



## **Sales and Delivery Conditions of Oskar Lehmann GmbH & Co. KG**

### **1. Sales and Delivery Conditions**

- (1) These sales and delivery conditions apply for all of our deliveries. They apply to all continual business relationships, also for future business, even if they are not expressly referred to in an individual case.
- (2) Our sales and delivery conditions apply exclusively. We do not recognise opposing conditions, or conditions deviating from our sales and delivery conditions.
- (3) In the event that individual provisions are or become without effect, the effectiveness of the other conditions thereof is not impaired.
- (4) We have the right to rescind the contract if the ordering party objects to these conditions.

### **2. Conclusion of the Contract**

- (1) All offers are subject to confirmation, to the extent that they are not designed as binding offers.
- (2) The contract comes into existence by the written or electronically transmitted order confirmation of the supplier. Confirmation of the order is decisive for price and delivery deadline.

### **3. Prices**

- (1) In cases of doubt, the prices are valid ex factory, exclusive of freight, customs duties, subsidiary import levies and packaging, plus value-added tax in the statutory amount.
- (2) The supplier is bound on the agreed-upon order prices for four months from the conclusion of the contract. If lengthier deadlines are stipulated for performance or receipt of deliver, the supplier, in the event of increased materials or labour costs, is entitled to impose a surcharge proportional to the increased costs incurred.
- (3) If it is stipulated that the price depends on part weight, the final price follows from the weight of the released reference sample.
- (4) For new orders (i.e., follow-up orders), the supplier is not bound by previous prices.
- (5) If payment in foreign currency is stipulated, changes in the exchange rate inure to the burden of the ordering party.
- (6) We deliver free of value-added tax to purchasers in other member states of the European Union, which have legitimately provided us their VAT identification number. Changes to the VAT identification number are to be reported without delay. If it should prove that claim to release from value-added tax was taken unjustifiably, we are entitled to a follow-up invoice for value-added tax. Moreover, the purchaser owes us compensatory damages.

#### 4. Delivery and Purchase Obligation

- (1) Delivery dates begin after receipt of all documentation necessary for carrying out the order, of payment and of the timely provision of all materials, to the extent these were stipulated. The delivery deadline is considered adhered to with reporting of readiness for dispatch, if shipment is delayed without the fault of the supplier, or is impossible.
- (2) The supplier is deemed delayed -- even in case of a performance time set by calendar -- only if a deadline for fulfilment of the contract of two weeks is set, unless he has seriously and conclusively refused to perform.  
The supplier assumes liability for damages arising out of delay and non-performance damages only up to an amount double that of the value of the order, unless he or his agents have acted intentionally or with gross negligence. Any stipulated contractual penalty is to be calculated into the claims for compensatory damages.
- (3) Adequate partial deliveries as well as reasonable deviation from ordered quantities up to + / - 10% are acceptable.
- (4) For make-and-hold orders without stipulated running time, lot production sizes and acceptance dates, the supplier can demand a binding determination no later than three months after the confirmation of the order. If the purchaser does not comply with this demand within three weeks, the supplier is entitled to set a two-week grace period, and after its expiry to rescind the contract and/or to demand compensatory damages.
- (5) If the purchaser does not fulfil his obligation to purchase, the supplier – notwithstanding his other rights – is thus not bound to the regulations of self-help sale and can freely sell the objects of the delivery after previously notifying the purchaser.
- (6) Events involving force majeure entitle the supplier to postpone the delivery for the duration of the hindrance and a reasonable starting time, or -- if they persist for longer than four weeks – to rescind the contract in whole or in part due to the still-unfulfilled part. Events of force majeure are strikes, lockouts, or unforeseeable, unavoidable circumstances, e.g., interruption of operation, even those which make it impossible for the supplier to make a timely delivery despite reasonable efforts; the supplier has the burden of furnishing evidence thereof. This also applies when the aforementioned hindrances occur during a delay or with a subcontractor.
- (7) The purchaser can demand that the supplier declare within two weeks whether he will rescind or deliver within a suitable grace period. If he does not so declare, the purchaser can rescind the unfulfilled part of the contract.

In agreeing to indeterminate obligations, the supplier's duty is restricted to the stock presently available to us.

A raw materials shortage, a stoppage of deliveries of parts or raw materials, or a subcontractor stoppage extends the stipulated delivery deadlines from the time of the stoppage or the delay in procurement of raw materials.

