

Terms & Conditions of Sale and Delivery 0313

§ 1 General provisions, Scope

- (1) The subsequent Terms & Conditions shall be applicable exclusively for all our business transactions with enterprises (§ 14 German Civil Code ("BGB"), hereinafter the "Customer") in the terms of § 310 para. (1) BGB.
- (2) Not being obliged to indicate in each case, these Terms & Conditions shall, regarded as a frame agreement, also apply to all future contracts with the same customer in respect of the sale and delivery of goods.
- (3) These Terms & Conditions shall be applicable exclusively. Differing, conflicting or amending terms and conditions of the Customer shall only apply as far as we have explicitly approved them in writing. This condition shall be in place as well in case we execute the order fully aware of differing or conflicting Customer terms and conditions without reservation.
- (4) Other written contractual agreements with the customer on an individual basis differing from these Terms & Conditions shall prevail.
- (5) Indications to statutory provisions are only for clarifying reasons. Such clarification missing shall have no impact to any applicable statutory provisions unless they have been directly changed or explicitly excluded within these Terms & Conditions.

§ 2 Quotation, Conclusion of Contract

- (1) Our quotations are, unless limited in time, subject to change and non-binding.
- (2) Specifications, illustrations, drawings, photographs and other information in relation to the condition of the web-shop products, in prospectuses at hand for the Customer, on data sheets and other product information or documents – even electronic data – (e.g. advertisements or public statements) shall be approximate and without obligation and only serve to identify a subject matter but shall not constitute a legal warranty or guarantee.
- (3) In placing an order, the Customer states that it wishes to purchase the goods ordered. We shall be entitled to accept the offer made in the order within four weeks of its receipt. A contract shall not be deemed concluded until we have sent a written order confirmation, have countersigned the Customer's order or have completed and delivered the order. Authoritative for the scope of the order shall be deemed the document with our written approval or in case of completion of the order with the Customer's approval the content of our last quotation.
- (4) All agreements, ancillary arrangements and subsequent amendments etc. between ourselves and the Customer shall be set down in writing. Our employees shall not be authorised to make statements that extend beyond the content of the written contract.
- (5) We reserve the right to effect alterations to design and form during the delivery period, provided the products and its function and appearance are not significantly altered thereby, and provided the Customer can reasonably be expected to accept these alterations.
- (6) We reserve ownership title and all copyright to samples, cost estimates, drawings and other material and non-material information, including in electronic format, and all other documents that form part of the quotation. These documents may not be made accessible to third parties without our explicit prior written approval, and they must be returned to us immediately upon request.
- (7) Additional requirements or changes regarding the goods ordered requested by the Customer after conclusion of the contract shall always be subject to our written approval and a separate written agreement, especially in respect of additional consideration and change of delivery date/period. Upon receipt of the request we shall be entitled to stop the execution of the contract until a separate agreement has been concluded. We shall not be burdened by any prolongation of the original delivery date/period due to the Customer's request. In case we suggest changes, to foregoing shall apply mutatis mutandis.
- (8) Obvious errors, misprints, miscalculations, type errors, miscalculations are optional for us and the Customer shall not be entitled to any claims resulting therefrom.

§ 3 Prices, Payment, Payment Terms and Conditions

- (1) Our price details and price lists shall be subject to change, unless we have explicitly declared them in writing to be binding.
- (2) Unless agreed otherwise in writing, the quoted prices shall be net prices ex works, plus value added tax at the rate applicable on the due date. If no prices have been agreed at the time of contract conclusion, our current prices on the delivery date shall apply.
- (3) In case the price for goods to be delivered outside Germany is in general not subject to value added tax (VAT), the Customer shall be obliged to immediately provide us with all necessary documents in respect of the export of the goods, otherwise we shall be entitled to debit the Customer with the accruing VAT. The following para (5) sentence 1 first half of the sentence and § 8 shall apply mutatis mutandis.
- (4) Shipping costs shall be invoiced separately. The Customer shall bear all incidental costs, for example transport insurance, packaging, unloading, customs costs, delivery etc., unless otherwise explicitly agreed in writing.
- (5) Unless otherwise explicitly agreed in writing, invoices shall be due without deductions immediately upon receipt and the date on which the consideration is at our disposal shall be deemed to be the date of the incoming payment. Unless otherwise explicitly agreed in writing, payment must be in the same currency as that in which the invoice is raised.
- (6) After expiration of payment terms, the Customer shall be in default on our notice. The purchase price then is subject to the statutory default interest applicable on the due date, whereupon we are entitled to claim further damages caused by default.
- (7) Payments may only be made by bank transfer; bill of exchange and cheque payments shall not be recognised as performance of the payment obligation.
- (8) It may be agreed between the contracting partners that the Customer must open a letter of credit through its bank (or another bank that is acceptable to us). It is agreed that in this individual instance, the letter of credit shall be opened in accordance with the Uniform Customs and Practices for Letters of Credit, 2007 revision, ICC Publication No. 600.
- (9) All our claims shall fall due immediately, even in the event of postponement, if the Customer suspends its payments, becomes over indebted, if insolvency proceedings are instituted in relation to its assets, or if the institution of such proceedings is refused due to inadequate assets, or if we become aware of circumstances that are capable of significantly reducing the Customer's credit rating. We shall thereupon be entitled, at our choice and after setting at time-limit, to reclaim the goods delivered, to make further deliveries dependent upon payments in advance or payment guarantees, to claim damages and to withdraw from the contract.

