

General Terms of Delivery and Payment

1. Validity

These terms of business apply to all our bids, contracts, supplies and other services (hereafter referred to as “supplies”), as well as to all future terms of business, even if they have not yet been expressly agreed upon. These terms are said to be effective upon the order being placed or at the very latest upon acceptance of the goods. We hereby expressly reject any other customer terms and conditions; they only apply subject to our express written consent. If a provision is found to be ineffective, the validity of the remaining provisions will be unaffected.

2. Conclusion of contract, documents, protective rights

2.1 Our bids are subject to change. A contract is only concluded once we have confirmed the order in writing. As far as the nature and scope of our supplies are concerned, our written confirmation is exclusively decisive. If we do not confirm the order in writing, the contract is concluded upon completion of the order at the latest. Telephonic or verbal statements made by our representatives require written confirmation prior to becoming legally effective.

2.2 We reserve proprietary rights and copyright for cost estimates, first drafts, drawings and other documents; these may only be provided to third parties subject to our approval. Any drawings and other documents submitted by us within the scope of our bids shall be returned to us at our request if we are not awarded the contract. In instances where we have supplied items based on drawings, models and samples or other documents submitted by the customer, the latter undertakes to ensure that the protection rights of third parties are not violated. In the event of a third party prohibiting us from the manufacture and supply of such items through recourse to their protection rights, we are entitled – without being obliged to verify our legal position – to take on any further activities and demand compensation for damage insofar as the customer has to respond. The customer also undertakes to immediately release us from all third-party claims relating to documents submitted by him, insofar as the supplier has to respond.

2.3 We reserve the right to bill for the cost of samples and tests parts, as well as for tools required for their manufacture. Manufacturing costs of tools required for batch production will be billed by us unless otherwise agreed. In any event, all tools remain our property, even if the customer bears part or all of their manufacturing costs.

2.4 In the event of make-and-hold orders, we are entitled to procure the materials for the entire order and to produce the entire ordered quantity immediately. Any requests for change made by the customer can therefore not be considered after the contract has been awarded, unless expressly agreed otherwise.

3. Description of service

3.1 The nature of the supplies and services delivered is definitively specified by expressly agreed upon performance characteristics (e.g. specifications, markings, clearance, and other data). The product's suitability for specific applications or specific purposes shall only be guaranteed subject to express and written agreement; otherwise, the customer is exclusively liable for application and suitability risks. Any supply and service characteristics other than those agreed upon are not covered. We reserve the right to standard or technically unavoidable deviations from physical and chemical magnitudes, processes and the use of raw materials as well as ordered quantities, insofar as these are deemed reasonable by the customer.

3.2 Details regarding supplies or services (e.g. in catalogues, product literature, electronic media or on labels) are based on our general experience and knowledge and therefore only reflect standard values or characteristics. These product details as well as expressly agreed upon performance characteristics/intended applications do not release the customer from the need to test the product's suitability for its intended purpose.

3.3 Details regarding the nature and possible uses of our products do not come with any guarantees, specifically in terms of §§ 444, 639 BGB, unless these are specifically indicated in writing.

4. Delivery and lead times

4.1 Lead times are only approximate insofar as a variation of up to one (1) month is possible, even if a delivery date has been agreed upon with the customer, unless a fixed delivery date has been agreed upon in writing. Confirmed delivery dates are subject to the correct, complete and punctual delivery of goods to our premises. A lead time is considered to be on schedule if the delivered item leaves our factory before expiry of the deadline, or if we have informed the customer of its readiness for dispatch. The lead time does not come into effect for as long as the customer has not accordingly fulfilled his obligations such as the provision of technical details and documents, loan approvals, part payments or guarantees of payment.

4.2 We are entitled to carry out partial deliveries insofar as these are deemed reasonable by the customer and are not subsequently detrimental to usage.

4.3 *Force majeure* occurrences, industrial action measures including strikes and/or lockouts, and other circumstances for which we are not responsible, which are beyond our control, and which make it impossible to complete an order within the deadline release us from our delivery obligations for the duration of their occurrence.

4.4 The return of sold, defect-free goods is prohibited in principle.

4.5 Applications for insolvency, declarations in lieu of an oath as per § 807 ZPO, emergent payment difficulties or signs of significant deterioration in the customer's financial position entitle us to call off deliveries immediately and to refuse the fulfillment of current contracts for as long as the customer has not provided consideration in return or provided the appropriate security at our request, without the customer being able to withdraw from the contract or demand damage compensation.

5. Dispatch and transfer of liability

5.1 Liability for the delivery is transferred to the customer upon departure from our factory premises.

5.2 Liability is transferred to the customer when the goods are ready for dispatch but dispatch is held up for reasons beyond our control and for which we are not responsible.

6. Packaging

Single-use packaging is not taken back.

7. Securities

7.1 We reserve the right to ownership of all our delivered good up until the time that all receivables, including partial and incidental ones owed to us by the customer within the scope of our business relationship, have been paid; in this respect, all deliveries are considered as being one comprehensive delivery transaction. With regard to current invoices, reserved ownership is held to be a security for receivables due. The above provisions also apply to future receivables.