If the stoppage lasts longer than four weeks, the supplier has the right to rescind the contract, in whole or in part, due to the still unfulfilled part.

## 5. Packaging, Shipping, Transfer of Risk and Default of Acceptance

- (1) To the extent that nothing else is stipulated, the supplier shall select packaging, the type of shipping, and the shipping route.
- (2) Also with freight prepaid delivery, the risk transfers to the purchaser upon the goods leaving the supplier's facility. In cases of delays in dispatch caused by the purchaser, the transfer of risk commences with the notice of readiness to ship.
- (3) Upon written demand of the purchaser, the goods will be insured at his own cost against risks designated by him.

## 6. Reservation of Title

- (1) The deliveries remain property of the supplier until the fulfilment of all due claims of the supplier against the purchaser. With a current account, the reserved property is deemed on the deliveries (conditional goods) as security for the supplier's balance invoice.
- (2) The purchaser may further process the goods in the ordinary and proper course of business, and resell them in agreement with a lengthened and extended reservation of rights. He is not entitled to further rights to dispose of them.  
The purchaser's authority to dispose over the goods is extinguished, if he does not adhere to his payment obligations to the supplier, materially breaches the contracts concluded with the supplier or suffers financial collapse. In this context, as financial collapse are deemed suspension of payment, excessive indebtedness, filing for bankruptcy proceedings and every other grave change in the purchaser's financial circumstances which can lead to jeopardising the security of the supplier.
- (3) Processing of the conditional goods will be performed for the supplier (Section 950 of the German Civil Code (BGB), hereinafter (*BGB*)). In case of common processing for multiple suppliers, the supplier is entitled to the property in accordance with Sections 947 et seq. of the *BGB*.  
the purchaser combines or commingles the supplier's item with an item which are among its own property in such a manner that the item of the purchaser is to be regarded as the main item, then the purchaser conveys to the supplier therewith a co-ownership share in the article in the proportion in which the value of the supplier's article stands to the value of the principal article (the net invoice value). The co-ownership share of the supplier remains in the possession of the purchaser who retains the article in safekeeping for the supplier.
- (4) For the case of resale, until the fulfilment of all claims of the supplier, the purchaser is deemed to have assigned to the supplier the receivables arising out of the resale, and other claims to which he is entitled as against his customers, with all subsidiary rights. If the resale takes place after processing, combining or commingling, the purchaser is deemed to have assigned to the supplier the percentage of the resold article in corresponding part to the receivables accruing from of the resale, if, from the processing, combining or commingling, co-ownership has arisen.  
If the resale take place together with objects belonging to a third party, without its being apparent which part of the claim is omitted from the sale of items subject to retention of the

supplier's title, the purchaser is deemed to have assigned a part of the receivable accruing from the resale, as it corresponds to the proportion of the value of the suppliers' items subject to retention of title, to the value of the objects to which the third party is entitled.

In the case of the customer of the purchaser, the receivable assigned to the supplier is considered as the last paid. The purchaser is entitled to collection of the assigned receivable in the normal course of business. This authorisation is extinguished in cases designated in Section 6(2). Upon the supplier's demand, the purchaser is obliged to give the supplier all information without delay and to hand over all files and data' which are necessary for the enforcing of the supplier's rights vis-à-vis the customer.

- (5) The purchaser assigns to the supplier receivables, which accrue to him from the sale of the receivables assigned to the supplier, to a factoring company. Notwithstanding the effectiveness, under property law, of this assignment, assignment of the reservation of title to the suppliers, the assignment to the purchaser, of claims assigned to suppliers in the framework of the extended reservation of title, is permitted only within the framework of a genuine factoring (that is, when the factor assumes the risk of the debtor's inability to pay the claim).
- (6) The purchaser assigns to the supplier claims for compensation against credit insurers, if and to the extent that insurance protection exists for the claim assigned, or to be assigned under the present provisions, to the supplier.
- (7) If the realisable value of the security present for the supplier exceeds his total receivables by more than 20%, the supplier is thereby obligated upon the purchaser's demand, with respect to the release of the security, by choice of the supplier.
- (8) The supplier is to make notification without delay of attachments or confiscation of the conditionally held goods by a third party. Intervention costs arising therefrom likewise, are at the expense of the purchaser, to the extent they are not borne by the third party.
- (9) In case the supplier, in accordance with the above-mentioned provisions, makes use of his reservation of title by withdrawal of conditional goods, he is entitled to sell the goods freehand or have them auctioned off. The enforcement of the reservation of title, and especially the claim for a return of title, represent a withdrawal from the contract. The withdrawal of the conditional goods is accomplished with the realised sales price taken back, but not more than the original stipulated delivery prices. Further claims for compensatory damages, especially lost profits, remain reserved.

