

# General Terms and Conditions of Business of Licharz GmbH

Rev. 10/2018

## 1. General

- (1) The following General Terms and Conditions apply to business transactions with companies within the meaning of § 14 BGB (*German Civil Code*). Deliveries and achievements of Licharz GmbH and the enterprises connected with us in the sense of §§ 15ff. AktG (*German Stock Corporation Act*) (analogous) are exclusively subject to these General Terms and Conditions. Contradictory Terms and Conditions of customers or others deviating from our terms shall not be deemed to be in acceptance of these terms, unless we expressly agreed to their application. Our conditions apply even in the event that we unreservedly deliver to the customer in the knowledge of customer's contrary terms or terms deviating from those in our conditions.
- (2) Individual agreements made with the Buyer in unique cases (including collateral agreements, supplements and amendments) shall take precedence over these General Terms and Conditions. Subject to proof to the contrary, the content of such agreements shall be governed by a written contract or our written confirmation.
- (3) Legally relevant declarations and notifications of the purchaser with regard to the contract (e.g. setting of a deadline, notification of defects, withdrawal or reduction) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Legal formal requirements and further evidence, in particular in the event of doubt as to the legitimacy of the declarant, shall remain unaffected.

## 2. Offer

- (1) Our offer is subject to confirmation and non-binding. This shall also apply if we have provided the Buyer with catalogues, technical documentation (e.g. drawings, plans, calculations, calculations), other product descriptions or documents - also in electronic form - for which we reserve ownership rights and copyrights.
- (2) The order of the goods by the purchaser shall be deemed a binding contractual offer. Unless otherwise stated in the order, we shall be entitled to accept this contractual offer within 10 days of its receipt by us.
- (3) The acceptance can be declared by us either in writing (e.g. by order confirmation) or by delivery of the goods to the buyer.

## 3. Prices

- (1) Unless otherwise agreed in our order confirmation, our prices are EXW (Incoterms ® 2010) plus statutory value-added tax, excluding packaging. This will be invoiced separately.
- (2) If, after conclusion of the contract, there is an increase in charges or fees which burden the movement of goods (e.g. customs duties, freight charges, taxes), we shall be entitled to make corresponding price adjustments if these changed costs were not foreseeable at the time of conclusion of the contract. The same shall apply to wage increases and price changes of suppliers which are unforeseeable at the time of conclusion of the contract and which come into force after conclusion of the contract.
- (3) The confirmation and calculation of semi-finished products shall be based on theoretical weights.

## 4. Payment

- (1) Unless otherwise agreed in our order confirmation, our invoices are due within thirty (30) days net without deduction from the invoice date.
- (2) Payment by bill of exchange is only permitted by express agreement. Acceptance of a bill of exchange as well as a cheque shall only be deemed payment on account of performance. In the event of payment by cheque or bill of exchange, the customer shall bear the bill of exchange and discount charges.
- (3) The purchaser shall only be entitled to a right to refuse performance in accordance with § 320 BGB (German Civil Code) and rights of retention to the extent that his claim has been legally established or is undisputed. In the event of defects in the delivery, the Buyer's counter rights shall remain unaffected, in particular in accordance with § 9 of these General Terms and Conditions.

## 5. Delivery, delivery period, default of acceptance

- (1) Delivery shall be ex warehouse, where the place of performance for the delivery and any subsequent performance shall also be. At the Buyer's request and expense, the goods shall be shipped to another destination (sale by delivery). Unless otherwise agreed, we shall be entitled to determine the type of dispatch (in particular transport company, dispatch route, packaging) ourselves.
- (2) Delivery times shall be stated in weekly dates and shall only be deemed fixed dates if this has been expressly agreed. All delivery obligations are subject to proper self-delivery. The delivery period shall be deemed to have been complied with if readiness for dispatch has been notified by the end of the delivery period or if the delivery item has left the warehouse. If construction documents, models, samples or the like are necessary for the execution of the order, the delivery period shall only begin with their complete and proper receipt by us. The delivery period shall be extended in the event of unforeseen hindrances beyond our control, e.g. operational disruptions, delays in the delivery of essential materials, insofar as such hindrances demonstrably have a considerable influence on the delivery of the delivery item. The delivery period shall be extended in accordance with the duration of such measures and obstacles. If the resulting delays exceed a period of six (6) weeks, both parties shall be entitled to withdraw from the contract with regard to the scope of services affected. Other claims do not exist in this context.
- (3) If the buyer is in default of acceptance, if he fails to cooperate or if our delivery is delayed for other reasons for which the buyer is responsible, we shall be entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). For this purpose we shall charge a flat-rate compensation of 0.5% of the invoice amount per calendar week, beginning with the delivery period or - in the absence of a delivery period - with the notification that the goods are ready for dispatch, or 5% in the event of non-acceptance of the goods.

