

General Terms and Conditions of LTG Aktiengesellschaft



1. Scope of application, German law

1.1 The following General Terms and Conditions of Sale apply exclusively to our supplies and services unless other conditions have been expressly approved by us in writing. Our General Terms and Conditions of Sale also apply if we, in the knowledge that the conditions of the purchaser either contradict or derogate from our General Terms and Conditions of Sale, supply the goods or accept the order without reserve.

1.2 Our General Terms and Conditions of Sale also apply to all future transactions with the purchaser.

1.3 Any departure from these General Terms and Conditions of Sale shall only be valid if confirmed by us in writing. They also apply to specific individual cases without any future effect. Our employees are not authorised to make any individual oral agreements which depart from these General Terms and Conditions of Sale.

1.4 The law of the Federal Republic of Germany shall apply. The United Nations Convention on Contracts on the International Sale of Goods does not apply to contracts with foreign customers.

2. Offer, conclusion of agreement, obligations for outside products

2.1 Our offers are not binding unless they are made in writing and expressly designated "Offer" and do not contain words such as "non-binding".

2.2 Any other declarations of intent which we have not specified as binding offers are merely an invitation to submit an offer (order).

2.3 If the purchaser submits an offer (order) it is bound by this for a period of two months from receipt by us. If we have not made acceptance within this period the purchaser may withdraw the written declaration in writing, otherwise the offer continues to be valid.

2.4 Our written confirmation of order determines the content of the agreement. This content shall form the basis of the agreement unless the purchaser objects without undue delay.

2.5 Declarations which generate an obligation on our part for proper functioning of components not supplied by us are not valid unless made by our corporate bodies or authorised agents (e.g. *Prokuristen* and *"Handlungsbevollmächtigte"*).

3. Prices

3.1 The prices due shall be as specified in the confirmation of order. Prices are ex works plus packaging plus statutory value added tax at the applicable rate. International trade terms such as EXW, FCA, DDP, CIF, etc., are subject to the rules of Incoterms® 2010.

3.2 If – for deliveries with an agreed delivery time of at least four months – the purchase or production costs for our supplies rise by 2 % or more (due to an increase in labour costs, materials prices or public duties and taxes), we are entitled to adjust prices accordingly.

4. Performance, documents, confidentiality

4.1 We reserve the right to modify the design, form and technical details provided this does not adversely affect the suitability of the goods for their designated purpose as specified in the agreement.

4.2 Unless otherwise agreed in writing in an individual agreement our supplies shall comply with statutory provisions of the Federal Republic of Germany. To this extent, we reserve the right to implement amendments to statutory provisions and official requirements by modifying the goods to be supplied.

4.3 With regard to export orders we do not accept responsibility for official acceptance of goods abroad. This applies in particular to public law provisions which are amended after the agreement has been concluded.

4.4 To the extent that in individual cases amendments have been agreed after conclusion of the agreement these shall be at the cost and risk of the purchaser.

4.5 In all other respects decisions on the costs of an amendment to the subject of supply shall be made in writing by common consent.

4.6 The purchaser is obliged to treat the content of the agreement and all associated details in confidence.

4.7 We retain the ownership rights and copyrights in illustrations, drawings, sketches, models, calculations and other documents. These may not be disclosed to third parties without our written consent.

4.8 The purchaser shall use our documents solely for the purpose of executing the agreement. It shall treat the documents in accordance with our instructions. Once the agreement has been completed the documents shall be returned to us without special request. There is no right of retention.

5. Delivery

5.1 Agreements on delivery periods or dates are not valid unless set out in writing. The delivery period – subject to 5.2 – commences on receipt of the confirmation of order by the purchaser.

5.2 The observance of agreed delivery times and dates is dependent on timely receipt of all documents to be provided by the purchaser, all necessary permissions and releases, provision of all necessary information, and observance of the agreed terms of payment and other obligations by the purchaser. If these prerequisites are not fulfilled on time, the delivery times shall be reasonably extended; this shall not apply if we are responsible for the delay.

5.3 In the event of delays in supply and performance with us or with our supplier owing to force majeure or events for which we are not responsible which render supply substantially more difficult or impossible (strikes, lock-outs, government orders, other disruptions to operation, etc.) the delivery time shall be suspended for the period of the delay.

5.4 Supply commitments, in particular dates, are subject to our having been supplied in correct and timely manner.

5.5 We reserve the right to make part shipments and part performance to the extent that this would appear necessary for technical reasons associated with despatch.