§ 4 Time of Delivery and Performance

- (1) Delivery dates and periods shall be approximate and subject to change, unless otherwise expressly agreed in writing. No transactions subject to fixed delivery date shall be concluded.
- (2) Delivery dates and periods shall only be binding, provided all commercial and technical questions have been clarified with the Customer and the Customer has met all obligations, for example timely provision of documents, the requisite official certificates or approvals, examinations, releases or agreed upon payment terms. Failing this, the delivery date and period shall be extended accordingly.
- (3) Meeting the delivery date and periods shall be subject to proper and timely self-supply.
- (4) Unless otherwise explicitly agreed in writing, the delivery shall be ex works Leonberg (EXW, Incoterms 2010).
- (5) Delivery date and period shall be deemed met after notification to the Customer the latest at the end of the delivery period that the goods are ready for collection.
- (6) If a specific delivery time is delayed for reasons for which we are not responsible (non-availability) the delivery periods and times shall be prolonged accordingly. The Customer will be informed about such circumstances and about the new delivery date immediately. In case the delivery should not be possible within the new delivery period, we shall be entitled to partially/fully withdraw from the contract, the Customer then shall be reimbursed any so far made payments under the contract. As non-availability shall be regarded especially as non-delivery of required materials by our sub suppliers in time and a congruent covering-transaction has been concluded by us or force majeure including but not limited to war, terrorism, revolution, rebellion, impediments arising out of national and/or international trade and customs requirements or any embargos or sanctions, natural catastrophes, labour disputes or any holdup preventing us from delivery in time without being liable insofar. Our statutory rights to rescind or terminate the contract shall not be affected thereby (e.g. frustration, unacceptability of performance and/or subsequent performance). The Customer's rights to rescind or terminate the contract according to these Terms & Conditions shall not be affected as well.

- (7) As far as a specific delivery date has been agreed and we should be in default, after a preceding reminder in writing combined with a grace period of 14 days, the Customer shall be entitled to claim liquidated damages of 0.5% per complete week of delay, limited to 5% of the net purchase price of the delivery affected by the default, unless it is evident from the circumstances and proven by us that the Customer has suffered no or only a significantly lower damage. If we fail to adhere to a further reasonable grace period of 14 days, the Customer shall be entitled to withdraw from the contract.

§ 5 Shipment

- (1) Unless otherwise explicitly agreed in writing, the goods shall be deemed delivered with notification to the Customer that they are ready for collection. Within our business hours the customer shall be entitled to receive the goods ex works Leonberg (EXW, Incoterms 2010).
- (2) We shall be entitled to effect and charge for part-deliveries, unless a uniform subject of the contract is to be delivered.
- (3) For documents being part of the scope of our delivery, the delivery shall be deemed met with providing the Customer with the full set of documents. Any Customer claims regarding the delivered documents are subject only to §§ 9 and 10.
- (4) If the delivery is subject to Customer's acceptance and/or approval (e.g. Factory Acceptance Test) and the delivery, its acceptance and/or approval should be delayed for reasons in Customer's responsibility or should Customer be in default of acceptance on the due date, notwithstanding differing contractual agreements, at our choice either a delivery ex works Leonberg (EXW; Incoterms 2010) shall be deemed agreed and/or the full or remaining purchase price shall become due immediately (if so plus value added tax, VAT), unless the Customer after our written reminder facilitates or initiates the acceptance and/or approval and delivery. Upon expiry of this deadline we shall be entitled to store the goods at Customer's expense and risk. At customer's request we shall insure the goods at Customer's expense. § 13 (1) shall apply mutatis mutandis. The foregoing shall apply to clearly separable and semi-finished goods, in case their manufacture and thereby a agreed delivery date should be delayed for reasons in customer's responsibility (e.g. delayed supply).

