

# LEMKEN GmbH & Co. KG

## GENERAL TERMS AND CONDITIONS OF SALE

As of: January 2023

### 1. General provisions

- 1.1. These General Terms and Conditions of Sale (hereinafter GTC of Sale, GTC-S or GTC) of LEMKEN GmbH & Co. KG (hereinafter also we / us) apply to all current and future business relationships between LEMKEN GmbH & Co. KG (hereinafter LEMKEN) and contractual partners / purchasers / buyers / customers (hereinafter customer). They apply exclusively to entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB), i.e. a natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of their or its trade, business or profession.
- 1.2. All deliveries and services shall be rendered by LEMKEN solely based on these GTC of Sale. Any deviating, conflicting, contradictory or supplementary GTC of the customer shall not be recognised by LEMKEN, not even after acceptance of the order, and will not become part of the contract; they are hereby expressly rejected in their entirety. Our silence with regard to such deviating general terms and conditions of business shall, in particular, not be deemed to constitute recognition or consent, not even for future contracts.
- 1.3. By accepting and executing an order, the customer accepts these GTC in the version valid at the time of placing the order. The GTC can be retrieved at any time from the LEMKEN website "<https://lemken.com/de-de/agb>", or will be provided to the customer free of charge on first demand.
- 1.4. The GTC of Sale apply to all future business dealings and contracts with the customer, even if LEMKEN does not refer to them expressly in the future.
- 1.5. Our GTC apply in place of any general terms and conditions of business of the customer, in particular the customer's general terms and conditions (GTC of purchase) even if according to these GTC of purchase the acceptance of the order is intended as unconditional acceptance of the GTC of purchase, or we deliver after the customer has informed us of the validity of its GTC of purchase, unless we have expressly waived validity of our GTC towards the customer. Exclusion of the general terms and conditions of business of the customer also applies if the general terms and conditions of business do not contain a separate regulation for individual points of our GTC. By accepting our order confirmation or the contractual service, the customer expressly acknowledges that it waives its legal objection derived from the purchasing conditions that our GTC do not apply.

### 2. Offer, conclusion of contract, obligation to perform

- 2.1. The conclusion of a contract as well as all agreements made between LEMKEN and the customer for the purpose of executing a contract must be in writing. Any amendments or supplements must be in writing. All verbal agreements must be confirmed in writing by LEMKEN before taking effect. This shall not affect Section 305b of the German Civil Code (BGB) (priority of individually agreed terms).
- 2.2. We assume an obligation to provide consultancy exclusively by virtue of an express separate consultancy agreement.
- 2.3. Unless expressly agreed otherwise, cost estimates from LEMKEN shall be non-binding and subject to a charge.
- 2.4. Unless expressly agreed otherwise, offers from LEMKEN shall be non-binding and without obligation until an order is confirmed. The right of prior sale shall remain reserved.

- 2.5. The customer must use the enquiry / contract award documents to check the correctness and accuracy of a LEMKEN offer. The customer shall also notify us expressly of any deviations, changes or additions to the offer in relation to the enquiry / contract award documents.
- 2.6. Unless expressly agreed otherwise, contracts shall only be concluded upon written order confirmation from LEMKEN or actual delivery of the goods or performance of the service by LEMKEN. In the latter case, the invoice shall also be deemed to be the order confirmation.
- 2.7. The customer must use the enquiry / contract award documents to check immediately (at the latest after 10 working days) the correctness and accuracy of the written order confirmation from LEMKEN. The customer shall also notify us expressly of any deviations, changes or additions to the order confirmation in relation to the enquiry / contract award documents.
- 2.8. A no-fault guarantee shall only be deemed to have been assumed by us if we have designated a characteristic and / or contractual performance in writing as "guaranteed by law". Even if the United Nations Convention on Contracts for the International Sale of Goods (CISG) applies, we shall only be liable in the event of culpable conduct on our part or on the part of vicarious agents attributable to us.
- 2.9. Notwithstanding Section 434 of the German Civil Code (BGB), the delivery item supplied by us shall be free from material defects if it has the characteristics agreed in the contractual specification or, in the absence of such, the characteristics listed by us in our general technical data sheet for the product at the time of conclusion of the contract. Section 434 (2) no. 3 and (3) no. 4 (accessories and instructions) and 434 (3) no. 2b (characteristics from public statements and advertising) as well as Section 434 (3) final paragraph (non-obligation of the seller to public statements) shall remain unaffected. Further characteristics of the delivery item, in particular
  - (i) property that buyers can expect these types of items to usually have,
  - (ii) suitability as demanded by the contract,
  - (iii) suitability required for normal use,
  - (iv) property of a sample or specimen,shall not be owed by us due to the absence of an express agreement to the contrary.
- 2.10. We shall only be obliged to deliver from our own stock (obligation to deliver from stock). Assumption of a no-fault procurement risk equivalent to a guarantee within the meaning of Section 276 of the German Civil Code (BGB) or a procurement guarantee is not based solely on our obligation to deliver an item which is defined solely by its class. We shall only assume this type of procurement risk within the meaning of Section 276 of the German Civil Code (BGB) and / or a no-fault liability by virtue of an express separate written agreement clearly stating "we assume the procurement risk...".
- 2.11. The customer is obliged to verify the suitability of the delivery items for their intended purpose and to comply with all relevant standards, including, in particular, the maximum performance requirements for tractors used in conjunction with LEMKEN machines (which can be viewed in the respective current LEMKEN price lists). This obligation shall not apply if LEMKEN has expressly assured the suitability in writing or has, by specific contractual agreement, assumed responsibility for the development and / or design. The customer must notify LEMKEN in due time prior to conclusion of the contract, in writing or in text form, of any special requirements for the products. Such notifications shall not, however, extend our contractual obligations and liability.
- 2.12. Offer documents, drawings, samples and similar information of a tangible or intangible nature are subject to the property rights and / or copyright of LEMKEN and may not be made accessible to third parties without the consent of LEMKEN.
- 2.13. LEMKEN reserves the right to make changes to the specifications of the goods at its reasonably exercised discretion (Section 315 of the German Civil Code (BGB)) However, this shall only apply to the extent that the change is standard practice or corresponds to technological progress or is caused by technical necessities, e.g. to avert danger, and that such a change does not cause any deterioration in terms of quality and usability for the customary purpose, and if suitability for a specific purpose has been agreed, for that purpose, without changing the overall character of LEMKEN's obligation to perform. Section 315 (3) of the German Civil Code (BGB) (judicial review and correction of discretionary decisionmaking) shall remain unaffected.

