



## General Terms and Conditions (of sale and delivery)

of Lützenkirchen Lagertechnik GmbH, Walter-Frese-Strasse 11, D-47299 Leichlingen, effective January 2010

### 1. Application of terms and provisions

1. Our deliveries, services and offers are made exclusively on the basis of the present General Terms and Conditions. These therefore also apply to all future business relations, even where they are not expressly agreed once again. By accepting our offer, the customer effectively agrees to these General Terms and Conditions. If our offer is confirmed by the customer in a form which differs from our terms and conditions, then too our General Terms and Conditions shall apply, even if we make no objection. Such different terms shall only apply if they have been expressly accepted by us in writing. If the customer does not agree to the above mode of operation, it must state this immediately and expressly in a separate letter. We reserve the right in such case to withdraw the offer without thereby becoming exposed to any claims of any kind.

2. Our General Terms and Conditions shall also apply where, in awareness of terms and conditions of a customer which conflict with or differ from our General Terms and Conditions, we carry out the deliveries or services to the customer without demur.

3. Our General Terms and Conditions shall also apply to all future deliveries, services and offers to the customer, even where they are not agreed again separately.

### 2. Offer and conclusion of contract

1. Our offers are without obligation and subject to confirmation. Statements of acceptance of all orders placed with us are only legally valid if confirmed by us in writing or electronic form. The same applies to additions, alterations or supplementary agreements.

2. If the customer's order qualifies as an offer within the meaning of section 145 BGB (German Civil Code), we have 4 weeks in which to accept it.

3. Our statements regarding the object of delivery (e.g. weights, dimensions, values in use, load capacity, tolerance and technical data) and our presentation thereof (e.g. in drawings and illustrations) are only approximately definitive unless their usability for the contractually intended purpose is conditional on an exact match. They are not guaranteed characteristics but descriptions or identifications of the delivery or service. Differences customary in the trade or differences which result from statutory provisions or represent technical improvements, as well as the replacement of components with parts of the same standard, are permissible if they do not impair usability for the contractually intended purpose.

4. We reserve copyrights and title to illustrations, drawings, calculations, cost estimates and other documents, none of which may be made accessible to third parties. This applies in particular to documents which are designated as "confidential". The customer must have our express consent before disclosing them to third parties. Illustrations, drawing and other documents included with offers must, on request, be returned to us without delay if the order is not placed with us.

5. Samples requested from us will only be delivered at extra charge.

6. We reserve the right to correct manifest errors and discrepancies in price lists, invoices and confirmations and to rebill as appropriate. The risk of transmission errors shall be borne by the customer.

7. Where the customer has to supply documents such as drawings, samples, models or the like, the customer shall be liable for the correctness of the content, technical feasibility and completeness; we are not obliged to check thereon. The customer shall be liable for ensuring that the use of such documents does not infringe the rights of third parties, and must indemnify us and hold us harmless in respect of any possible detriment resulting from such violations of the law.

8. The legal relationship between us and the customer is governed solely by the purchase contract concluded in written form, including these general terms and conditions of delivery. The relationship covers in full all accords between the contracting parties on the subject matter of the contract. Oral commitments by Lützenkirchen Lagertechnik GmbH before the conclusion of the contract shall not be legally binding, and oral agreements between the contracting parties will be superseded by the written contract except where said contract expressly provides for the oral agreements to apply with binding effect. Additions and amendments to the agreements reached, including these Terms and Conditions, shall only be valid if in written form. With the exception of managing directors or

authorised representatives, our staff are not entitled to conclude oral agreements of differing content. Transmission by fax is sufficient to meet the requirement of written form, but other forms of telecommunication, in particular email, will not suffice.

### 3. Scope of performance obligation

1. The content and scope of our deliveries or services are governed by our written confirmation of order – where one has been issued. We are however entitled, without consulting the customer first, to make use of a technical design or a material which differs from that stated in the confirmation provided that this does not entail a deterioration of the object to be delivered.

2. Protective devices are delivered as well where this is required by law or has been expressly agreed. The customer is obliged to inform us in good time about the regulations applicable at the place of installation regarding accident prevention and protection of the environment. The expense incurred for such devices is not included in the price except where stated otherwise in the order confirmation. The customer shall be responsible for compliance with the regulations referred to above.

### 4. Prices – terms of payment

1. The prices are quoted "ex works" except where agreed otherwise, including loading at the works but not including packing.

2. Statutory value added tax is not included in our prices; it is shown separately on the invoice at the statutory rate on the day the invoice is issued.

3. We reserve the right to raise our prices accordingly if cost increases occur after conclusion of the contract, in particular due to collective wage agreements or rises in material prices. The customer can be given evidence thereof on request.

