



**GENERAL TERMS AND CONDITIONS OF SALE
of LEISTRITZ PRODUKTIONSTECHNIK GMBH (08/2010)**

**§ 1 General, Conclusion of Contract, Cancellation,
Confidentiality**

1. All deliveries and services made by us shall be based exclusively upon these General Terms and Conditions of Sale, which shall – lacking special agreement - also apply for future business relationships. Contrary conditions of the Purchaser or conditions differing from our General Terms and Conditions of Sale are not recognised by us unless we have explicitly agreed to their validity in writing. Our General Terms and Conditions of Sale apply even if we have unreservedly accepted the order being aware of contrary conditions of the Purchaser or conditions differing from our conditions.
2. A contract - lacking special agreement - will only be effected with our written order confirmation. Agreements by telephone or verbally and/or adjustments of these General Terms and Conditions of Sale require our written confirmation. Also the abolishment of the written form requires the written form.
3. If the Purchaser cancels a legally valid contract, we are entitled, according to § 649 German Civil Code ("BGB"), to claim the agreed price including profit, less possibly saved expenses. We reserve the right to the assertion of further claims.
4. We reserve the right of proprietorship and copyright as well as the right to register label rights or other rights of protection for samples, quotes, drawings and similar information of a tangible and intangible manner - also in electronic form; they shall not be disclosed to third parties nor made available in any other way. We are obligated to make any information, labelled as confidential by the Purchaser, available to third parties only with the consent of the Purchaser. Third parties shall not include companies associated with us as defined in §§ 15-19 German Stock Companies Act ("AktG").

§ 2 Prices and Payments, Offsetting, Assignment

1. The prices shall apply, lacking special agreement, EX WORKS (INCOTERMS 2000) including loading at the factory, but excluding packaging and unloading. Added to the prices shall be the applicable VAT. If we, as an exception, at the request of Purchaser arrange shipment by a transport agent despite an EX WORKS agreement, we only act in the name and on behalf of the Purchaser without bearing any responsibility for fault of the transport agent. If we, as an exception, take over the freight- and insurance costs, we are entitled to charge premiums in case of events such as force majeure (e.g. war risk, closure of shipping routes).
2. Unless we explicitly offered fixed prices, prices agreed are based on the cost ratio at the time of order. If the delivery of the delivery item occurs more than 4 months after the order, and if the total amount regarding material, energy, procurement or other costs increases up to this day, we are entitled, according to § 315 German Civil Code ("BGB"), to charge reasonable premiums for the occurred total cost increases based on the original calculation.
3. Lacking special agreement, payment is due without any deduction to our account in the following manner:
 - a. One third (1/3) deposit upon receipt of order confirmation,
 - b. One third (1/3) upon notification of readiness for shipment and prior to loading,
 - c. balance upon transfer of risk.Our invoices are due and payable net within 30 calendar days from date of invoice. If the Purchaser is in default with a payment, outstanding accounts shall instantly become due and further works regarding the delivery item shall only be conducted against prepayment. We reserve the right to further claims.
4. The Purchaser only has the right to withhold payment or offset with counter claims if his counterclaims are uncontested or are established as legally valid. The Purchaser is only entitled to the assertion of payment-withholding rights based on counterclaims resulting from the same contract-relationship.
5. The right to decline cheques or bills of exchange shall remain reserved. In case of payment by cheque the payment obligation is only fulfilled when the counter value has been credited to our account.
6. If several claims exist against the Purchaser, the setting-off occurs according to the criteria of due date, security, cumbrousness and age of the claims (according to § 366 sub paragraph 2 German Civil Code ("BGB")).

7. In case of reasonable doubts concerning the solvency of the Purchaser, in particular but not limited to default in payment, we will - irrespective of other legal claims - only deliver against prepayment or collateral security. In this case any open cheques and/or other outstanding claims resulting from the delivery relationship with the Purchaser will become due and payable immediately.
8. Unless otherwise explicitly agreed to in writing, credit notes and other rebates occur in any case without the acknowledgement of fault or legal obligation.
9. We are entitled to assign the claims from our business connection. Assignment prohibitions or -limitations are herewith vetoed.

