

General Conditions of Purchase of the Dücker conveyor systems („DÜCKER“)
Update 18 April 2012

1. General

1.1 **DÜCKER's** Conditions of Purchase shall exclusively apply to all deliveries and services provided by the Supplier. They apply to business transactions with business entities, legal public entities and trusts governed by public law. Any conditions of the Supplier which are contrary to or different from **DÜCKER's** Conditions of Purchase shall not be valid unless they have been expressly acknowledged by **DÜCKER** in writing. This shall also apply when **DÜCKER** is aware of the Supplier's conditions which are contrary to or different from **DÜCKER's** Conditions of Purchase and accepts the delivery of the Supplier without any reservations. In accepting **DÜCKER's** order, the Supplier accepts **DÜCKER's** Conditions of Purchase.

1.2 **DÜCKER's** Conditions of Purchase shall also apply, without the need for express agreement, to all future business dealings with the Supplier.

1.3 To the extent that these Terms and Conditions provide for the written form, this requirement shall be satisfied by transmission using fax or electronic means.

2. Orders

2.1 The extent of the Supplier's service obligations shall be determined by **DÜCKER's** order. The order contains a full description of the goods to be delivered together with the price and binding delivery date.

2.2 **DÜCKER's** written purchase order shall remain valid for 7 (seven) working days from the date

of the order. Any confirmations of orders that **DÜCKER** receives after the expiry of this limit will constitute a new offer requiring the written acceptance of **DÜCKER**. Confirmations of orders by the Supplier must be given in writing.

3. Pricing, Transport and Conditions of Payment

3.1 The prices specified in **DÜCKER's** order shall be binding. The prices are net prices without statutory value added tax. In the absence of written agreement to the contrary, the price shall include all transport or delivery costs as well as packaging. Any other costs or charges arising shall be borne by the Supplier. Transport and shipping respectively shall be at the risk of the Supplier.

3.2 Regarding the take-back obligation of the Supplier for the packaging the statutory provisions apply. The Supplier shall collect and dispose of any transport - and outer packaging as well as any other packaging free of charge for **DÜCKER**.

3.3 Unless otherwise agreed in writing, payment of the purchase price, if made by **DÜCKER** within 14 days calculated from the date of delivery and receipt of the invoice, shall be at a discount of 2 %, and if made within 30 days of receipt of the invoice, shall be at the stated net price.

3.4 The Supplier is obliged to state on all documents (in particular invoices, delivery notes etc.) **DÜCKER's** reference number. If it is agreed in individual cases that **DÜCKER** shall bear the transport costs, the originals and copies of the bills of lading with full details of the route, truck number etc. and the transport invoices must be

attached to the invoices; in cases of a collective delivery, the invoices must state the weight and partial amount of the delivered goods. To the extent that this is not done, **DÜCKER** shall not be responsible for the resulting delay in payment.

3.5 The INCOTERMS shall apply in the version effective at the time of conclusion of the contract.

3.6 The Supplier is not entitled to assign claims against **DÜCKER** to any third parties unless **DÜCKER** expressly agrees in writing.

3.7 **DÜCKER** shall retain any statutory rights of set-off or rights of retention.

4. Delivery Time, Delayed Delivery, Force Majeure

4.1 The dates or terms of delivery stated in the purchase order shall be binding. Any specified terms of delivery commence from the date of the purchase order. Should the Supplier discover that he is not in a position to comply with the delivery date, **DÜCKER** must be immediately notified in writing; without prejudice to any claims of **DÜCKER** resulting from such delay.

4.2 In the event of a delay on the part of the Supplier, **DÜCKER** is entitled to demand compensation for the damages suffered. Any further statutory claims of **DÜCKER** shall remain unaffected.

4.3 In the event of a force majeure such as war, transportation or operational disruption, industrial action, unforeseeable currency or exchange rate hindrances or other obstruction which is beyond **DÜCKER's** control, **DÜCKER** is entitled to withdraw from the contract in whole or in part or require performance

of the contract at a later date without any claims for damages arising on the part of the Supplier. The notification that such a force majeure has occurred must be made in writing by **DÜCKER** within a reasonable time of the related occurrence becoming known **DÜCKER**.

5. Inspection for Defects

5.1 By prior appointment **DÜCKER** is entitled at any time between confirmation of the contract and the delivery date to already inspect the goods at Supplier's during the normal business and operation hours for any defects. This shall not curtail **DÜCKER's** rights to claim under the warranties.

5.2 Following receipt of the goods, **DÜCKER** is obliged within a reasonable time period for the concrete expenditure of time for the examination to examine the goods for any possible deviations as to quality and quantity. Notification of defects shall be deemed to be given in good time if submitted immediately after the discovery of the defect.

5.3 **DÜCKER** is entitled to examine the goods for deviations of quality or quantity by reliable random samples, provided this corresponds with circumstances in the regular course of business as well as the type and volume of the delivery. If the result of the random checks reveals a defect in terms of quality or quantity, **DÜCKER** is entitled to enforce its warranty for defects in relation to the entire delivery.