4. All the costs related to transport, including insurance, shall be met by the customer.

5. Except where agreed otherwise, payment is to be made in cash without any deduction and without charge to our designated accounts. Except where stated otherwise in the order confirmation, the purchase price is payable net (without any deduction) within 30 days of the invoice date. We allow 2% cash discount for payment within 10 days of the invoice date: the decisive date is the day the payment is credited to one of our accounts.

6. If the customer defaults on payment, we are entitled to charge interest on default at 5% above the base rate set by the European Central Bank. If we are in a position to demonstrate a higher level of loss on default, we will be entitled to claim thereon. The customer is however entitled to demonstrate to us that we incurred no loss, or significantly less loss as a result of the default on payment. The interest rules of the HGB (German Commercial Code) for mutual commercial transactions apply in addition.

7. If the customer defaults on a payment, wholly or partially, we are entitled to require the provision of bank-backed security in the unpaid amount of the claim. If the customer defaults on the provision of the security we will be entitled, after previously setting a deadline for performance, to withdraw from the contract and require payment of damages instead of performance. The provisions of the first two sentences, above, will also be applicable if levy of execution is enforced on the customer's assets, if the customer ceases payment or if the customer applies for a settlement or moratorium.

8. The right to set off the customer's counter-claims or to withhold payment on grounds of such claims is only admissible where the counter-claims are undisputed or have been finally established at law.

9. All taxes, fees and other charges (e.g. customs duty) arising outside the Federal Republic of Germany are to be paid by the customer. The customer is responsible for obtaining and paying for official permits, in particular import permits.

### 5. Delivery time

1. The delivery time is determined by mutual agreement. Except where regulated otherwise, it starts as of the date of the order confirmation, but on no account before receipt of the documents to be obtained by the customer, required information, releases to be declared by the customer, down payments to be made by the customer and fulfilment of the customer's other obligations.

2. The delivery time stated is subject to confirmation and without obligation except where a fixed deadline or a fixed date has been expressly promised.
3. The delivery time is deemed adhered to if by that date the object of delivery has left the works or information has been received that the object is ready for dispatch.
4. Timely delivery is conditional on correct and punctual delivery to us.
5. We are not liable for cases of delivery being impossible or for delays in delivery where these are caused by force majeure or by other events which were not predictable at the time the contract was concluded and for which we are not responsible (e.g. operational disruptions of all kinds, problems obtaining materials or energy, transport delays, strikes, lawful lockouts, shortage of labour, energy or raw materials, problems obtaining necessary official permits, measures taken by public authorities, our suppliers' failure to deliver or to deliver the correct goods on time). Where such events make it seriously difficult or impossible for us to deliver and where the incapacity to deliver is not of a temporary nature, we are entitled to withdraw from the contract. Where such impediments to delivery are of a temporary nature, the periods of delivery and service performance are extended or the delivery and service performance deadlines are postponed by the period the impediment lasts, plus an appropriate start-up period. Where the customer cannot reasonably, in view of the delay, be expected to accept the delivery or the service, the customer may withdraw from the contract by giving us immediate written notice.
6. If the customer incurs damage or loss owing to a delay for which we are to blame, the customer may demand compensation for delay. This however does not prejudice the right to withdrawal regulated by these Terms and Conditions in section 10.3. Claims of greater extent on grounds of delay are excluded except where the delay is due to a wilful or grossly negligent breach of obligation by us or by a person discharging obligations on our behalf. The compensation for delay amounts to 0.5% of the net order value for each complete week of delay after expiry of the delivery period agreed in binding form, but the total will not be more than 5% of the total order value.
7. If dispatch is delayed at the customer's request, the customer is charged for the costs incurred through storage, starting one month after advice of readiness for dispatch; for storage on our premises, however, the charge is at least 4% of the invoice amount for every month or part thereof. We will be entitled, after a reasonable deadline set by us has expired to no avail, to make other use of the object of delivery and to deliver to the customer at a reasonably extended date.

## 6. Taking delivery

1. The customer has to take delivery of objects delivered even if they show insignificant defects, notwithstanding the rights defined in section 8 of these General Terms and Conditions.
2. We are only entitled to make part-deliveries where
  - the part-delivery is usable by the customer within the framework of contractual determination rights
  - the delivery of the remainder of the ordered goods has been secured, and
  - the customer does not thereby incur substantial additional expense or additional costs (unless we agree to assume these costs).

