

# DYMAK A/S

## TERMS AND CONDITIONS OF SALE AND DELIVERY

### 1. **Applicability**

- 1.1. Unless otherwise expressly agreed in writing between Dymak A/S (“Seller”) and Buyer (Collectively, the “Parties”) these Terms and Conditions of Sale and Delivery (The “Terms”) shall apply.
- 1.2. Specifically, unless otherwise expressly agreed in writing, Buyer’s terms of sale and delivery and/or other other provisions that might apply to Buyer’s transactions do not apply to the sales transaction between the Parties.
- 1.3. The sales agreement entered into between Seller and Buyer is referred to as the “Transaction”.
- 1.4. The goods and/or services provided by Seller as part of the Transaction are referred at as the “Goods”.
- 1.5. Provided Seller by written consent accepts that Buyer’s conditions on purchases shall apply to the Transaction the provisions found in the order confirmation and in these Terms shall have priority in case of discrepancies.

### 2. **Offer and Order Confirmation**

- 2.1. Seller’ offer remains valid for twenty (20) calendar days after dispatch to Buyer.
- 2.2. Seller’ obligation to deliver pertains only to the Goods listed in the order confirmation.

### **3. Prices and Payment**

- 3.1. Unless otherwise expressly agreed in writing sales prices are Seller' current sales prices in USD all prices quoted are exclusive i sales tax, transportation cost and the like. Prices quoted in Seller' price lists are not binding and may be changed at any time without prior notice. Seller may increase the prices in regard to Goods that have been ordered and confirmed, but yet not delivered, provided such price increases are caused by increased prices from Seller' sub-contractors and/or suppliers.
- 3.2. Payment terms are strictly net cash on delivery. In the event of late payment Seller may with immediate effect terminate the Transaction or demand default interest at a rate of two per cent (2.0 %) per month.

### **4. Seller's Performance**

- 4.1. Seller's obligation to deliver pertains only to the Goods specified in the order confirmation. Seller undertakes to deliver Goods of marketable quality in regard to material and workmanship.

### **5. Time and Place of Delivery of the Goods**

- 5.1. Unless otherwise expressly agreed in writing all stated delivery times are approximate and non-binding.
- 5.2. All deliveries are "EX WORKS" INCOTERMS 2010. The risk for the Goods passes to Buyer no later than upon delivery. In situation where Buyer shall pick up the Goods at Seller' premises the risk for the Goods passes to Buyer when the Goods are ready for pick-up.
- 5.3. If it is agreed that the place of delivery is different from Seller's place of business, costs to cover transportation and loading shall be borne by Buyer. Also, the risk for the Goods passes to Buyer upon loading. The aforementioned shall apply unless other terms are expressly agreed in writing.
- 5.4. If Buyer fails to collect or take delivery of the Goods at the agreed upon time Seller may without notice and at its' sole discretion either declare the Transaction avoided or have the Goods stored at Buyer's risk and for Buyer's cost.

### **6. Delay**

- 6.1. In case of delay in delivery Buyer shall give notice thereof to Seller as soon as Buyer discovers the delay. Simultaneously Buyer shall grant Seller a reasonable additional time for delivery, such addi-

tional time not to be less than fourteen (14) calendar days. Non-compliance with the notice requirement has as a consequence that Buyer loses all remedies against Seller.

- 6.2. Provided Seller fails to deliver within the additional time granted according to Article 6.1, above, Buyer may declare the Transaction avoided by giving written notice to Seller. In case the delay is in regard to part of an order Buyer's right to declare Transaction avoided pertains only to the late delivered Goods.
- 6.3. If Buyer exercises its' right to declare the Transaction avoided pursuant to Article 6.2, above, Buyer may claim documented damages from Seller. The damages can in no vent exceed the smaller of Buyer's expenses caused by acquiring similar Goods from a third party or the purchase price from Seller, plus ten per cent (10 %).
- 6.4. Buyer shall in no event be entitled to damages or any other type of compensation caused by delay with delivery than what follows from Article 6.3, above.

## 7. **Buyer's Duty to Inspect and to give Notice of Defects.**

- 7.1. Immediately upon delivery Buyer must inspect the Goods to ensure that the Goods are conforming and free from defects.
- 7.2. Buyer must immediately give written notice to Seller of claims in regard to defects - including deviation from the agreed upon quantities - discovered by Buyer or should have been discovered at the inspection performed according to Article 7.1, above. Such notice must be given no later than eight (8) calendar days after delivery of the Goods according to Article 5, above. Notice of latent defects - meaning defects that could not reasonably be discovered upon delivery - must be given as soon as the defect is discovered or should have been discovered and in no event later than twelve (12) months after delivery of the Goods.
- 7.3. Buyer's failure to give notice in accordance with Article 7.2, above, precludes Buyer to claim damages or any other compensation for losses caused by the defects.

## 8. **Defects**

- 8.1. Upon Buyer's timely notice in accordance with Article 7.2, above, Seller may at its' sole discretion repair the Goods, replace the Goods or provide Buyer with a proportional reduction in the sales price. Pertaining only to situations where Seller has not within a reasonable time repaired the Goods, replaced the Goods or provided Buyer with a proportional reduction in the sales price, Buyer may either have the defect cured by a third party or declare the Transaction avoided.
- 8.2. Buyer may claim damages for defective Goods from Seller only if Buyer has engaged a third party to repair the Goods or if Buyer declares the Transaction avoided in accordance with Article 8.1, above. Damages shall be limited to additional costs incurred by having the Goods repaired, or additional costs incurred by obtaining equivalent Goods from a third party. However, the damage

amount payable shall in no event exceed the contract price for the defective Goods, plus ten per cent (10 %).

