

# General Terms and Conditions of Order and Delivery

of

Lingemann

Beschaffungssysteme SRL

in commercial transactions with enterprises

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## 1. General, scope

- 1.1 These general terms and conditions of order, delivery, and services apply only to natural persons or legal entities purchasing goods or services for commercial or professional purposes and to legal persons under public law or special funds under public law.
- 1.2 The terms and conditions set out below apply exclusively to our business relationships with our customers and in terms of information and consultancy. If our General Terms and Conditions are implemented in a transaction with a customer, they will also apply to all subsequent business relationships between the customer and us, unless expressly agreed in writing in another mode.

Differing terms and conditions of the buyer and/or the orderer (hereinafter referred to as the **customer**) apply only if they are expressly recognized by us. Our silence regarding these different terms and conditions will not be considered in particular as recognition or consent and this will also apply to future contracts.

Our General Terms and Conditions apply instead of any customer's terms of purchase, and also where such terms of purchase stipulate that acceptance of an order is considered unconditional recognition of the customer's terms of purchase, or that we deliver or execute after the customer has indicated the validity of his general terms and conditions of purchase unless we have expressly waived the validity of our General Terms and Conditions. By accepting the confirmation of our order, the customer expressly acknowledges that he waives his legal objection derived from the conditions of purchase.

- 1.3 If framework contracts have been concluded with our customers, they will have priority. These will be supplemented by these General Terms and Conditions unless more specific regulations are agreed upon.
- 1.4 If compensation claims are mentioned below, this notion also includes claims for reimbursement under § 1469 and § 1531 of the Civil Code.

## 2. Information/Consultancy/Properties of products and services/Participation actions of customers

- 2.1 The information and explanations regarding our products and services offered by us or our employees and our authorized agents will be provided only based on our experience so far and will not constitute any guaranteed properties or warranties regarding our products or services. The values specified in this context will be considered average values of our products and/or services.  
In the absence of other express agreements, we do not promise the customer that our products and/or services are adequate to achieve the objectives pursued by the customer.
- 2.2 Any information about our products and services in our offerings, our printed materials, and the Internet, in particular from illustrations, drawings, measurements, data on properties and performance, as well as other data, in particular, technical statements and information on ingredients must be considered as approximate average values, in the absence of an indication such as "Mandatory property". This also applies to the statements of our employees, unless otherwise agreed. The data without tolerances indicated on our products, as they appear on our website or in catalogs and/or brochures, are subject to deviations and changes that are usual in the industry and/or differences and changes due to production, in particular, due to technical developments and materials used.
- 2.3 If we provide instructions for use, they will be drawn up with the usual care of the industry, but do not relieve our customers of the obligation to carefully inspect the products in terms of their suitability for the intended purpose of the customer. In the absence of another agreement, the customer is obliged to check our products and/or services regarding the fit with the proposed purpose. The same applies to notes on import, customs, and certification regulations.
- 2.4 We undertake to provide consultancy exclusively based on a separate written consultancy agreement.
- 2.5 References to standards, similar regulations and technical information, descriptions, and illustrations of the item delivered from offers and brochures resp. on the internet and in our advertising as well

as from the analyzes provided or the descriptions of the physical characteristics of the delivered items will represent a property of our products only when we have expressly declared the condition of being "property of the product"; these are general, non-binding operational specifications.

In the absence of another agreement, this also applies to the product-related statements of our employees other than an express oral agreement.

- 2.6 It will be considered that we have given a guarantee in the legal sense (contractual taking over of liability, regardless of fault) if we have designated in writing property and/or the result of the execution as "guaranteed by law".
- 2.7 We assume no liability for the possibility of using and/or registering and/or marketing our products for the intended purpose of the customer, except for the liability provided by law, unless we have agreed otherwise in writing with the customer. This will not affect paragraph 11.
- 2.8 The customer is obliged to provide us on time with the complete information and data necessary for the provision of the service.

