

# General Terms and Conditions of Order and Delivery

of

Lingemann GmbH

in commercial transactions with enterprises

Status April 2019

## **1. General Scope**

1.1 These general terms and conditions of order, delivery and services shall apply exclusively (i) to companies within the meaning of § 14 BGB [German Civil Code] i.e. natural persons or legal entities that purchase the goods or service for commercial or professional purposes and for persons under public law or special funds under public law.

1.2 The terms and conditions set forth below shall apply exclusively to our business relations with our customers, also with respect to information and consultancy. Where our General Terms and Conditions are implemented in a transaction with a customer, they shall also apply to all further business relations between the customer and ourselves unless otherwise expressly agreed in writing.

Differing terms and conditions of the buyer and/or orderer (hereinafter referred to **customer**) shall only apply if expressly acknowledged by us in writing. Our silence regarding such differing terms and conditions shall not be deemed in particular to be acknowledgement or consent, and this shall also apply to future contracts.

Our General Terms and Conditions shall apply in place of any conditions of purchase of the customer, also where such conditions of purchase stipulate that acceptance of an order is deemed to be the unconditional recognition of its conditions of purchase, or we deliver or perform, after the customer has indicated the validity of its general terms and conditions of purchase, unless we have expressly waived the validity of our own General Terms and Conditions. By accepting our order confirmation, the customer expressly acknowledges that it waives its legal objection derived from the conditions of purchase.

1.3 If framework contracts have been concluded with our customers, these shall take precedence. They shall be supplemented by these General Terms and Conditions unless more specific regulations are agreed.

1.4 If claims for damages are mentioned in the following, this notion includes as well claims for reimbursement according to § 284 BGB.

## **2. Information / Consultancy / Properties of the products and services / participation actions of customers**

2.1 Information and explanations regarding our products and services by us or our employees and vicarious agents shall be provided solely on the basis of our experience to date, and shall constitute neither warranted properties, nor guarantees regarding our products or services. Values specified in this context shall be deemed average values of our products and/or services.

In the absence of other express agreements, we do not owe the customer that our products and/or services are appropriate to achieve the objectives pursued by customers.

2.2. Any information about our products and services in our offers, prints and the internet, especially illustrations, drawings, measurement, property and performance data, as well as other data, especially technical statements and information on ingredients must -in the absence of a designation as "binding property"- be regarded as approximate average values. This also applies to statements of our employees, unless otherwise agreed. Data without indicated tolerances about our products, as included on our website or in catalogues and/or brochures are subject to deviations and changes which are customary in the industry and/or differences and changes for production reasons, especially due to technical developments and used materials.

2.3 If we provide operating instructions, these shall be drawn up with the care customary in the industry but do not release our customers from the obligation to inspect the products carefully regarding their suitability for the purpose intended by the customers. In the absence of another agreement, the customer is obliged to check our products and/or services for their suitability for their intended purpose. The same applies to notes regarding import, customs and certification regulations.

2.4 We only assume an obligation to provide advice exclusively on the basis of a separate, written consultancy agreement.

2.5 Reference to standards, similar regulations and technical information, descriptions and illustrations of the delivery item in quotations and brochures resp. on the internet and in our

advertising, as well as in provided analyses or descriptions of physical characteristics of delivery items shall only represent a property of our products when we have expressly declared the condition to be a "property of the product"; these are otherwise non-binding, general specifications of performance.

In the absence of another agreement, this also applies to product related statements of our employees outside an explicit oral agreement.

2.6 We shall only be deemed to have given a guarantee in the legal sense (the contractual takeover of a liability regardless of fault), if we have designated a property and/or the outcome of performance as "guaranteed by law" in writing.

2.7 We shall assume no liability for the usability and/or the registrability and/or tradability of our products for the customer's intended purpose other than liability prescribed by law unless we have agreed otherwise in writing with the customer. This shall not affect para. 11.

2.8 The customer is obligated to provide us in due time with the complete information and data needed for the service provision.

## **3. Specimens / Provided Documents and Data / Samples / Quotations**

3.1 Properties of specimens or samples shall only become an integral part of the contract if this is expressly agreed in writing. The customer is not authorised to use and pass on specimens or samples.