## 7. Transfer of risk

1. The risk of the goods passes to the customer not later than when the object of delivery is handed over (the time being determined by the start of the loading process) to the forwarding agents, carrier or other party designated for the execution of the transport. This also applies when part-deliveries are made or we have agreed to perform other services as well (e.g. shipment or installation). If dispatch or the handing over of the goods is delayed owing to a circumstance originating with the customer, the risk will pass to the customer as from the day on which we are ready for dispatch and have notified the customer thereof.
2. On request by the customer the shipment will be insured by us at its expense against theft, breakage, fire and flooding damage and other insurable risks.
3. If dispatch is delayed owing to circumstances for which we are responsible, the risk passes to the customer as from the day we become ready to dispatch. We are however obliged to obtain, at the customer's request and expense, the insurance cover which the customer requests. If no such request is made, we will be entitled to

insure the objects of delivery, at the customer's expense, as from the place and time of the transfer of risk.

## 8. Warranty for defects

To the exclusion of further claims and notwithstanding the customer's right of withdrawal under these Terms and Conditions (section 10.4), we are liable as follows for defects, including those related to the agreed characteristics or suitability of the object for the customer or purchaser:

1. The objects delivered must be examined carefully immediately after delivery to the customer or a third party designated by it. The objects are deemed to be approved if we do not receive, in the agreed form, a complaint of defect regarding manifest defects or other defects which became apparent during an immediate and careful examination, within 7 working days after delivery of the object of delivery or otherwise within 7 working days after the detection of the defect or after the time at which the defect became apparent to the customer on the basis of normal use and without close investigation.
2. Where there is a defect in the object of purchase, we are entitled, at our option, to rectify same by remedying the defect or by delivering a replacement. In the case of remedying the defect we are obliged to cover all the expense necessary for the purpose of such remedy, in particular road tolls, transport, labour and material costs, except where these are increased by virtue of the object of purchase being moved to a location other than the place of performance. The scope of the delivery is governed by our written confirmation of order. In the case of our offer being valid for a limited time and including a time limit for acceptance, the offer will be authoritative unless an order confirmation has been received in due time. Supplementary agreements and amendments must be in written form.
3. If the rectification, by way of remedying a defect or delivering a replacement, of a defect in the object of purchase for which we are responsible is unsuccessful, the customer will be entitled, at its option, to reduce the purchase price or, if the defect is a substantial one, to withdraw from the contract.
4. We are liable under the relevant statutory provisions, if the customer asserts claims for damages, for wilfully or negligently causing loss of life, physical injury or damage to health. In addition, we are liable in case of claims for damages on grounds of wilful intent or gross negligence by us or by our legal representatives or persons discharging obligations on our behalf.
5. We are also liable under the relevant statutory provisions where we are culpable in the breach of a primary contractual obligation; in this case, however, the liability for damages is limited to predictable damage or loss occurring in standard situations.
6. We are thus in particular not liable for damage or loss that is not directly related to the object of delivery itself. Liability for damages is excluded in all other cases.
7. The mandatory provisions of the German product liability act remain unaffected.
8. The warranty period is one year, reckoned as from the transfer of risk. After that period claims become time-barred, and this also applies to claims to compensation for consequential damage or loss related to defects, except where claims are asserted under the law of torts; these are governed by the statute of limitations.
9. The warranty lapses if and when the customer, without our consent, modifies the object of delivery or has it modified by third parties and this makes the remedying of defects impossible or unreasonably difficult. In every such case the customer is required to meet the additional costs of defect rectification resulting from such modification.

## 9. Other claims for damages

1. We are not liable
  - a) in the case of minor negligence by our corporate bodies, legal representatives, employees or other persons discharging obligations on our behalf;
  - b) in the case of gross negligence by our non-executive employees or other persons fulfilling obligations on our behalf, except in the case of a breach of obligations essential to the contract. Such obligations are the obligations of timely and defect-free delivery and installation as well as advisory, protective and due care obligations which are intended to enable the customer to use the object of delivery as required by contract or are directed at protecting the person and life of the customer's staff or third parties or the customer's property against serious damage.

2. Where we are liable for damages on the merits of the case, such liability is limited to damage or loss which we foresaw at the time the contract was concluded as a possible consequence of a breach of contract or which, having regard to circumstances which were known to us or which we should have known, we should have foreseen if we had exercised due and customary care. Indirect damage or loss and consequential damage or loss resulting from defects in the object of delivery furthermore only qualify for compensation if such damage or loss can typically be expected when the object of delivery is used as required by contract.

3. In the event of liability for minor negligence our obligation to compensate for damage to property and persons is limited to an amount of €3,000,000.00 per claim and for financial loss to €100,000.00 per claim (corresponding to the current coverage amount for our product liability insurance or liability insurance), even if the case involves a breach of obligations essential to the contract.