## 3. Specimens/Provided documents and data/Samples/Quotations

- 3.1 The properties of the specimens or samples will become an integral part of the contract only if this is expressly agreed upon in writing. The customer is not authorized to use and transmit samples or samples.  
If we sell a product based on a sample, the deviations of the latter will be allowed and will not give the right to complaints and claims against us, if these deviations are common and if the agreed specifications are met by the delivered product, in the absence of any other agreement.
- 3.2 All copyrights on our specimens and samples, illustrations, drawings, data, quotations, and other documents relating to our products and services provided to our customers will remain our property and may not be used or made available to third parties without our express consent in writing. The customer must return them in response to a request if no order is placed with us within 4 weeks of the transfer to the customer.

The regulations of points 1 and 2 are also valid for documents, drawings, and customer data; but we will be allowed to provide access to third parties, to whom we transfer contractual releases after agreement with the customer or whom we use as suppliers or authorized 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 as binding or contain binding commitments. These are order requests.  
  
The customer is obliged to comply with his order as a request for contracting for 14 calendar days - 5 working days if the order is placed electronically - after receiving the purchase order at our headquarters, as long as the customer does not anticipate a subsequent takeover by us on a regular basis. This also applies to follow-up orders.  
  
A contract is created - also in the daily activity - only when we confirm the customer's order in writing or text format (i.e., also by fax or e-mail). This confirmation is valid only if the customer has paid all the arrears in full and verification of the customer's credit carried out by us proves to be without a negative result, in the absence of another agreement with the customer.  
When the delivery or the service is made within the binding period according to the order, our confirmation can be replaced with the delivery, in this case, the shipment of the delivery being decisive.
- 4.2 In case of call orders or acceptance delays caused by the customer, we will be authorized to purchase the material for the entire order and to produce the total quantity ordered immediately, resp. to supply ourselves with the desired quantity. Once the order has been placed, no request to modify the customer can be considered, unless this has been expressly agreed upon in writing.
- 4.3 The customer must notify us in writing in good time before concluding the contract regarding any special requirements regarding our products.

Such notification shall not extend our contractual obligations and liability.

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

4.4 **We are obliged to deliver only from our stock (the obligation to deliver from stock).**

4.5 **Assuming a procurement risk is not just our obligation to deliver an item that is defined only by its type.**

**We only assume a procurement risk based on a separate written agreement stating "we assume the procurement risk ...".**

4.6 If acceptance of the contractual products or their delivery is delayed for a reason for which the customer is responsible, we will be authorized, after establishing an extension of 14 days, at our option, to request immediate payment of the purchase price or cancellation contract or refuse execution and claim damages instead of full execution. The time limit must be given in writing or text format. We will not be obliged to refer again to our rights under this clause.

4.7 If we claim compensation according to the above provisions, the damages to be paid shall amount to 20% of the net delivery price. This shall not affect any right of either party to claim a different amount of damages or the fact that no damage was incurred. There is no connection between the reversal of the burden of proof and the above provisions.

Also, we will be authorized, after the above term, by par. 4.8, clause 1 to dispose of the contractual goods in another way and to deliver the customer again after a reasonable time.

4.8 If an order or a call for delivery is delayed by the customer, we will be authorized to postpone the delivery with the same period with which the customer is delayed, plus a scheduling period of 5 working days at our headquarters.

If a purchase on call is canceled, the individual recalls must reach us, in the absence of another agreement on a shorter delivery and recall period, at least 6 weeks before the desired delivery date specified in writing.

In the absence of any other agreement, the customer is obliged to take over the purchased products completely within 6 months from the conclusion of the contract. If recalls are not made on time, we will be allowed to notify the customer and set a 14-day extension for the recall. After the expiration of the mentioned period, we will be allowed to cancel the contract due to the unfulfilled part of the contract and to demand compensation instead of the execution. We do not have to refer again to the rights in this clause. Paragraph 4.8, section 2 shall apply accordingly.

4.9 Unless otherwise specified in writing and unless we are strictly bound by various government regulations, we will be required to provide useful information for our products and a product label only in German or, at our option, in English.

The customer is responsible for providing us with all the necessary information regarding the products ordered in a suitable period, to execute the purchase order according to the contract.

4.10 We reserve the right to change the specifications of the products to the extent required by legal requirements, provided that such change does not result in a decrease in quality and usability for the usual purpose and if suitability for a particular purpose has been agreed upon.

