

# Terms and conditions of sale and delivery for DAN VALS A/S



## 1. Contractual basis

- 1.1. These terms and conditions of sale and delivery together with DAN VALS A/S' offer and order confirmation constitute the collected contractual basis for DAN VALS A/S' sale and delivery of goods to the customer. Changes and amendments shall only apply if the parties have agreed to this in writing.

## 2. Offers

- 2.1. DAN VALS A/S' offer remains valid for 30 days from the date of the offer, unless otherwise stated in the offer. If the accept of the offer reaches DAN VALS A/S after the expiry of the acceptance period, it shall not be binding for DAN VALS A/S, unless DAN VALS A/S informs the customer otherwise.
- 2.2. All prices shall be inclusive VAT, any other duties, packaging and freight, unless it is otherwise stated in the offer.
- 2.3. DAN VALS A/S reserves the right to add administrative charges in connection with orders below DKK 1000, unsuccessful delivery, special packaging, unjustified notice of a defect and the like.

## 3. Orders

- 3.1. All orders must be confirmed in writing by DAN VALS A/S before these constitutes a binding agreement. DAN VALS A/S' obligations shall only correspond to the contents of the order confirmation.
- 3.2. The order shall be delivered subject to price increase due to altered terms of trade, public charges, exchange rate, supply of raw materials and the like which are not controlled by DAN VALS A/S.
- 3.3. The customer may not make changes to an order that has already been placed, without written consent from DAN VALS A/S.
- 3.4. Cancellation of an order is not possible without consent and only against payment of DAN VALS A/S' loss, including development, production of tools, purchase of material and any loss of profits.

## 4. Payment and security

- 4.1. The customer shall pay all invoices for deliveries net 30 days from delivery, unless otherwise agreed in writing. The amount may not be offset if the counterclaim is disputed. Any notification of defects does not entitle the customer to withhold payment for deliveries.
- 4.2. If the customer, due to reasons for which DAN VALS A/S is not responsible, do not pay in due time, DAN VALS A/S shall be entitled to choose to cancel the purchase, or calculate interest of 1 % per month of the amount due from the due date until payment.
- 4.3. Regardless of whether this appears from the offer or not, DAN VALS A/S shall be entitled to demand that payment obligation is secured by a bank guarantee from an acknowledged bank or by an irrevocable and confirmed letter of credit.

## 5. Title

- 5.1. DAN VALS A/S shall keep the title of the goods, until DAN VALS A/S has received payment in full, including any interest and other charges.

## 6. Place of delivery

- 6.1. All deliveries are "EX WORKS" (INCOTERMS 2010) DAN VALS A/S business premises, unless otherwise agreed. The risk in the goods passes to the customer upon delivery. In cases where the customer is obliged to collect the

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goods from the seller's business premises, the risk passes when the goods are ready for collection and the customer has been so advised.

- 6.2. Should the parties have agreed a place for delivery other than end DAN VALS A/S' business premises, transport from the seller's business premises, including loading the goods onto the truck or ship etc. (as the case may be), is at the customer's risk and expense, unless otherwise expressly agreed and confirmed in writing by DAN VALS A/S.

## 7. Time of delivery

- 7.1. Time of delivery shall be indicated as an estimate and is non-binding, unless otherwise expressly agreed and confirmed in writing by DAN VALS A/S.
- 7.2. When the latest date for delivery has been set, DAN VALS A/S may deliver before the agreed latest day. Timely delivery presupposes that DAN VALS A/S has received all relevant information and material from the customer reasonable time in advance.
- 7.3. When the time of delivery is indicated by number of days, the time of delivery shall be calculated from the date of the written order confirmation provided that all technical details and formalities for the completion of the order is in place at this time. If it has been agreed that the customer must open a letter of credit or make payment in advance, such letter of credit or payment in advance must also be received by DAN VALS A/S. If not, the time of delivery shall be calculated from the date when all matters have been put in order by the customer.
- 7.4. If DAN VALS A/S does not deliver at the agreed time, the customer shall be entitled to fix a reasonable deadline for delivery in writing. If the customer intends to cancel the sale should this delivery time not be met, the customer should expressly state this. If the delivery then is not made within this deadline the customer may cancel the sale in so far as the delayed part of the delivery.
- 7.5. If a delay of orders with a confirmed delivery date is due to DAN VALS A/S' circumstances, the customer is entitled to be compensated with an amount corresponding to 0.5% of the agreed purchase price. However such compensation cannot exceed 5% in total. Payment of compensation will not be made for the first four week's delay. The customer may not assert further compensation rights against DAN VALS A/S, regardless of the loss suffered.
- 7.6. If the customer fails to collect or take delivery of the goods at the agreed time, the customer is obligated to pay any amount conditional upon delivery as if delivery had taken place. Furthermore, DAN VALS A/S is entitled to cancel the agreement and demand compensation from the buyer for the financial loss suffered by DAN VALS A/S due to the customer's breach of contract.
- 7.7. If the customer does not comply with the agreed stipulations concerning payment of the purchase price, DAN VALS A/S is not obligated to make the delivery.