§ 6 Export Control

- (1) If required, the Customer shall be obliged to provide us with all necessary information in respect of the export of the product to be ordered respectively the resale of this product, to enable us to comply with all applicable statutory laws and regulations and to request any approvals necessary. We shall not be burdened by any delays arising from the export control actions and the agreed upon delivery date and period shall be extended accordingly.
- (2) Inasmuch there should be any ambiguities in respect of the export of the products or the end user arising from the information given by the Customer and those ambiguities should not be resolved after our reminder we shall be entitled to rescind the contract after a 14 days grace period has been set. The Customer shall not be entitled to any compensation.
- (3) The Customer shall indemnify and hold us harmless from any damages, losses and other claims and support us in any proceedings having been instituted arising from incomplete or incorrect information given by him at its own expense.
- (4) In case we need an approval to deliver the products, the contract shall be subject to obtaining such approval.

§ 7 Transfer of Risk

- (1) The risk of accidental loss and deterioration shall transfer to the Customer, in case of delivery ex works (EXW, Incoterms 2010), at the time we inform the Customer that the goods are ready for collection. The same shall apply for part-deliveries, or if we have to provide other separately agreed services (e.g. commissioning).
- (2) In case the delivery should not be ex works Leonberg (EXW, Incoterms 2010), then the risk of accidental loss and deterioration shall pass to the Customer at the time of handover, or, if the Customer is in default of acceptance, at the time we offer to hand over the goods.

§ 8 Retention of Title

- (1) We retain title to all delivered products until such time as the Customer has paid all current and future claims arising out of the business relationship on whatever legal grounds.
- (2) The Customer shall be obliged to treat the products delivered subject to retention of title with care and to provide sufficient insurance, to be proven on request. The Customer hereby assigns any claims against its insurance covering any damages. We herewith accept such assignment.
- (3) Any products subject to retention of title may not be given in pledge or as security to third parties until the secured receivables are paid in full. The Customer must notify us without undue delay and in writing, if and to the extent that third parties attempt to seize or attach the products that are our property and point out our retention of title in the products to the third parties. In case the Customer is in breach with these obligations he shall be obliged to provide us with all information necessary in order to assert these rights and to provide the necessary cooperation. Any costs arising insofar shall be borne by the Customer unless we can collect these costs from the third party.
- (4) Where the customer is in breach of contract namely in default of payment of the purchase price due, we shall be entitled to rescind the contract in accordance with the statutory provisions and to demand return of the goods by virtue of the retention of title and the rescission. Where the customer fails to pay the purchase price due, we may only assert these rights after having set a reasonable grace period for the customer to pay and such deadline has elapsed without pay or where the setting of any such grace period is not required by law. Our damages and costs arising from rescinding the contract, especially shipping costs shall be born by the Customer.
- (5) The Customer shall be entitled to on-sell and/or process any products subject to retention of title in the ordinary course of business. Additionally the following provisions shall also apply:
 - (a) The retention of title extends to any and all products resulting from the processing, intermingling or joining of our products at their full value, with ourselves being deemed as the producer. Where our products are processed, intermingled or joined with the products of third parties and any such third parties have retained title, we shall acquire co-ownership in proportion to the invoice values of the processed, intermingled or joined products. In any event, the resulting product shall be subject to the same provisions as the products delivered subject to retention of title.
 - (b) The Customer hereby assigns to us, by way of security, any and all claims from the resale of the products vis-à-vis third parties in full or to the extent of any co-ownership interest in accordance with the preceding subparagraph lit. a). We hereby accept the assignment. The Customer's obligations set out in the preceding para. (2) shall also apply with regard to the assigned claims.
 - (c) The Customer shall have the revocable right to collect on these claims even after assignment. We hereby undertake to refrain from collecting on any claims as long as Customer meets his payment obligations in relation to us, does not default in payment, no petition to open insolvency proceedings has been filed, such petition has been declined and Customer's ability to perform has not been compromised in any other way. However, should any of the above events occur, we may require the Customer to disclose to us information on all claims assigned and the relevant debtors including all information required for collection, to pass on all relevant documents to us and to notify any and all debtors (third parties) of the assignment.
- (6) Where the realisable value of the security exceeds our claims by more than 10%, we shall, upon Customer's request, release any security we are entitled to.