4.11 We have the right to deliver larger or smaller quantities with up to 5% of the agreed delivered quantity. Also, we have the right to deliver products with customary deviations regarding quality, measurements, weight, color, and equipment. Such products are contractually compliant.

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

5.1 Mandatory delivery dates and periods must be expressly agreed in writing as mandatory. We shall make every endeavour to meet non-mandatory or approximate delivery dates and periods (about, approx. etc.).

5.2 Delivery and/or service periods will begin upon receipt by the customer of our order confirmation, but not before all economic, technical, and logistical details regarding the execution of the order have been clarified and all other requirements to be met by the customer be fully fulfilled, in particular, the advance payments or the insurance agreed to be paid or provided in full. This applies to delivery dates. If the customer requests changes after placing the order, a new reasonable delivery period will begin when we confirm the change.

5.3 Deliveries can be made before the delivery deadline. The date of delivery for the obligations to be fulfilled at the place of business of the debtor is considered the date on which the products are reported ready for shipment, otherwise, the date on which the products are sent and in the case of obligations to be discharged at the creditors, the day of the deliverance at the agreed delivery location.

5.4 The legal rights of the customer corresponding to our execution will be canceled in the absence of any other written agreement unless we do not deliver significant parts or we deliver with delay.

5.5 If we are default in delivery, the customer must first give us a reasonable extension of time of at least 14 days - unless this is unreasonable - to perform the contract. If this expires without success, damage claims for breach of duty - for any reason - will exist only as provided in paragraph 11.

5.6 We accept returns of packaging, in the absence of another agreement, only based on legal obligations.

#### **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 one of our subcontractors to enable us to provide the delivery or service due to us under the contract, despite proper storage in terms of quantity and quality, under our delivery agreement with the customer (congruent coverage), for reasons for which we are not responsible, or is incorrect or not provided promptly, or force majeure events have a significant duration (i.e., more than 14 calendar days), we will notify timely our customer in writing or text format. In this case, we will be authorized to postpone the delivery during the obstruction or to cancel in whole or in part the contract for that part of the contract that has not yet been performed if we have fulfilled our obligation to provide information and have not assumed any procurement risk or delivery guarantee. Force majeure events are strikes, blockages, official intervention, lack of electricity and lack of raw materials, transport blockages through no fault of our own, obstructions of the company that are not due to us, e.g. fire, floods and damage to cars and any other obstructions which, when considered objective, were not caused by our negligence.

6.2 If a date of delivery and/or provision of a service or a period of delivery and/or provision of a service is compulsorily agreed and the agreed date of delivery and/or provision of the service or period of delivery and/or agreed performance of the service is exceeded due to events according to paragraph 6.1, the customer will be authorized, after a reasonable extension of time, without success, to cancel the contract for that part of the contract that has not yet been performed, if the customer cannot be objectively expected to adhere further to the contract. In this case, the customer will have no other claims, especially compensation claims.

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

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

7.1 In the absence of another written agreement, the delivery will be shipped from the factory and any delivery made by us, if agreed, is uninsured. Delivery will be shipped at the customer's obligation to send or pick up and at the customer's risk and expenses.

We have the right to deliver an agreed sales shipment from other place than the agreed place of performance.

7.2 If shipping is agreed upon, we reserve the right to choose the route and means of transport. But we will strive to take into account the wishes of the customer regarding the route and type of shipment. Any additional costs incurred as a result - and if the delivery of the paid goods is agreed - will be borne by the customer.

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

- 7.3 The risk of accidental loss or accidental damage will pass to the customer when the products to be delivered are handed over to the customer, the shipping agent, the freight carrier, or other companies entrusted with the transport of the products, but at the latest when the products leave our companies, warehouses or subsidiaries unless it is agreed to fulfill the obligation at the creditor's place of business. The above also applies if an agreed partial delivery is made. In the case of a delivery obligation at the place of the debtor, the risk will be transferred to the customer upon delivery.
- 7.4 If delivery is delayed because we assert our right of withholding due to full or partial payment of the customer or for any other reason for which the customer is responsible, the risk will pass to the customer no later than the date the notification is sent to the customer, stating that the delivery is ready for shipment and/or use.

