

## Delivery Conditions

### A. Validity

1. These General Terms and Conditions apply to all current and future contracts and other services (hereinafter "delivery"). They shall be deemed accepted when an order is issued or a delivery is accepted. They may be changed by us at any time without prior notice. Other conditions will not become contractual content, even if we do not expressly contradict them; they shall only be effective in individual cases following our written confirmation. The invalidity of individual regulations of this contract does not affect the validity of the remaining regulations.
2. Our conditions of sale only apply in relation to companies according to § 14 of the German Civil Code.

### B. Conclusion of Contract

1. Our offers are non-binding. A contract shall only be completed upon our written order confirmation. If the order is not confirmed by us in writing the contract shall be completed upon order execution at the latest. In such case, the delivery note is considered as order confirmation. Only our written order confirmation is relevant for the date and scope of delivery.
2. We reserve all proprietary rights and copyrights of estimates, designs, drawings and other documents; these may be made available to third parties only with our express approval. Drawings and other documents provided as part of an offer must be returned to us on request at any time; this is mandatory when the order is not placed with us. In case of our delivery of items according to drawings, models, samples or other documents provided by the purchaser, he takes over the liability that protected rights of third parties have not been damaged. If third parties, with reference to protected rights, do not permit the manufacturing and delivery of such items, we are entitled – without being obliged to check the legal position – to stop all further activities and to claim damages from the purchaser in case of his fault. In addition, the purchaser shall undertake to indemnify us immediately from third-party claims related to documents made available to us.
3. We reserve the right to accept small orders and to specify minimum order quantities or minimum prices. In general, a minimum order size of 1,000 Euro per product group is required. We shall reserve any customary or technically unavoidable deviations from physical and chemical quantities, including colors as well as order sizes depending on the item up to 10%, for metal rubber articles according to VDI 1005 20% in spring characteristics as far as is reasonable for the purchaser. For call orders we shall be entitled to procure materials for the entire order and to manufacture the total order quantity immediately. Any changes desired cannot be considered after the order has been given unless this has been specifically agreed to.
4. Any oral agreements or agreements by telephone made before or upon the conclusion of the contract with employees of Lausitz Elaste GmbH, so far as they are not in possession of an appropriate legal power of authority, are subject to written confirmation of Lausitz Elaste GmbH to become effective. With the signing of the contract any oral amendments and additions must be confirmed by Lausitz Elaste GmbH in writing.

### C. Delivery and Delivery time

1. Delivery dates are to be regarded as approximately agreed, even if we have agreed with the purchaser on a delivery time or delivery period, unless agreed delivery time/period has been expressly stipulated as "fix" by us. A confirmed delivery time/period shall be subject to the correct, complete and timely obtaining of supplies by ourselves. The delivery term is deemed to be met if the object to be delivered has left our factory or we have informed the purchaser that the goods are ready for dispatch. Delivery deadlines shall remain ineffective as long as the purchaser has not properly fulfilled his obligations, such as furnishing technical data and documents, approvals as well as making a down payment or providing a payment guarantee.
2. Acts of God or other events beyond our control that render the timely execution of accepted orders impossible shall relieve us of our delivery commitment as long as these events prevail. The same provision shall apply in case of other unforeseeable impediment to performance which we are not responsible for, especially due to fire, floods, labor disputes, shortage of energy and raw materials or official actions. Damage claims due to default, inability or non-performance are limited to typical and foreseeable damages, unless we, our legal representatives or vicarious agents are at fault for slight negligence. The limitation on liability shall not apply to cases of intent or gross negligence. The purchaser's legal right of withdrawal remains unaffected, if its conditions are fulfilled. In the case of contracts whose performance consists of several deliveries, non-performance, defective or delayed performance of one delivery remains without influence upon the other deliveries of the contract.
3. Partial deliveries shall be permissible.
4. The goods are delivered at the purchaser's risk regardless of the place of dispatch. If the goods are ready for dispatch, and the delivery or the acceptance of the goods is delayed for reasons beyond our control, the risk passes to the purchaser on receipt of the notification that the goods are ready for dispatch.
5. Non-returnable packaging material made of paper, jute, foil or wood will not be charged. Other packaging, especially special packaging such as wood or steel drums or iron cores will be invoiced at cost price. Carriage free return shipments of conveyor belt drums or cores will be credited with four-fifths of the invoice amount.
6. It is generally not possible to return sold and non-defective goods. Should, by way of exception, goods be taken back by us, the valid net price on the date of withdrawal shall be credited. If the net price on the date of delivery is below the net price on the date of withdrawal, the net price valid on the day of delivery will be credited. Clause 6 shall not apply in case of reservation of ownership.
7. In case of purchaser's application for the opening of an insolvency proceeding, purchaser's statements in lieu of an oath according to § 807 ZPO, shortages of liquid funds or a significant deterioration of financial circumstances, become known to us after conclusion of the contract, we shall be entitled to suspend deliveries immediately and to refuse the fulfillment of current contracts unless the purchaser executes counter-performance or, on our request, provides appropriate securities.