In case we sell a product because of a sample, deviations of the latter shall be allowed and do not give the right for complaints and demands with us, if these deviations are customary and if possibly agreed specifications are met by the delivered product, in the absence of any other agreement.

3.2 All copyrights to our specimens and samples, illustrations, drawings, data, quotations and other documents about our products and services provided to our customers shall remain our property and may not be used or made available to third parties without our express written consent. The customer has to return them in response to a request if no order regarding this is placed to us within 4 weeks after the transfer to the customer.

The regulations of the sentences 1 and 2 are valid for the documents, drawings and data of the customer as well; we shall though be allowed to give access to them to those third parties, we transfer contractual deliverances to in accordance with the customer, or we use as suppliers or vicarious agents.

## **4. Conclusion of contracts / Scope of delivery and services / Procurement risk and guarantee**

4.1 Our quotations are subject to change unless they are expressly designated binding or contain binding commitments. They are requests for orders.

The customer is bound to its order as contract request for 14 calendar days -5 working days if the order is placed electronically- after receipt of the purchase order at our registered office, so far as the customer isn't anticipating a subsequent adoption by us on a regular basis (§ 147 BGB). This applies to follow-up orders as well.

4.2 A contract is created -also in day-to-day business- only when we confirm the customer's order in writing or text form (i.e. also by telefax or email). This confirmation is only valid if the customer fully cleared all arrears and a credit check of the customer performed by us turns out without a negative result, in the absence of another agreement with the customer.

When the delivery or service is performed within the binding period in the sense of the order, our confirmation can be replaced by the delivery, whereas the dispatch of the delivery is decisive.

4.3 In the event of call orders or acceptance delays caused by the customer, we shall be authorised to procure the material for the entire order and to manufacture the total quantity ordered immediately, resp. to stock up with the desired quantity. After the order is placed, no change requests by the customer can therefore be considered unless this was expressly agreed in writing.

4.4 The customer must notify us in writing in due time prior to conclusion of the contract of any special requirements of our

products. Such notice shall not, however, extend our contractual obligations and liability.

**In the absence of any other express agreement, we shall only be obligated to deliver the products ordered by our customer as licensable and tradable goods within the EU.**

**4.5 We shall only be obligated to deliver from our own stock (obligation to deliver from stock).**

**4.6 Assumption of a procurement risk in the sense of § 276 BGB does not lie solely in our obligation to deliver an object which is only defined by its type.**

**4.7 We shall only assume a procurement risk in the sense of § 276 BGB by virtue of a separate written agreement stating "we assume the procurement risk..."**

4.8 If acceptance of the contractual products or their shipment is delayed for a reason for which the customer is responsible, we shall be authorised, after setting an extension of time of 14 days which has expired, at our option to request immediate payment of the purchase price, or to rescind the contract or refuse performance and request damages instead of full performance. The time limit must be given in writing or text form. We shall not be required to refer again to our rights under this clause.

4.9 In the event of our claiming damages as stipulated above, the damages to be paid shall amount to 20 % of the net delivery price. This shall not affect any right of either party to prove a different amount of damage or that no damage was incurred. There is no connection between the reversal of the burden of proof and the foregoing stipulations.

Furthermore, we shall be authorised, after the foregoing time limit in accordance with para. 4.8, clause 1 expires, to dispose of the contract goods otherwise, and to deliver to the customer again after a reasonable time limit.

4.10 If an order or call for delivery is delayed by the customer, we shall be authorised to postpone the delivery by the same period of time as the customer is behind schedule plus a scheduling period of 5 working days at the place of our registered office.

As far as a purchase on call is terminated, the individual recalls have to reach us, in the absence of another agreement on a shorter delivery and recall period, at least 6 weeks before the desired delivery date in writing.

In the absence of any other agreement, the customer is obligated to collect the purchased products completely within 6 months after conclusion of the contract. If the recalls are not made in time, we shall be allowed to remind the customer and to set a time expansion of 14 days for the recall. After the expiration of the said period, we shall be allowed to rescind the contract due to the by reason of the unfulfilled part of the contract, and to demand compensation in place of performance. We do not have to refer again to the rights from this clause. Para. 4.8, section 2 shall apply correspondingly.

4.11 If not expressly stated in another agreement in writing, and if we are not strictly bound to different governmental regulations, we shall only be obligated to offer user information for our products and a product label in German or, at our option, in English language

The customer is responsible to provide us with every necessary information regarding the ordered products within an adequate period of time, in order to perform the purchase order according to contract.