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

The customer must notify us immediately of the recognized material defects, but no later than 12 days after pickup, in case of factory delivery, otherwise after delivery. The notification regarding hidden material defects must be made to us in writing or text format immediately after they were discovered, but at the latest within the legal warranty period according to par. 8.7. A defect notice that does not meet the time requirements excludes any claim by the customer for breach of material defect obligations. This does not apply in the case of an intentional, grossly negligent, or fraudulent act committed by us in the event of injury, death, or damage to health or the assumption of a guarantee for the absence of defects or a procurement risk or another basis of mandatory legal liability. Special legal provisions in the case of final delivery of the product to a consumer (supplier regress, §§ 1770-1771 Civil code) remain unaffected.

- 8.1 The transport operator must also be notified of any material defects recognized in the delivery, and the recording of defects in written or text format must be arranged by the transport operator. Failure to record defects promptly will preclude any claim by the customer for breach of material defect obligations. This does not apply in the case of an intentional, grossly negligent, or fraudulent act by us, in case of injury, death, or damage to health, or in case of assumption of a guarantee for the absence of defects or a mandatory legal basis of liability and in the case of the right of recourse in the supply chain (supplier regress - §§ 1770-1771 Civil Code).

If the defects in number and weight have already been acknowledged on delivery by the above control obligations, the customer must make a complaint to the transport operator regarding defects in the receipt of the products and request certification of this complaint. If defects are not notified promptly, any customer complaint resulting from breach of duty due to material defect will also be excluded. This does not apply in the case of an intentional, grossly negligent, or fraudulent act committed by us, in the event of injury, death, or damage to health, or the event of a guarantee for the absence of defects or the assumption of procurement risk, in case of compulsory legal liability or case of a right of recourse in the supply chain (supplier regress - §§ 1770-1771 Civil Code).

- 8.2 When handling, processing, combining, or mixing with other goods begins, the delivered products will be considered approved by the customer according to the contract. This also applies if the products are not used according to the original destination if this is not the usual application of the delivered product.
- 8.3 *The customer must notify in writing immediately of any other breach of duty, setting a reasonable time limit for remedy, before claiming any further rights. Otherwise, he loses all resulting rights.* This does not apply in the case of an intentional, grossly negligent, or fraudulent act committed by us in the event of injury, death, or damage to health, or the assumption of a warranty for the absence of defects or the assumption of procurement risk, in the case of compulsory legal liability.
- 8.4 We will remedy any defects for which the customer is responsible and we will reject any unjustified claims on behalf of and at the expense of the customer if the customer is a merchant in the meaning of the German Commercial Code.

- 8.5 If, as an exception, the breach of duty does not relate to the performance of the works by us, the contract cannot be rescinded if the breach of our duty is immaterial.

- 8.6 We will provide a guarantee for verifiable material, production, or construction defects, unless expressly agreed otherwise, for 12 months, calculated from the date on which the risk passes (see paragraph 7.3), in case of refusal to accept or take delivery by the customer from the date of notification that the goods are ready to be taken over. This does not apply to claims for damage resulting from a warranty, from the assumption of procurement risk, in the event of injury, death, or damage to health, in the event of an intentional, grossly negligent or fraudulent act, or if, in cases of §§ 1770 -651 of the Civil Code (Liability of the main supplier and his right of recourse), § 1879 Section (1) No. 2 (Construction of buildings and objects for buildings) or if a longer period is established by law.

- 8.7 If the customer or a third party rectifies a defect incorrectly, we will not be liable for the resulting consequences. This will also apply to any changes to the delivery item made without our prior consent.

- 8.8 Further claims by the customer for or in connection with defects or consequential damages caused by a defect, for whatever reason, will exist only by the provisions of paragraph 11.

- 8.9 Our guarantee provided in the case of purchase contracts (claims in the event of a breach of duty due to defective performance in the case of material defects concerning our purchase contract) and liability arising therefrom will be excluded if it cannot be proven that defects and related damages are due to defective material, defective design or defective performance or defective instructions on use. In particular, warranty and liability arising from a default obligation will be excluded in the event of misuse, improper storage and transport conditions, and the consequences of chemical, electromagnetic, mechanical, or electrolytic influences that do not correspond to expected average standard influences indicated in the description of our product and/or in the user manual or other agreed product specification or on the product-specific datasheet. This does not apply in the event of an fraudulent, grossly negligent, or intentional act by us or injury, death or damage to health, the assumption of a guarantee, a procurement risk, and liability due to another compulsory statutory basis for liability.

