

# **General Sales Terms and Delivery Conditions of Lediberg by LINDOCATELLI GmbH (Lage/Germany)**

as of November 01, 2022

## **1. Validity of our General Terms and Conditions**

1.1. These delivery conditions will be valid for any business with persons who - upon conclusion of the contract - carry out their industrial and freelance professional activity (entrepreneur), as well as for businesses with bodies corporate organized under public law or special funds under public law.

1.2. Our sales terms and delivery conditions will be exclusively valid; they will also be valid for future business with the contracting party. Any of the contracting party's conditions that deviate from our sales terms and delivery conditions will not be valid, even if we do not expressly contradict them or render unconditionally services for the contracting party or accept the contracting party's services.

We will be entitled to withdraw from the contract if the contracting party contradicts the validity of our sales terms and delivery conditions. The contracting party's general terms and conditions will also not be valid if they deviate from legal stipulations notwithstanding the contents of our sales terms.

## **2. Conclusion of the contract / written form**

2.1. The contracting party's order will be a binding offer. We can accept this offer within 14 days by dispatching a written order confirmation. The contract will be concluded with the receipt of the order confirmation by the contracting party.

2.2. Our offers will be non-binding and only mean a request to the contracting party to place the order.

2.3. The written form provided for in these general terms and conditions will be deemed to have been observed if the necessary statement is made in writing according to § 126b of the German civil code (e.g. by fax or by email).

## **3. Prices, packing**

3.1. Our prices will be quoted ex factory, excluding packing, freight, assembly, and insurance, unless otherwise indicated in the order confirmation. Our prices are net prices. The respective V.A.T. will be charged separately. The prices are only valid for the order concerned but are not binding for reorders.

3.2. Packaging and freight charges will be charged at cost price. Pallets will remain our property and are to be returned in an immaculate condition together with the next delivery. The return of equivalent and similar pallets will be accepted. If the pallets are not returned within one month from delivery we will charge the cost price.

## **4. Payment / discount / default of payment**

4.1. Accounts receivable will be paid to us net within thirty days from date of invoice. After the expiry of the term the contracting party will be in default without any reminder. Bills of exchange will not be accepted for the purpose of payment. Checks will be exclusively accepted on account of payment. Cost and expenditure will be borne by the contracting party. All payments will have to be made in EURO (€). Any foreign bank charges will be borne by the contracting party.

4.2. If the contracting party is in default we will be entitled to claim interest on arrears for the year that exceed the relevant basic interest rate by eight percentage points, notwithstanding our right to prove and claim a higher rate based on the damage caused by the delay.

4.3. If the contracting party is in default with one payment all other claims will become immediately due unless the contracting party proves that it is not responsible for the delay.

## **5. Liability for material defects**

5.1. In case of a defect we will be - at our discretion - first entitled to eliminate the defect or to deliver a faultless article (supplementary performance, § 439, section 1 of the German civil code). In the case of the supplementary performance we will be obliged to bear all the costs that are necessary for the purpose of the supplementary performance, in particular, transport, shipping and handling, work, and material costs, provided that these costs do not increase due to the fact that the goods are to be taken to another place or to be changed after the claim has been put forward. We will be entitled to refuse the supplementary performance if it is only possible based on disproportionately high costs.

5.2. Unless otherwise prescribed by law the contracting party will be obliged to first fix a reasonable time limit in writing for the supplementary performance before it can put forward other guarantee claims. In general we will be granted a term of at least four weeks for a supplementary performance; unless a shorter term has been agreed in a particular instance.

5.3. Any guarantee will be excluded, if the goods have only minor defects. Only insignificant deviations from the quality as provided in the contract and only insignificant impairment of serviceability as stipulated in the contract will, in particular, be deemed as non-essential defects. Furthermore guarantee will be excluded if the contracting party or third persons have eliminated defects or carried out repairs without substantial necessity. Furthermore any guarantee will be excluded if the defect is due to missing or faulty records or information on the contracting party's part.

5.4. Claims for damages because of any possible consequential damages that occurred independent of supplementary performance (loss or production, claims due to delayed delivery to the contracting party's customers, etc., § 280 of the German civil code) can only be put forward if a reasonable term in writing for supplementary performance has expired ineffectively. Apart from this item 12 will be applicable to claims for damages.

5.5. The contracting party's claims for defects regarding the bought object will lapse within one year from delivery of the bought object. If the contracting party wishes to withdraw from the contract or to demand the reduction of the purchase price, these rights will also be excluded after one year from delivery of the purchased object. This reduction of the guarantee term will not apply in case of willful or fraudulent intent.

5.6. If the term for supplementary performance has expired ineffectively, we will be entitled to request the customer to put forward his further claims for guarantee within one month from our request. If he does not make his relevant statement within this term claims for guarantee will be excluded; however, this will only apply if we have expressly pointed out this legal consequence in our request with the indicated term.

5.7. Beyond the above-mentioned guarantee clause, we do not assume any guarantee for the quality of the purchased object supplied by us.

5.8. The contracting party's claims based on defects of the purchased object will lapse within one year from dispatch of the purchased object. If the contracting party wishes to withdraw from the contract or to demand the reduction of the purchase price, these rights will also be excluded after one year from delivery of the purchased object.

This reduction of the guarantee term will not apply in case of willful or fraudulent intent.