4.12 We reserve the right to change the specification of the products to the extent that legal requirements make it necessary, if this change doesn't bring about a decrease in quality and usability regarding the usual purpose and, if the suitability for a certain purpose was agreed, to this purpose.

4.13 We are entitled to excess or short deliveries by up to 5 % of the agreed delivered quantity. Furthermore, we are entitled to deliver products with customary deviations regarding quality, measurements, weight, colour and equipment. Such products are contractually compliant.

#### **5. Deliverance / Place of performance / Delivery time / Default in delivery / Packaging**

5.1 Binding delivery dates and periods must be agreed expressly and in writing as binding. We shall make every endeavour to meet delivery dates and periods that are not binding or approximate (approx., about etc.).

5.2 Delivery and/or service periods shall begin with the customer's receipt of our order confirmation but not before all economic, technical and logistic details about the performance of the order are clarified and all other requirements to be fulfilled by the customer are met completely, in particular advance payments or securities agreed are paid or provided in full. This shall apply to delivery dates. If the customer requests changes after placing the order, a new, reasonable delivery period shall begin when we confirm the change.

5.3 Deliveries may be made prior to expiry of the delivery time. The date of delivery for obligations to be performed at the place of business of the debtor shall be deemed the date on which the products are reported ready for shipment, otherwise the date on which the products are sent, in case of obligations to be discharged at the creditors the day of the deliverance at the agreed delivery location.

5.4 The customer's interest in our performance shall lapse for lack of any other written agreement only if we fail to deliver significant parts or deliver with delay.

5.5 If we default in delivery, the customer must first set us a reasonable extension of time of at least 14 days -unless this is unreasonable- to perform the contract. If this elapses without success, damage claims for breach of duty -for whatever reason- shall exist only as stipulated in para.11.

5.6 We only accept packaging returns, in the absence of another agreement, because of and dealing with legal obligation.

#### **6. Force majeure / Delivery subject to punctual delivery to us on the part of our sub-contractors**

6.1 If we do not receive a delivery or service from our subcontractor to allow us to provide our delivery or service which is due from us under the contract, despite due and proper stocking in terms of quantity and quality under our delivery agreement with the customer (*congruent coverage*), for reasons for which we are not responsible, or it is incorrect or not in due time, or events of force majeure occur of significant duration (i.e. of longer than 14 calendar days), we shall notify our customer in writing or text form in due time. In such case, we shall be authorised to postpone the delivery for the duration of the obstruction, or to rescind the contract in whole or in part for that part of the contract not yet fulfilled if we have met our foregoing duty to provide information and have not assumed a procurement risk as in § 276 BGB or a delivery guarantee. Events of force majeure are strikes, lock-outs, official intervention, power shortages and shortages of raw materials, transport bottlenecks through no fault of our own, company obstructions not due to us e.g. fire, water and damage to machinery and any other obstructions which, when considered objectively, were not caused by our negligence.

6.2 If a delivery and/or service date or delivery and/or service period is agreed with binding force and the agreed delivery and/or service date or the agreed delivery and/or service period is exceeded due to events according to para. 6.1., the customer shall be authorised after a reasonable extension of time has elapsed without success to rescind the contract for that part of the contract not yet fulfilled, if the customer cannot be objectively expected to adhere further to the contract. The customer shall have no further claims, especially claims for damages, in this case.

6.3 The above provision according to para. 6.2 shall apply accordingly if, for the reasons stated in para. 6.1, also without contractual agreement of a fixed delivery and/or service date, the customer cannot be objectively expected to adhere further to the contract.

#### **7. Shipment / Passing of risk / Approval**

7.1 In the absence of another written agreement, the delivery shall be shipped ex works, and any shipment by us if agreed, uninsured. The delivery shall be shipped at the customer's obligation to send or pick-up and risk and expenses.

We are entitled to deliver an agreed sales shipment from another place than the agreed place of performance.

7.2 Where shipment is agreed, we reserve the right to choose the route and means of transport. We shall, however, endeavour to take the customer's wishes into account with respect to the route and type of shipment. Any additional expenses as a result -also where delivery freight paid is agreed- shall be borne by the customer.