- 8.12 Claims based on defects are excluded 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, is valid only when given in writing.

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

- 9.1 All prices are, in principle, quoted at the factory or warehouse and net value in EURO and exclude sea or air transport packaging, freight transport, postal charges and, if a transport insurance has been concluded, insurance charges plus the value-added tax (if required by law) to the valid rate from the factory or warehouse resp. stock to be borne by the customer, and other country-specific taxes in the case of delivery to countries other than the Federal Republic of Germany and in addition to customs and other fees and public charges for deliverance/service. In the absence of another agreement with the customer, the valid prices will be those indicated in the general price list valid when the contract was concluded between us and the customer.

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

- 9.2 Payment methods other than cash payment and bank transfer require a separate agreement between us and the buyer; this applies in particular to the issuing of checks and bills of exchange.
- 9.3 If 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 have the right to issue partial invoices depending on the progress of the order processing and/or to request payments in advance.
- 9.5 The purchase price will be paid within 10 calendar days from the transfer to the carrier of goods in the case of our obligation to send and in the case of the agreed obligation to take over 10 calendar days after receiving the indication that the products are ready for collection and in the case of the 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 fulfillment will be accepted only when the payment in foreign currency corresponds to the value agreed 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 will be charged, unless otherwise agreed, based on our valid general price lists.
- 9.8 We are authorized, in our fair discretion, to increase remuneration unilaterally and reasonably if the production of materials and/or the costs of purchasing materials and/or products, wage costs and ancillary wages, social security contributions, and costs with energy and costs due to environmental requirements and/or currency regulations and/or customs changes and/or transport charges and/or public charges are increased, if they directly or indirectly affect the costs of producing or purchasing goods or the costs of contractually agreed services, and if more than 4 months pass between the conclusion of the contract and delivery. Such an increase mentioned above will be excluded if the increase in costs for the factors mentioned above is offset by a reduction in costs for factors other than those mentioned above in terms of bearing the total costs for delivery (cost balancing). If the cost factors mentioned above are reduced without the increase in costs being offset by the increase in other costs mentioned above, this cost reduction will be transmitted through a price reduction.
- If the new price increases by 20% or more of the original price due to our right to adjust the price mentioned above, the customer will be allowed to cancel the unfulfilled contracts in the part that has not yet been fulfilled. He may do so only immediately upon receipt of the notice of the increased price.
- 9.9 If under the contract, we incur exceptional transportation charges, the customer will bear any additional costs arising from the increase in transportation charges after the conclusion of the contract.
- 9.10 The agreed payment periods start from the date indicated in par. 9.5.
- 9.11 Upon non-fulfillment of the payment obligations, late payment interest of 9% of the unpaid price will be charged according to § 1535 of the Civil Code. The right to claim additional damages remains reserved.
- 9.12 In case of an approved bank transfer, the date of receipt of payment in our bank account resp. in the bank account of the paying agent specified by us is considered the payment rate.
- 9.13 *Failure to comply with the customer's payment obligation will cause all payment obligations in the business relationship with the customer to become due immediately. Irrespective of any deferred payment agreements, bills of exchange agreements, or payment in installments, in this case, all liabilities owed to the customer will be paid immediately.*