7.2 The customer is entitled to sell on the purchase item in due course of business. He is also entitled to process or combine it; as such, he thereupon assigns us all receivables resulting from subsequent disposal, processing, combination or other judicial reasons relating to the purchase item (in particular from insurance contracts or unauthorized dealings) to the value of the invoiced total (incl. VAT). Subsequent disposal denotes usage made by the customer for the purpose of contracts of manufacture or supply.

7.3 The ownership claim also extends to those products resulting from the processing, mixing or combination of our goods, at their full value, with the outcome being that we are considered as the manufacturers of these products.

Should the processing, mixing or combination with goods of a third party give rise to the latter's proprietary rights, we shall then acquire co-ownership in proportion to the objective value of these goods. Should our ownership expire due to the combination or mixing of goods, the customer shall thereupon assign us his ownership and/or reversion rights to the new stock or item to the extent of the invoiced amount of the goods supplied by us, and shall safeguard them for us free of charge.

7.4 Notwithstanding the assignment of his rights, the customer is entitled to call in receivables arising from subsequent disposal, as long as we have not withdrawn this entitlement. We will not call in the receivables ourselves, provided that the customer duly fulfills his payment obligations towards us. Upon our first written request, the customer is obliged to provide us with the details of the debtors of the assigned receivables, and to inform the debtors of the assignment.

7.5 In accordance with clause 7.2, we are entitled to withdraw the customer's right to further disposal and to collection of receivables assigned to us with immediate effect if the customer defaults on payments due to us, if he encounters payment difficulties due to a significant deterioration in his financial position, or if he fails to fulfill his commitments towards us accordingly. In the event of the customer's application for insolvency, in the event of any default in payment, in the event of a declaration being made in lieu of an oath as per § 807 ZPO or in the event of changes in ownership of the customer's company due to payment difficulties, the right to further disposal and collection of receivables assigned to us will expire automatically.

7.6 The customer shall safeguard the items forming part of our (joint) property with the care of a respectable trader and free of charge, and will ensure these items against fire, burglary and other risks.

7.7 The customer is prohibited from mortgaging or pawning any supplied goods that are subject to reservation of proprietary rights. In the event of seizure or any other prejudice to our proprietary rights on the part of a third party, the customer shall immediately inform us thereof and also confirm the proprietary rights both toward us and the third party in writing. Any remaining costs incurred upon us in spite of the successful outcome of an ensuing legal dispute shall be borne by the customer.

7.8 Applications for insolvency, declarations in lieu of an oath as per § 807 ZPO, or signs of significant deterioration in the customer's financial position, which pose a serious threat to our payment claim and entitle us to cancel the contract, entitle us to recover the goods; in such an instance, the customer hereby agrees to such recovery. Should this recovery occur, the Parties agree that we will refund or otherwise settle the costs at the usual market value at the time of recovery. Recovery of goods is only tantamount to withdrawal from the contract if this is expressly stated by us. Costs incurred by recovery (such as transportation costs) shall be borne by the customer. In cases where there has been no official notice of withdrawal, the customer may only request the delivery of recovered goods once he has paid the full purchase price and all other costs.

7.9 Securities owed to us will not be collected if the value of our securities exceeds the nominal value of the securable receivables by 20 %. The customer can request the express removal of supplied goods from the reserved property as long as the overcollateralisation does not exceed 20%.

8. Prices and payment

8.1 Our prices are given in EURO ex delivering works and do not include VAT.

8.2 Unforeseen changes in the cost of raw materials, labour, material and energy beyond our control entitle us to adjust our prices accordingly, of up to 5 %, if at least four (4) weeks lie between the conclusion of the contract and the anticipated delivery date. In the event of part deliveries, each delivery may be invoiced separately. If no prices have been set upon conclusion of the contract, we shall apply the price in effect on the day of delivery.

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8.3 If no other payment arrangements have been agreed upon in writing, our invoices fall due for payment immediately with no deductions.

8.4 We are not obliged to accept bills of exchange, cheques and other promissory notes; they are always accepted for the sake of fulfillment.

8.5 The date of receipt of payment is the date on which the amount is made available to us or has been credited to our bank account. If the customer delays payment, we are entitled to charge interest at a rate of 8 % p.a. above the basic interest rate for the duration of the default period. This does not restrict our right to demand further damage compensation.

8.6 If the customer is unable to pay, all receivables owed by the customer from this and other contracts fall due immediately. Furthermore, deliveries forming part of this or of other contracts may be detached from a previous security or a step-by-step payment method.

8.7 We do not allow interest on advance and/or interim payments.

8.8 The customer is not entitled to offset or withhold payments if his counterclaim is undisputed or deemed to be legally valid by us.

