

DuParta Terms of Sale & Delivery

§ 1 General - Scope

- (1) Our deliveries, performances and offers are executed exclusively under these Terms of Sale. The same hence apply also to all future business relations, even when not expressly agreed on again. These Terms are considered as accepted at the latest with taking delivery of the goods or performance. Counter-acknowledgments by the Customer with reference to his terms and conditions of business or of purchase are hereby objected.
- (2) These conditions are part of all Agreements and are applicable to all herewith related actions of DuParta and its Buyers/Orderers.

§ 2 Offers, Offer Documents, Revocation

- (1) Our offers are not binding, unless otherwise agreed.
- (2) Orders, also when made by telephone, telefax or internet, may not be revoked unilaterally by the Orderer. This requires our consent. Such a case incurs a handling fee the amount of which depends on the respective valid price list.
- (3) To graphs, drawings, calculations and other documents of DuParta® and/or suppliers of DuParta® reserve themselves the proprietorship and copyrights. To any passing to third parties the Orderer requires our express written consent.
- (4) Drawings, graphs, measures, weight indications or other performance data are only binding if this is expressly agreed on in writing.

§ 3 Prices - Terms of Payment

- (1) All prices are indicated in € (Euro), ex VAT. All price indications within the scope of the price list, the catalogue, or our website are without guaranty. Prices are subject to alteration; price changes will be reported one month in advance.
- (2) As far as the confirmation of order/invoice does not show otherwise, the purchase price becomes due for payment net before the order will be sent to Orderer. Payments must be came out in Euro (€) by bank transfer according to the payment instructions as mentioned in invoices from DuParta.
- (3) As for the rest, at delay in payment by the Orderer, current orders will be held back and new orders will be postponed until payments have been settled. Any delay in delivery to Orderer or customers from Orderer and any consequential damage as a result of delayed payments are totally accountable to the Orderer.

§ 4 Delivery Time - Passing of Risk

- (1) A by DuParta or by one of its suppliers declared delivery time is based on the circumstances and the information which are at present at the moment that the order is being created by Orderer. Indicated delivery times are not binding or guaranteed as far as an express delivery term guaranty does not result from a written confirmation. Transactions for delivery by a fixed date are not made. In case of a delay in delivery the Orderer is obliged to grant us in the first place an additional period of time of reasonable length for delivery. Before the expiration of the additional period of time any claims by the Orderer for delayed delivery are excluded.
- (2) If DuParta or its suppliers need (extra) information or material from Orderer which is needed to carry out the order(-s) as being created by Orderer, then the delivery time will be extended with the time that Orderer needs to provide all this information and/or material.
- (3) The risk for damage or loss of goods passes to the Orderer from the moment that the delivered goods arrive at the postal address as agreed upon between DuParta and Orderer.
- (4) All ordered goods remain property of DuParta until Orderer paid the invoices concerning these goods. All rights and obligations related to the goods are transferred to Orderer once payments are settled and goods are delivered properly at the postal address as agreed upon between Orderer and DuParta.
- (5) We are liable for a delay in delivery according to the legal provisions as far as the same constitutes a breach of contract caused intentionally or by gross negligence on our side. Insofar as there is no breach of contract by intention or gross negligence, any liability for damages is excluded. As for the rest, we are liable according to the legal provisions as far as we culpably committed breach of an essential contractual obligation; in such case the liability for damages is yet limited to the foreseeable, typically incurring damage. As for the rest, we are in case of delay in delivery liable to maximally 15% of the delivery value.
- (6) Delays in delivery and of performance due to force majeure and due to events that substantially impede or make impossible delivery on our side - to which belong especially strike, lockouts, official directives, etc., also when they occur with our suppliers or their sub-contractors -, are not within our responsibility even in case of bindingly fixed terms and dates. They entitle us to postpone the delivery respectively the performance for the period of the impediment plus a reasonable starting period or to repudiate the contract in whole or in part concerning its not yet executed part. Should the impediment last longer than three months the Orderer, upon having granted a reasonable extension, is entitled to withdraw from the contract concerning its not yet executed part. From a prolonged delivery time or a release from our obligation the Orderer may not derive any claims for damages. We can only invoke the described circumstances when we inform the Orderer without delay.
- (7) Unless agreed upon differently in writing, DuParta determines the method of distribution, ensuring that this method cares for the safe, unharmed and properly delivery of the ordered goods.
- (8) If Orderer refuses to accept delivered goods or does not value the agreements concerning this delivery, Orderer remains responsible for settling payments and consequential costs concerning this delivery.