## **7. Responsibility for Material Defects**

- (1) Determinative for the quality and finish of goods produced are the outturn samples, which are presented to the purchaser upon demand by the supplier for inspection. Notice as to technical specifications serves the purpose of describing performance and is not to be construed as a quality guarantee. Non-essential alternations of the products with regard to construction, form and composition, as well as of the values listed in the product description, are to be accepted by the purchaser, to the extent they are reasonable, or within tolerances for defects, quality, and performance which are usual in the trade. Colour discrepancies based on the nature of the materials, and variations in quantity, strength and dimensions up to 105 are according to contract.

- (2) If manufacture takes place according to purchaser's drawings, the supplier assumes liability only for conformity with the drawing.
- (3) The supplier assumes liability for the acceptance of consulting and construction assignments only through written agreement.
- (4) Notifications of defects are to be made in writing without delay. In the case of hidden defects, the complaint is to be brought immediately after it is ascertained.
- (5) With substantiated complaints of defects – whereby the outturn samples released by the purchaser in writing determine the expected quality and finish -- the supplier is obligated to rectification of the defects. If he does not meet this obligation within an appropriate deadline, established in writing by the purchaser, or if the remediation fails despite repeated attempts, the purchaser is entitled to reduce the purchase price or to rescind the contract.  
The grace period consists of three weeks; it is shorter, if, in an individual case, a shorter deadline is contractually stipulated or another deadline is urgently necessary, e.g., in pressing cases, in which disproportionately large damages are impending, or in which dangers for operational safety arise.  
The deadline for rectification of defects is extended by the delivery deadlines for raw materials, when the supplier advises as to these deadlines.  
It is not necessary to set a deadline if the supplier has conclusively and apparently rejected the rectification of defects or such rectification is not possible. In the case of rectification of defects, the supplier is obligated to bear the expenses required for the purpose of the rectification, especially transport, road charges, labour, and materials costs, to the extent that these are not increased by having the goods brought to a location other than the place of delivery. Continuing claims, especially claims for reimbursement for expenditure or compensation for damage due to damages from deficiencies or the consequences thereof, exist solely within the framework of the provisions of (8) herein. Replacement parts are to be sent back freight collect with a packaging slip included.
- (6) Unauthorised reworking and improper treatment have, as a consequence, the loss of all claims for defects. Only for the defence against disproportionately greater damages, or due to delay in correction of the defect by the supplier is the purchaser entitled to conduct repairs, and to demand reimbursement of reasonable costs therefore, following prior communication with the purchaser.
- (7) Warranty claims are precluded if mistakes have occurred due to natural wear and tear of the object of purchase, through faulty or negligent treatment, deficient or improper maintenance, inappropriate use or unsuitable application, faulty installation, excessive stress and strain or use of unsuitable tools after passing of risk, or especially external influences after passing of risk, which were not contractually provided.  
Warranty claims are also precluded if the purchaser himself, or through a third party, has carried out work covered by warranty that was not legally permissible.
- (8) The duration of the warranty consists of one year from delivery, to the extent that nothing divergent has been stipulated.  
This warranty duration is not valid for fraudulent conduct of the supplier, for claims for compensatory damages arising from injury to life, limb and health, or for claims for compensatory damages which rest upon an intentional or grossly negligent breach of duty by the supplier, his legal representatives or vicarious agents. In these cases, the statute of limitations as provided by law applies.

For supplementary performance carried out, or for replacement parts, the duration of the warranty exists only until expiry of the duration of the warranty for the original delivery.