8. If the purchaser has to provide objects and materials for the execution of the order, these shall be delivered ex-works in the agreed or any other reasonable extra-quantity for any defective goods in due time and perfect condition. In default thereof, we are entitled to invoice the purchaser for additional costs which might arise as a result of it and not to supply goods as we deem appropriate or to interrupt. We reserve the right to charge the costs for testing parts as well as tools required for their manufacturing (molds, dome, mouthpieces, etc.). The tools necessary for series production shall remain our property in all cases.

### D. Reservation of Ownership

- a) We shall reserve the ownership of all and any goods delivered until all existing claims, including conditional and subsidiary claims, maintained by us towards the purchaser from our business relation have been satisfied or until any checks and/or bills of exchange handed over have been honored. The aforementioned stipulation shall also apply to future claims.
  - b) We shall be entitled to immediately take possession of the goods subject to retention of title, if the purchaser is in arrears with fulfilling the claims resulting from the business relationship. The demand of return of goods or the repossession of the goods subject to retention of title does not constitute a withdrawal from the contract unless we have expressly stated this. We are entitled to demand immediate return of the goods under exclusion of rights of retention unless there are legally effective or undisputed counterclaims.
  - c) Regardless of the purchaser's financial obligations, we are entitled
    - aa) to sell the goods returned after prior announcement at best price and to credit the proceeds or
    - bb) to credit the contract price - less discounts, rebates and other reductions and after deduction of the depreciation in value. In addition, we are entitled to deduct our costs of return from the credit amount.
  - d) Prior to any pledge or any other infringement of our ownership rights by third parties the purchaser shall notify us immediately and confirm the right of ownership in writing both to us and the third parties. The purchaser is not entitled to pledge the goods subject to retention of title or transfer them by way of security.
  - e) The purchaser has to adequately insure the goods subject to retention of title against fire and burglary. Any claims against the insurance company concerning the reserved goods are already hereby surrendered to us to its full value. The purchaser is obliged to immediately inform the insurance company of the assignment of the claim.
  - f) Any processing of reserved goods is effected for us as the manufacturer in the sense of § 950 BGB (Civil Code) without our obligation. The developed and processed goods apply as goods subject to retention of title in the sense of these conditions.
  - g) If the purchaser processes, connects, mixes or combines the reserved property with other merchandise not belonging to us (§§ 947, 948 BGB), we become joint owner of the new object or total quantity in the proportion of the value of our reserved goods to the other merchandise at the time the processing, connecting, mixing or combining took place. If the purchaser acquires sole title to the new object, we hereby agree that the purchaser grants us co-ownership in the ratio of the invoice value or total quantity of the reserved goods to that of the processed, combined, mixed, or mingled goods. For the new object resulting from this processing is considered as privileged property under this provision. The purchaser shall keep the new object in safe custody for us with the due diligence of a responsible businessman and shall be obliged to provide any information and access to documents relating to the exercise of justice.
- 2.a) The purchaser is entitled to resell retained goods in the proper course of business. Resale of goods is equal to use of goods subject to retention of title by purchaser in performing contracts for work and labor. The purchaser's claims arising from the re-sale of reserved goods are even now assigned to us together with all ancillary rights, regardless of whether the retained goods were sold before or after further processing, connecting, mixing or combining and whether they are resold to one or more buyers. If an assigned claim against the garnishee has been included into a current account, the assignment agreed upon shall relate to all claims of balance of the open account as well. The assigned claims shall serve as security for all our rights and claims according to D.1.a).
  - b) If the reserved goods are resold together with other goods, irrespective of whether without or after processing, combination, mixing or blending, the assignment of the purchase price claim according to D.2.a) is valid up to the amount of the invoice value of the conditional goods. Furthermore, it is agreed that in addition of the aforementioned resale price a claim of 10% of our sales price is assigned to us which will be offset with interests and costs after receipt of payment whereby the unconsumed dunning amount will be compensated. If the purchaser provides goods and services in combination with the sale of the goods subject to retention of title and does he not differentiate between the reserved goods and the goods and services provided on the invoice issued for the consumer, thus, he calculates a total price, this value shall be assigned to us to the amount of our sales price.
  - c) In the event the conditional goods are used by the purchaser to fulfill an agreement for services or an agreement for work and materials, the payment resulting from the contract for work/services or the contract for work and materials is assigned to us as determined in D.2.a) and b).