## 8. Packaging

- 8.1. Unless otherwise agreed with the customer, the goods will be packed according DAN VALS A/S' judgement and the costs paid by the customer, if the packaging is not expressly included in the price.
- 8.2. The packaging will only be taken back if there is an agreement in writing and credit of 80% of the packaging price will be given, provided that the packaging is fit for reuse and delivered carriage paid to DAN VALS A/S' business premises.

## 9. Duty of inspection and notice of defects

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- 90.1. The customer must inspect the goods thoroughly, immediately upon delivery. If the goods do not conform to the contract or have defects, the customer must immediately, and no later than 10 work days after taking delivery, notify DAN VALS A/S of the defects in writing.
- 9.2. If the customer becomes aware of defects at a later time, which could not have been detected at the time of delivery despite thorough inspection ('latent defects'), the customer must immediately upon detection notify DAN VALS A/S.
- 9.3. Notifications of defects made more than one year from the time of delivery will, in any circumstances, be regarded as not in due time.
- 9.4. Should the customer fail to provide notice of the defect in accordance with the above, the customer will be precluded from asserting any claims regarding defects against DAN VALS A/S.
- 9.5. Should the customer's notification of defects prove to be groundless, and if DAN VALS A/S has incurred costs in this connection, DAN VALS A/S is entitled to invoice the customer for the work, deliveries and other expenses.

## 10. Liability

- 10.1. Should a notification of defects be timely and justified, and if the delivery is defective or flawed, DAN VALS A/S is entitled to choose to remedy or deliver goods in replacement or provide the customer with a proportional reduction of the purchase price.
- 10.2. Should DAN VALS A/S not within reasonable time remedy, make replacement delivery or provide a proportional reduction of the purchase price, the customer is entitled to set a reasonable deadline for the remedial measure. Only if DAN VALS A/S do not remedy, make replacement delivery or provide a proportional reduction of the purchase price before this deadline, will the customer be entitled to allow a third party to remedy or cancel the purchase of the defected part of the delivery.
- 10.3. Should the customer choose to cancel the purchase, pursuant to clauses 10.1 and 10.2, DAN VALS A/S shall pay back the purchase price and the customer's claim for damages, e.g. for replacement purchase, is then maximized to 10 % of the invoice value of the part of the delivery that is defect.
- 10.4. Should the customer choose to allow a third party to remedy, pursuant to clauses 10.1 and 10.2, the customer may claim damages connected hereto, however not exceeding 10 % of the invoice value of the part of the delivery that is defect.
- 10.5. The customer is obligated to return the defected goods to DAN VALS A/S, if so requested.

## 11. Liability related to manufacturing by DAN VALS A/S on goods belonging to the customer

- 11.1. To the extent DAN VALS A/S manufactures anything on the goods of the customer the following applies to the DAN VALS A/S' liability for defects related to the manufacturing:
- 11.2. Should a notification of defects be timely and justified, and if the delivery is defective or flawed, DAN VALS A/S is entitled to choose to remedy or deliver goods in replacement or provide the customer with a proportional reduction of the purchase price. If the customer has supplied the material to be processed by DAN VALS A/S, the customer is obliged to supply the new material free of charge, if DAN VALS A/S chooses to remedy the defect. In case of gross negligence on the part of DAN VALS A/S, DAN VALS A/S will compensate the customer the documented purchase costs related to the defect materials. Section 10.2 – 10.4. also cover goods belonging to the customer manufactured by DAN VALS A/S.
- 11.3. Section 11.2. is caused by the low prices on manufacturing compared to the price of the goods supplied by the customer. If the customer wishes to have a higher compensation in case of defects, this has to be agreed separately with DAN VALS A/S – and then against payment of a higher purchase price.

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## 12. Circumstances due to the products' special character

- 12.1. In connection with executing the order, DAN VALS A/S reserves the right to make changes, which are deemed necessary in respect of the production.
- 12.2. Should the customer provide materials, waste should be expected in connection with running-in and calibrating the machines.
- 12.3. The customer acknowledges and accepts that for the bending process the rise of curve is used as a linear unit of measurement and that bending margins are measured in proportion to this.
- 12.4. The customer acknowledges and accepts that bending margins, to some extent, is affected by the quality and initial stability of the material and that bending profiles/subjects may be distorted after being bend, for instance in connection with transport or other handling.
- 12.5. The customer acknowledges and accepts that after bending the profile may be distorted by up to 10 %. DAN VALS A/S' bending margins will always apply unless otherwise agreed in writing. **General bending margins, for example ISO 2768-1, specified on the customer's drawing will not be complied with.** Any other requirements / bending margins the customer may have, must be agreed with DAN VALS A/S in writing, or they will not apply.
- 12.6. The customer acknowledges and accepts that DAN VALS A/S does not assume responsibility for any deviations from the bending margin which are due to the quality and stability of the material. Costs for remedial work in this connection lies with the customer.
- 12.7. The customer also acknowledges and accepts that DAN VALS A/S shall not be liable for changes, including deviations from bending margins, that may occur due to the customer's subsequent refinement, handling or processing of the goods delivered, including for example galvanization, painting, cutting, welding etc. Any measurements and control of bending margins must be performed prior to processing or treatment of any kind.
- 12.8. DAN VALS A/S assumes no responsibility for whether the goods may be certified according the standards the customer may wish, e.g. EN 1090. This responsibility lies with the customer.
- 12.9. Unless it has been otherwise expressly confirmed by DAN VALS A/S, the bending margins listed in schedule of appendix 1, shall apply to all orders.

