

# LEHMANN & MICHELS GmbH

## General Terms and Conditions of Sales

July 2009

### § 1 General/Scope of application

1. These Terms and Conditions of Business apply to all current and future business relationships in which we act as a seller/supplier and our contractual partner is an entrepreneur, legal entity under public law or special fund under public law.
2. Any differing, conflicting or supplementary standard terms and conditions of the customer shall not be part of the contract, even if we are aware of them, unless their validity has been expressly approved in writing.

### § 2 Conclusion of a contract/Special provisions

1. Our offers are subject to change and prior sale. The delivery times listed on orders or order confirmations are non-binding. Agreed times are only binding if they have been expressly confirmed in writing as a fixed designated time.
2. When ordering a service the customer declares its wish to purchase with binding effect. We are entitled to accept the contractual offer contained in the order within two weeks after receipt. Acceptance may be declared either in text form or by commencement of order processing.
3. In the case of custom-built products we are allowed to make excess or short deliveries up to 10% of the ordered quantity.
4. The export of our products from the European Union is subject to our express prior written approval.

### § 3 Prices

1. Prices are ex works plus packaging and any value added tax. Unless a fixed price agreement has been reached, the seller reserves the right to increase the prices accordingly should any cost increases arise after the conclusion of the contract, especially due to pay settlements and increased costs for raw materials and supplies. Insofar as a delivery period lasting more than 4 months from the conclusion of the contract has been agreed, the prices valid at the time of delivery shall apply. The same applies if the buyer defaults on acceptance.
2. The purchase price is due for payment immediately without deductions unless otherwise agreed.
3. The customer shall only be entitled to offset, if his counterclaims have been finally established in law or recognized by us in writing. He may only exercise a right of retention if his counterclaim is based on the same contractual relationship.

4. We shall be entitled to first offset payments against any older debts, despite any provisions of the customer to the contrary, and shall inform the customer of the type of offset carried out. If costs and interest have already been accrued, we shall be entitled to first offset payment against the costs, then the interest and lastly the main receivables.
5. If circumstances come to our notice which reduce the customer's creditworthiness more than just insignificantly, if there is justified doubt as to its creditworthiness or if terms of payment are not met, we may assert the immediate payment of all receivables or demand that security be furnished. In these cases we are also entitled to withdraw from a contract without giving notice. We undertake to release all the security furnished to us at our discretion insofar as the value thereof exceeds our respective total receivables by more than 25%.

#### **§ 4 Retention of title**

1. All goods supplied shall remain our property until all the claims arising from the business connection with the customer to which we are entitled have been paid in full. Processing or transformation of delivered products shall always take place in our favour in order to put us in the position as manufacturer or owner manufacturer, but without any obligation on our part. If our title ceases to apply due to incorporation or amalgamation, it is hereby already agreed that the customer's title to the end product shall be transferred to us in proportion to the value of the supplied item (invoiced value). The customer shall hold the seller's property in safekeeping free of charge. Goods to which we hold (joint) title shall be referred to below as reserved goods.
2. The customer shall be entitled to sell the reserved goods in the ordinary course of business as long as he is not in arrears. Attachments or collateral assignments are inadmissible. The customer hereby already assigns to us as security the claims arising from the resale or on any other legal grounds in respect of the reserved goods.
3. Unless the customer is in default, he shall be entitled to resell the reserved goods or the products resulting from processing only under agreements with his customers including corresponding retention of title that safeguards our retention of title. Pledges and collateral assignments are inadmissible. The customer hereby already assigns to us his claims arising from the resale or release of the reserved goods.
4. If other goods are sold together with the reserved goods at an all-in price, the assignment shall include any claim only to the extent of the price for the goods we supplied. The customer shall be entitled to collect the claim. This authorisation shall end as soon as the buyer fails to meet his payment obligations as agreed. In this case, we may collect the accepted claim ourselves.
5. If the value of the security provided exceeds the claims to be guaranteed by more than 10%, we shall undertake to release the excess amount.
6. In the event of seizures by third parties of the reserved goods, the customer shall point out our ownership and notify us without delay. In this respect, the customer shall reimburse costs and damage.

7. In the event of conduct by the customer which is in breach of the contract - especially payment default – we shall be entitled to take back the reserved goods or, if necessary, demand the assignment of the claims for return. The taking back and the seizure of the reserved goods by us does not constitute withdrawal from the contract.
8. The customer shall be obliged to handle the goods with care. As long as our right of ownership exists the goods must be insured by the customer against loss and reduction in value and against vandalism, fire, theft and transport risk as well as water damage.