5.6 In the event of a delay in delivery the purchaser is entitled to withdraw from the agreement and/or to demand compensation in lieu of performance if a reasonable deadline set by the purchaser, combined with threat of refusal, has expired without results.

5.7 At our request the purchaser is obliged to declare within a reasonable period in writing whether it intends to withdraw from the agreement and/or demand compensation in lieu of performance or insist on performance.

5.8 The amount of a claim to reimbursement of the default damages and to compensation in lieu of performance is restricted to typically foreseeable damages; exceptions thereto are cases of intent or gross negligence on the part of our legal representatives or agents.

6. Risk, acceptance

6.1 The place of performance shall be our production site or our despatch warehouse.

6.2 The risk of accidental loss passes to the purchaser when the subject of supply leaves the works even if supply is made in part shipments or if the supplier has agreed to render other services, e.g. dispatch costs or shipment and erection.

6.3 If acceptance is required, passage of risk of accidental loss shall be on acceptance. Acceptance must be carried out on the acceptance date without undue delay or, alternatively, when we have given notification that the subject of supply is ready for acceptance. The purchaser shall not refuse acceptance on the grounds of an insignificant defect.

6.4 If the subject of supply cannot be despatched or accepted or if despatch or acceptance are delayed owing to circumstances which are not within our sphere of responsibility, risk of accidental loss shall pass to the purchaser on the date on which notice is issued that the subject of supply is ready for despatch or acceptance.

7. Information and documents

7.1 The purchaser shall provide us – promptly and without being specifically requested to do so – with all information and documents which are required or are of substantial significance for execution of the agreement.

7.2 If the purchaser receives information and documents which differ from the information and documents which we have provided, the purchaser shall report this to the contact named in writing and without undue delay. In the event of infringements of the duty to provide notification we shall not regard the differences as binding on us.

7.3 If the information or documents required for our activity contain errors or if they do not comply with the form required by contract, we are entitled to charge the costs necessitated by correction separately according to the usual hourly rates.

8. Reservation of title

8.1 The goods shall remain our property until all our claims against the purchaser resulting from the business relationship (including collateral claims and compensation claims and claims arising from the collection of cheques and bills of exchange) have been satisfied.

8.2 If our title in the goods lapses as a result of combining or mixing and if the purchaser becomes the owner, the purchaser hereby transfers to us in advance a share in the title in the item which has been created by the processing, whereby this share shall correspond to the value of the portion which we have supplied. We hereby accept this offer of transfer of title. Handover shall be replaced by custody free-of-charge.

8.3 Transfers of our ownership or co-ownership are subject to our express written approval. To the extent that the purchaser transfers title to third parties it hereby assigns to us in advance any claims arising therefrom by way of performance. We accept such assignment. In the event that the purchaser is permitted to resell the purchaser is authorised to collect assigned claims until such authorisation is revoked.

8.4 If third parties infringe our rights of ownership the purchaser shall report this without undue delay and take suitable legal steps against this on its own initiative.

8.5 In the event of default on the part of the purchaser, an application for institution of insolvency proceedings, transfer of the expectant right to third parties or transfer of the purchaser's business to third parties, we shall be entitled – without withdrawing from the agreement – to take back the goods supplied and to enter the business premises of the purchaser for this purpose. If reservation of title is claimed, if we take back or pledge goods supplied this shall not constitute withdrawal from the agreement, unless we specifically declare withdrawal from the agreement in writing. We shall be entitled to dispose freely of such reserved goods which we have taken back. The proceeds from such sale shall be offset against the purchaser's liability less reasonable realisation costs.

8.6 If the value of the securities due to us exceeds the claims by more than 20 % we will release securities – at our discretion – at the request of the purchaser.

9. Terms of payment

9.1 Place of payment is Stuttgart. The purchaser waives the right to offset against claims which are not final and absolute. It further waives the right to claim a right of retention in as far as this is not based on undisputed or final and absolute counterclaims.

9.2 Invoices for the supply of goods shall be payable without any deductions within 30 days of receipt of invoice. If the invoice has not been paid within 30 days of receipt of invoice, at the latest 30 days after delivery has been made, the purchaser is in default with payment and we may claim default interest and further damage caused by such default. If the purchaser is in default with payment we are entitled to demand default interest of 8 % points above the prevailing basic rate of the Deutsche Bundesbank.

9.3 If there is a deterioration in the financial position of the purchaser, in particular if claims are not settled by the due date or if there are seizures we may demand that claims be settled immediately.

