

## General Terms of Sale, Delivery and Payment Loryma GmbH

### I. General

- The following terms and conditions shall only apply to natural persons or legal entities, or to partnerships with legal personality acting in their commercial or self-employed capacity (entrepreneurs) at the time the contract is concluded. In each case, the version which was valid at the time of the contract conclusion is applicable. The contracts contain in writing all agreements made for the execution of the sales contracts between the purchaser and us.
- Conflicting, deviating or supplementary terms and conditions laid down by the buyer shall not be recognized unless previously and expressly approved by us in writing. Our terms and conditions shall also apply when supplying the buyer without reservation after having been informed of conflicting or divergent terms and conditions on the part of the buyer.
- Our terms and conditions shall also apply to any and all future contracts.
- German law shall exclusively apply in every case including the UN Convention on Contracts for the International Sale of Goods (CISG).

### II. Conclusion of a Contract

- Our quotations are subject to change and are non-binding, unless we have explicitly designated them as binding.
- Upon placing an order for the required goods, the customer shall make a binding offer to enter into a contract.
- We shall be entitled to accept the offer constituted by the purchase order within two weeks either by dispatching an order confirmation or by dispatching the ordered products within the same period.
- The contract shall be concluded with the proviso that, if we ourselves are not correctly or properly supplied, we are not obliged to perform the contract, or may only partially perform the same. This shall solely apply if we are not responsible for the failure to deliver. We will notify the customer immediately if the goods are not available or only partially available and return all advance payments of the customer immediately.
- Order cancellations will only be recognized upon our agreement. In such cases we shall be entitled to claim compensation amounting to 20% of the agreed purchase order sum. The buyer can prove that we have sustained no or a minor loss from the order cancellation.
- We hereby reserve all proprietary and intellectual property rights as well as copyrights to any and all illustrations, calculations, drawings and other documentation. The purchaser may only disclose such items to third parties with our written consent, regardless of whether or not we have designated such items as confidential. The same shall apply to the transmission of information relating to our products which may have been made available to the customer.

### III. Solvency

- It is assumed upon accepting orders that the buyer is creditworthy.
- In the event that, following conclusion of a contract, information be obtained to the effect that the buyer's financial situation has deteriorated considerably to the extent that the allowance of credit no longer be justified, we shall be entitled to require a security on due and/or undue demands payable to us as a result of unfulfilled contracts, such a requirement also applying to payments already made by bill of exchange. Should the buyer fail to meet such a requirement in time, we shall have the right to withdraw from the contract or to seek compensation due to non-fulfilment of the contract. The obligation to supply may be suspended until such advance payment or provision of securities has been met. Regulations by the German Insolvency Law and the Receivership Law remain unaffected.
- Material deterioration in the financial standing of the buyer is most especially deemed to have arisen in the case of bad cheques, protesting of bills of exchange, futile seizure, forced administration, suspension or opening of insolvency proceedings.

### IV. Prices

- VAT, as required by law, is not included in the prices stated. It shall be listed separately in the invoice at the legally valid rate on the day the invoice is issued.
- In the case of delivery franco domicile, any tax rates, duties, freight rates, fees and other charges which may have risen, fallen or been newly implemented subsequent to the conclusion of the contract shall be borne by/credited to the buyer.