- 2.14. The customer shall be bound to its order as an offer to enter into contract for 14 calendar days – 5 working days for electronic orders (in each case at our registered office) – after submission of the order, unless the customer must also regularly expect a later acceptance by us (Section 147 of the German Civil Code (BGB)). This shall also apply to subsequent orders placed by the customer.
- 2.15. The contractual partner shall always be the party that commissions LEMKEN, unless the partner discloses that it is acting in the name and on behalf of a third party and simultaneously discloses the third party's contact details, including the invoice address, with the commissioning. If the person who commissions LEMKEN is unable to prove a power of attorney relationship, this person shall be liable for all liabilities arising from the commissioning.
- 2.16. The existing price situation on the market at the time of conclusion of the contract (with the exception of a normal, average price development for the purchase of such raw materials, delivery items or services) for the purchase of raw materials, delivery items and services, which we require to fulfil the contract for the customer, is the implicit basis of this contract. This also applies to the delivery capability of the suppliers contractually involved by us with regard to the deliveries and services required by and from them to fulfil the contract for the customer.

### **3. Prices, payment conditions**

- 3.1. Unless otherwise agreed, LEMKEN's prices shall be net prices in euros based on "FCA shipping point of our supplying plant / warehouse" (Incoterms 2020) plus packaging, storage, load securing, insurance and statutory value added tax as well as any other taxes and duties. Offers are based on the daily exchange rate of the currency agreed (/EUR), should EUR not be the agreed currency. On the day of delivery, the price will be adjusted to the current daily exchange rate of the currency agreed (/EUR). Any risk of currency exchange fluctuations shall be borne by the purchaser. If the customer – insofar as expressly agreed – pays in a currency other than EUR, payment shall only be fulfilled when the foreign currency payment corresponds to the agreed amount in EUR on the date of receipt of payment.

Unless otherwise agreed, LEMKEN's prices valid on the day of delivery / service provision plus value added tax at the respective statutory rate shall be owed. Services, in particular installation, maintenance and / or repair work shall be invoiced in accordance with LEMKEN's applicable hourly rates at the time of service provision.

- 3.2. A calculation of value added tax shall be omitted only in cases in which the prerequisites for tax exemption are demonstrably met. In the case of deliveries to EU member states (intra-Community deliveries), the contractual partner shall immediately cooperate in a suitable manner in providing evidence of the intra-Community delivery in accordance with the requirements of the respective local laws. In particular, LEMKEN may request dated and signed confirmation of receipt of the intra-Community delivery. The confirmation shall contain at least the name and address of the recipient of the goods, the quantity and customary designation of the goods, as well as the place and date of receipt of the goods. In addition, the contractual partner shall provide its valid VAT ID number. If LEMKEN is not provided with the relevant evidence, the tax exemption of the intra-Community deliveries shall cease to apply; in addition, the contractual partner shall reimburse LEMKEN for any official surcharges.
- 3.3. LEMKEN shall be entitled to increase the remuneration unilaterally in the event of an increase in material production and / or material and / or product procurement costs, wage and ancillary wage costs, social security contributions as well as energy costs and costs due to environmental regulations, and / or currency regulations and / or changes in customs duties and / or freight rates and / or public charges accordingly, if these directly or indirectly influence the goods production or procurement costs and if there are more than 2 months between conclusion of the contract and delivery. An increase in the aforementioned sense is excluded insofar as the cost increase in individual or all of the aforementioned factors is offset by a cost reduction in any other of the aforementioned factors in relation to the total cost burden for the delivery (balancing). If the aforementioned cost factors are reduced without the cost reduction being offset by an increase in any other of the aforementioned cost factors, the cost reduction must be passed on to the customer by way of a price reduction. If the new price is 20% or more above the original price due to the price increase, then the customer is entitled to withdraw from contracts that have not yet been completely fulfilled. However, the customer can only assert this right immediately after notification of the increased price.