- 9.14 If the payment conditions or known or recognized circumstances are not met which, in our appropriate commercial opinion, give rise to justified doubts as to the creditworthiness of the customer, *including facts which existed after the contract but which were unknown to us or which could not be known to us*, we will be authorized, without prejudice to other legal rights in such cases, to cease subsequent work on current orders or delivery and request advance payments or the provision of appropriate regular guarantees for outstanding deliveries and, after expiration, if a reasonable extension of the term for the provision of such guarantees does not bring the expected effect, let us cancel the contract, regardless of other legal rights. The customer will be obliged to reimburse us for all damages incurred by the non-performance of the contract
- 9.15 The customer has the right to retention or the right to set-off only in respect of those counterclaims that are not disputed or that have been recognized by declaratory judgement.
- 9.16 The customer can exercise a right of retention only if its counterclaim relates to the same contractual relationship.
- 9.17 The payments received will be used first to repay the costs, then the interest, and, finally, the main claims according to their age.
- Conflicting provisions of the customer regarding the payment are irrelevant.
- 9.18 Only the date of receipt of payment in our bank account is relevant for the timeliness of the payment, regardless of the payment method. In the case of checks, the value date is decisive. Customer payments must be delivered free of postage and expenses in our favour.
- 10. Retention of title, Seizures**
- 10.1 We retain title of all equipment and goods we deliver (hereinafter referred to as "goods subject to retention of title") until all receivables owed to us in the business relationship with the customer, including claims that will arise in the future from contracts concluded at a later date, are paid. This will also apply to any balance in our favor when any or all payments due to us are incorporated into 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 arising from a case of damage relating to goods subject to retention of title are hereby assigned to the value of the goods subject to retention of title.
- 10.3 The customer is authorized to resell the delivered products in the normal course of business. The customer is not allowed to make other disposals, in particular, pledging or granting of equitable lien. If the goods that are subject to retention of title are not paid immediately by third-party buyers when they are resold, the customer will be obliged to resell them only with retention of title. The authorization to resell the goods subject to retention of title does not apply a priori if the customer suspends payment or does not pay.
- 10.4 The customer hereby 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 his buyers that excludes or infringes in any way our rights or nullifies the claim 's assignment in advance. When the goods subject to retention of title are sold together with other items, the claim against third-party buyers amounting to the delivery price agreed between ourselves and the customer is considered assigned unless the amounts applicable to the individual goods can be determined from the invoice.
- 10.5 The customer will have the right to collect the claims that have been assigned to us until revoked by us, this revocation being admissible at any time. We engage to revoke the direct debit authorization only in case of legitimate interest. Such a legitimate interest exists, for example, when the customer does not fulfill his payment obligations or has arrears. At our request, the customer will be obliged to provide us with all the information and documents necessary to collect the assigned claims and, unless we do so ourselves, to notify its buyers immediately of the assignment to us.
- 10.6 If the customer incorporates claims from the resale of the goods subject to retention of title in a current account relationship with its buyers, the customer will hereby assign us any recognized closing balance in its favor at the value corresponding to the total value of the claim resulting from the resale of our goods subject to retention of title, such a claim being transferred to the current account relationship.
- 10.7 The customer must notify us immediately if he has already assigned claims to third parties from the resale of products delivered or to be delivered by us, in particular, due to real or unreal factoring, or made other agreements that may affect our current or future security interests according to par. 10.
- In case of unreal factoring, we will be authorized to cancel the contract and request the products already delivered to be handed over. This also applies 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 case of conduct that violates the contract through the fault of the customer,