### V. Delivery

- Loading and transport shall take place uninsured and at the purchaser's risk. With regard to the manner and route of transport, we shall attempt to take the purchaser's wishes and interests into account. The purchaser shall bear any additional costs incurred as a result thereof, even if carriage-paid delivery has been agreed.
- If transport is delayed at the purchaser's request, or through the purchaser's fault, we shall store the goods at the purchaser's own expense and risk. In such an event, notification of readiness for transport shall be deemed equivalent to transport.
- Information regarding delivery dates or periods shall be deemed to be non-binding unless explicitly designated as binding. The delivery period specified by us shall only commence once all technical issues have been resolved. The purchaser must as well meet all his obligations in an orderly and timely manner.
- If the underlying purchase contract constitutes a transaction for delivery by a fixed date as defined by § 286 Paragraph 2 No. 4 of the German Civil Code (BGB) or § 376 of the German Commercial Code (HGB), our liability shall be defined by the statutory provisions. The same shall apply if, as a result of a delay in delivery for which we are responsible, the purchaser may claim not to be interested in the fulfilment of the contract any more. In such an event, our liability shall be limited to the foreseeable typically arising damage, unless the delay in delivery results from a deliberate breach of contract for which we are responsible. Default on the part of our representatives or vicarious agents is attributed to us. In the event of a delay in delivery we as well shall be liable to the purchaser to the extent provided for by law, if the delay in delivery results from a deliberate or grossly negligent breach of contract for which we are responsible. Default on the part of our representatives or vicarious agents may be attributed to us. Our liability shall be limited to the foreseeable typically arising damage, unless the delay in delivery results from a deliberate breach of contract for which we are responsible.
- If a delay in delivery for which we are responsible is based on the culpable breach of a material contractual obligation, whereupon default on the part of our representatives or vicarious agents may be attributed to us, we shall be liable to the extent provided for by law, with the proviso that, in such a case, our liability for indemnification shall be limited to foreseeable, typically arising damage.
- For all other situations, in the event of a delay in delivery for which we are responsible, the purchaser may demand a flat-rate compensation amounting to 3% of the value of the delivery for each complete week of delay, in total not exceeding 15% of the value of the delivery.
- Any further liability for a delay in delivery for which we are responsible shall be excluded. Further statutory claims and rights to which the purchaser may be entitled in addition to damages as a result of a delay in delivery for which we are responsible shall remain unaffected.
- We shall be entitled to render partial deliveries and partial performance insofar this is tolerable for the customer.
- Should the purchaser delay official acceptance of the goods, we shall be entitled to demand compensation for any losses or additional costs incurred. The same shall apply if the purchaser is in culpable breach of his obligation to cooperate. The risk of accidental deterioration or loss shall be transferred to the purchaser as soon as he is in default of acceptance respectively in debtor's delay.
- Deliveries made by lorry and/or wagon shall be unloaded immediately by a sufficient number of the buyer's workforce using suitable means. Any waiting times and demurrages which go beyond the fixed loading and unloading times as specified by the [German] long-distance goods rate scale or by the Deutsche Bundesbahn (German Federal Railways), as well as costs incurred as a result of the purchaser's culpable failure to unload the goods, will be charged on the basis of expenditure.

### VI. Complaints/Guarantees

- The purchaser shall be obliged to inspect the delivered goods for any apparent defects that may reasonably be detectable by an average customer. Upon delivery the purchaser as well shall be obliged to check the documentation accompanying the goods to verify conformity with the purchase order details relating to the goods. The purchaser is to notify us of such apparent defects in writing immediately after receipt of the goods at the point of destination stating in detail the nature and extent of the defects and the estimated amount of the claim. The date of our receipt shall decide about the timely notice of such a complaint. Complaints relating to the quantity of goods delivered and/or any other form of shortfall or damage are to be noted as ascertained facts on the consignment note and/or transport documents at the time of acceptance of the consignment and to be confirmed by means of the driver's signature. The purchaser is to notify us immediately in writing of any defects that become apparent at a later date, and in so doing state in detail the nature and extent of the damage as well as the estimated amount of claim. In the event of any infringement of the purchaser's duty to inspect or notice a complaint, the consignment shall be deemed to have been accepted in consideration of the respective defect. The burden of proof lies with the purchaser with respect to any and all presuppositions of a claim, most notably in relation to

the defect itself, the point in time the defect was established and the timely notice of the relevant complaint.

- With regard to defects ascertained in the goods, we hereby warrant either to remedy the defect or to replace the consignment at our discretion. Where replacement is concerned, the purchaser shall be obliged to return the defective object(s). Expenses incurred in remedying the defects, most notably transportation, labour costs and costs of materials as well as travel expenses shall be borne by us provided that such costs do not increase as a result of the purchased object being transported to a destination other than the place of fulfilment.
- In the event that the defect may not be corrected within a reasonable period of time or all attempts to remedy the defect or provide a replacement should fail for whatever reason, the purchaser shall, at his/her own discretion, be entitled to ask for a lower price payable for the goods (price reduction) or withdraw from the contract. Failure to remedy the defect shall only then be deemed to have occurred if, after being granted sufficient opportunity to remedy the defect or supply a replacement, the desired results are not achieved, a remedy or replacement consignment proves to be impossible, we refuse or unreasonably delay such a remedy or replacement consignment, there is reasonable doubt as to the prospects of success, or if other reasons constitute a hardship. The customer shall not be entitled to withdraw from the contract on the grounds of a minor breach of contract, this most notably being in relation to minor defects.
- Should the customer opt to withdraw from the contract on the basis of a defect of title or a material defect once all attempts at a remedy have failed, he/she shall only be entitled to require compensation according to Section 5.
- Claims relating to defects in respect of the delivered goods shall become statute-barred within one year of the goods being delivered. The statutory limitation periods shall apply in cases where we can be charged with malice.