If shipment is delayed at the customer's request or through the customer's fault, we shall store the goods at the customer's expense and risk. In this case, notice that the goods are ready for shipment shall be deemed equivalent to shipment.

7.3 The risk of accidental loss or accidental deterioration shall pass to the customer when the products to be delivered are handed over to the customer, forwarding agent, freight carrier or other firms entrusted with shipping the products but at the latest when the products leave our works, warehouse or branch unless performance of the obligation at the place of business of the creditor is agreed. The foregoing shall also apply if an agreed partial delivery is carried out. In case of an obligation to deliver at the debtor's site, the risk will be transferred to the customer with the deliverance.

7.4 If delivery is delayed because we assert our right of retention due to the customer's default in payment in whole or in part or due to another reason for which the customer is responsible, the risk shall pass to the customer at the latest as of the date on which the notice is sent to the customer stating that the delivery is ready for shipment and/or performance.

#### **8. Notice of defects / Breach of duty due to material defects (Warranty)**

8.1 The customer must give us notice of recognisable material defects immediately but at the latest 12 days after collection, in the case of delivery ex works, otherwise after delivery. Notice of hidden material defects must be given to us in writing or text form immediately after they are discovered but at the latest within the statutory warranty period according to para. 8.7. A notice of defects that fails to comply with requirements of time shall exclude any claim by the customer for breach of duty due to material defects. This shall not apply in the case of an intentional, grossly negligent or fraudulent act by us, in the event of injury to life, limb or health, or the assumption of a guarantee for the absence of defects or a procurement risk acc. To § 276 BGB or other compulsory statutory basis for liability. The special legal provisions in case of final deliverance of the product to a consumer (supplier regress, §§ 478, 479 BGB) remain unaffected.

8.2 The transport operator must also be notified of any material defects recognisable on delivery, and the recording of defects in written or text form must be arranged by the transport operator. Failure to record defects in due time shall exclude any claim by the customer for breach of duty due to material defects. This shall not apply in the case of an intentional, grossly negligent or fraudulent act by us, in the event of injury to life, limb or health, or the assumption of a guarantee for the absence of defects, or compulsory statutory basis for liability and in the case of the right of recourse in the supply chain (supplier regress - §§ 478, 479 BGB).

If defects in number and weight were already recognisable upon delivery according to the foregoing duties to inspect, the customer must make a complaint about the defects to the transport operator upon receipt of the products, and have this complaint certified. Failure to give notice of defects in due time shall also exclude any claim by the customer arising from breach of duty due to material defects. This shall not apply in the case of an intentional, grossly negligent or fraudulent act by us, in the event of injury to life, limb or health, or the assumption of a guarantee for the absence of defects, or the assumption of a procurement risk according to § 276 BGB, in the case of compulsory statutory liability or in case of a right of recourse in the supply chain (supplier regress - §§ 478, 479 BGB)

8.3 When handling, processing, combining or mixing with other goods begins, the products delivered shall be deemed approved by the customer according to the contract. This shall also apply if the products are shipped on from their original destination, if this is not the usual application of the delivered product.

8.4 *The customer must give notice in writing immediately of any other breach of duty, setting a reasonable time limit for remedy, before asserting any further rights. If he does not do so, he loses all resulting rights.* This shall not apply in the case of an intentional, grossly negligent or fraudulent act by us, in the event of injury to life, limb or health, or the assumption of a guarantee for the absence of defects, or the assumption of a procurement risk according to § 276 BGB, in the case of compulsory statutory liability.

8.5 We shall remedy any defects for which the customer itself is responsible, and eliminate any unjustified complaints on behalf of and at the expense of the customer, if the customer is a merchant within the meaning of the German Commercial Code.

8.6 If, by way of exception, breach of duty does not relate to the performance of work by us, the contract may not be rescinded if our breach of duty is immaterial.

8.7 We shall provide a warranty for verifiable material, production or construction defects, unless otherwise expressly agreed, for a period of 12 months, calculated from the date the risk passes (see para. 7.3), in the case of refusal to accept or take delivery by the customer from the date of the notice that the goods are ready to be taken over. This shall not apply to damage claims from a guarantee, from the assumption of a procurement risk, from injury to life, limb or health, an intentional, grossly negligent or fraudulent act, or if, in the cases of § 478, 479 BGB (recourse in supply chain), § 438, section (1) No. 2 (construction of buildings and objects for buildings), and § 634 a (1) No. 2 BGB (building defects), or if a longer period is stipulated by law. § 305b BGB (The preference of individual agreements in oral or writing or text form) remains unaffected. A reversal of the burden of a proof is not linked to the regulation above.