**§ 3 Term of Delivery and/or Performance, Delay,
Force Majeure**

1. The term of delivery and/or performance shall be evident from the agreements of the contractual parties. The adherence by us is subject to all commercial and technical questions having been resolved between the contractual parties and that the Purchaser has fulfilled all his incumbent obligations such as for example official certificates or approvals, presentation of drawings/data or payments. If this is not the case, the delivery term shall be adequately extended. This shall not apply if we are responsible for the delay.
2. The adherence to the term of delivery and/or performance shall be subject to the correct and timely self-supply by the individual sub-suppliers properly and duly appointed by us. We will inform of any impending delays as soon as possible and search for reasonable alternatives in close cooperation with the Purchaser.
3. The delivery term shall be deemed fulfilled once the delivery item has left our factory up to the time agreed or readiness for shipment has been announced. As far as an acceptance has to occur, the time of acceptance shall be relevant - except in case of justified acceptance refusal -, alternately the notification of readiness to accept.
4. If the non-adherence of the term of delivery and/or performance is due to force majeure (including, but not limited to, general mobilisation, war, terrorism, riots, storm, fire, flood, earthquake, epidemics/pandemics, public travel warnings), industrial action (lock-outs, strikes or other concentrated actions of personnel, either direct or indirect), disturbances of internal operations for which we are not responsible or other events which are outside of our reasonable scope of influence, the term of delivery and/or performance shall be extended adequately. We will inform the Purchaser of the beginning and end of such circumstances as soon as possible.
5. The Purchaser may withdraw from the contract without notice if we are finally unable to perform the entire service prior to transfer of risk. The Purchaser may furthermore withdraw from the contract if the execution of a part of the delivery of an order becomes impossible and he has a justified interest in the refusal of the partial delivery. If this is not the case, the Purchaser has to pay the contract price equivalent to the partial delivery. This also applies in case of our inability. For the remainder § 8 of this General Terms and Conditions of Sale shall apply.

If impossibility or inability occurs during the acceptance delay or if the Purchaser is solely or mainly responsible for these circumstances, he shall remain obligated to payment.
6. If the Purchaser, after the due date, sets an adequate time limit for us for the performance of the service - under consideration of the legal exceptions - and this term is not adhered to, the Purchaser shall be entitled to withdraw in the context of the legal regulations. He shall be obligated to declare in an appropriate timeframe upon our request, whether he is exercising his right of withdrawal.

Further claims resulting from delay in delivery shall be exclusively determined in accordance with § 8 of this General Terms and Conditions of Sale.

**§ 4 Transfer of Risk, Acceptance, Delay,
Part- and Over-Deliveries**

1. The risk shall be transferred to the Purchaser when the delivery item has left the factory, even in case of part deliveries or if we have taken on other services, i.e. delivery costs or supply and assembly. In as far as acceptance has to occur in our factory, this shall be relevant for the transfer of risk. Acceptance has to be exercised immedi-

- ately at the date of acceptance, alternately upon our notification regarding readiness to accept.
2. If an acceptance has to take place, nature, scope and conditions have to be agreed on until conclusion of contract. If Purchaser requests us to perform the required examination, he has to inform us in advance and bear any costs resulting from this. The Purchaser may not refuse acceptance in case of a non-significant defect.
 3. If shipment and/or acceptance is delayed or omitted due to circumstances, for which we are not responsible, risk shall be transferred to Purchaser from the date of notification of readiness for shipment and/or acceptance. We are obligated, at the request and expense of the Purchaser, to take out an insurance against fire. The Purchaser is at liberty to take out additional insurance himself.
 4. Acceptance shall be deemed effected if Purchaser does not accept the delivery item (or parts thereof) despite acceptance duty within a reasonable period of time set by us. If shipment and/or acceptance of the delivery item is delayed due to reasons, for which the Purchaser is responsible (delay of acceptance), he will be charged, irrespective of other legal claims, commencing 14 calendar days from the notification of shipment and/or readiness to accept all (storage-)expenses incurred due to the delay. Unless the Purchaser can demonstrate a lower damage or no damage at all, these amount to at least 0.5% of the invoice amount for the non-accepted delivery item for each month thereof, however a maximum of 5% of the individual invoice amount. We reserve the right of proof of a higher (storage-)expense.
 5. Part deliveries are admissible as far as reasonable for the Purchaser. Technical deviations of ordered amounts are admissible up to +/-10%, unless this is unreasonable. Deviations concerning dimensions, weight or quality shall be allowed when customary in trade or according to applicable standards. Our calculation shall be decisive.

