

General Terms and Conditions of Business of LMS Consult GmbH & Co. KG

1 General

- 1.1 **Conflicting Business Conditions, Written Form, Contract Language**
These General Terms and Conditions of Business shall apply to all—including all future—orders/contracts with the customer. Other conditions shall not become a part of the contract even if we do not expressly object to them. The customer may claim validity of additional agreements before or upon conclusion of the contract only if they are immediately confirmed in writing. The language of the contract shall be German or English. In cases of doubt, the German wording shall prevail.
- 1.2 **Offers, Right to Make Changes**
Our offers are subject to confirmation. We reserve the right to make technical improvements to the products we sell.
- 1.3 **Recording of Data**
We may store and process relevant contract data in our EDP system.
- 1.4 **Setting Off and Retention**
The setting off or the retention by the customer is not permitted except in cases of undisputed counterclaims or counterclaims that have become res judicata.
- 1.5 **Rush Orders/Small Orders, Packing Units**
Orders whose value of goods is less than EUR 100 shall be subject to a low-quantity surcharge of EUR 20. Delivery shall normally be made in packing units (PUs) according to the valid price list. For deliveries within five working days or for order values up to EUR 500, we reserve the right to ship and invoice immediately without separate order confirmation.
- 1.6 **Place of Jurisdiction/Applicable Law**
Place of jurisdiction shall be Villingen-Schwenningen or the court responsible for the seat of the customer's business, at our discretion. In addition, in cases of disputes about foreign contracts we shall also be entitled to call the arbitrary tribunal at the Chamber of Industry and Commerce Villingen-Schwenningen for a final decision in accordance with the Arbitration Act of the German Institution of Arbitration (Deutsche Institution für Schiedsgerichtsbarkeit e.V., DIS). German law shall apply, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

2 Delivery

- 2.1 **Place of performance shall be the warehouse of LMS Consult in Brigachtal.** The risk shall be transferred to the customer when the delivery leaves our warehouse. This shall also apply to partial deliveries and where we have performed additional services, such as freight forwarding, costs of transportation, packing, insurance, exportation, or installation. It shall also apply to deliveries to a consignment warehouse.
- 2.2 **Where we have accepted orders on call, standing or blanket orders, the customer shall have to call up the entire order quantity within twelve months.**
- 2.3 **In the case of a delay in the customer's acceptance of a shipment, we may, at our own discretion, have the products stored at the customer's expense or, after providing a warning and setting a deadline, sell the products for account of the customer.**

3 Delivery Periods, Delays

- 3.1 **Indicated delivery periods are ex works.** Delivery deadline shall commence upon the customer's receipt of our order confirmation; however, if preliminary technical issues still need to be resolved at the time of the conclusion of the contract, at the earliest after we have received all documents, permits, or releases required from the customer, and definitely not before any agreed-upon advance payments have been received.
- 3.2 **Force majeure and strikes, lockouts, operating breakdowns, shortages of raw materials or means of production for which we are not responsible, including delayed deliveries or failure to deliver by upstream suppliers, or if the customer requests additional or amended services, shall extend the delivery deadline accordingly and release us from our**

obligation to deliver if delivery becomes impossible as a result. We shall not be responsible for the aforementioned circumstances, even where they occur during an already existing delay.

- 3.3 **We shall be considered in default of delivery only if the customer has sent us a reminder and an indicated reasonable additional period of time has lapsed.**
- 3.4 **We shall be liable for any consequences of delay only in the case of willful intention or gross negligence.** In these cases our liability shall be limited to the typical damage that can be predicted at the time of the conclusion of the contract. The customer shall be obligated to promptly notify us in writing of any likely consequences of delay.
- 4 **Prices, Terms of Payment**
- 4.1 **Prices quoted shall be ex works and do not include any applicable sales tax, but do include packaging.** Charges for transportation, freight, and insurance shall be at the customer's expense.
- 4.2 **Invoices shall be paid in full, without deductions, and must be credited to our account in euros within 30 days.** Receipt of payment is applicable. We shall accept bills of exchange or checks only with a view to performance, at the customer's expense.
- 4.3 **In the case of customers with whom we are working for the first time or with whom we do not work regularly, after delays in payment or in the case of reasonable doubt of the customer's creditworthiness, we shall retain the right to make any individual shipment dependent on advance payment or a security deposit in the amount of the invoice value.**
- 4.4 **In the case of an agreed return of faultless products, the customer shall be charged a checking and processing fee in the amount of 10% of the invoice value (EUR 10 minimum).**
- 4.5 **If the customer returns products without prior arrangement, without a sender's address, or without stating the order number and packing slip number of LMS Consult's original shipment of the goods, a research and checking fee of 15% of the invoice amount, but a minimum of EUR 20, shall be charged.**
- 4.6 **If the customer is in default of payment, all of our debt claims against it shall be due immediately and we shall not be obligated to make any further deliveries based on current delivery contracts.** We shall be entitled to demand cash payment before shipping the goods for outstanding deliveries under abolishment of the term of payment. The same shall apply in the case of failure to pay in exchanges or checks, of if debit requests/direct debit authorizations are not carried out or canceled.
- 4.7 **In the case of default of payment we shall charge default interest in the amount determined by law, notwithstanding further damage compensation claims.**
- 4.8 **We may offset amounts payable to the customer, such as a credit notes, against our claims against the customer, if necessary, even before these amounts are due.**
- 5 **Retention of Title and Assignment of Future Claims**
- 5.1 **Goods delivered shall remain our property until the complete and unlimited payment of all of our debt claims against the customer.**
- 5.2 **The customer may neither use conditional goods nor merge nor combine them with other objects to which a third party may have rights.** If, however, conditional goods become a component of a new object, then we shall be a direct proportional co-owner of this object even if it constitutes a new legal entity. Our proportion of co-ownership shall be based on the relation of the invoice value of the conditional goods to the value of the new object at the time of the connection.
- 5.3 **The customer may resell the conditional goods in its normal course of business as long as its claims from the resale have not been assigned, pledged or otherwise encumbered.**
- 5.4 **The customer shall assign to us in advance as collateral any claims against its customers from the resale of the**