10. Liability for defects

10.1 The purchaser shall inspect the goods received without undue delay on arrival for defects and agreed characteristics. The supplier shall be informed of any obvious defects in the consignment no later than seven days after receipt of the consignment, latent defects shall be reported in writing no later than seven days after discovery. Otherwise the consignment shall be deemed to have been accepted.

10.2 The purchaser shall provide us with an opportunity to investigate the complaint; in particular, it shall make damaged goods and the packaging available to us for inspection. If it refuses to comply with this requirement we shall be released from liability for defective goods.

10.3 We shall not be liable for public statements made in our advertising or in the advertising of another manufacturer of the goods supplied or its agents, if the purchaser is unable to prove that the statements have influenced its decision to purchase or if we were not and could not be expected to be aware of such statement or if the statement had already been corrected accordingly at the time the purchaser decided to make the purchase.

10.4 If the purchaser demands subsequent performance on the grounds of a defect we may choose whether to remedy the defect ourselves or to supply defect-free goods in replacement. Title in the goods to be replaced shall be restored to us – concurrently in return for replacement supply. If repair or replacement are not possible, are refused or do not take place or fail for other reasons within our sphere of responsibility before expiry of the deadline set by the purchaser, the purchaser may at its own discretion withdraw from the agreement or demand a reduction in the purchase price.

10.5 To the extent that the complaint is justified, of the direct costs incurred by repair or replacement we shall bear the costs of the part to be replaced including carriage. Any costs incurred by the purchaser shall be borne by the purchaser himself. Necessary assembly and travel expenses incurred in connection with unjustified complaints regarding defects shall be borne by the Buyer.

10.6 Claims of the purchaser derived from the expenses required to satisfy subsequent performance, in particular, transport, in-transit, work and material costs are ruled out in as far as the expenses increase because the subject of supply was subsequently moved to a place other than the branch of the purchaser, unless such transport corresponds to the designated or contractual use.

10.7 We shall not be liable for damage to goods caused by natural wear and tear, unsuitable or incorrect use or treatment, faulty assembly or commissioning, excessive use or improper modification, improvement or repair work by the purchaser or third parties in as far as they are not our fault.

10.8 Claims of the purchaser for compensation over and above this, in particular for compensation in lieu of performance and for replacement of other direct or indirect damage – including concomitant or consequential damage, irrespective of legal ground – are excluded. This does not apply if

a) we maintain silence with malicious intent regarding a legal or material defect or have assumed a guarantee that there are no such defects or if we have assumed a guarantee for the quality of the goods,

b) the damage is based on intent or gross negligence on our part or on the part of one of our legal representatives or agents or negligent infringement of essential contractual duties by ourselves or such persons, or

c) negligent infringement of duty on our part, on the part of our legal representatives or agents has led to personal injury or damage to health.

However, in the event of simple negligence our duty to replace is restricted to the value of foreseeable damage typical of this type of agreement.

10.9 The provisions of 10.8 shall apply accordingly to direct claims of the purchaser vis-à-vis our statutory representatives or agents.

11. Statutory limitation

11.1 All claims of the purchaser – whatever the legal reasons – become statute-barred after 12 months.

11.2 The statutory periods apply to compensation claims pursuant to 10.8 a) – c). They also apply to defects of buildings or to contractual goods which have been used in accordance with their normal use for a building in which they have led to a defect.

12. Delay in acceptance

12.1 In the event of a delay in acceptance the purchaser shall render compensation of 10 % p.a. of the outstanding contract value for the period of the default. The outstanding contract value shall be the difference between the overall order volume and the payments which have already been made. The purchaser is entitled to prove that the actual damage incurred is less. This claim shall exist irrespective of and in addition to a possible claim for default of payment.

12.2 In addition and in the event that the goods have already been paid in full, we are still entitled to claim a higher amount of compensation (e.g. costs of removal from storage) in as far as this is proved in the individual case.

13. Resale of the goods

If the subject of supply is resold the purchasers undertake to incorporate no. 10 (Liability for defects) of these General Terms and Conditions of Sale as an integral part agreements with third parties. In the event of an infringement we are indemnified from claims for compensation from third parties, in particular from product liability claims arising from our internal relationship to the purchaser.

14. Final provisions

14.1 Stuttgart shall be the place of jurisdiction for both parties provided that the purchaser is a merchant, a legal person under public law or a special public fund.

14.2 If a provision of these General Conditions of Sale should be or become invalid, the validity of the remaining provisions shall remain unaffected.

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