- 3.4. Unless otherwise agreed in writing, payment, on the basis of an existing security for receivables, must be made within 30 days after delivery or service provision, without deduction of any discount. Timeliness of payment, by whatever means it is made, shall be determined solely by the date on which it is credited to our account. The value date shall be decisive for cheque payments. Payments by the customer must be made for our benefit, postage and charges paid. LEMKEN may also, without stating any reasons, make a service provision conditional on matching payment with delivery (e.g. by cash on delivery or bank direct debit) or on advance payment.
- 3.5. Discounts granted by LEMKEN shall lapse if the contractual partner defaults on the payment of claims against LEMKEN, even if the default relates to other services. Agreed discounts may only be deducted when all previous invoices have been settled.
- 3.6. LEMKEN shall be entitled to commission a lawyer or a collection agency to collect outstanding debts of the customer, and the customer shall be obliged to bear any reminder and collection expenses as well as lawyers' fees that may be necessary for the appropriate legal prosecution. LEMKEN shall be entitled to set off payments against accrued interest, its own reminder expenses, third-party collection expenses and lawyers' fees. Payments may also be set off against the oldest claim even if the contractual partner has indicated otherwise. We are entitled to reject payments whose redemption provisions contradict Section 367 (1) of the German Civil Code (BGB).
- 3.7. If the payment deadline is exceeded, the contractual partner undertakes to pay interest on arrears at 9 percentage points above the basic rate of interest pursuant to Section 247 of the German Civil Code (BGB). The assertion of further damages is not excluded. The contractual partner further undertakes to pay appropriate reminder expenses, the reminder expenses of any creditor protection association pursuant to the Ordinance of the Federal Minister for Economic Affairs on the maximum rates of remuneration owed to collection agencies (German Federal Law Gazette BGBl. 141/1996 as amended) and the fees of intervening lawyers, insofar as they were expedient and necessary.
- 3.8. Payment by bill of exchange is permissible only after prior express agreement. Bills of exchange and cheques shall be accepted by LEMKEN only on account of performance and shall not be deemed payment until they have been honoured.
- 3.9. If the contractual partner is in default of payment, LEMKEN shall be entitled to declare due all claims which are not yet due and to demand immediate cash payment with respect to all claims due and payable under the business relationship. This right shall not be excluded by any deferment or acceptance of bills of exchange or cheques.

If terms of payments are not observed by the customer or circumstances become known or can be identified which according to a dutiful commercial discretion give LEMKEN cause to justified doubts about the creditworthiness of the customer, also such facts, which existed when the contract was concluded already, however were not known or did not have to be known to LEMKEN, then irrespective of further statutory rights in these cases LEMKEN is entitled to suspend the continued work on current orders or the delivery and to request advance payments or provision of a bank guarantee from a German credit institution affiliated to the deposit protection fund for still outstanding deliveries and after the unsuccessful expiry of a reasonable final deadline for the provision of such collateral – irrespective of further statutory rights – to withdraw from the contract with regard to the part not yet fulfilled. The customer is obliged to reimburse LEMKEN for all damages incurred through the non-execution of the contract.

- 3.10. The customer shall be entitled to withhold payments or to offset them against counter claims only to the extent that its counter claims have not been disputed or have been legally established. This shall also be valid if the counter claim that is to be set off is synallagmatic with our claim (i.e. two performances in the contract concluded with us are reciprocal) and relates to the breach of our main performance obligation.
- 3.11. Several contractual partners shall be jointly liable.
- 3.12. LEMKEN employees shall not be authorised to receive monies on behalf of LEMKEN.

#### **4. Delivery, delivery periods and dates, delay, transfer of risk, force majeure, reservation of self-delivery; cases of hardship**