8.8 If the customer or a third party rectifies a defect incorrectly, we shall not be liable for the resulting consequences. This shall also apply to any modifications of the delivery item undertaken without our prior consent.

8.9 Further claims by the customer for or in connection with defects or consequential damage caused by a defect, for whatever reason, shall exist only subject to the provisions of para. 11.

8.10 Our warranty provided in case of purchase contracts (claims for breach of duty due to defective performance in the case of material defects concerning our purchase contract) and liability arising therefrom shall be excluded if defects and damages connected therewith cannot be proven to be due to defective material, defective design or defective performance or defective instructions on use. In particular, the warranty and resulting liability because of an injury of the duty due to defective performance shall be excluded for causes of defective use, inappropriate storage and transport conditions and for the consequences of chemical, electromagnetic, mechanical or electrolytic influences that do not correspond with expected average standard influences indicated in our product description and/or the user manual or another agreed product specification or the product specific data paper. This shall not apply in the case of a fraudulent, grossly negligent or intentional act by us, or injury to life, limb or health, the assumption of a guarantee, a procurement risk according to § 276 BGB and liability due to another compulsory statutory basis for liability.

8.12 Claims based on defects shall not exist in the case of only a minor deviation from the agreed or customary condition or usefulness.

8.13 Recognition of breach of duty, in particular in the form of material defects, shall only be valid when given in writing.

#### **9. Prices / Payment terms / Objection of uncertainty**

9.1 All prices are on principle quoted ex works or warehouse and net in EURO and exclude sea or airlift transport packaging, freight, postage and, if a transport insurance was concluded the insurance charges, plus value added tax (if stipulated by law) at the legally valid rate ex works or warehouse resp. stock which shall be borne by the customer, in addition to other country-specific charges in case of deliverance to other countries than the federal republic of Germany, and in addition to customs and other fees and public charges for the deliverance/service. In the absence of another agreement with the customer, the valid prices shall be as indicated in the valid general price list when the contract was concluded by us and the customer.

*We can assign any claims arising from the business relationship with the customer to Eurofactor AG. In such case, the invoices to the customer shall include a corresponding notice of assignment. Payments with the effect of discharging a debt may only be made in such case to Eurofactor AG.*

9.2 Other payment methods than cash payment and bank transfer require a separate agreement between us and the purchaser; this applies in particular for the issuing of checks and bills of exchange.

9.3 In case that taxes and charges for us or the customer arise for the service performed by us (withholding tax), the customer shall release us from those taxes or charges.

9.4 We are entitled to create partial invoices according to the progress of the order processing and/or to demand advance payments.

9.5 The purchase price shall be due 10 calendar days after transfer to the freight carrier in case of our obligation to send and in case of agreed obligation to collect 10 calendar days after receipt of the indication of the products being ready for collection and in case of agreed obligation to send 10 calendar days after deliverance of the delivered goods.

9.6 If the customer pays in other currencies than EURO, the fulfilment shall only be accepted when the foreign currency payment corresponds to the agreed amount in EURO on the day of receipt of the payment.

9.7 Services that are not an integral part of the agreed scope of delivery shall be charged, unless otherwise agreed, on the basis of our respectively valid general price lists.

9.8 We are authorised at our equitable discretion to increase remuneration unilaterally and reasonably where material production and/or material and/or product procurement costs, wage and ancillary wage costs, social contributions as well as energy costs and costs due to environmental requirements, and/or currency regulations, and/or customs change, and/or freight charges and/or public charges are increased, if they influence the costs for production or procurement of the goods or costs for contractually agreed services directly or indirectly and if more than 4 months pass between conclusion of the contract and delivery. Such an above-mentioned increase shall be excluded if the increase in costs for the above-mentioned factors is set off by a reduction in costs for factors other than those mentioned above with respect to the overall cost burden for the delivery (cost balancing). If the above-mentioned cost factors are reduced without the increase in costs being set off by the increase in other above-mentioned costs, this reduction in costs shall be passed on through a price reduction.