## **6. Liability for deficiency in title**

6.1. Within the scope of the legal stipulations we will be liable for the delivery of products that are exempt from deficiency in title. Unless otherwise agreed, we will only guarantee that the products supplied by us do not violate third persons' industrial property rights or copyright in the country (home country) where our company has its seat. We will not be liable if the violation of such property rights is based on instructions given by the contracting party, or if the reason for the infringement is due to the fact that the contracting party has arbitrarily changed the product or used it for a purpose other than that agreed in the contract.

6.2. The contracting party will immediately inform us when an infringement of property rights has been put forward by third persons. If it does not inform us immediately any claims for guarantee will be excluded.

6.3. Item 9.10. will apply accordingly regarding the guarantee term.

6.4. If justified claims are put forward by third persons within the guarantee term, we can at our discretion and at our expense obtain a right of use for the deliveries involved, or change the deliveries in a way to ensure that the property rights are not violated, or supply comparable products, by taking the purpose indicated in the contract into account.

6.5. The contracting party's claim for guarantee will be excluded if it negotiates with the third person, or makes agreements with the latter without our consent, or if the contracting party does not immediately inform us about the third party's claims.

## **7. Liability for compensation for damages and futile expenses**

7.1. Notwithstanding the cause in law our liability for compensation for damages and for the reimbursement of futile expenses will be limited to negligence and deliberate intention. This will also apply to breach of duty by our legal representatives and vicarious agents.

7.2. In the case of general negligence we will be only liable - notwithstanding the cause in law - for the violation of material contractual obligations; in this case the amount of a possible claim for damages will be limited to the compensation for a typical foreseeable damage. Before the conclusion of the contract the contracting party will be obliged to draw our attention in the written form to special risks, atypical possibilities of damage and unusual amounts of damage. The liability for any further consequential damages, missed economic success, direct damages and for damages based on third persons' claims will be excluded.

7.3. Claims for damages due to defects will be excluded if the goods show only insignificant defects.

7.4. Any limitation of liability will not apply to claims in connection with death, injury or damage to health as well as to claims based on the product liability law and further obligatory liability-related regulations.

## **8. Artwork / raw materials / print media**

8.1 Artwork, films, final drawings, manuscripts, etc. supplied by the contracting party will be binding for the execution of the order; the consequences of any possible mistakes included in the latter will be borne by the contracting party.

8.2 If the contracting party makes available films and proofs they will be manufactured according to the guidelines of the FOGRA. Colour deviations within the limits determined by the FOGRA will be admissible for the use of such proofs.

## **9. Reservation of title**

9.1. We will reserve the title to all goods supplied by us until the fulfillment of all claims based on the business relation with the contracting party - including also any future claims. As long as the invoice has not been completely settled the reservation of title will apply to the respective balance.

9.2. In case of the contracting party's culpable behavior which is contrary to the contract, and in particular in the case of delayed payment, we will be entitled to take back the supplied object also without prior withdrawal from the contract. The contracting party will be obliged to handover. Taking back the goods will not be deemed as our withdrawal from the contract, unless we have expressly stated our withdrawal in writing. The taken back goods will be credited against the real sales revenue after deduction of the utilization and taking back costs.

## **10. Property rights /secrecy / company details**

10.1. The contracting party will be liable for the non-infringement of third persons' property rights regarding the records, objects and the like that it has handed over to us for the purpose of delivery or performance. We will draw the contracting party's attention to third persons' rights that are known to us. The contracting party will exempt us from third persons' claims and compensate us for damage which has been caused to us. If third persons prohibit us the performance, production or delivery under reference to their property right, we will be entitled - without examining the legal situation - to stop the work and to demand compensation for our expenditure. The records, objects and the like that had been handed over to us but were not used for the execution of the order will be returned upon request against reimbursement of the costs. Otherwise we will be entitled to destroy these three months after the submission of the offer.

10.2. We will reserve property rights and copyright to all samples, models, drawings, quotations, calculations, and similar information of material and immaterial kind - including those in electronic form. This will also apply to films, clichés, lithographic prints, printing plates, and standing types, even if they are charged separately. These objects and information may not be made available to third parties. If the contracting party receives such information in connection with the preparation of the contract it will be obliged to return these free of charge to us if the contract is not concluded.

10.3. The contracting party will be obliged to make available all information to third persons only with our express consent, if we expressly describe it as confidential or if it is to be kept secret because of the given circumstances.

10.4. We will be entitled to appropriately refer to our own company in the goods we supply.

## **11. Final clauses**

11.1. In addition to these terms of the contract the relevant law of the Federal Republic of Germany which is applicable to the privities of contract regarding domestic parties will be exclusively valid. The application of the UN CISG (United Nations Convention on Contracts for the International Sale of Goods) will be excluded.

11.2. Should any single clauses of these general terms and conditions be wholly or partially ineffective, this will not affect the validity of the other clauses and/or of the other parts of such clauses; instead the legal stipulations will be applicable.

11.2. Lemgo will be the place of performance, payment and fulfillment for all obligations resulting from the privities of contract regarding the contracting party. Agreements on the payment of costs do not include a change of the above-mentioned place of fulfillment.

11.3. The data required for handling the business transactions will be stored at a central place in our company.

11.4. Lemgo will be the exclusive place of jurisdiction for all disputes resulting from the contractual relationship with all contracting parties. We will be entitled to sue the contracting party at our discretion also at its general place of jurisdiction or at the place of jurisdiction which is competent for its place of business.

**Lediberg by LINDOCATELLI GmbH, D-32791 Lage**