- 4.1. Unless otherwise agreed, deliveries shall be made by LEMKEN from "FCA shipping point of our supplying plant / warehouse" (Incoterms 2020), which shall also be the place of performance for the deliveries and any subsequent performance.
- 4.2. Transport is carried out at the expense and at the risk of the contractual partner, even in the case of partial deliveries. Even for goods unloaded carriage paid or delivered at the expense of LEMKEN, the transfer of risk to the contractual partner shall take place at the time of handover to the carrier. In this respect, "carriage paid" in relation to the customer shall only apply as a cost assumption regulation for transport by us.
- 4.3. Unless the order has been expressly agreed as a transaction for delivery by a fixed date, delivery periods shall not be binding and shall not start until all technical details of the order have been clarified, the contractual partner has fulfilled its obligations to cooperate, in particular regarding the timely receipt of all materials, documents, authorisations, examinations, releases to be provided by the contractual partner, and the contractual partner has complied with the agreed terms of payment. If these requirements are not duly fulfilled in good time, the delivery periods shall be extended accordingly. In the event of a change to the order, the delivery period shall start anew upon confirmation of the change by LEMKEN. LEMKEN shall be entitled to make partial deliveries and to invoice accordingly, insofar as these are reasonable for the customer. Partial deliveries shall be reasonable if (i) the partial delivery can be used by the customer within the scope of the contractual intended purpose, (ii) the delivery of the remaining ordered goods is ensured and (iii) the customer does not incur any significant additional expenses or costs as a result (unless LEMKEN agrees to bear such costs).
- 4.4. If we do not receive deliveries or services from our subcontractors for us to provide a delivery or service which is owed by us as part of the contract, despite proper and adequate stocking prior to conclusion of the contract with the customer in terms of quantity and quality under our delivery or service agreement with the customer, i.e. in such a way that, upon fulfilment of the supplier obligation towards ourselves, we can fulfil the contract with the customer according to the nature of the goods, quantity of the goods and delivery time and / or service (congruent stocking) or they are incorrect or not in due time for reasons for which we are not responsible or events of force majeure occur of significant duration (i.e. of longer than 14 calendar days), we shall notify our customer in due time in writing or text form. In such case, we shall have the right to postpone the delivery for the duration of the obstruction, or to withdraw from the contract in whole or in part for the part not yet fulfilled if we have met our foregoing duty to provide information and have not assumed a procurement risk or a guarantee of delivery pursuant to Section 276 of the German Civil Code (BGB). Events of force majeure are wars, acts of terror, strikes, lock-outs, official interventions, energy shortages and shortages of raw materials, epidemics and / or pandemics, transport bottlenecks or obstructions through no fault of our own, in particular general curfews and / or bans on contact, company obstructions through no fault of our own – e.g. due to fire, water and damage to machinery – and any other obstructions which, when considered objectively, were not culpably caused by us. In the event of exemption from performance in accordance with the aforementioned provision, we shall not be liable to pay damages and / or reimburse costs or penalties due to default.

If a delivery date or a delivery period or a performance period or a performance date is agreed with binding force and if the agreed date or the agreed period is exceeded due to the aforementioned events, the customer shall have the right, after a reasonable period of grace has elapsed without result, to withdraw from the contract due to the part not yet fulfilled. The customer shall have no further claims, especially claims for damages, in such case. The aforementioned provision shall apply accordingly if, for the reasons stated in Section 1, also without contractual agreement of a fixed delivery date, the customer cannot be objectively expected to adhere further to the contract.

- 4.5. If we are obliged to make a single delivery or multiple deliveries as part of the contract concluded, the obligation to deliver shall cease to apply if the legal and / or economic and / or logistical and / or procurement requirements on the market for the provision of the contractual delivery have changed compared to the time at which the contract was concluded in such a way that, viewed objectively, we can no longer be expected to fulfil the obligation to deliver. In this context, the fulfilment of the obligation to deliver can no longer be expected of us, in particular, if the general energy emergency is declared, and / or if, due to a general shortage of raw

materials and / or a shortage of parts, the delivery item or parts thereof or raw materials for this purpose cannot be procured for us on the procurement market from their usual suppliers up to that point in time within a sufficient period of time to comply with the delivery period owed to the customer, insofar as we would trigger an order on the procurement market immediately after call-off in the case of an obligation to call off deliveries or after conclusion of the contract in the case of an individual delivery period. We shall also be released from our obligation to deliver if the situation or event leading to the aforementioned inappropriateness was foreseeable in principle, but not specifically at the time the contract was concluded. We will inform the customer immediately if the aforementioned situation occurs that leads to a release from performance on our part. In this case, the parties shall immediately negotiate adjustments to the contract, taking into account the interests of both parties and the aforementioned situation. If, at the request of one of the contractual parties, such an agreement is not reached within 30 calendar days, both parties shall be entitled to withdraw from the unfulfilled part of the contractual relationship concerned without compensation or, in the case of a continuing obligation, to terminate the contract without notice and without compensation.

- 4.6. Insofar as a purchase has been concluded with advance payment and self-collection, the entire delivery quantity must be collected in full within 14 days at the latest after notification of readiness for shipping. The customer then has an obligation to collect.

The advance payment for self-collection must be made to our bank account at least 7 days prior to self-collection. Timeliness of payment, by whatever means it is made, shall be determined solely by the date on which it is credited to our account.

The customer must arrange a collection date for self-collection with LEMKEN no later than 7 days after notification of readiness for shipping. The agreed collection date shall then be confirmed by LEMKEN with details of the date and a time window.

The customer must ensure that the agreed time window is adhered to. If the goods ready for shipping are not collected by the customer within the agreed time window, the customer's claim to this time window shall lapse. LEMKEN may then, at its reasonably exercised discretion, specify a new time window for the customer.

If the customer fails to arrange a collection date with LEMKEN and / or if the goods have not been collected within the agreed time window, LEMKEN shall be entitled to charge a flat-rate expense allowance of 5% of the net price of the deliver items.

Furthermore, LEMKEN shall then be entitled to store the goods at the expense of the contractual partner, pursuant to the provisions of Section 4.8. of this contract, and to demand storage charges.

