for any Material for which vessel space has been eventually booked prior to Seller being notified by Buyer of any *Force Majeure*.

If performance of any of the affected party's obligations are so relieved for a period of 180 days consecutive days or more, either party may by notice to the other party terminate the Agreement. Such termination shall not prejudice any rights of the parties arising prior to the date thereof.

Neither party shall be required to settle an industrial dispute under particular conditions or deal with an industrial dispute in a particular way.

12. Retention of Title

Seller reserves title to all Material delivered by the Seller until satisfaction in full of all claims due to the Seller under the business relationship as at the time of delivery or any future claims.

In the event that any Material being subject to retention of title are connected, mixed or processed with any other material, the Seller acquires a co-ownership in any material newly created or in any material arising as a result of a mixture in proportion to the value of Seller's Material being subject to retention of title as compared to the value of the other material as at the time of the connection, mixture or processing. The Seller shall not assert any claims in respect to the increase in value arising as a result of such connection, mixture or processing.

In the event of a sale of any Material partially or entirely owned by the Seller, the purchase price claim under the resale is hereby assigned to the Seller up to the amount of the share of the value of the Seller's Material in the aggregate purchase price. Seller hereby accepts such assignment. Any consideration received by the Buyer (material assets, cash or due from banks) shall be accepted as the Seller's property.

In the event that the value of the claims assigned to the Seller by way of security exceeds Seller's claims secured by way of retention of title towards the Buyer by more than 20 %, the Seller shall be obliged, upon the request of the Buyer, to release any additional security provided.

All assets (material, monies, etc.) entirely or partially owned by the Seller shall be separately stored by the Buyer and adequately insured against loss, theft and damage by fire, water etc. To the extent that a hand-over is required, such hand-over shall be substituted by the storage of the Material etc. on the Seller's behalf by the Buyer free of charge. The Buyer shall not be entitled to pledge the Seller's Material or transfer such Material by way of security. Any third-party seizure shall immediately be notified to the Seller by submitting the documents required in connection with such an intervention. The costs of the intervention shall be borne by the Buyer. The enforcement of any retention of title, including any claim for restitution, shall not be deemed a revoking of the Agreement.

13. Governing Law and Severability

The Agreement is made under and shall be governed and construed in accordance with the material laws of the Federal Republic of Germany. The UN Sales Convention (CISG) shall not apply.

Should any provision hereof be invalid, this shall not affect the validity of the remaining provisions. Any such invalid provision shall be deemed replaced by a provision which comes as close as possible to the economic intent of the invalid provision.

14. Confidentiality

Except as required by law, each Party shall keep the subject matter of this Agreement strictly confidential. Written approval by either Party has to be given before any information can be disclosed to any third party.

15. Third Party Rights

If deliveries are effected according to drawings or other information supplied by the Buyer and third party rights are thereby infringed, Buyer shall release Seller from all claims.

16. Annulment costs

If the Buyer cancels a placed order without justification, Seller is entitled to claim 10% of the selling price for costs arising from processing the order and for lost profit without submitting any evidence. This shall not prejudice the

Seller's right to claim higher provable damages. The Buyer shall retain the right to produce evidence proving lower damages.

17. Offsetting / withholding of payment

Buyer shall only be entitled to offset or to withhold payments against Seller's payment demands if the counterclaims have been explicitly acknowledged by the Seller in writing, are undisputed or have been recognised by judgment.

18. Excess or short delivery/Tolerances

Deviations in weight and item numbers due to production or delivery of up to 10% shall be allowed with regard to the total order quantity and every part delivery. The weight determined by the supply plant shall prevail. The supply plant shall reserve the right to make engineering changes and changes in shape, which result from improved technology or are due to legal requirements, during the entire delivery period provided that the delivery item is not changed substantially and that the changes are reasonable to the Buyer.

19. Notices

Any notice under the Agreement shall be in writing and be sent by registered mail, courier or fax to the address or fax number mentioned in the Agreement. Such notice shall be effective (a) if sent by registered mail or courier, upon delivery, evidenced by a delivery record and (b) if sent by fax, upon transmission, evidenced by a transmission record.

20. Dispute Resolution

Any dispute, controversy or claim arising out of or in connection with the Agreement, including the validity, breach, amendment or termination thereof, shall be settled, to the exclusion of the ordinary courts, by arbitration in accordance with the rules of London Court of International Arbitration in force on the date that the notice of arbitration is submitted in accordance with these rules. The number of arbitrators shall be three. The place of arbitration shall be London and the arbitral proceedings shall be conducted in English.