§ 9 Warranty

- (1) The agreed quality of the products is according to § 2 para. (2) above generally determined only by the descriptions in our order confirmation.
- (2) Customer's warranty claims are subject to Customer's compliance with his obligation of inspection, notification and rejection in accordance with § 377 of the German Commercial Act ("HGB"). The Customer shall inform us in writing without undue delay about any defect revealed at inspection or later. Such indication shall be deemed being without delay when served within seven days, insofar the dispatch of the indication shall be suitable. Notwithstanding of the statutory obligation of inspection, notification and rejection the Customer shall be obliged as well to indicate apparent defects (including incorrect or incomplete deliveries) within seven days, the dispatch of the indication shall be in such case suitable as well. If the Customer fails to inspect and/or indicate any defect as required we accept no liability for such defect.
- (3) If there should be a substantial defect at the time of transfer of risk, then we shall be entitled, at our choice, either to remedy the defect (rectification of defects) or to deliver a defect-free item

(replacement delivery). If one or both of these subsequent performance options should be impossible or unreasonable, we shall be entitled to refuse. Replaced parts shall become our property.

(4) We are entitled to make the subsequent performance dependant on the fact that the Customer pays the due purchase price. The Customer however shall be entitled to retain a part of the purchase price which is reasonable in the ratio to the defect.

(5) We shall have the right to repair or replace defective products twice under our warranty obligation.

The Customer has to give us the time and opportunity which are necessary for the owed subsequent performance, in particular to hand over the products for which a complaint was made for the purposes of inspection or to give us access to conduct necessary inspections regarding the claimed defect or damage. In the event of substitute delivery the Customer must return the defective products.

The Customer shall only have the right to remedy the defect itself or to arrange for its remedy by third parties and to claim reimbursement of the associated expenses, where there is an urgent risk to operational safety or in order to avert disproportionately high losses. We shall have no liability for the consequences arising from an inappropriate subsequent performance by the Customer or third parties. The Customer shall not be entitled to self-repair, if we are entitled to reject subsequent performance by law.

(6) The expenses which are necessary for the purpose of inspection and subsequent performance, in particular transport, route, work and material costs shall be borne by us if there is actually a defect. This does not include costs for dismantling and assembly as well as other costs. The Customer shall be obliged to make available to us, at its own expense, any ancillary tools (e.g. cranes etc.) that we require for subsequent performance. We do not cover any costs regarding the subsequent performance accruing only because the products have been placed at a location differing from the original destination. However, if it is determined that a request for remedy of a defect by the Customer is unjustified we can request reimbursement of the costs incurred hereby from the Customer.

(7) We accept no liability for defects that are based on the Customer's configuration.

(8) In addition we accept no liability for defects or damages if our installation, operating and maintenance instructions are not followed or are caused through unsuitable or inappropriate use, overload, defective installation or commissioning by the Customer or third parties, normal wear and tear, defective or negligent use or treatment or improper use, unsuitable equipment, replacement materials, chemical, electrochemical, electrical or physical effects, unless they have arisen through intentional or grossly negligent behaviour or through a breach by us of a fundamental contractual obligation. Our warranty obligations shall lapse as well, if the Customer or third parties amend the products delivered without our explicit prior consent or authorization, notwithstanding if the defect arises at an unchanged part or we are prevented from necessary inspections of the rejected products or the claimed damage.

(9) We provide no warranty for used products.

(10) If the subsequent performance has failed or a reasonable deadline which is to be set by the Customer for the subsequent performance has expired unsuccessfully or it is dispensable according to the statutory regulations the Customer can rescind the contract or reduce the purchase price. However, in case of an insignificant defect the Customer is limited to a reduction of the purchase price. The Customer shall not be entitled to any further claims irrespective of their legal grounds.

(11) The Customer shall receive no guarantees in the legal sense from us, unless agreed otherwise in writing. This shall not affect any manufacturers' guarantees.

(12) Further claims shall be exclusively governed by § 10 of these Terms & Conditions.

§ 10 Liability and Restrictions of Liability

(1) Insofar as not otherwise derived from these Terms & Conditions the Customer's statutory right to rescind the contract shall neither be excluded nor limited. Furthermore our statutory or contractual rights shall neither be excluded nor limited as well.

(2) We shall have unlimited liability in case of wilful act or gross negligence (including acts of our legal representatives or agents), and for damages from injury to life, the body or the health arising from our simple negligence or wilful or gross negligence acts of our legal representatives or agents. Our liability shall be unlimited as well due to given guarantees and express warranties, if our liability rises from a thereby covered defect. Our liability is not limited in respect of strict liability (especially according to the German Product Liability Act).

(3) In the event of a breach of a cardinal obligation, our liability shall be restricted to the average predictable direct contractual loss based on the nature of the goods in question. Cardinal obligations are regarded as substantial obligations which characterize the contract and which the contracting partner can rely on; it is a matter of essential rights and obligations, which are preconditions for execution of contracts and are essential to attain the scope of the contract.