## 13. Liability for damages caused by the goods (product liability)

- 13.1. In the relationship between DAN VALS A/S and the customer, DAN VALS A/S disclaims any liability for property damage which may be tied to DAN VALS A/S' goods.
- 13.2. DAN VALS A/S' liability is further limited as stipulated in the general limitation of liability below.

## 14. General limitation of liability

- 14.1. DAN VALS A/S shall not be liable for indirect loss, including operation loss, sales, loss of profit, time, goodwill and other financial ramifications.
- 14.2. DAN VALS A/S shall not be liable for damage caused by the material to:
  - a) Real estate or chattels personal that occur while the material is in the possession of the customer.
  - b) Products that have been produced by the customer or products in which these are parts or for damage to real estate or chattels personal caused by the goods due to the material.

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- 14.3. DAN VALS A/S shall not be liable for flaws and defects due to incorrect installation, handling or the like performed by the customer.
- 14.4. If the customer has improved or transformed the goods or incorporated this in other materials or constructions, rendering it impossible for DAN VALS A/S to remedy or replace, DAN VALS A/S' liability for any flaws and defects shall cease to apply.
- 14.5. Likewise, DAN VALS A/S shall not be liable for defects caused by the material which has been provided by the customer or for constructions that have been stipulated or specified by the customer.
- 14.6. The Customer shall indemnify DAN VALS A/S any loss to the extent that DAN VALS A/S is held liable for such damages and such loss, for which DAN VALS A/S are not liable to the customer pursuant to these terms and conditions of sale and delivery, and shall cover any reasonable costs DAN VALS A/S may have for defence in this respect.

## 15. Force Majeure

- 15.1. The following circumstances entail that DAN VALS A/S is exempt from liability if these prevent DAN VALS A/S from fulfilling their contractual obligations or makes the fulfilment unreasonable burdensome for DAN VALS A/S: War, riots and disturbances, strike, lockout, fire, seizure, currency restrictions, defects or delays of sub-supply, of which DAN VALS A/S has no control, lack of means of transport, restrictions of driving force etc.
- 15.2. Should Force Majeure set in on the part of the customer, the customer shall cover DAN VALS A/S' costs for securing and protecting the goods while the Force Majeure exists.
- 15.3. Should the completion of the agreement be prevented for a period of more than 6 months due to Force Majeure, the parties may cancel the part of delivery that has not been completed without compensation.

## 16. Intellectual property rights and confidentiality

- 16.1. All DAN VALS A/S' intellectual property rights related to the goods, or any material delivered in connection with the goods, shall remain with DAN VALS A/S.
- 16.2. All rights and title to drawings, models and other technical documents concerning the goods provided by DAN VALS A/S to the customer, regardless of whether they were provided before or after entering into the contract, remain the property of the DAN VALS A/S. Except as otherwise expressly agreed by DAN VALS A/S, such material may only be used for the proper use or resale of the goods.
- 16.3. The customer may not, without the DAN VALS A/S' prior written consent, disclose information of a commercial or technical nature to any third party, which information is, by its nature, confidential, or which the DAN VALS A/S, at the time of entering into the contract or subsequently, stated was confidential.
- 16.4. Even where a purchase agreement is not entered, DAN VALS A/S maintains the right to drafted offers, including drawings and proposals etc. Such information and documents may not be copied or made available to a third party without prior consent from DAN VALS A/S. The customer may not to a third party convey or hand over an offer made by DAN VALS A/S together with related drawings.

## 17. Special tools

- 17.1. Special tools, produced in connection with the production of the customer's order, shall remain the property of DAN VALS A/S unless otherwise agreed. The special tools shall be kept up to a year after the last order has been placed. When the special tools are then destroyed, the customer must pay any costs for the production of new special tools.

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## **18. NL 92**

18.1. To the extent it has not been otherwise agreed in these terms and conditions of sale and delivery, the parties agree that standard terms of NL92 apply. If there are discrepancies between NL92 and these terms and conditions of sale and delivery, these terms and conditions of sale and delivery shall take priority.

## **19. Choice of Law and Venue**

19.1. Any dispute between the parties arising from the purchase and conditions connected hereto shall be settled according to Danish law and in consideration of the jurisdiction of said law. The International Sale of Goods Act No 733 dated 7 December 1988 and the United Nations Convention of 11 April 1980 on contracts for the international sale of goods (CISG) shall not apply.

19.2. Any disputes shall be exclusively governed by the Danish Court with jurisdiction of the Court in Kolding.

## **20. Annex**

20.1. Bending margins schedule.

These terms and conditions of sale and delivery applies from 1 April 2019