- 4.7. Unless expressly agreed otherwise, the choice of shipping method and route shall be at the discretion of LEMKEN. This is without liability for the cheapest or fastest delivery.
- 4.8. The goods shall also be deemed to have been delivered if they are not called off immediately on the delivery date after notification of readiness for shipping. In this case, LEMKEN shall be entitled to store the goods at the expense of the contractual partner and to charge storage fees amounting to 0.5% of the net price of the delivery items for each month or part thereof, but not more than a total of 5% of the net price of the delivery items. The contractual parties shall be at liberty to provide evidence of higher or lower delivery costs.

Further claims due to default of acceptance remain unaffected. The stored goods will only be insured at the special request of the customer.

- 4.9. If the contractual partner does not accept the goods or services provided in accordance with the contract at the contractually-agreed place or at the contractually-agreed time and if the delay is not the result of an act or omission on the part of LEMKEN, LEMKEN shall have the option of either declaring due the agreed price and demanding compensation or insisting on payment of a reasonable take-back or cancellation fee. This shall be of 20% of the net payment owed by the customer. The assertion of further rights remains unaffected. The customer reserves the right to prove that a significantly lower (more than 10% lower) damage or expense has been incurred.

## **5. Installation rules**

- 5.1. When using the delivered goods, the installation, operating and other technical regulations and instructions provided to the customer by LEMKEN or its vicarious agents must be observed by the contractual partner. The contractual partner is also obliged to inform its possible contractual partners about their validity.
- 5.2. Installation, maintenance and repair sites must be kept accessible to us in the event of rectification; otherwise, the contractual partner shall be in default of acceptance and of the due date of LEMKEN's services.
- 5.3. If the contractual partner requests an acceptance test, this shall be expressly agreed with LEMKEN upon conclusion of the contract. Unless otherwise agreed, LEMKEN may, at its reasonably exercised discretion, decide where this shall take place (Section 315 of the German Civil Code (BGB)). Such a test shall in any case be carried out during the normal working hours of LEMKEN's employees. The general practice for acceptance testing in the relevant industry sector shall be decisive in this respect.

## **6. Warranty, liability, limitation period**

- 6.1. The customer shall notify us in writing or text form of obvious material defects and / or defects of title without delay after delivery, of hidden material defects and / or defects of title without delay after discovery, at the latest however within the warranty limitation period pursuant to Section 6.5. A notification of defect that is not made on time or in the correct form shall rule out any claim by the customer whatsoever based on a breach of duty due to material defects and / or defects of title. This shall not apply in the case of wilful, grossly negligent or fraudulent actions on the part of LEMKEN, in the event of injury to life, body or health or the assumption of a guarantee of freedom from defects or of a procurement risk pursuant to Section 276 of the German Civil Code (BGB) or other statutory liabilities and in the event of recourse claims in the supply chain pursuant to Sections 478, 445a of the German Civil Code (BGB).
- 6.2. The customer must undertake a plausibility check upon acceptance, i.e. check the type of product quantity / weight and condition. Material defects, obvious type defects and / or quantity / weight defects, which are obvious upon delivery, must also be notified to the transport company and the customer must have such defects certified on the spot on the delivery paperwork / CMR in writing or text form. Failure to give notification of defects to the transport company in due time or in the correct form will exclude any claim by the customer based on breach of duty due to material defects. This will not apply in the case of fraudulent, wilful or grossly negligent actions on the part of LEMKEN, in the event of injury to life, body or health or the assumption of a procurement risk pursuant to Section 276 of the German Civil Code (BGB), a guarantee of freedom from defects or liability based on a statutory liability or in the event of recourse claims in the supply chain pursuant to Sections 478, 445a of the German Civil Code (BGB).

If quantity and weight defects are obvious upon delivery, the customer must also notify the transport company of these defects and have such defects certified on the spot on the delivery paperwork / CMR in writing or text form. Failure to give a notification of defects to the transport company in due time or failure of the transport company to issue a certification in the correct form will exclude any claim by the customer based on the breach of duty due to material defects. This shall not apply in the case of fraudulent, wilful or grossly negligent actions on the part of LEMKEN, in the event of injury to life, body or health or the assumption of a procurement risk pursuant to Section 276 of the German Civil Code (BGB), a guarantee of freedom from defects or liability based on a statutory liability and in the event of recourse claims in the supply chain pursuant to Section 478 of the German Civil Code (BGB).

- 6.3. Each notification of defect must, as a condition precedent for validity, also contain an exact product designation, for machines additionally the serial number, as well as the delivery note or invoice number. Notifications of defect do not entitle the customer to withhold invoice amounts in whole or in part. Carton stickers, content labels and control slips enclosed with the shipment must be sent in with the notification of defect.
- 6.4. At the request of LEMKEN, the customer shall return the rejected deliveries to LEMKEN at its own expense. In the event of a justified notification of defect, we shall reimburse for the most cost-effective shipping route; this shall not apply if the costs increase as a result of the deliveries being located at a place other than the place of intended use. In the event of an unjustified

notification of defect, we shall be entitled to demand reimbursement from the contractual partner for the expenses incurred (e.g. transport, labour and material costs), unless the lack of defect was not apparent to the contractual partner.