- (9) If the grace period established by the purchaser has expired, the supplier has the right to request of the purchaser, with a set deadline of two weeks, that he assert his guaranteed rights vis-à-vis the supplier. If no such assertion is given within the deadline, the supplier remains entitled to the grace period.
- (10) In case of a supplier regress after lawfully bidden fulfilment of a consumer's guaranteed claims, Sections 478 and 479 of the German Civil Code (BGB) apply, with the following modifications:
- (10.1) The supplier does not assume liability in regress proceedings for defects if the defectiveness results from stipulations as to the quality of the property handed over to the consumer, which stipulations were reached with the supplier and which deviate from the stipulations which the supplier has reached with the purchaser. The benchmark for the question as to whether a defect is present is thus also, in a supplier regress within the meaning of Sections 478 and 479 of the *BGB*, exclusively the agreement as to quality which the supplier has made with the purchaser.
- (10.2) The relief of the supplier regress applies only if the property delivered to the consumer is identical with the property that the supplier delivered to the purchaser. Sections 478 et seq. of the *BGB* therefore also do not apply if the property delivered by the supplier has been changed or rebuilt.  
Therefore they also do not apply if the supplier has delivered only articles, components or parts which were built into other products, which then for their part have reached the consumer.
- (10.3) Application of Sections 478 et seq. of the *BGB* is precluded if the purchaser exports the delivered products abroad and, in the contract for export, excludes the application of the United Nations Sales Convention.
- (10.4) If the purchaser lodges a claim for repair of an object or subsequent delivery, he is to inform the supplier of this without delay and to give him the possibility of carrying out the subsequent delivery himself. He is to make the goods available for examination and processing for this purpose.  
A claim for replacement under Section 478 Paragraph 2 of the *BGB* exists, therefore, only if the supplier has not performed the demanded supplementary performance within a reasonable deadline or has refused to do so.  
Apart from that, the claim for replacement is limited in amount to the expenses which would have arisen, had the supplier subsequently improved the delivered product at the place of delivery stipulated with the purchaser, or if he had subsequently delivered it there.  
For any additional expenses, which can arise for the purchaser from subsequent performance or utilisation in regress proceedings under Section 478 Paragraph 2 of the *BGB*, the supplier, in each warranty case – independently from verification of such additional expense -- a lump sum of 5% of the costs according to the expense per paragraph 4.
- (10.5) Sections 478 and 479 of the *BGB* do not apply for claims to compensatory damages. In this respect, Number (8) of these delivery conditions applies.

## 8. General Limitations on Liability

- (1) In all cases in which the supplier due to contractual or statutory bases for claims is obligate to compensate for damage or expenses, he is liable only in the scope governed as follows. Any further liability is precluded.
- (2) The supplier assumes liability to the extent that he, his leading employees or vicarious agent, can be charged with intentional conduct, gross negligence, or injury to life, limb or health.
- (3) Strict liability under product liability law remains unaffected, as does liability for the fulfilment of a quality guarantee, in case this is expressly stipulated.
- (4) Also remaining unaffected is liability for intentional breach of essential contractual duties. The liability is, however, to the extent other than in the cases of Paragraph 1, limited to foreseeable damages typical for contracts.
- (5) A change to the burden of proof to the purchaser's disadvantage is not linked with the provisions above.
- (6) The provisions above correspondingly apply to claims for replacement of futile expenditures. (Section 284 of the BGB).

## 9. Terms and Conditions of Payment

- (1) All payments are to be tendered to the supplier exclusively in Euros.
- (2) Unless otherwise stipulated, the price for deliveries or other services is payable less a 2% early payment cash discount within 14 days as well as without deduction within thirty days after the date of invoice. Prerequisite for an early payment discount is the settlement of all earlier due, indisputable invoices.
- (3) If the stipulated payment deadlines are exceeded, interest payments in the amount of the statutory interest rate of 8 percentage points above the respective base interest rates of the ECB are calculated, to the extent that the supplier does not prove greater damage.
- (4) The purchaser can set off or enforce his right of retention only when his claims are undisputed or ascertained by declaratory judgment.
- (5) As a result of the purchaser's delay in payment, or circumstances, which form serious doubt as to the purchaser's creditworthiness, the supplier's claims become due immediately. Moreover, in this case the supplier is entitled to demand pre-payments for deliveries which remain outstanding. Such a deterioration of financial circumstances is to be assumed when, among other cases, currency exchanges or checks are protested or when a credit insurer refuses coverage or considerably reduces coverage, or when the limit set by a credit insurer is exceeded or by the intended delivery was exceeded.
- (6) The purchaser can offset only claims that are undisputed or ascertained by declaratory judgement, or enforce a right of retention. Under these prerequisites, he can hold back payment for compensation for defects in a delivery only in the amount that corresponds to the value of the defective delivery.