If the new price increases by 20 % or more of the original price due to our above-mentioned right of price adaptation, the customer shall be allowed to rescind not completely fulfilled contracts regarding the part which is not yet fulfilled. He may only do so immediately after the receipt of the announcement of the increased price.

9.9 If, according to the contract, we bear the freight charges by way of exception, the customer shall bear any additional costs arising from increases in freight rates after the contract was concluded.

9.10 Agreed payment periods run from the date as indicated in para. 9.5.

9.11 Once in default, default interest shall be charged of 9 % above the respective base rate according to § 247 BGB. The right to assertion regarding further damages remains reserved.

9.12 In case of agreed bank transfer, the date of the reception of the payment on our bank account or resp. on the bank account of the paying agent specified by us shall be deemed the payment rate.

*9.13 The customer's default in payment shall cause all claims for payment under the business relationship with the customer to become due immediately. Regardless of any agreements to defer payments, agreements on the term of bills of exchange or payment by instalment, in this case all the customer's liabilities due to us shall become payable immediately.*

9.14 If payment terms are not met or circumstances known or recognisable that, in our proper commercial judgement, give rise to justified doubt about the customer's creditworthiness, also including such facts that existed when the contract was concluded but which were unknown to us or did not have to be known to us, we shall be authorised, notwithstanding further statutory rights in such cases, to cease further work on current orders or delivery, and to request advance payments or the provision of appropriate customary securities for deliveries still outstanding, and, after expiry of a reasonable extension of time to provide such securities is unsuccessful, to rescind the contract, irrespective of other statutory rights. The customer shall be obliged to reimburse us for all damages incurred by the non-performance of the contract.

9.15 The customer shall have a right of retention or right of set-off only with respect to those counter-claims that are not disputed or have been recognised by declaratory judgement.

9.16 The customer can only exercise a right of retention if its counter-claim relates to the same contractual relationship.

9.17 Incoming payments shall firstly be used to repay the costs, then the interests and finally the main claims according to their age.

Conflicting provisions of the customer regarding the payment is irrelevant.

9.18 Only the date of the receipt of the payment on our bank account is relevant for the timeliness of the payment, regardless of which payment method. In case of checks, the value date is decisive. Payments of the customer must be delivered free of postage and expenses in our favour.

#### **10. Retention of title, Seizures**

10.1 We retain title to all equipment and goods we deliver (hereinafter referred to as a whole as "goods subject to retention of title") until all our claims under the business relationship with the customer, including claims arising in the future from contracts concluded at a later date, are paid. This shall also apply to any balance in our favour when any or all claims by us are incorporated in a current account and the balance has been established.

10.2 The customer must insure the goods subject to retention of title at the replacement value, in particular against fire and theft. Claims against the insurance arising from a case of damage relating to goods subject to retention of title are herewith assigned to us in the value of the goods subject to retention of title.

10.3 The customer is authorised to resell the delivered products in the normal course of business. The customer is not permitted to make other disposals, especially pledging or granting of equitable lien. If the goods subject to retention of title are not paid for immediately by third party buyers when resold, the customer shall be obliged to resell under retention of title only. Authorisation to resell the goods subject to retention of title shall not apply a priori if the customer suspends payment or defaults in payment to us.

10.4 The customer herewith assigns to us all claims including securities and ancillary rights that accrue to the customer against the end user or third parties from or in connection with the resale of goods subject to retention of title. The customer may not reach an agreement with its purchasers that excludes or impairs our rights in any way or nullifies the claim's assignment in advance. When the goods subject to retention of title are sold with other items, the claim against third party buyers amounting to the delivery price agreed between ourselves and the customer shall be deemed assigned unless the amounts applicable to the individual goods can be determined from the invoice.

10.5 The customer shall be entitled to collect claims assigned to us until revoked by us, this revocation being admissible at any time. We engage to only revoke the direct debit authorisation in case of legitimate interest. Such a legitimate interest is given, for example, when the customer doesn't meet the payment duties or gets into payment arrears. At our request, the customer shall be obliged to give us the information and documents in full required to collect assigned claims, and unless we do so ourselves, notify its buyers immediately of the assignment to us.