- 6.5. For claims arising from a breach of duty based on poor performance in the form of material defects (warranty claims), the limitation period is 12 months, unless otherwise expressly agreed between us and the customer, calculated from the date of transfer of risk, in the event of the customer's refusal to take delivery or acceptance from the time of the notification of readiness to take delivery of the goods. This does not apply to claims for damages arising from a warranty, the assumption of a procurement risk pursuant to Section 276 of the German Civil Code (BGB), claims based on injury to life, body or health, fraudulent, wilful or grossly negligent actions on the part of LEMKEN, or if a longer limitation period is stipulated pursuant to Sections 478 and 445a (recourse in the supply chain), Section 438 (1) no. 2 (construction of buildings and supply of items for buildings) and Section 634a (1) no. 2 of the German Civil Code (BGB) (building defects) or otherwise by law, in particular in the case of the German Product Liability Act (ProdHaftG). A reversal of the burden of proof is not associated with the aforementioned provision.
- 6.6. LEMKEN must be given the opportunity to examine the alleged defect and to recognise it as such.
- 6.7. Of the direct costs arising from the rectification or replacement delivery, we shall bear the costs of the replacement part, including shipping, insofar as the complaint is justified. Moreover, we shall bear the costs of removal and installation should we be responsible for the defect.
- 6.8. A warranty claim shall not exist (i) in the event of natural wear and tear; (ii) in the event of the condition of the goods or damage occurring after the transfer of risk as a result of unsuitable and improper handling, as a result of improper use, storage, set-up or faulty installation or commissioning by the purchaser or third parties, use of unsuitable operating equipment or substitute materials, non-compliance with installation and handling instructions or the operation of the contractual goods together with other devices, elements, systems or accessories which do not originate from LEMKEN and whose compatibility with the goods was not expressly promised by LEMKEN in writing, or excessive stress or use; (iii) in the event of non-reproducible software errors; (iv) in the event of only minor deviations from the agreed quality or only minor impairment of usability; (v) in the event of the goods being modified by a third party or through the installation of non-original parts or by repairs carried out without the consent of LEMKEN, unless the defect is not causally related to the modification.
- 6.9. LEMKEN shall not be liable for the quality of the goods based on the design or the choice of material, provided that the contractual partner has specified the design or the material. A possible warning obligation is waived by LEMKEN.
- 6.10. LEMKEN shall not be liable for damage caused by the respective structural, local, weather, physical, optical and technical conditions of the areas surrounding the goods, force majeure, improper or excessive operation, operating error, incorrect storage, lack of maintenance, disregard of instructions or recommendations or damage for which LEMKEN is not responsible.
- 6.11. With the exception of default in rectification, LEMKEN shall only be liable for the costs of rectification of defects carried out by the contractual partner if this rectification of defects, including the associated costs, has been expressly approved by LEMKEN in advance.
- 6.12. If the customer or a third party carries out improper modifications or repairs on the delivery item, our liability for the resulting consequences shall be cancelled.
- 6.13. The provisions of Section 6 shall apply accordingly to defects of title that are not based on the infringement of third-party property rights.
- 6.14. The assignment of warranty claims against LEMKEN is not permitted. Section 354a of the German Commercial Code (HGB) (assignment of monetary claims in commercial transactions) remains unaffected as a mandatory provision.

## **7. Exclusion of liability and limitation**

- 7.1. Subject to the following exceptions, we shall not be liable, in particular not for claims of the customer for damages or reimbursement of expenses – irrespective of the legal grounds – in the event of a breach of duties arising from the contractual obligation.
- 7.2. The aforementioned exclusion of liability pursuant to Section 7.1 shall not apply:
- in the case of own wilful or grossly negligent breach of duty and wilful or grossly negligent breach of duty by legal representatives or vicarious agents;
  - in the case of breach of material contractual obligations; "material contractual obligations" are obligations whose fulfilment shapes the nature of the contract and which the customer may rely on.
  - in the event of injury to life, body or health, also caused by legal representatives or vicarious agents;
  - where we have assumed a warranty for the workmanship of our goods or contractual performance, or a procurement risk as defined in Section 276 of the German Civil Code (BGB);
  - in the case of liability pursuant to the German Product Liability Act (ProdHaftG) or other compulsory statutory liability.
- 7.3. If we or our vicarious agents are responsible for slight negligence and none of the cases specified in bullet points 1, 3, 4, 5 of Section 7.2 above exist, we shall be liable, also in the case of breach of material contractual obligations, only for contract-typical and foreseeable damage. Section 254 of the German Civil Code (BGB) (contributory negligence) shall remain unaffected.
- 7.4. Exclusion or limitation of liability pursuant to Sections 7.1 to 7.3 above and Section 7.5 shall apply to the same extent for the benefit of our organs, our executive and non-executive employees and other vicarious agents as well as our sub-contractors.
- 7.5. Claims by the customer for damage resulting from this contractual relationship may only be asserted within a preclusion period of one year as of commencement of the statutory limitation period. This shall not apply if we are responsible for intent or gross negligence, in the event of slight negligence if we have breached a material contractual obligation and for claims due to injury to life, body or health, and in the case of a claim arising from a tort action or an expressly assumed guarantee or assumption of a procurement risk as defined in Section 276 of the German Civil Code (BGB), or in the event that a longer limitation period is mandatory by law.
- 7.6. The lessor's no-fault liability for initial material defects irrespective of fault (Section 536a (1), first alternative BGB) is excluded.
- 7.7. The aforementioned provisions do not entail a reversal of the burden of proof.