(4) Our liability for damages not to the delivered goods itself, especially for indirect and consequential damages, including but not limited to loss of production, loss of use, loss of turnover, loss of profit, damages from holdup shall be excluded, unless caused by gross negligence or wilful misconduct.

(5) As far as statutorily admissible further claims shall be excluded.

(6) The above exclusion or limitation of our liability shall also relate in respect of our legal representatives and agents.

§ 11 Statute of Limitations

(1) The statute of limitations for claims arising from defects in quality or title is one year from passing of risk.

(2) The same shall apply to contractual and non-contractual claims for damages of the Customer which are due to a defect of the products. The statute of limitations from the German Code of Product Liability remains unaffected. Apart from that all claims for damages of the Customer according to § 10 above are subject to the statutes of limitation by law.

§ 12 Infringement of Proprietary Rights and Copyrights

(1) If use of the products leads to an infringement of proprietary rights or copyright, we shall in principle, at our own expense, procure for the Customer the right to continued use, or else modify the products in a manner that is reasonably acceptable for the Customer, so that no further infringement of the protective right occurs. If this is not possible subject to commercially reasonable conditions or within a reasonable period, then the Customer shall be entitled to withdraw from the contract. We shall also have the right to withdraw from the contract, subject to the above criteria. We shall also indemnify the Customer in the event of uncontested or finally judicially approved claims by the proprietor of the protective rights in question.

(2) Inasmuch as this is statutorily admissible, our obligations stated under (1) shall be conclusive in the event of an infringement of a protective right or copyright. We shall only be obligated where

- the Customer notifies us immediately of asserted infringements of protective rights or copyright,
- the Customer provides us with adequate support during defence of the claims asserted, and/or enables us to undertake modification measures in accordance with the previous paragraph,
- we reserve the right to effect all defence measures, including out-of-court settlements,
- the deficiency in title is not the result of an instruction given by the Customer, and
- the infringement of rights has not been caused by the fact that the Customer has altered the delivery item of its own volition or has used it in a manner contrary to the contract.

§ 13 Setoff, Retention, Assignment

(1) We are entitled to offset claims made against us by a Customer or to assert a right of retention, including in the event that the due dates in question differ.

(2) The customer shall only be entitled to offset against our monetary claim or to exercise a right of retention where its own claims are the subject of final judicial approval, are uncontested or have been acknowledged by us. Furthermore, it shall only have authority to exercise a right of retention provided its counterclaim is based on the same contractual relationship.

(3) The Customer also declares its agreement to the offsetting of its own monetary claims and debts due from us. Similarly, we may also offset monetary claims and debts due from the Customer's group companies.

(4) The Customer's claims against us may not be offset.

§ 14 Use of Software

If the scope of supply includes software, then the Customer shall be granted a non-exclusive right to use the software supplied, including its documentation. It shall be made available for use on the delivery item intended for it. Use of the software on more than one system is prohibited. The Customer may only copy the software, translate it or convert it from object code to source code, to the statutorily admissible extent (§§ 69a et seq. German Copyright Act ("UrhG")). The Customer undertakes not to remove manufacturer details, in particular copyright indications, or to alter these without LEWA's prior written approval. LEWA or the software supplier shall retain all other rights to the software and the documentation, including copies thereof. The grant of subsidiary licences shall not be admissible.

§ 15 Confidentiality

The Customer shall be obliged to keep strictly confidential all our information, documents, documentation, drawings, drafts or other documents, know-how and commercial and business secrets ("confidential information"), and shall not pass confidential information on to third parties, make them otherwise available or exploit them in any way without our explicit prior written approval. Customer documents shall be kept confidential as well.

§ 17 Final Provisions

(1) These Terms and Conditions and the entire legal relationship between the parties or their respective successors in title shall be governed exclusively by German substantive law, to the exclusion of the provisions of the UN Convention on Contracts for the International Sale of Goods and Private International Law.

(2) The place of performance and exclusive place of jurisdiction for all disputes shall be Leonberg. However, we shall be entitled to sue the Customer at its registered office.

(3) If individual provisions of these Terms and Conditions and/or of the contract between the parties should be or become void or inoperative, this shall not affect the validity of the remaining provisions. The parties undertake to replace inoperative provisions by new provisions, which take account in a legally admissible manner of the rules laid down in the inoperative provisions. The same shall apply to loopholes in the contract. In order to fill a loophole, the parties undertake to produce something that comes as close as possible to what the parties would have determined, on the basis of the spirit and intent of the contract, if they had considered the point in question.