## **§ 5 Transfer of risk/Delivery**

1. The risk of accidental loss and accidental deterioration of the goods shall pass to the customer upon surrender of the goods and in the case of sales shipment upon delivery of the item to the carrier, haulage contractor or other person or establishment designated to carry out the forwarding. If dispatch is delayed at the customer's request, the risk shall pass to the customer upon notification of readiness for dispatch and he shall store the goods at his expense.
2. Dispatch shall be effected at our discretion ex warehouse or ex works. We reserve the right to choose the transport mode and route. Partial deliveries which are acceptable to the customer are allowed.
3. We are not responsible for delivery and performance delays due to force majeure and due to events which do not merely temporarily significantly impede or render impossible our performance – including war, strikes, lockouts, official directives, even if they occur at our manufacturers' or suppliers' premises or at the premises or their subcontractors – also in the case of dates and deadlines agreed with binding force. Such events entitle us to postpone the delivery or performance for the duration of the impediment plus a reasonable lead time or to withdraw from the contract in whole or in part due to the not yet fulfilled part.
4. If the impediment lasts longer than two months after delivery of the order, the customer shall be entitled to withdraw from the contract, after setting a reasonable grace period, with respect to the not yet non-fulfilled part. The buyer may not derive any compensation claims therefrom.

## **§ 6 Inspection of the goods/Warranty**

1. The customer shall inspect the goods for obvious defects (especially completeness, transit damage) within 10 working days after obtaining the power of disposal and report any detected defects in writing within 5 working days after detection; otherwise, the assertion of warranty claims is excluded. Transit damage shall be notified immediately to the transport company upon receipt of the goods.
2. Punctual dispatch shall suffice to comply with the deadline. The customer shall bear the full burden of proof for all conditions of his claims, especially for the defect itself, for the time of detection of the defect and for the timely notification of defects.

3. We shall initially give a warranty for defects in the goods at our discretion by rectifying the defect, supplying a replacement or issuing a credit note.
4. If subsequent performance is not successful, the customer may, at its discretion, demand a reduction of the payment (deduction) or the cancellation of the contract (withdrawal). In the event of only a minor breach of contract, especially in the case of only minor defects, the customer shall, however, have no right of cancellation.
5. If the customer opts for compensation after subsequent performance has failed, the goods shall remain with the customer if this is acceptable to him. The compensation shall be limited to the difference between the purchase price and the value of the defective item. This does not apply if we maliciously caused the breach of contract.
6. The warranty period is one year from receipt of the goods. Any mandatory statutory limitation and liability rules, e.g. liability upon giving a warranty, liability for malicious, intentional and grossly negligent conduct and for loss of life, physical injury or damage to health, liability according to the Product Liability Act and the regulations governing the purchase of consumer goods, shall not be affected.
7. Only the contractual product description shall be agreed as the quality of the goods. In addition, public statements, sales talk or advertising do not constitute a contractual quality description of the goods. No "purchase according to sample" based on provision of samples prior to or on the occasion of the conclusion of the contract shall be agreed, that is the samples are merely representative samples that show the approximate character of the goods. Specific characteristics are not agreed thereby. Alternatively, the parties may agree a purchase according to "sample found to be good". In this case, the supplied goods must correspond to the sample.
8. The Customer shall not receive any guarantees from us in the legal sense. Manufacturer's guarantees shall not be affected thereby.

## **§ 7 Liability restrictions**

1. We shall be liable according to the statutory provisions. In the case of slightly negligent breaches, our liability and that of our legal representatives and our vicarious agents shall be restricted to the contractually typical direct average damage which is foreseeable according to the type of goods.
2. We are not liable for the slightly negligent breach of insignificant contractual obligations.
3. The aforementioned liability restrictions do not apply to claims of the customer arising from product liability or guarantees we have expressly given. Moreover, the liability restrictions do not apply to malice and personal injury or illness or loss of life which is attributable to our company.
4. Claims for damages by the customer due to a defect shall become statute-barred after one year from surrender of the goods. This does not apply, if we are guilty of fraud.

## § 8 Final provisions

1. The laws of the Federal Republic of Germany apply exclusively. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and international private law do not apply.
2. If the customer is a merchant, legal entity under public law or special fund under public law, the exclusive place of jurisdiction for all disputes arising from this contract is Hamburg, Germany. The same applies, if the customer does not have a general place of jurisdiction in Germany or the domicile or habitual place of abode is not known at the time of the institution of legal proceedings. We are also entitled to institute legal proceedings against the customer at his place of jurisdiction.
3. Any amendments to these General Terms and Conditions must be in writing in order to be valid. This also applies to a waiver of the written form requirement.