4. The above exclusions and limitations of liability apply on the same scale in favour of our corporate bodies, legal representatives, employees or other persons discharging obligations on our behalf.

5. Where we provide technical information or advisory services and this information or advice is not included in the service performance required of us and contractually agreed, this is done free of charge and to the exclusion of all and any liability.

6. The limitations defined in this section 9 do not apply to our liability for wilful acts, for guaranteed product characteristics or for loss of life, physical injury or damage to health or our liability under the product liability act.

#### **10. Customer's right of withdrawal**

1. The customer may withdraw from the contract if and when it becomes totally impossible to provide full performance before the transfer of risk. Furthermore, the customer may also withdraw from the contract if, in the case of an order of objects of the same kind, it becomes impossible to deliver part of the order for quantity reasons and the customer has a legitimate interest in refusing a part-delivery; if this is not the case, the customer is entitled to reduce the amount due accordingly.

2. If the impossibility occurs during a period of delay in acceptance or for a reason for which the customer is responsible, the latter continues to be obliged to make payment.

3. If we default on performance, the customer is entitled, having first set a deadline for performance, to withdraw from the contract.

4. The customer also has a right to withdraw if we are at fault in allowing a reasonable deadline set for the rectification of a replacement delivery related to a defect for which we are responsible to pass without result. The customer also has a right of withdrawal in other cases where a rectification or replacement delivery is unsuccessful.

5. The customer may only declare his withdrawal if our default is substantial and his interest in the delivery is seriously impaired. Such impairment is not deemed serious if the customer continues to use the object of delivery.

#### **11. Securing retention of title**

1. All the goods and objects delivered by us continue to be our property until payment has been made in full of all financial demands, including ancillary claims, claims for damages and the honouring of cheques and bills of exchange. The retention of title will also exist if we place individual claims on current account and the balance owing is calculated and acknowledged.

2. The above also applies to export deliveries as set forth in section 4. If the statutory rules of the country of destination do not allow retention of title in the form referred to above, the customer undertakes to provide us with security for all claims against him and due to us.

3. Should the goods and objects delivered by us be assigned, with our consent, at the time the contract is concluded and as security for the financing, to a third party that finances for the customer, by granting a loan or in any other form or manner, the price to be paid to us, the customer hereby transfers to us its entitlement in rem to the objects delivered for the event that, at the time of the release of the security by the financing third party, not all of our claims against the customer have been settled. The entitlement in rem is of such extent that the object of delivery will again be covered by reserved property rights as security for the balance of our claim.

4. The customer is obliged to cooperate in measures which we wish to undertake to protect our title or in lieu of a comparable right to the object delivered. The customer is not permitted to pledge the object of delivery or assign it as security. The customer must inform us without delay in case of distraints or impoundments or other dispositions by third parties and send us copies of the relevant disposition documents.

5. In cases of breaches of contract by the customer, in particular default on payment or culpable deterioration of the object of delivery, we are entitled, having given warning, to recover the said object and the customer is obliged to surrender it. The assertion of retention to title and dstraint of the delivered object by us are not deemed to be withdrawal from the contract.

6. As long as the object of delivery is subject to our retention of title the customer is not entitled to sell it without our consent. Where we have consented to such sale, the customer must advise the third party of the retention of title. The customer may only sell the object of delivery if the retention of title is maintained in force.

#### **12. Place of performance**

The place of performance for all obligations arising from the contractual relationship is our place of business in 42799 Leichlingen.

#### **13. Court with jurisdiction**

The court responsible for our place of business has jurisdiction for all legal disputes arising from the contractual relationship and disputes about its conclusion and legal effectiveness, including suits regarding bills of exchange and cheques. We reserve the right, however, to file suit under any other established jurisdiction, for example that for the customer's primary place of business.

#### **14. Applicable law**

The relations between us and the customer are subject exclusively to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) dated 11 April 1980 will not apply.

#### **15. Installation conditions**

Where the contract with the customer includes installation services, our general installation conditions apply. These prevail in cases where they are in conflict with the General Terms and Conditions.

#### **16. Severability**

The invalidity of individual provisions of these terms of delivery does not entail the invalidity of the contract as a whole or of the remaining delivery conditions. The contracting parties will be obliged to replace any invalid provision with a provision that comes as close as possible to the intended commercial effect.

Note: The customer notes that we store data from the contractual relationship pursuant to section 28 of the German data protection act for the purpose of data processing and that we reserve the right to transmit the data to third parties (e.g. insurance companies) where this is necessary for the performance of the contract.