9. Claims against defects

9.1 We are liable for defects found on goods supplied by us in accordance with the following provisions only:

9.2 The customer shall duly fulfill his inspection and claim obligations in accordance with § 377 HGB.

9.3 Complaints shall only be accepted by us if they are submitted in writing. Complaints lodged against sales representatives, carriers or other third parties shall not be deemed to be filed in due form and due time.

9.4 In the event of a defective consignment, we reserve the opportunity – prior to the start of production (processing or installation) – to resolve/eliminate the defect or redeliver the goods, unless the customer deems this unreasonable. In the event of our inability to do this or in the event of our failure to fulfill this commitment immediately, the customer may then return the goods at our risk. In urgent cases, he can – subject to our approval – eliminate the defect by his own means or by means of a third party at our cost.

9.5 If the defect is detected only after the start of production – despite compliance with the obligation stipulated in clause 9.2 – the customer may demand rectification (either in the form of rework or replacement, depending on our choice).

9.6 In the event of a replacement, the customer is obliged to return the defective item upon our request.

9.7 Annulment of the contract or a reduction in the purchase price shall only be granted if the defect cannot be rectified within a reasonable period, if rectification of the defect is likely to incur disproportionate costs, if rectification of the defect is deemed to be unreasonable or for other reasons, is deemed to have failed. Only in the event of insignificant defects is the customer not entitled to withdraw from the contract.

9.8 In the event of a complaint, the customer shall immediately grant us the opportunity to inspect the goods in question; in particular, the incriminated goods shall be made available to us at our request and at our cost. In the event of unfounded complaints, we reserve the right to demand that the customer bear any transportation and inspection expenses.

9.9 Defect claims shall not be accepted if the fault is due to non-compliance with operating, maintenance and installation instructions, to inappropriate or improper use or storage, to improper or negligent handling or assembly, to natural wear and tear, or to intervention on the part of the customer or a third party.

9.10 The customer may only demand damage compensation and reimbursement for defects due to costs incurred through dismounting and assembly, as well as associated transportation costs, if this has been agreed upon by contract. This does not apply if the defect was caused deliberately or through gross negligence and/or resulted in injury to life, body or health.

9.11 For products that are not delivered as new in accordance with the agreement, the customer is not entitled to the above-mentioned claims.

10. Liability

10.1 We shall be liable for all types of damage compensation claims, in particular with regard to faults pertaining to conclusion of the contract, breach of obligations and unauthorized actions (§§ 823 ff BGB), if we, our staff or associates are found to be guilty of intentional misdemeanour or gross negligence.

10.2 In the event of damage resulting from death, bodily harm, compromised health, breach of guarantee or breach of basic contractual obligations, we shall also be liable for slight negligence. In the event of a breach of basic contractual obligations, our liability shall be limited – depending on the type of goods – to foreseeable, contractually standard and direct average damages. This provision also applies to contractual breaches committed by our staff and associates.

10.3 In the event of breached protection rights, we are liable in terms of the above-mentioned provisions, inasmuch and insofar as these protection rights are violated during the contractually valid use of our goods, provided that these rights are valid in the Federal Republic of Germany and on condition that they are published at the time of our delivery. This does not apply if we have manufactured the supplied items on the basis of drawings and models or similar descriptions or details provided by the customer and are not aware, or are not expected to be aware that protection rights have been breached as a result of products developed by us.

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10.4 Our liability in terms of the provisions of product liability law remains unaffected by the above provisions.

10.5 The statute of limitations for claims arising from defects in delivered products becomes effective 1 year after acceptance of the products, however not exceeding 14 months after the transfer of risk, unless the acceptance is delayed for reasons for which the customer is not responsible. This does not apply to an item that has been accordingly used for a building and has resulted in the latter's defectiveness; in such instances, the statute of limitations becomes effective after a 5-year period.

10.6 Reduction and withdrawal claims shall not be admitted once the statute of limitations for rectification claims has come into effect.

10.7 Claims associated with the manufacturer's right of recourse remained unaffected by this paragraph.

10.8 Furthermore, we shall not be held liable.

11. Place of performance, place of jurisdiction, and other agreements

11.1 The customer is only entitled to bring claims arising from the contract subject to our prior agreement.

11.2 The place of performance for all claims arising from business ties and more specifically from our deliveries is the place from which the delivery was performed.

11.3 The place of jurisdiction for all claims arising from business ties and more specifically from our deliveries is that of the current head office of the Leipold Group member responsible for the delivered item. This place of jurisdiction also applies for disputes regarding the conclusion and effectiveness of the contract. However, we are also entitled to bring an action against the customer before the competent courts for his head office.

11.4 The law of the Federal Republic of German applies exclusively, without possibility of recourse to its international private legislation, insofar as it refers to the validity of another legal system. Application of the United Nations Convention on Contracts for the International Sale of Goods is not admissible.

*** Members of the Leipold Group:**

Carl Leipold GmbH

Leipold Inc. (For Leipold Inc., the special Terms and Conditions for Leipold Inc. will apply)

Leipold (UK) Ltd. (For Leipold (UK) Limited, the special Terms and Conditions for Leipold (UK) Limited will apply)