§ 5 Reservation of Title, National Security Rights

1. We retain ownership on the delivery item up to the fulfilment of all current and future claims - also for possible owing ancillary services - arising from the business relationship with the Purchaser. The reservation of title extends also to the acknowledged credit balance, if we post claims toward the Purchaser on current account (extended reservation of title).
2. If the Purchaser processes the delivery item prior to the complete payment with other products which do not belong to us, we are owed the ownership on the new product in the ratio of the value of the reserved goods to the other processed goods at the time of processing, without us incurring obligations hereto.
3. The Purchaser has to treat the delivery item with care and, if necessary, maintain it. The Purchaser is obligated to insure the delivery item against theft, fire, water and other usual damages at his expense up to the complete payment of our outstanding claim. If the Purchaser does not provide sufficient proof hereof, we are entitled to insure the delivery item at the expense of the Purchaser.
4. In case of conduct contrary to the contract by the Purchaser, especially default of payment, we are entitled to the retraction of the delivery item following a reminder and the Purchaser is obligated to surrender the deliver item. If the Purchaser ceases payments or if insolvency or extrajudicial settlement proceedings are applied for, we are entitled to withdraw from the contract and demand immediate return of the delivery item. The right of retention shall be excluded.
5. Prior to the complete payment of our outstanding claims the Purchaser may only on-sell and otherwise neither pledge or assign as security the delivery item in the context of proper business operations under reservation of title. In case of distraint as well as confiscation or other official direction by third parties, the Purchaser has to notify us without undue delay. We are also to be informed immediately regarding legal or actual access to the reserved goods by third parties as well as damage or loss.
6. If permitted by law, the Purchaser assigns to us in advance all claims with regard to the reserved goods from on-selling or other legal grounds due to the Purchaser. If the reserved goods are sold with other products not belonging to us or become the subject of contract work, the assignment only applies in the amount of the invoice value of the reserved goods. The Purchaser is authorised to collect the assigned claims from on-selling until revocation. In the presence of an important reason, especially default of payment, cessation of payment, commencement of insolvency proceedings or justified indications for an excessive indebtedness or impending illiquidity of the Purchaser, we are entitled to withdraw the authorisation to collect. On demand the Purchaser has to advise the creditor of the assignment.
7. As far as the value of the securities exceeds our claims by more than 15%, we will release securities at our discretion at the Purchaser's request.
8. As far as the effective protection requires a registration (of our rights or of a security right) or the like according to applicable local regulations at the point of destination of the delivery item, it shall be the responsibility of the Purchaser to determine the legal situation and to notify us accordingly and - in coordination with us - at his expense effect a registration in our favour or take other required steps. If the reservation of title is illegal per se at the point of destination, the Purchaser will, at his expense, procure security rights according to the applicable law.