The evidence of higher damages and our statutory claims (in particular reimbursement of additional expenses, appropriate compensation, termination) shall remain unaffected; however, the lump sum shall be set off against further monetary claims. The Buyer shall be entitled to prove that we have incurred no damage at all or only substantially less damage than the aforementioned lump sum.

## 6. Scope of supply

The scope of delivery is basically determined by our written order confirmation. We reserve the right to over- or underdeliver up to 10% of the ordered quantity.

## 7. Passing of risk, acceptance

- (1) Unless otherwise stated in the order confirmation, delivery EXW (Incoterms ® 2010) is agreed. This shall also apply in the event that transport is carried out by us.
- (2) The risk of accidental loss and accidental deterioration of the goods shall pass to the Buyer at the latest upon delivery. In the case of sale by delivery to destination, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass to the Buyer upon delivery of the goods to the forwarding agent, carrier or other person or institution designated to carry out the shipment. If acceptance has been agreed, this shall be decisive for the transfer of risk. For the rest, the statutory provisions of the law governing contracts for work and services shall also apply mutatis mutandis to an agreed acceptance. Delivery or acceptance shall be deemed to have taken place if the Buyer is in default of acceptance.

## 8. Retention of title

- (1) The delivered goods shall remain our property until complete payment of all claims - including future claims – regardless of their legal basis. This shall also apply if individual claims or all our claims have been included in a current invoice and the balance has been struck and acknowledged.
- (2) The goods subject to retention of title may neither be pledged to third parties nor transferred by way of security until the secured claims have been paid in full. The buyer must inform us immediately in writing if an application is made to open insolvency proceedings or if the goods belonging to us are seized by third parties (e.g. seizures).
- (3) The customer shall be entitled to resell the reserved goods in the ordinary course of business. This entitlement may, however, be revoked in the event that the Buyer fails to comply with his contractual obligations. In this case, in particular in the event of default in payment, we shall be entitled to take back the goods following a reminder and the customer shall be obliged to surrender the goods. The revocation shall be deemed to have been pronounced in the event of cessation of payments and an application to open insolvency proceedings against the customer's assets.
- (4) The assertion of the retention of title as well as the seizure of the delivery items by us shall not be deemed withdrawal from the contract unless declared by us in writing.
- (5) In the event of resale, however, the purchaser hereby assigns to us all claims in the amount of the purchase price agreed between us and the purchaser, including value added tax, which accrue to the purchaser from the resale, irrespective of whether the delivery items are resold without or after processing.
- (6) In the event that our goods are processed, mixed or combined by the Buyer, the retention of title shall extend to the resulting products at their full value, whereby we shall be deemed the manufacturer. If the ownership rights of third parties remain in force in the event of processing, mixing or combination with goods of third parties, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the same shall apply to the resulting product as to the goods delivered under retention of title.
- (7) The purchaser remains authorised to collect the claim until the right to resell is revoked. However, our authority to collect the claims ourselves shall remain unaffected thereby. However, we undertake not to collect the claim as long as the purchaser is not in default of payment, there is no defect in his ability to pay and we do not assert the retention of title by exercising a right in accordance with paragraph (4). However, if this is the case, we can demand that the buyer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. At the purchaser's request, we shall release security rights at our discretion if and insofar as their value exceeds our claims by 10%.