6. Quality Assurance

The goods supplied must correspond with the respective statutory provisions, regulations and directives of public authorities, government safety organisations and trade associations, and with the latest technology as well as the specifications and quality requirements set out in the purchase order. The Supplier is obliged to advise **DÜCKER**

in writing of possible limitations on use and declaration duties for the supplied goods.

7. Warranty

7.1 The Supplier guarantees that the goods are free from defects in material and title. Statutory warranty claims shall be fully available to **DÜCKER** at all times.

7.2 In the event of a breach of warranty, the Supplier is obliged to bear all necessary costs to remove the defect in question or to replace the defective goods. This shall also apply if such costs increase because **DÜCKER** has instructed that the subject of the delivery must be subsequently moved to a location other than **DÜCKER's** place of business.

7.3 **DÜCKER** has an absolute unqualified right to claim compensation for damages including those arising from breaches of collateral duties.

7.4 Claims in relation to defects are subject to a three year limitation period calculated from the date of delivery of the goods to **DÜCKER**, unless a further reaching statutory or separately agreed provision provides for a longer limitation period.

8. Liability

8.1 Upon **DÜCKER's** demand, the Supplier holds **DÜCKER** free in respect of all third party claims that are raised against **DÜCKER** by reason of a breach of an obligation on the part of the Supplier, provided that and to the extent that the Supplier is obliged to compensate

8.2 If **DÜCKER** is held liable for a producer and/or product liability claim due to a fault in an item delivered by the Supplier, the Supplier must hold **DÜCKER** free upon **DÜCKER's** demand for the liability resulting from the fault insofar as

the cause of the fault originates from the Supplier's sphere of control and organization and the Supplier is liable in relation to third parties. The Supplier is obliged to maintain sufficient product liability insurance. **DÜCKER's** further claims for damages shall remain unaffected.

8.3 In the context of liability for damages under **clause 8.2** above, the Supplier is also obliged to reimburse any charges arising out of or in connection with **DÜCKER's** recall of the goods. **DÜCKER** shall, in so far as it is possible and reasonable, inform and provide the Supplier with the opportunity to comment on the content and extent of the recall measures to be implemented. Other statutory claims of **DÜCKER** shall remain unaffected.

9. Retention of Title

9.1 **DÜCKER** reserves the title to all items of **DÜCKER**, which are in the possession of the Supplier. Any processing or conversion shall be carried out for **DÜCKER**. If **DÜCKER's** goods are processed or mixed with items not belonging to **DÜCKER**, **DÜCKER** shall acquire co-ownership of the new item in proportion of the fair market value of the item to the other processed or mixed items at the time of the processing or mixing.

9.2 Any extended and enlarged reservations of title on the part of the Supplier - particularly any reservation of title in relation to delivered goods pending full payment of all claims deriving from the business relationship - shall be excluded. In particular, there shall be no processing within the meaning of § 950 of the German Civil Code on behalf of the Supplier.

10. Works and Services

These General Conditions of Purchase shall also apply to the purchase of works and services (in

particular construction works and ancillary construction works) by **DÜCKER**, with the following proviso:

- 10.1 To the extent that as a result of statute, public authorities or applicable provisions of the VDE (German Electrical Engineering Association), DIN or similar provisions, particular qualifications are required of workers, the Supplier or contractor, respectively, shall ensure that its workers have such qualifications. The contractor shall comply with the accident prevention regulations (BGV A1) of the German Accident Prevention and Insurance Association. For works carried out in **DÜCKER** operating plants, or on behalf of **DÜCKER** in other operating plants, the contractor must furthermore observe the safety regulations of the respective operating plant.
- 10.2 The contractor must submit with the invoice the statements of materials and hours worked signed by **DÜCKER**. The signature shall simply certify the number of working hours and use of material respectively and shall not be deemed to be a final acknowledgement.

11. Confidentiality

The Supplier shall regard the full content of **DÜCKER's** order(s), in particular also the data contained in the specifications, as well as all other documentation provided to the Supplier by **DÜCKER**, as trade secrets and shall treat them as confidential.

Where a sub-contractor is appointed he shall be subject to a corresponding obligation of confidentiality.

12. Place of Performance, Jurisdiction, Applicable Law

- 12.1 The relationship between **DÜCKER** and the Supplier shall be governed by German Law, if

applicable under inclusion of the UN Vienna Convention on Contracts for the International Sale of Goods (CISG).

- 12.2 The place of performance for all obligations arising under the contractual relationship is the registered office of the respective **DÜCKER** company. The place of jurisdiction for any disputes arising directly or indirectly out of this contract is **Düsseldorf**, Germany. **DÜCKER** is entitled however to bring an action against the Supplier in the jurisdiction of his own place of business.
- 12.3 All agreements are to be made in writing (see **clause 1.3**). Any amendments or additions to these General Terms and Conditions – including this written form requirement - shall be made in writing to the extent that there is no stricter form required by statute for the validity of the provisions. The same shall apply to side letters and supplementary agreements
- 12.4 Should any provision of these conditions of purchase or any provision in the context of other agreements be invalid or become invalid, the validity of the other provisions or agreements shall remain unaffected.