§ 6 Warranty Claims in case of Quality Defects

1. We are liable for quality defects of the delivery under exclusion of further claims - subject to § 8 of this agreement - as follows:
2. Requirement for any warranty claims by the Purchaser shall be his proper fulfilment of all due inspections and requirement to give notice of defects without delay. Independent of the legally prescribed immediate checking and requirement to give notice, claims due to obvious quality defects of the delivery item may not be asserted in any case after 2 weeks from receipt of the delivery item. Transport damages are to be noted on the delivery note and must be confirmed by the driver via his signature.
3. In case of delivery according to sample, pattern and/or construction specifications by the Purchaser, warranty claims shall be excluded also in case of concealed defects if the delivery item complies with the sample, pattern and/or construction specifications. If the defect is due to materials supplied by the Purchaser himself, all claims shall be excluded.
4. According to our discretion, all those parts have to be repaired or to be replaced free of charge, which have been proven defective due to circumstances occurring prior to the transfer of risk. We have to be notified of the detection of such defects without delay. Replaced parts shall become our property. If we repair or deliver in the context of a warranty claim, it triggers a new begin of the period of limitation only in respect of the new delivery and/or rectification in case of significant rectification of defect and with the explicit written acknowledgement of a new start of the period of limitation.
5. Quality defects in case of software deliveries shall only exist if these a) are reproducible by the Purchaser on the contractually agreed hardware, b) do not just represent insignificant deviations from the respective documentation and c) do not just insignificantly affect the usage.
6. In case of defect remedy we are obligated to bear all expenses necessary for the defect remedy as far as they are not disproportionately increased due to the delivery item being brought to a place different from the contractually agreed place of delivery. Following a three-time unsuccessful remedy of defect, the Purchaser shall be allowed to withdraw from the individual single order or reduce the purchase price.
7. The Purchaser has to provide the necessary time and opportunity for our undertaking of the defect remedy and/or the replacement deliveries after coordination with us; otherwise we are exempt for any consequences arising thereof. The Purchaser has the right to remedy the defect himself or cause the remedy to be effected by a third party at commercially reasonable (third-party) prices and request reimbursement from us regarding the necessary expenses only in urgent cases of danger to the operational safety and/or avoidance of disproportionately large damage, whereby we have to be notified immediately under all circumstances. If the Purchaser or a third party improperly remedies the defect, we are exempt from liability for the resulting consequences. This also applies for alterations to the delivery item without our prior consent.
8. No warranty and/or liability shall be accepted, in particular - but not limited to - in the following cases: Unsuitable or improper storage or usage, faulty assembly and/or start-up by the Purchaser or third party, natural wear and tear or deterioration, construction in accordance with samples approved by the Purchaser, faulty material and/or tools provided by the Purchaser, faulty or negligible treatment, deviations from operation manuals and operation instructions and/or therein described environmental factors, improper maintenance, unsuitable operating facilities, faulty construction works, unsuitable building foundation, chemical/electrochemical/electric/climatic influences - unless we are responsible for them.

§ 7 Warranty Claims in case of Defect of Title

1. If the usage of the delivery item leads to the infringement of industrial property rights or copyrights in the inland, we will, at our discretion and at our expense, on principle procure the Purchaser's right for further usage or modify the delivery item reasonable for the Purchaser in a way that the industrial property rights infringement no longer exists. If this is not possible at economically appropriate conditions or in an adequate timeframe, we as well as the Purchaser are entitled to withdraw from the contract.
2. Our above mentioned obligations are - subject to § 8 - final in case of industrial property rights or copyrights infringement. They only exist if
 - a. the Purchaser has notified us without delay regarding applied industrial property rights or copyrights infringement,
 - b. the Purchaser supports us in the defence against the applied claims to an adequate extent and/or allows us the execution of the modification measures according to § 7 Nr. 1 of this agreement,
 - c. the right to all defence measures (including extrajudicial regulations) is not limited by actions or omissions of the Purchaser,
 - d. the defect of title is not based on circumstances relating to the Purchaser (i.e. parameter of technical specifications, provision of material, samples and software), and
 - e. the legal infringement was not caused by the Purchaser arbitrarily altering the delivery item or he has used it in a non-contractual manner.
3. If we are to deliver according to drawings, models, samples, software or under usage of parts provided by the Purchaser, the Purchaser shall be responsible that the copyright or other industrial property rights of third parties are not hereby infringed. The Purchaser has to inform us of all third party rights. The Purchaser has to exempt us from all third party claims in this regard as well as all related damages (incl. expenses for bringing an action).