§ 5 Delivery - Shipping Charges

- (1) As far as not otherwise provided for in the respective valid price list, delivery 'ex works' (EXW) is agreed. Shipping charges and packing costs are extra.
- (2) Transport- and all other packings under the Dutch Packaging Regulations are not taken back. It is with the Orderer to care for the disposal of the packings at his own expenses.
- (3) An order value below € 50 entitles us to charge a minimum quantity surcharge of € 5
- (4) Partial deliveries by us are permitted as far as not excluded in writing by the Orderer.

§ 6 Returns

- (1) We do not accept returns of goods but upon prior agreement.
- (2) The Orderer shall only return goods in perfect condition and in original packing.

§ 7 Liability for Defects

- (1) Precondition for claims for defects of the Orderer is that the same immediately controls the goods after receipt and immediately claims possible defects. The goods delivered are deemed to be of perfect condition when obvious defects are not claimed within 10 working days at the latest, other defects not within 6 months at the latest. In case of alterations of the delivered goods by the Orderer or third parties any warranty is excluded.
- (2) To the extent that a good sold is defect we are at our choice entitled to subsequent performance in the form of remedy of the defect or to the delivery of a new good in perfect condition. In such cases the Orderer has no claim for reimbursement of his expenses, as especially transport charges, tolls, and labour- and materials costs.
- (3) Customary or marginal technically unavoidable deviations from quality, colour, mass, equipment, or design are no defect of the goods.
- (4) If subsequent performance fails the Orderer is at his choice entitled to demand withdrawal or reduction.
- (5) We are liable according to the legal provisions as far as the Orderer asserts claims for damages for intent or gross negligence. We are liable according to the legal provisions as far as we culpably committed breach of an essential contractual obligation; in such case the liability for damages is yet limited to the foreseeable, typically incurring damage.
- (6) Liability for culpable injury of life, injury of the body or health remains unaffected; this applies also for the compulsory liability under the Dutch Product Liability Act
- (7) Unless otherwise provided for above, any liability is excluded.
- (8) Excluded from warranty claims are damages resulting from usual wear and tear, overstrain, improper use, negligent care, and non-compliance with the instructions of use.
- (9) We reserve ourselves the right of constructional modification at any time but are not obliged to perform such modifications on goods already delivered.

§ 8 Joint Liability

- (1) A liability for damages beyond that provided for in § 7 is excluded - notwithstanding the legal nature of the asserted claim.
- (2) In case of the processing of fabrics of the Orderer sent to and handled by us, our liability for not culpable damage or loss of the fabric is limited to maximally € 100,00 per meter of fabric. If the Orderer makes available more expensive fabric for processing, this is at his own risk, provided that the parties have before agreed in writing on the processing of the more expensive fabric and the spread of risk.
- (3) As far as our liability for damage is excluded or limited, this applies also with regard to the personal liability for damages of our staff, employees, collaborators, selling agents, and persons employed in the performance of our obligation.

§ 9 Securing of Reservation of Title

- (1) We reserve ourselves title to the good sold until satisfaction of all our actual or future claims against the Offerer (including all current account debit balance claims) for whatever cause in law. With the Offerer being in breach of contract, especially at delay in payment we are entitled to take back the good sold. Our taking back the good sold does not represent a termination of the contract, provided that this had expressly been declared by us in writing. Our attachment of the good sold represents always a termination of the contract. With the good sold taken back we are entitled to its utilization. The proceeds of utilization are credited against the liabilities of the Orderer - with deduction being made of a reasonable amount of utilization costs.
- (2) In case of attachments or other interferences by third parties the Orderer shall inform us in writing without delay.

§ 10 Intellectual property, marketing and advertising

- (1) Orderer is entitled to use the brandname of DuParta® and related logos, advertising material and the like for promotional and advertising activities
- (2) The brandname of DuParta® and brand related material will solely be used for vending MTM clothing and not for any other business. Nor will the name and brand of DuParta® be used for any activities that have nothing to do with MTM clothing without prior permission in writing by DuParta®
- (3) Copyrights as well as all intellectual properties related to the goods delivered by DuParta or by one of its suppliers, remain founded at DuParta and its suppliers. Orderer obtains the explicit right to use the trademarks and related products, knowledge, signs, logos and so forth to enhance the vending of the goods as produced and delivered by DuParta and its suppliers, unless otherwise agreed upon in writing.
- (4) Orderer is not allowed to remove, to change or to replace trademarks, material labels or any other marks from the goods as produced and/or delivered by DuParta and/or one of its suppliers. Nor is Orderer allowed to change the products themselves unless these changes are needed to make the goods fit better on their customers.
- (5) Orderer will inform DuParta immediately after Orderer is acquainted with misuse or violation of copyrights and/or intellectual property of goods or trademarks from DuParta and/or one of its suppliers. In that case only DuParta and/or one of its suppliers is entitled to take legitimate action subsequently. If needed Orderer will grant its full support in solving this issue.