- 8.3. Buyer shall have no right to damages or any other compensation caused by defective Goods in addition to the rights stipulated in Article 8.2, above.
- 8.4. Provided Buyer has engaged a third party to repair the defective Goods without being entitled thereto according to Article 8.1, above, Buyer shall not be entitled to receive any compensation from Seller for its' costs incurred.

## 9. **Limitation of Liability**

- 9.1. Seller shall be liable for defective Goods only Buyer has used the Goods as prescribed in an orderly and sound manner, and in accordance Seller's instructions, if any. Seller's liability is in any event limited to damages caused by defects in the Goods purchased from Seller, and does thus not extend to damages caused by third party products used in connection with the Goods purchased from Seller. Further, Seller shall not be liable for damages caused by Goods that have been altered without Seller's prior written consent.
- 9.2. Seller shall in no event be liable for operation loss, loss of time or profits, or any other indirect or consequential loss caused Buyer, Buyer's customer or any other user of the Goods. Buyer shall in no event be entitled to any type of punitive damages. Buyer is not entitled to compensation for costs caused by de-mounting and/or re-mounting of objects or installations in which the Goods may have been installed.
- 9.3. Provided Seller is held liable for third party losses caused by the Goods, Buyer shall hold Seller harmless for liability claims in excess of the contract price for the Goods, plus ten per cent (10 %).

## 10. **No Liability for Damage to Commercial Property**

- 10.1. As between Seller and Buyer, Seller excludes any liability for damage to commercial property that may be caused by the Goods. If Seller is met with claims for damages to commercial property from Buyer's customers, those customers' customers, or end-users of the Goods, Buyer is obliged to indemnify Seller for any such claim, and to cover Seller's reasonable costs, including attorney fees in defending any such claim. Thus, the provision found in Article 9.3, above, shall not apply.

## 11. **Natural Products**

- 11.1. When purchasing natural products, including wicker work, willow and bast, Buyer shall be aware that the Goods containing such products easily decay if they are kept in moist surroundings. Thus, in connection with Buyer's inspection (Article 7, above) Buyer should pay special attention to possible signs of decay.

11.2. Provided Buyer fails to give written notice of decay within three (3) months after delivery of the Goods in question Buyer is in all aspect precluded from asserting damage claims against Seller. The preclusion includes damages claims of any nature - including, but not limited to, warranty claims - caused by the decay.

12. **Software**

12.1. When purchasing Goods that includes software Buyer is granted a non-exclusive, non-transferrable license to use the software. Title to the software remains with Seller. Buyer may not provide copies of the software to any third party.

13. **Intellectual Property Rights and Confidentiality**

13.1. All of Seller's intellectual property right pertaining to the Goods and material delivered in connection with the Goods, remain with Seller.

13.2. All rights and title to drawings, models and other technical documents pertaining to the Goods shall remain with Seller regardless of whether such items were delivered to Buyer prior to or after the Transaction was concluded. Items of the nature just described may be used solely in conjunction with the use of and/or resale of the Goods.

13.3. Without having obtained Seller's prior written consent Buyer may not disclose to any third party any commercial or technical information that is confidential by nature or at any time determined by Seller to be kept confidential

14. **Force Majeure**

14.1. "Force majeure" include situations where performance of a Party's obligations under the Transaction has become significantly more burdensome or difficult as a result of, among other things, events such as war, civil war, riots, acts of terrorism, government restrictions, bans on import or export, natural disasters of any kind, widespread or local labor disputes, fire, power failure, and computer viruses.

14.2. Unless the other Party can show that the non-performing Party foresaw or should have foreseen the force majeure conditions at the time where the Transaction was concluded the Party affected by that situation is released from its' obligations during the duration of the force majeure situation

15. **Choice of Law and Venue**

15.1. The formation, execution, validity, interpretation, performance, amendments, termination, and settlements under this Agreement, shall all be governed and construed in accordance with the laws of the state of Florida and applicable United States federal law, except that the federal and

state of Florida choice of law rules shall not apply. Further, the Parties specifically exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.

- 15.2. If a dispute of any kind whatsoever arises between the Parties in connection with this Agreement, the Parties shall attempt to settle such dispute amicably.
- 15.3. Provided the Parties are not able to agree upon an amicable settlement within sixty (60) calendar days after initiation of settlement discussions any controversy or claim arising out of or in relation to this Agreement (whether contractually or in tort), and including disputes regarding the validity of this Article, shall be settled by the American Arbitration Institute (“AAA”) according to that Institution's procedural rules for international matters. Taking of evidence in the form of pre-trial discovery shall be limited to the fullest extent permitted by AAA’s procedural rules. The place of Arbitration shall be in Orlando, Florida. Provided the dispute in question amounts to \$100,000.00 or less, the Arbitration Panel shall consist of one (1) arbitrator. Provided the dispute in question exceeds \$100,000.00 the Arbitration Panel shall consist of three (3) arbitrators.
- 15.4. The result of the Arbitration shall be final and binding upon the Parties, and the Arbitrator(s) shall in their discretion have the power to award reasonable costs and attorney’s fees to the prevailing Party.
- 15.5. Despite the arbitration procedure agreed upon in this Article 15 the Parties shall not be precluded from carrying out interim measures via the appropriate judicial authority.