## 10. Mouldings (Tools)

- (1) The price for mouldings also contains the costs for one-time sampling, but not, however, the costs for testing and processing equipment as well as for alterations occasioned by the purchaser. Costs for further samplings, for which the supplier bears responsibility, are at his expense.
- (2) To the extent nothing is otherwise stipulated, the supplier is and remains title bearer of the mouldings that have been manufactured for the purchaser by the supplier himself or by a third party commissioned by him. Mouldings are used for the purchaser's orders only as long as the purchaser complies with his payment and acceptance commitments. The supplier is then obligated to reimburse the costs of these mouldings only if these are necessary for the fulfilment of an output quantity assured to the purchaser. The obligation of the supplier to retain these is extinguished 2 years after the final delivery from the moulding and the prior notification of the purchaser.
- (3) If, pursuant to stipulation, the purchaser becomes title holder of the mouldings, the property shall become his after full payment of the purchase price for it. The tendering of the mouldings to the purchaser is replaced by the storage in favour of the purchaser. Independently of the statutory claim to recover possession of the purchaser and from the useful life of the mouldings, the supplier is entitled, until the conclusion of the contract, to their exclusive possession. The supplier is to designate the mouldings as third-party property and, upon purchaser's demand, to insure them at his own expense.
- (4) For the mouldings belonging to the purchaser pursuant to Paragraph 3 and/or the mouldings made available by purchaser on loan, the supplier's liability is limited to the storage, care and maintenance as in his own affairs. Costs for maintenance and insurance are the responsibility of the purchaser. The obligations of the supplier are extinguished when, after completion of the order and the corresponding request of the purchaser, the purchaser does not retrieve the mouldings within a reasonable deadline. As long as the purchaser has not complied with the full scope of his contractual obligations, the supplier is entitled in every case to a right of retention in the mouldings.

## 11. Materials Provisioning

- (1) If materials are delivered by the purchaser, they are to be delivered at his own expense and risk, on time, and flawless condition.
- (2) In the event of non-performance of these prerequisites, delivery time is reasonably extended. Except in cases of force majeure, the purchaser bears the additional costs arising, also for interruptions in manufacturing.

## **12. Commercial Intellectual Property Rights and Defects of Title**

- (1) If the supplier is to deliver according to drawings, models, patterns or otherwise under use of parts provided by the purchaser, the purchaser is thereby responsible that intellectual property rights of third parties in the countries of destination of the goods are not hereby infringed. The supplier will notify the purchaser as to the rights known to him. The purchaser is to release the supplier from the claims of third parties and to render replacement of arising damages. If the manufacture or delivery is prohibited to the supplier by a third party, based on intellectual property rights belonging to the third party, the supplier is thusly entitled – without inspection of his legal situation -- to halt work until the clarification of the legal situation by the purchaser and the third party. In the event that further execution of the order, due to the delay, is no longer reasonable for the supplier, he is entitled to rescind.
- (2) The drawings and patterns transferred to the supplier, which have not been utilised for the order, will be sent back as desired; otherwise, the supplier is entitled to destroy them three months after the offer is made. This obligation applies to the purchaser correspondingly. The party entitled to destruction is to inform the other contracting partner beforehand in a timely way of the intention to destroy the material.
- (3) The supplier is entitled to all copyrights, and, as necessary, commercial trademark rights, in especially all rights of use and enjoyment, and all utilisation rights, in the models, forms, and equipments, drafts and drawings, which were created by him or from a third party commissioned by him. Documents and information of this sort may not be made accessible to third parts. If the purchaser obtains information of this sort in connection with initiating the contract, he is obliged to return them at no charge if the contract does not materialise.
- (4) In the event other defects of title are present, No. 7 applies to these correspondingly.

## **13. Place of Performance and Court of Jurisdiction**

- (1) Place of performance is the supplier's place of business.
- (2) The court of competent jurisdiction, at the discretion of the supplier, is either the supplier's place of business or that of the purchaser.
- (3) German law applies exclusively. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) dated 11 April 1980 (*BGB* 1989, page 586) for the Federal Republic of Germany (*BGB* 1990, Page 1477) is precluded.
- (4) In the event that individual provisions are ineffective, that does not affect the remaining provisions. In place of any ineffective provisions, the statutory provision enters into effect.
- (5) The data necessary for processing business transactions are saved with the supplier at a central location.

As of January 2013

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FORM YOUR IDEAS**

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