d) The purchaser will be entitled to sell the conditional goods or otherwise use them only on condition that the claims referred to in points D.2.a) to b) are assigned to us and that the name of our make is mentioned in his copies of invoices, delivery notes and other documents. He is not entitled to dispose of the reserved goods in any other way.

e) The purchaser is authorized to collect the assigned claims arising from the resale. Our right to collect the claim remains unaffected by the purchaser's right to collect the claim. We will not collect debt claims ourselves, as long as the purchaser meets his payments with us in due course. We shall have the right to revoke the purchaser's authority for the resale of the reserved goods and collection of assigned claims with immediate effect if the purchaser is in arrears with payments to us or experiences a shortage of liquid funds due to a significant deterioration of financial circumstances. In case there is an application to begin insolvency proceedings over the assets of the purchaser, any payment stopped, a declaration in lieu of oath according to § 807 ZPO (German Code of Civil Procedure) is given, or if due to a shortage of liquid funds a change of ownership occurs in the purchaser's business, the authority for resale and collection of assigned claims concerning the reserved goods will cease automatically. If we have revoked the purchaser's authority for resale of the reserved goods or the authority is automatically expired, the purchaser must immediately return the goods subject to retention of title and to provide us or anyone authorized by us with direct possession. In such a case, the purchaser shall be obligated to notify us of the claims assigned and their debtors, to furnish all particulars required for collection, to hand over pertinent records and to advise the debtors of the assignment. Any costs incurred due to repossession of conditional goods are to be paid by the purchaser.

3.a) The retention of title in accordance with the foregoing provisions shall still remain if some of our claims have been included in the ongoing account and a balance has been drawn and recognized. The property reservation also extends to the current account balance claims.

b) The retention of title in accordance with the foregoing provisions shall expire if all of the above mentioned claims under D.1.a) are fulfilled. Thus, the ownership of the reserved goods shall be transferred to the purchaser and the assigned claims shall be returned.

4. If the realizable value of all existing securities assigned to us exceeds our claims in total by more than 10 %, we shall be obliged to release securities at our discretion by the purchaser's special request.

#### **E. Prices and Payment**

1. Delivery, service and invoicing are performed with the prices and conditions valid on the day of delivery or collection of the goods, unless something different has been expressly agreed with the purchaser. Unforeseen changes in costs for raw materials, wages, energy and others beyond our control shall entitle us to adjust prices accordingly. We deliver our goods to our immediate customers, at our discretion, either free of charge by post, free of charge to each German general cargo station or free of charge via any other usual way. If expedited shipping is prescribed (e.g. air freight, express), the purchaser shall bear the difference between the costs for the cheapest transportation and the higher expenses. Any cartage will be charged to the purchaser. Remuneration for customer collection shall not be granted. If not otherwise agreed upon, we are permitted to deliver ex works or branch.

2. All payments by the purchaser are to be made in EURO.

3. Our invoices are due immediately and are payable net, free of postage and fees, insofar as not stated differently by us. A reminder fee of 3.00 EURO will be charged for each reminder – with the exception of the first reminder for default in payment – unless the purchaser is able to prove that there was no damage at all or the damage is substantially lower than the flat rate. The right to make further claims for damages remains reserved.

4. Cash discount is only granted when all payment commitments out of earlier deliveries have been fulfilled and the invoice amount has been punctually paid to us in cash or has been credited to our account by the aforementioned due dates. The furnishing of a bill cannot result in the granting of a prompt-payment discount; in case of cashless payment, especially when a check is submitted, the date of the credit entry will be decisive. In case of payment or credit note with reservations subject to one condition or other restrictions a cash discount cannot be granted. The purchaser shall bear the risk of transferring payment.

5. Bills of exchange and checks shall be only credited with reservation of due and proper receipt of the full amount. We reserve the right of own or other acceptances. Any costs and discount charges shall be borne by the purchaser. We cannot assume any liability for presentation and protest. If we learn that the purchaser's bill of exchange has been protested, or there is no immediate coverage of other protested bills, we shall be entitled to return all current bills. At the same time, all our receivables shall become due. Postdated checks are not accepted.

6. The receipt of payment date shall be the day on which the amount is in our possession or has been credited to our bank account. The risk of payment method is to be borne by the purchaser. In the event that the purchaser is in default of payment, we shall be entitled to charge default interest of 8% above the current published base lending rate. This shall not restrict the right to claim additional damages.

6. In case the purchaser is in default of payment, we can demand, at our discretion, that the outstanding rates of payments or other claims against the purchaser are due immediately as well as to stipulate that additional deliveries resulting from this contract or from other contracts of prior security or payment may be dependent on the making of payments by the purchaser by simultaneous performance. Should the purchaser fail to comply with our demand for prepayment or collateral within a reasonable period, we shall be entitled to rescind the contract(s) and to invoice the purchaser for any and all costs incurred prior to said point in time, including lost profits.