## **8. Return**

- 8.1. With the exception of an existing right of withdrawal, the customer is only entitled to return purchased goods if a right of return has been expressly agreed in each individual case. Such a right of return, if agreed, shall in any case exist only if the goods are returned to LEMKEN's factory undamaged and in their original packaging at no cost to LEMKEN.

With the exception of an existing right of withdrawal of the customer, a right of return shall not exist under any circumstances for individually manufactured goods / custom-made products.

- 8.2. If the customer has a right of return, the contractual partner undertakes to pay 15% of the agreed net purchase price of the returned goods as compensation for LEMKEN's expenses upon return of the goods.

## **9. Property rights and copyrights**

- 9.1. The contractual partner shall inform LEMKEN without delay of any (alleged) infringements of property rights or related risks that it becomes aware of and, if so requested, allow LEMKEN to handle legal disputes (including out of court).

- 9.2. At LEMKEN's option, LEMKEN shall be entitled (i) to obtain a right of use for the product infringing a property right, (ii) or to modify it in such a way that it no longer infringes the property right, (iii) or to replace it with a similar product which no longer infringes the property right. If LEMKEN is unable to do so under reasonable conditions or within a reasonable period of time, the contractual partner shall be entitled to the statutory rights of withdrawal - provided that it has enabled LEMKEN to carry out a modification. Under the aforementioned conditions, LEMKEN shall also be entitled to withdraw from the contract. LEMKEN reserves the right to take the measures available to it under this provision, Clause 1, even if the infringement of property rights has not yet been legally established or acknowledged by LEMKEN.
- 9.3. Claims of the contractual partner shall be excluded (i) if the contractual partner is responsible for or has caused the infringement of the property right, (ii) if the contractual partner does not support LEMKEN to a reasonable extent in defending itself against claims of third parties, (iii) if the deliveries have been manufactured in accordance with the specification or instructions of the customer, (iv) if the infringement of the property right results from the use in combination with another item (including software) not originating from or approved by LEMKEN or (v) if the deliveries were not used in accordance with the contract or are used in a manner which LEMKEN could not foresee.
- 9.4. Diagrams, sketches, cost estimates and other technical documents, which may also be part of the offer, shall always remain the intellectual property of LEMKEN, as shall samples, catalogues, brochures, illustrations and the like. Any exploitation, duplication, reproduction, distribution, processing and handing over to third parties, publication, demonstration or any other disposal requires the express consent of LEMKEN. Any processing of such documents which constitute the intellectual property of LEMKEN shall also be subject to the express written consent of LEMKEN.

The contractual partner shall indemnify and hold LEMKEN harmless against any damage resulting from a breach of these provisions. This shall also apply to damage resulting from the use of unauthorised modified, processed and implemented sketches, samples, diagrams and the like. Any further claims arising from an infringement of LEMKEN's intellectual property rights shall remain unaffected thereby and may be asserted separately.

## **10. Retention of title, right of retention**

- 10.1. Delivered goods shall remain the property of LEMKEN until full payment of all claims arising from the delivery contract. We are entitled to take back the delivery item if the purchaser acts contrary to the contract.
- 10.2. The contractual partner shall be entitled to process or combine LEMKEN's products within the scope of its ordinary business operations. LEMKEN shall acquire co-ownership of the products resulting from the processing or combination as security for the claims referred to in Section 10.1. The contractual partner must store the items subject to LEMKEN's co-ownership free of charge as a secondary contractual obligation. The amount of LEMKEN's co-ownership share shall be determined by the ratio of the value of LEMKEN's product and the item created by the processing or combination at the time of processing or combination. Any other disposal, in particular processing beyond the ordinary course of business, pledging or transfer of ownership by way of security, shall not be permitted.
- 10.3. During the existence of the retention of title, resale to a third party shall be permissible only in the ordinary course of business and while maintaining the retention of title. The contractual partner hereby assigns to LEMKEN in full all claims, including ancillary rights, to which it is entitled from the resale of the LEMKEN product, and undertakes to make a corresponding note in its books or on its invoices (in the case of computerised accounting, this assignment must also be shown in the open item list). The assigned claims shall serve as security for LEMKEN's claims pursuant to Section 10.1. The customer must notify LEMKEN immediately if the customer has already assigned claims to third parties from the resale of products delivered or to be delivered by LEMKEN, especially due to real or unreal factoring, or made other agreements which can impair LEMKEN's current or future security interests pursuant to Section 10. In the case of unreal factoring, LEMKEN shall be entitled to withdraw from the contract and request handover of the products already delivered. 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.