§ 8 Liability, Exclusion of Liability

1. We shall only be liable for damages occurring within the limitation period according to § 9 which did not occur on the delivery item itself (especially for indirect damages and consequential damages), regardless of the legal ground,
 - a. in case of intent,
 - b. in case of gross negligence of the owner/the management body or executive employees,
 - c. in case of culpable violation of life, body, health,
 - d. in case of maliciously concealed quality defects,
 - e. in the context of a guaranty,
 - f. in case of defects of the delivery item, as far as we are liable according to the product liability law for damage to persons and private property.
2. In case of culpable violation of significant contractual duties, the fulfilment of which principally allows the proper execution of the contract according to its content and purpose and in the adherence to which the Purchaser may generally trust (so-called cardinal obligation), we are liable also in case of gross negligence of non-executive employees and in case of slight negligence, in the latter case limited to the reasonably foreseeable damage typical for the contract.
3. Further claims shall be fully excluded.
4. As far as our liability is excluded or limited, this also applies for personal liability of our employees, wage earners, personnel, representatives and vicarious agents.

§ 9 Period of Limitation

All claims by the Purchaser - for what ever legal grounds - expire within 12 months from the date of receipt and/or acceptance of the delivery item. The legal terms shall apply for compensation claims according to § 8 Nr. 1 a-d and f of this agreement. They shall also apply for quality defects of a building or for deliver items, which have been used in accordance with their usual manner of usage for a building and which have caused its faultiness.

§ 10 Usage of Software

1. As far as the delivery contains software, the Purchaser is granted a non-exclusive right to use the delivered software including its documentation. The software is only entrusted to him for the usage on the respective delivery item. The usage of the software on more than one system is prohibited.

2. The Purchaser may only duplicate, adapt, translate or compile it from the object code to the source code within the legally permissible extent (§§ 69 a cont. German Copyright Law ("UrhG"). The Purchaser shall be obligated not to remove manufacturer information - especially copyright information - or change it without our explicit prior written permission.
3. All other rights regarding the software and the documentation, including the copies, shall remain with us and/or the software supplier. The awarding of sub-licenses is prohibited.

§11 Export and Customs Regulations

1. In relationships crossing national boundaries the conclusion of contracts and its fulfilment shall be subject to the (timely) granting of a possibly necessary approval by the Federal Office of Economics and Export Control ("BAFA") and/or any other authorised governmental authority and subject to the absence of embargos and/or other sanctions.
2. The Purchaser shall be obligated to provide us without delay with all information and documentation (especially End-User-Certificate in accordance with BAFA-specimen) which we request for export approval. Delays caused by export checks or licensing procedures shall override any lead times or deadlines stipulated. If any required licenses for certain items cannot be obtained, the contract shall be considered as not concluded regarding the items in question; because of this and of above mentioned transgression of deadlines, any claims for damages shall be excluded.

§12 Data Protection

The Purchaser agrees that his data may be used by us and other companies of the LEISTRITZ Group (as defined in §§ 15-19 German Stock Companies Act ("AktG")) for the fulfilment of the contract (including but not limited to checking and execution of the order, checking of creditworthiness, passing on to third parties for the purpose of corporate financing and the debtor management).

§ 13 Choice of Law, Jurisdiction/Arbitration, Place of Execution

1. The substantive law of the Federal Republic of Germany shall apply exclusively. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
2. Place of execution for all contractual obligations and sole jurisdiction for all disputes arising out of or in connection with these General Terms and Conditions of Sale shall be Nürnberg, Germany. In case of contractual relationships with Purchasers located in countries outside the European Union that are member states of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (10th June 1958), all disputes shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one Arbitrator appointed in accordance with the said Rules. The language of the arbitral proceedings shall be English. Place of arbitration shall be Nürnberg, Germany.
3. If one of the regulations of these General Terms and Conditions of Sale should be or become void or ineffective, the validity of the remaining regulations shall remain unaffected hereof.

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