especially in case of non-fulfillment of payment obligations, we will be authorized to take back all the goods subject to retention of title. The customer is obliged, in this case, to automatically hand over the goods subject to retention of title and must pay all transport costs arising from the redemption. The redemption of the reserved goods will be equivalent to the cancellation of the contract. In case of withdrawal, we will be authorized to use the reserved goods. The realisation proceeds are offset with the claims owed to us by the customer from the business relationship - minus the corresponding disposal costs. We can at any time, during normal business hours, enter the customer's premises to establish the stock of goods delivered by us. Taking back of goods subject to retention of title implies termination of the contract only if we expressly state this in writing or if this is prescribed by the mandatory legal provisions. The customer must immediately notify us in writing of any seizure by a third party of the goods subject to retention of title or any claim assigned to us.

10.9 If the value of the securities existing for us by the above provisions exceeds the overall secured claims by more than 10%, we will be obliged at the customer's request to release securities at our option.

10.10 We handle and process goods that are subject to retention of title as producers without any 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 will acquire co-ownership over the new item in the ratio of the invoice value for our goods and the invoice values for other processed or connected items. If our goods are connected with other mobile items in a uniform item that is considered the main item, the customer will assign us co-ownership in the same ratio. The customer will maintain the property or co-ownership free of charge on our behalf. Co-ownership rights that arise as a result are considered goods subject to retention of title. The customer will be obliged at any time at our request to provide us with the information necessary 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 in the importing state are required for the validity of the reservation of property rights described above, the customer has to perform such measures immediately at his own expense or issue a statement in an appropriate form. We will contribute to this to the required extent. If the law of the importing country does not allow the retention of title but allows the retention of other rights relevant to the delivered item, we may exercise all rights at our reasonable discretion. If this does not result in securing our claims against the customer, the customer is obliged to provide us immediately with other securities for the delivered goods or other securities at our reasonable discretion.

10.12 In case of seizures or other interventions of third parties, the customer is obliged to inform us immediately in writing within a maximum of 3 days, otherwise, the customer will be liable for the resulting loss.

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

11.1 Subject to the following exceptions, we will not be liable, for whatever legal reason, for breach of duty, in particular not for claims by the customer for damages or reimbursement of expenses.

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

**§ 1** In the event of own intentional or grossly negligent breach of duty and intentional or grossly negligent breach of duty by our legal representatives or authorized agents;

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

**§ 2** In case of injury, death, or damage to health, also caused by our legal representatives or our authorized agents;

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

**§ 4** if we have assumed a warranty for the workmanship of our goods or the outcome of a service or a procurement risk;

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

11.3 If we or our authorized agents are guilty only of slight negligence and no case of the above-mentioned para. 11.2, presented in points 4, 5, and 6 indent is present, our liability will be limited to the foreseeable damages typical for the contract.

11.4 Our liability will 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, death, or damage to health, as well as in the case of a claim based on an unlawful act or expressly agreed guarantee or the assumption of procurement risk 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 par. 11.1 to 11.4 and 11.6 above and 11.7 apply equally to the same extent for the benefit of executive and non-executive employees and other authorized agents, as well as our subcontractors.

11.6 There is no connection between the reversal of the burden of proof and the above provisions.

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

12.1 The place of performance for all contractual obligations is the registered office of our company unless an obligation is assumed to be fulfilled at the place of business of the creditor or in the case of other agreements.

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

12.3 The law of the Federal Republic of Germany applies exclusively to all legal relations between the customer and us, with the exception in particular of the UN Sales Convention (CSIG). It will be expressly clarified that this choice of law must be understood in the sense of Art. 14, section 1 b) of EC REGULATION No. 864/2007 and therefore applies to non-contractual claims in sense of this Regulation. If foreign law is compulsory and applies in a single case, our General Terms and Conditions will be interpreted in the manner in which the economic purpose is maintained as far as possible.

#### **13. Pallet exchange**

Pallet replacement will be performed step by step by the corresponding valid UIC norm. Additional costs on our part arising from the fact that a step by step pallet exchange is not possible (for example, due to 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 by the International Trade Terms (INCOTERMS), INCOTERMS 2010 will apply.

15.2 All agreements, collateral agreements, warranties, and contract amendments must be made in writing. This also applies if this requirement for the written form is waived. Legal preference of individual agreements in written, text, oral, and implied form will remain unaffected.

15.3 If any provision of the contract is or will become invalid/void or unenforceable in whole or in part for reasons related to the law of general terms and conditions under Sections 305-310 BGB, the legal regulations will apply.

If any current or future provision of the contract is or will become invalid/void or unenforceable in whole or in part for reasons other than the provision relating the law of general terms and conditions, it will not affect the validity of the other provisions of this contract, unless the performance of the contract - with regard to the following provisions - would present an unreasonable difficulty for either party.

This also applies if, after the conclusion of the contract, it is found to have a gap that requires filling.

The validity of the remaining contractual terms and conditions will remain unchanged in all circumstances except for clauses declared void or annulled by courts.

The parties will replace any invalid/null/unenforceable provision or gap that requires filling for reasons other than the provision of the relating law of general terms and conditions, by a valid provision that corresponds in its economic and legal content to the content of the invalid/null/unenforceable provision and the purpose of the contract as a whole. If the invalidity of any provision is due to a measure of performance or time (time limit or date) stated therein, a measure that closely corresponds to the original measure must be agreed in a legally admissible way for that provision.

**Notice:**

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

Lingemann Beschaffungssysteme SRL, April 2019