### VII. Liability

- In accordance with the statutory provisions, we shall bear unlimited liability for damage to life, limb and health based on a negligent or intentional breach of duty on our part, on the part of our legal representatives or our vicarious agents, and for damage subject to liability pursuant to the German Product Liability Act ('Produkthaftungsgesetz'). We shall be liable to the extent provided for by law for damage which is not covered by Clause 1 and which is based on an intentional or grossly negligent breach of duty or malice on our part as well as that of our legal representatives or our vicarious agents. In that event, however, our liability shall be limited to the foreseeable typically arising damage unless we, our legal representatives or our vicarious agents have acted intentionally. To the extent that we have issued a guarantee on quality and/or durability with respect to the goods or parts thereof, we shall also be liable in the context of that guarantee. However, we shall only be liable for damage based on the absence of the guaranteed quality or durability, but which does not directly incur in the goods themselves, if the risk of such damage is clearly covered by the quality and durability warranty.
- We shall also be liable for damage caused by ordinary negligence, if such negligence relates to the breach of contractual obligations the observance of which is of particular significance to the achievement of the contract purpose (essential obligations). However, we shall only be liable if the damage is typically associated with the contract, and is predictable.
- All other forms of liability shall be excluded, regardless of the legal nature of the claim asserted. This shall apply, in particular, to claims in tort, or claims for compensation for futile expenditure in lieu of performance; this shall not affect our liability pursuant to Section V No. 4 to Section V No. 7 of this contract. Any exclusion or limitation of our liability shall also apply to the personal liability of our white-collar and blue-collar employees, co-workers, representatives and vicarious agents.
- Claims for damages asserted by the purchaser in respect of a defect shall become statute-barred within one year of the goods being delivered. This shall not apply in the event of injury to life, limb or health caused by ourselves, our legal representatives or our vicarious agents, nor shall it apply if we, or our legal representatives, have acted in an intentional or grossly negligent manner, or if our ordinary vicarious agents have acted in an intentional manner.

### VIII. Payment

- Unless otherwise agreed, all invoices are payable net within 14 days of date of invoice. Payment is to be effected in cash or by cashless transaction. Discounts shall only be accepted if payment reaches us within the agreed period of time for cash discounts and no overdue invoices remain. The amount of discount is not deductible from freight costs or freight prepaid nor from any incidental expenses which may have been expressly stated. 2. In addition, we shall be entitled, from the due date, to levy late payment interest amounting to 8% above the base interest rate, and to debit all costs incurred as a result of issuing payment reminders. We reserve the right to verify and assert a higher level of losses related to the delayed payment. 3. A complaint lodged by the purchaser shall not release him/her from any duty to effect payment. With the exception of uncontested or legally enforced claims, the purchaser shall not be entitled to withhold payment or offset such payments against any counterclaims he/she may be enforcing. Incoming payments shall amortize outstanding debts in the order in which they have occurred.