10.6 If the customer incorporates claims from the resale of goods subject to retention of title in a current account relationship with its buyers, the customer shall herewith assign to us any recognised closing balance in its favour in the amount which corresponds to the total amount of the claim from the resale of our goods subject to retention of title, such claim being transferred to the current account relationship.

10.7 The customer must notify us immediately if the customer has already assigned claims to third parties from the resale of products delivered or to be delivered by us, especially due to real or unreal factoring, or made other agreements which can impair our current or future security interests according to para. 10.

In the case of unreal factoring, we shall be authorised to rescind the contract and request the products already delivered to be handed over. This shall also apply to real factoring if, according to the contract with the factor, the customer is not free to dispose of the purchase price of the claim.

10.8 In the event of conduct in breach of the contract through the

customer's fault, especially in the case of default in payment, we shall be authorised to take back all goods subject to retention of title. The customer shall be obliged in this case to hand over the goods subject to retention of title automatically and has to pay all transport costs arising from the redemption. The redemption of the reserved goods by us will be equivalent to a cancellation of the contract. In case of withdrawal, we shall be authorised to utilise the reserved goods. The realisation proceeds are offset with the claims, the customer owes us from the business relation – minus appropriate disposal costs. We may at any time during normal business hours enter the customer's business premises to determine the stock of the goods delivered by us. Taking back the goods subject to retention of title shall only involve rescinding the contract if we expressly state this in writing or this is prescribed by compulsory statutory provisions. The customer must notify us immediately in writing of any third-party seizure of goods subject to retention of title or any claim assigned to us.

10.9 If the value of securities existing for us according to the foregoing provisions exceeds the secured claims as a whole by more than 10 %, we shall be obliged at the customer's request to release securities at our option.

10.10 We handle and process the goods subject to retention of title as manufacturers without obligation on our part. If the goods subject to retention of title are processed or connected inseparably with other items that do not belong to us, we shall acquire co-ownership in the new article in the ratio of the invoice value for our goods to the invoice values for the other processed or connected items. If our goods are connected with other movable items into a uniform article that is deemed the principal article, the customer shall herewith already assign co-ownership thereof to us in the same ratio. The customer shall maintain ownership or co-ownership free of charge on our behalf. Rights of co-ownership accordingly arising shall be deemed goods subject to retention of title. The customer shall be obliged at any time at our request to provide us with the information required to assert our ownership or co-ownership rights.

10.11 In the event that for deliveries to foreign countries, certain additional measures and/or explanations regarding the retention of title are required in the importing state for the validity of the reservation of proprietary rights described above, the customer has to perform such measures immediately at its costs, or resp. to put out a statement in proper form. We will contribute to this to the required extent. In case that the law of the importing country doesn't permit a retention of title, but permits the retention of other rights relevant to the delivered item, we may exercise all rights to our reasonable discretion (§ 315 BGB). If this doesn't result in securing our claims against the customer, the customer is obligated to provide us immediately with other securities for the delivered goods or other securities to our reasonable discretion (§ 315 BGB). The customer's right to judicial review and correction (§ 315 III BGB) remains unaffected correspondingly

10.12 In case of seizures or other interventions by third parties, the customer is obligated to inform us immediately in writing, so that we can file a complaint according to § 771 ZPO (German Code of Civil Procedure). In case that the third party is incapable to pay the judicial and extra-judicial costs of a complaint according to § 771 ZPO, the customer shall be liable for the resulting loss.

### **11. Exclusion / Limitation of liability**

11.1 Subject to the following exceptions, we shall *not* be liable, for whatever legal reason, for breach of duty from the obligation, especially not for claims by the customer for damages or reimbursement of expenses.

11.2 The above exclusion of liability according to para. 11.1 shall not apply,

**§ 1** In the case of own intentional or grossly negligent breach of duty and intentional or grossly negligent breach of duty by legal representatives or vicarious agents;

- In the case of violation of material contractual obligations; "*Material contractual obligations*" are obligations that determine the contract and on which the customer may rely on;

**§ 2** In the event of injury to life, limb or health, also caused by legal representatives or vicarious agents;

**§ 3** in the case of default if delivery and/or service by a fixed date was agreed;

**§ 4** where we have assumed a warranty for the workmanship of our goods or the outcome of a service, or a procurement risk as in § 276 BGB;

**§ 5** in the case of liability under the German Product Liability Act or other compulsory statutory liability.

11.3 In the case that we or our vicarious agents are guilty of only slight negligence, and no case of above-mentioned para. 11.2, there 4, 5 and 6 indent is present, the liability on our part shall be limited to foreseeable damages typical for the contract.