8. We do not pay interest on advance payments or payments on account.

9. The purchaser shall only be entitled to a right of set-off or retention of payments provided that his counterclaim is undisputed by us or has been determined as legally binding. We accept no deductions other than those we have explicitly agreed to; warranty claims remain unaffected.

10. Any payments with the effect of discharging the debt can only be made to our named account of the factor to whom we have transferred the rights in respect to all our claims arising from our business relationship.

#### **F. Warranty**

1. With regard to merchants, our deliveries and services are exclusively subject to the legal inspection and reprimand liabilities.

2. Contractors, who are not merchants, must notify us of evident defects within a period of two weeks from receipt of goods in writing; otherwise the assertion of warranty is excluded. For the observance of the time limit the dispatch of the notification in good time shall be sufficient. The contractor is responsible for making all necessary notifications and in particular is responsible for notifying details of the defect and the date on which it occurred and for reporting the defect in a timely manner.

3. The warranty period for products, which we have delivered as new products according to the agreement, shall be 1 year. Warranty claims are null and void for products, which we have not delivered as new products according to the agreement. The following conditions apply to the claims for compensatory damages. The purchaser is only entitled to claim compensation due to the absence of guaranteed characteristics if the assumption of a warranty was given with the aim to ensure the purchaser against the occurring damages. Any other warranty claims and claims for compensation for damages, with exception of claims arising from injury of life, body and health which we, our legal agents or vicarious agents, are liable for, are excluded if we, our legal agents or our vicarious agents are only at fault for slight negligence, unless there are typical and foreseen damages due to gross violation of contractual duties; claims for damages are not excluded if we, our legal agents or our vicarious agents are guilty of damage by intention or gross negligence.

4. For the purchaser's right of recourse according to the Directives on the Sale of Consumer Goods, the conditions mentioned under No. 2. and 3. apply only to claims of damages.

5. Our information about delivery item, subject of agreement and purpose of use, e.g. measurements, weights, hardness, utility value, shall merely constitute descriptions or identifications and no guarantee of characteristics. All information is to be considered as approximate, customary deviations shall remain reserved as far as nothing else is agreed. Guaranteed characteristics have to be explicitly specified as such in writing. Deviations from samples or previous deliveries shall be avoided as far as technically feasible. We reserve the right to make changes within the bounds of what is reasonable for the purchaser, especially if it is in the interest of technical progress and in so far as the delivery item is not considerably changed. Considerable deviations shall only justify a warranty claim according to F.1..2.

6. Warranty claims expire not only with natural wear and tear but also in case of damages due to incorrect handling and storage caused by the purchaser or non-contractual use of goods if we did not agree, in individual cases, with another form of usage in advance in written form.

#### **G. Liability**

The following conditions apply in relation to companies:

1. Referring to several years of practice, any contractual and extra-contractual claims by the purchaser, irrespective of the sort of claim or its basis in law, e.g. due to infringement of pre-contractual obligations, positive violation of a contractual duty, tort, equalization between joint debtors, against us, our legal agents, vicarious agents and employees are excluded in all cases, unless there are typical and foreseen damages due to gross violation of contractual duties or damages caused intentionally or grossly negligently by us or our executives. Claims arising from injury of life, body and health which we, our legal agents or vicarious agents are liable for, remain unaffected by this disclaimer of liability.

2. This liability provision shall also be valid for our consulting service, whether verbal or written, and for attempts or in any other way; the purchaser is not released from the obligation to check the suitability of the goods for intended purposes.

3. Claims according to the product liability law remain unaffected by this disclaimer of liability.

#### **H. Place of Performance, Place of Jurisdiction, Applicable Law**

1. The place of performance is Rothenburg.

2. As far as businessmen are concerned, the place of jurisdiction shall be Rothenburg for all claims from business relations, in particular our deliveries, even if sales or deliveries have been performed by another branch. This place of jurisdiction applies to judicial dunning procedures and all disputes as to the creation and validity of a contractual relationship. We are, however, entitled to take action against the purchaser at the court having jurisdiction for his place of business. If the purchaser is domiciled outside the Federal Republic of Germany, we are entitled alternatively to choose to have disputes that arise under this agreement or about its effectiveness finally decided by one or more arbitrators appointed by these rules of arbitration in accordance with the Arbitration Rules of the International Chamber of Commerce, Paris, to the exclusion of the ordinary courts.

3. Only German Federal law is applicable, the regulations of the UN sales law (Convention of Contracts for the International Sale of Goods) being excluded.

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