### IX. Right of Retention

- The goods shall remain the property of the seller as per § 449 BGB and in consideration of the following supplements until full payment has been effected.
- The purchaser's purchase price or labour cost claims deriving from the resale, installation or other processing of the goods delivered by us, together with all ancillary rights, are herewith assigned to us in advance, regardless of whether these have been resold to one or more purchasers. In the event that the purchaser should sell the goods to which we have reserved title together with other goods to which we do not have title, the assignment of the claim, or assignments of the claims, shall only apply to the extent of the value of the goods which we have delivered. All processing, handling or conversion of the goods by the purchaser shall be performed on our behalf and by our order. Should the goods be processed or converted with the help of objects or materials that do not belong to us, we shall acquire a part ownership of the new article which shall represent the proportionate value of the goods supplied by us to the other processed or converted articles. The same shall apply in cases where the goods are mixed with other objects or materials that do not belong to us.
- The buyer shall only be entitled to resell or process the goods supplied by us in the ordinary course of business and under the presupposition that the purchase price or wage claims from such resale be transferred to us in acc. with Point 2. The buyer shall not be entitled to dispose of the goods supplied by us in any other shape or form. Before full payment of our claim has been effected, the buyer shall not pledge or assign by way of a security the goods supplied by us to third parties. Should the purchaser be in payment arrears, he must obtain our specific consent in order to dispose of those goods in respect of which full payment has not yet been made.
- Regardless of the assignment, the buyer shall nevertheless be entitled to collect sums due from the reselling or processing of the goods. Our entitlement to collect sums due shall not be affected by the right of the buyer to do the same. However, we shall not collect sums due provided that the buyer continues to settle his obligations to pay. Failing this, we shall be entitled to assert our ceded claims. The buyer shall then refrain from collecting assigned claims as per our instructions. At our request, he shall be obliged to inform the third-party of the assignment and to present us the necessary documents to assert our rights against said third-party.
- Our right of retention is contingent on full payment of all receivables arising from our business relations being effected whereby ownership of the goods supplied by us and subject to retention shall then pass to the buyer and the assigned claims be due to the buyer. We hereby commit to release the appertaining securities in acc. with the above provisions at our discretion and to the extent that such value exceeds the secured debts by more than 20%; however, this presupposes that the release of securities for such goods or their replacement value occurs once they themselves have been paid for in full.
- Upon reselling the goods, the buyer himself is to agree with his purchaser the right of retention on the goods supplied by us and which are subject to our right of retention in order to safeguard our ownership. He hereby commits to inform us immediately of any third-party access to the goods in our ownership. Equally, he shall inform said third-party gaining access to the goods that ownership lies with us.
- For as long as the claim remains unsettled, we shall be entitled to require information of the buyer as to which goods with reservation of ownership are still in the possession of the buyer, where they are located and which purchasers received the other goods supplied prior to these and in what quantity, type and number etc. We shall be entitled to inspect the goods supplied by us which are subject to ownership at any time and place of location in order, for example, to ipso jure mark, repossess, immediately sell and otherwise avail of the goods if reasonable doubt prevails as to the solvency or willingness to pay of the buyer, as a result of a delay in payment, other difficulties in meeting debts or a deterioration in the buyer's financial circumstances, especially following futile seizure, receivership or foreclosure, insolvency proceedings etc. whilst maintaining any and all claims arising from a default and especially pertaining to the costs for returning the goods. Following a reasonable period of time we shall be entitled to assert a

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minimum claim for damages resulting from the non-fulfilment of the sales agreement amounting to 20% of the invoice amount with the proviso of asserting further claims in the future. The buyer shall bear responsibility for proving whether or not the supplier has sustained no or a moderate loss from the non-performance. In the event that the goods are repossessed due to his suffering financial difficulties, the buyer may not assert his rights relating to trespassing.

8. The buyer shall be obliged to insure our goods to a sufficient extent against fire and theft and to furnish evidence of the conclusion of an insurance policy at our request. The goods are to be stored in such a way that our right of ownership remains unaffected.

### **X. Reserve of Cession**

We hereby reserve the right to assign to third parties any of our existing and future claims arising from the contractual relationship, including any securities that are due to us.

### **XI. Place of Jurisdiction/Fulfilment**

1. In the event that the purchaser is a businessman, a legal entity founded under public law or a public utility, the sole place of jurisdiction for all disputes arising from this contract shall be at our place of business. The same shall apply in the event that the purchaser has no general place of jurisdiction in Germany or his permanent or habitual place of residence is unknown at the time the action is brought. We shall, however, also be entitled to take action against the purchaser at his place of residence and/or registered place of business.

2. Provided that nothing to the contrary has been stated in the order confirmation our place of business shall be the place of fulfilment.

### **XII. Data Processing**

The buyer acknowledges that we save and process personal data in connection with our business dealings. No specific statement shall be published to this extent.

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