11.4 Our liability shall be limited in total to a maximum amount of liability of EUR 150,000.00 for each claim. This does not apply in cases where we are guilty of fraudulent intent, intent, gross negligence, for claims because of injury of life, limb or health, as well as in case of a claim which is based on an unlawful act or an expressly agreed guarantee or the assumption of a procurement risk according to § 276 BGB or in cases of higher differing legally compulsory liability amounts. Any further liability shall be excluded.

11.5 Exclusion resp. limitation of liability according to 11.1 to 11.4 and 11.6 above and 11.7 shall apply to the same extent for the benefit of executive and non-executive employees and other vicarious agents as well as our sub-contractors.

11.6 There is no connection between the reversal of the burden of proof and the foregoing stipulations.

### **12. Place of performance / Legal venue / Applicable law**

12.1 Place of performance for all contractual obligations is our company's registered office except where an obligation to be performed at the place of business of the creditor is assumed or other agreements.

12.2 Any disputes shall be settled, as far as the customer is merchant in terms of the German Commercial Code, our registered office as exclusive venue. This jurisdiction rule of the Clauses 1 and 2 applies as well for such situations between us and the ordering person which could lead to non-contractual claims in the sense of EC REG No. 864 / 2007. We shall also have the right, however, to bring an action against the customer at its general legal venue.

12.3 The law of the Federal Republic of Germany shall apply exclusively to all legal relationships between the customer and ourselves, to the exclusion in particular of the UN Sales Convention (CSIG). It shall be expressly clarified that this choice of law is to be understood in the sense of Art. 14, section 1 b) EC REG No. 864 / 2007 and shall therefore apply for non-contractual claims in the sense of this regulation. If foreign law is compulsory applicable in a single case, our General Terms and Conditions shall be interpreted in the manner that the economic purpose is maintained as far as possible.

### **13. Pallet exchange**

Change pallets will be changed step by step according to the correspondingly valid UIC norm. Additional costs on our part arising from the fact that a step by step pallet exchange is not possible (e.g. because of an activation of pallet service providers) will be passed to the customer.

### **14. Incoterms / Written form / Severability Clause**

15.1 If trade terms were agreed according to the International Commercial Terms (INCOTERMS), INCOTERMS 2010 shall apply.

15.2 All agreements, collateral agreements, warranties and amendments of the contract are to be made in writing. This also applies if this requirement for the written form itself is to be waived. The legal preference of individual agreements in written, text, oral and implied form (§ 305b BGB) shall remain unaffected.

15.3 If any provision of the contract therefore is or shall become invalid/void or unenforceable in whole or in part for reasons relating to the law of general terms and conditions according to §§ 305 to 310 BGB, the legal regulations shall apply.

If any current or future provision of the contract therefore is or shall become invalid/void or unenforceable in whole or in part for reasons other than the provision relating to the law of general terms and conditions according to §§ 305 to 310 BGB, this shall not affect the validity of the remaining provisions of this contract unless the performance of the contract -also in consideration of the following provisions- would present an unreasonable hardship for either party.

This shall also apply if, after the contract is concluded, it is found to have a gap that requires filling.

In contrary to the possible principle that the Severability Clause shall only reverse the burden of proof, the effectiveness of the remaining contractual terms and conditions shall remain unchanged under all circumstances and therefore § 139 BGB shall be waived.

The parties shall replace any invalid/void/unenforceable provision or gap that requires filling for reasons other than the provision relating to the law of general terms and conditions according to §§ 305 to 310 BGB by a valid provision that corresponds in its legal and economic content to the invalid/void/unenforceable provision and the purpose of the contract as a whole. § 139 BGB (partial nullity) is expressly excluded. If the invalidity of any provision is due to a measure of performance or time (time limit or date) stated therein, a measure which most closely corresponds to the original measure in a legally admissible way must be agreed for this provision.

**Notice:**

**In accordance with the provisions of the Data Protection Act, we point out that the contract processing in our enterprise is managed by an IT system and that in this context, we store the data received due to the business relation with the customer.**

Lingemann GmbH, April 2019