- conditional goods (see para. 5.3) and/or newly formed objects (see para. 5.2) to the value of our invoice for the conditional goods. If the customer is not in default of payment for the conditional goods, it may collect the assigned claims in its normal course of business. However, it may only use the proportional proceeds for the payment to us for the conditional goods.
- 5.5 The customer is required to inform us immediately of any attachments, confiscation, or any other right to disposal of a third party with regard to the conditional goods or the goods co-owned by us.
- 5.6 In the case of failure to pay in exchanges or checks, or if debit requests or direct debit authorizations are not carried out or are retroactively cancelled, or if the customer or the end user become insolvent or suspend payments, the Customer shall lose all rights as per para. 5.3. The customer must immediately notify any subsequent purchaser of our extended retention of property rights. It may only use the proportional proceeds, based on the assignment, for the payment of the goods delivered.
- 5.7 If default of payment occurs or in those cases covered in para. 5.6, we shall be authorized to withdraw from the order/contract, and/or to demand the return of any conditional goods in the possession of the customer and/or to collect the assigned debt claims directly. In order to determine our rights, we shall be entitled to have all the customer's documents and books concerning our reserved rights examined by a person who is subject to the professional duty of confidentiality.
- 6 Defects and Claims for Damages
- 6.1 We shall be liable for insuring that our products are free of defects at the time of the transfer of risk. The required composition, shelf life, and use of our products are based solely on the written agreed specification, product description, and/or operating instructions. Any information beyond this, in particular information provided in preliminary discussions, advertising, and/or referenced industrial standards, shall only become part of the contract if they are expressly referenced in writing.
- 6.2 If the customer requires the delivered goods for purposes other than those agreed in para. 6.1, it must check before use if the products are specifically suited for such purposes - including all aspects pertaining to product safety. The customer shall be required to ensure that the products comply with all relevant technical, legal, and official regulations before putting them to their intended use. We shall not be liable for material or design guidelines of the customer concerning the suitability or permissibility of the desired materials or designs, and thus have no particular testing obligation.
- 6.3 We shall not be liable for the consequences of improper handling, use, servicing, or operation of the products or the consequences of normal wear and tear of wearing parts, such as pistons, seals, valves, or the breakage of glass, plastic, or ceramic parts, for the consequences of chemical, electrochemical or electrical influences, or the failure to follow the instructions in the operating instructions.
- 6.4 Claims for defects against us shall be limited to one year from delivery of the goods to the customer, except in the case of goods which are used in accordance with their typical manner of use for a structure.
- 6.5 The customer shall only have a right of recourse toward us inasmuch as it has made no agreements with its own customer which exceed the legally mandatory claim for defects.
- 6.6 In the case of justified deficiency claims we shall initially only be required to provide subsequent performance at our discretion. Any additional warranty claims shall only exist in the case of rejection, impossibility, or failure of said subsequent performance. Additional expenses which result from the fact that the goods have been relocated from the initial place of delivery shall be borne by the customer.
- 6.7 The customer shall be obliged to promptly and carefully check incoming products—also for product safety—and to notify us in writing of any apparent deficiencies and of any hidden defects as soon as they are found. The customer must notify the carrier immediately of any transportation damage. Non-observation of the obligation to check and give notice of defects will void any and all warranty claims for those deficiencies.
- 6.8 We shall be liable for compensation for material damages and financial loss only in the case of willful intent or gross negligence. We shall be liable for material damages and financial loss which have not occurred in the delivered goods themselves only if the customer points out their potential hazard in writing at the time the contract was concluded and if we pledge an obligation to assume liability in this respect in writing. Our liability is therefore limited to the typically incurring damages which we could have foreseen when the contract was concluded. The warranty period for additionally delivered goods shall terminate with the end of the warranty period for the goods originally delivered.
- 6.9 If the customer uses the delivered goods with materials that are harmful to the environment, poisonous, radioactive, or dangerous in any other way, it shall be obliged to clean them prior to any return shipment. We may include any necessary costs of decontamination/cleaning and disposal in the customer's invoice.
- 7 Legal Reservation, Industrial Proprietary Rights, Confidentiality
- 7.1 If we deliver products according to drawings, models, and samples provided by the customer, it is liable for ensuring that industrial property rights or other rights of third parties are not infringed through the production and delivery of these products.
- 7.2 All information acquired through the business relationship with us which is not deemed to be public knowledge shall be deemed proprietary and may not be disclosed by the customer to third parties.
- 8 Regulations Concerning Foreign Trade
LMS Consult shall be responsible for adherence to German regulations if products made in Germany are exported. Observation of and adherence to the relevant regulations concerning foreign trade (import licenses, foreign exchange transfer permits, etc.) and other laws which are in effect outside of Germany shall be the sole responsibility of the customer.
- 9 If a provision is void or becomes void, the validity of the other provisions is not affected.
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