## 9. Warranty / liability

- (1) The statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly or defective assembly instructions), unless otherwise specified below. Claims arising from supplier recourse are excluded if the defective goods have been further processed by the purchaser or another entrepreneur, e.g. by installation in another product.
- (2) The basis of our liability for defects is above all the agreement reached on the quality of the goods. All product descriptions which are the subject of the respective contract or which have been made public by us (in particular in catalogues or on our Internet homepage) shall be regarded as an agreement on the quality of the goods. If the quality has not been agreed, it is to be judged according to the legal regulation whether a defect is present or not (§ 434 Paragraph 1 S. 2 and 3 BGB). We assume no liability for public statements made by the manufacturer or other third parties (e.g. advertising statements).
- (3) The buyer's claims for defects presuppose that he has fulfilled his statutory duties to examine the goods and to give notice of defects (§§ 377, 381 HGB). Complaints regarding obvious defects shall only be considered if they are made immediately in writing (including text form) stating supporting documents, samples, packing slips as well as invoice number and invoice date, but at the latest within fourteen days after receipt of the goods; defects not identifiable during the inspection must be reported in writing within the same period from discovery. If the Buyer fails to properly inspect the goods and/or to give notice of defects, our liability for the defect not reported, or not reported in a timely manner, or not properly reported, shall be excluded in accordance with the statutory provisions.
- (4) The purchaser must give us the time and opportunity necessary for the owed subsequent performance, in particular to hand over the rejected goods for inspection purposes; however, rejected goods may only be returned to us with our express consent. In the event of a replacement delivery, the Buyer shall return the defective item to us in accordance with the statutory provisions. Subsequent performance shall include neither the removal of the defective item nor its reinstallation if we were originally not obliged to install it.
- (5) Warranty claims are limited to subsequent performance. We shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs as well as any dismantling and installation costs, in accordance with the statutory provisions, if a defect actually exists. Otherwise, we may demand reimbursement from the Buyer for the costs incurred as a result of the unjustified request to remedy the defect (in particular testing and transport costs), unless the Buyer was unable to recognize the lack of defectiveness. If the subsequent performance fails, the purchaser shall be entitled, at his discretion, to demand a reduction in payment or to withdraw from the contract. Further claims, in particular claims for expenses or damages, due to defects or consequential damages, shall only exist within the framework of the provisions of these General Terms and Conditions.
- (6) Unless otherwise stated in these General Terms and Conditions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions. We shall be liable for damages - for whatever legal reason - within the scope of liability for culpa in contrahendo in cases of intent and gross negligence. In the event of ordinary negligence we shall be liable, subject to a milder standard of liability in accordance with statutory provisions (e.g. for care in our own affairs), only (i) for damage arising from injury to life, limb or health, (ii) for damage arising from the not inconsiderable breach of a material contractual obligation (an obligation the fulfilment of which is essential to the proper performance of the contract and the observance of which the contractual partner regularly relies on and may rely on); in this case, however, our liability shall be limited to compensation for the foreseeable, typically occurring damage.
- (7) The limitations of liability resulting from the above provision shall also apply to breaches of duty by or for the benefit of persons whose fault we are responsible for in accordance with statutory provisions. They shall not apply if we have fraudulently concealed a defect or assumed a guarantee for the quality of the goods and for claims of the purchaser under the Product Liability Act.
- (8) Due to a breach of duty which does not consist in a defect, the purchaser may only withdraw or terminate the contract if we are responsible for the breach of duty. A free right of termination of the buyer (in particular according to §§ 648 BGB) shall be excluded.

## 10. Limitation period

- (1) Notwithstanding § 438 Para. (1) No. 3 BGB, the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance.
- (2) Special statutory provisions on limitation (in particular § 438 Para. (1) No. 1, Para. (3), §§ 444, 445b BGB) shall remain unaffected.
- (3) The aforementioned limitation periods of the sales law also apply to contractual and non-contractual claims for damages of the buyer which are based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. However, claims for damages by the Buyer pursuant to Section 9 (6) sentence 2 and sentence 3 (i) of these General Terms and Conditions and pursuant to the Product Liability Act shall become statute-barred exclusively in accordance with the statutory limitation periods.

## 11. Place of performance and jurisdiction

Unless otherwise stated in our order confirmation, the place of performance shall be Buchholz. The exclusive place of jurisdiction shall be Neuwied, Germany, to the extent permitted by law. However, we are also entitled to sue the buyer at his general place of jurisdiction.

## 12. Applicable law

These GTC and the contractual relationship between us and the Buyer shall be governed exclusively by the substantive law of the Federal Republic of Germany to the exclusion of the Uniform Law on the International Sale of Goods (EKG) and the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG).

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- (7) The limitations of liability resulting from the above provision shall also apply to breaches of duty by or for the benefit of persons whose fault we are responsible for in accordance with statutory provisions. They shall not apply if we have fraudulently concealed a defect or assumed a guarantee for the quality of the goods and for claims of the purchaser under the Product Liability Act.
- (8) Due to a breach of duty which does not consist in a defect, the purchaser may only withdraw or terminate the contract if we are responsible for the breach of duty. A free right of termination of the buyer (in particular according to §§ 648 BGB) shall be excluded.

## 10. Limitation period

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- (3) The aforementioned limitation periods of the sales law also apply to contractual and non-contractual claims for damages of the buyer which are based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. However, claims for damages by the Buyer pursuant to Section 9 (6) sentence 2 and sentence 3 (i) of these General Terms and Conditions and pursuant to the Product Liability Act shall become statute-barred exclusively in accordance with the statutory limitation periods.

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