§ 11 Commitments & responsibilities

- (1) DuParta commits itself to: inform and supply orderer on time with style books, measurement instructions, measurement tables, order forms, pricelists, fabric samples/fabric bunches and the like. DuParta is not in any way responsible for the possible incorrect use of these materials and the possible consequential damage related to this misuse.
- (2) DuParta commits itself to provide a training to employees of Orderer concerning a technology of taking measurements, selecting fabrics, accessories, as well as of styles, models and design of business clothes, pass on the knowledge of the cut and what technology is used in sewing of business clothing (suits, shirts, coats) of both male and female.
- (3) DuParta commits itself to arrange and send invoices to orderer as soon as goods are ready for delivery.
- (4) DuParta commits itself to check bank transactions by orderer as soon as these are carried out
- (5) As soon as correct bank transactions for orders are settled, DuParta commits itself to immediately send concerning orders to the preferred postal address – as provided by Orderer – accompanied with the just and legally accepted export and transport documents. Ownership of the goods changes from DuParta to Orderer once the goods are handed over to the distributing party who is responsible for transport from The Netherlands to the postal address of Orderer. Distributing party is accountable for transport of the goods and eventual loss or damage of the goods during transport.
- (6) Since transport and distribution costs are often not easy to establish beforehand, DuParta is allowed to charge Orderer afterwards for transport and distribution costs for goods which have already been sent to Orderer before. DuParta commits itself to clearly specify these costs and the orders to which these are related in the invoices DuParta sends to Orderer.
- (7) DuParta commits itself to check whether goods arrived in good condition on postal address.
- (8) Orderer commits itself to import the goods to his place of residence. DuParta is not in any way responsible for import procedures as carried out by orderer. All costs related to the import of the goods from postal address (i.e. the address at which DuParta distributes the goods) to home address are for account of Orderer.
- (9) DuParta commits itself to correct orders free of charge which are not executed correctly, i.e. orders that are executed differently than what is agreed upon with DuParta or its suppliers c.q. different than the data which Orderer entered in the (Internet based) order system. However, DuParta is not in any way responsible for input mistakes by Orderer. Any costs related to adjustment or replacement of orders that are clearly the result of wrongly entered data in the order system of DuParta's suppliers are solely accountable for Orderer.

§ 12 Neglection/decomposition of Agreement

- (1) If Orderer fails to meet the conditions of this agreement or fails to fulfill any obligation related to this agreement, DuParta is entitled to postpone any actions related to this agreement until Orderer is willing and able to meet and fulfill all conditions and obligations as yet. If Orderer continues to fail to meet the conditions of this agreement, DuParta is entitled to (partially or completely) decompose this agreement.
- (2) In case of applied (temporary) moratorium, (requested) bankruptcy, shutting down of business by Orderer, than all agreements and mutual obligations between Orderer and DuParta will be ended, unless DuParta demands from Orderer to still meet certain parts of this agreement.

§ 13 Transfer of rights and obligations

- (1) DuParta is allowed to transfer all rights and obligations as agreed upon in this agreement to a third party. In such case DuParta will inform Orderer at least two months before transfer will take place. In that case Orderer is allowed to decompose the agreement from date of transfer.

§ 12 Final Provisions

- (1) On all eventual disputes or conflicts with regard to this agreement and all related conditions and orders between Orderer and DuParta, exclusively Dutch legislation is applicable.
- (2) All disputes will, as far as not otherwise bindingly prescribed by law, exclusively be submitted to the authorized law court in Amsterdam, The Netherlands.
- (3) Any agreement modifying or additional to the above provisions must be made in writing to become effective. This applies also to a waiver of the written form.
- (4) Should one of the provisions of these Terms of Business or a provision within the scope of any other agreement be or become invalid, this shall not affect the validity of the remaining provisions or agreements.