- 10.4. At LEMKEN's request, the contractual partner shall immediately inform LEMKEN in writing regarding to whom it has sold goods owned or co-owned by LEMKEN and which claims it is entitled to from the resale, and shall issue to LEMKEN, at its expense, publicly certified documents concerning the assignment of the claims.
- 10.5. The contractual partner shall not be entitled to dispose in any other way of the items to which LEMKEN retains title or co-ownership or of the claims assigned to LEMKEN. The contractual partner shall notify LEMKEN immediately of any seizures or other legal impairments of the items or claims belonging in whole or in part to LEMKEN. The contractual partner shall bear all costs incurred to nullify access of third parties to the reserved or secured property of LEMKEN and to recover the item. In the event that a legal transaction fee is triggered by an assignment for security, this fee shall be borne by the contractual partner.
- 10.6. In the event of default in payment or any other culpable breach of fundamental contractual obligations on the part of the contractual partner, LEMKEN shall be entitled to declare due the entire outstanding residual debt. Even if a later due date has been agreed with regard to individual invoices, LEMKEN shall in such cases be entitled to request handover of the items to which LEMKEN retains title or ownership by way of security, to the exclusion of any rights of retention of the contractual partner.

If LEMKEN makes use of this right, the contract shall be deemed to have been rescinded only if LEMKEN expressly declares this. In the event of a withdrawal, LEMKEN shall be entitled, in the absence of any agreement to the contrary, to charge a no-fault, lump-sum cancellation fee amounting to 25% of the total net purchase price as well as to assert damages in excess thereof.

- 10.7. After taking back the goods, LEMKEN shall be responsible for either selling the item and crediting the sales price obtained to the contractual partner against its outstanding obligations, deducting its own expenses, or taking back the goods at the invoice price, deducting any depreciation, and charging the contractual partner an appropriate fee for its period of use; however, at least 25% of the purchase price or the agreed repair fee shall be charged.
- 10.8. LEMKEN shall be entitled to retain the items handed over to LEMKEN for repair until all outstanding claims have been settled, also as security for claims arising from other legal transactions. LEMKEN shall be released from any obligation to carry out warranty work as long as the contractual partner is in arrears.
- 10.9. The customer shall be obliged to ensure that the goods subject to retention are maintained in a fully resalable condition for the duration of the continued ownership and to insure the goods appropriately against theft, fire and water damage at the current replacement value. The customer shall provide evidence of the conclusion of the insurance policy at the request of LEMKEN. If maintenance and inspection work is required on the product owned by LEMKEN, the contractual partner must carry this out in good time at its own expense.
- 10.10. In case of deliveries abroad, if certain measures and / or declarations by either party are necessary to ensure the effectiveness of the aforementioned reservation of title and / or certain other rights referred to in the aforementioned paragraphs, the customer is obliged to inform LEMKEN accordingly in writing or in text form and to take all necessary measures and / or make all necessary declarations without undue delay at its own expense. LEMKEN will cooperate in this to the extent necessary. If the law of the importing country does not permit retention of title but allows LEMKEN to reserve other rights as to the delivery item, LEMKEN may exercise all rights of this kind at its reasonably exercised discretion (Section 315 of the German Civil Code (BGB)). Insofar as an equivalent guarantee for LEMKEN's claims against the customer is not achieved in this way, the customer shall be obliged to promptly provide LEMKEN with other customary guarantees for the delivered goods at its own expense at our reasonably exercised discretion (Section 315 of the German Civil Code (BGB)).

## **11. Customer's obligation to cooperate**

As an essential obligation to cooperate, the customer is obliged to provide us with all information and data required for the service provision in a timely and complete manner and to perform all actions from its sphere in a timely manner and free of charge so that we can provide our service in accordance with the contract.

## 12. Export control and customs

- 12.1. In the absence of any contractual agreements to the contrary with the customer, the delivered goods are intended for placement on the market for the first time within the Federal Republic of Germany or, in the case of delivery outside the Federal Republic of Germany, to the agreed country of first delivery (first country of delivery).

When shipping the goods from the first country of delivery to other countries, the customer must check whether the local requirements of the destination country unknown to us at the time of provision are met. The customer shall be obliged to check this and to comply strictly with the relevant export regulations and embargoes for these goods, especially of the European Union (EU), Germany or any other EU Member States and, if applicable, of the USA or Asian or Arab countries and all third countries involved, if the customer exports the products supplied by us or has them exported.

Each contractual partner shall be entitled to refuse to fulfil the contract if such performance is impaired or prohibited by foreign trade regulations (in particular national and international [re-]export control and customs regulations, including embargoes and other governmental sanctions) which – in accordance with such regulations – are applicable to this contract (hereinafter "foreign trade regulations"). In such cases, each contractual partner shall be entitled to terminate this contract to the extent required.

- 12.2. If the fulfilment of the contract is delayed due to authorisation, approval or similar requirements or due to other procedures under foreign trade regulations (hereinafter collectively referred to as "authorisation"), the agreed delivery periods and delivery dates shall be extended / postponed accordingly, insofar as we have not culpably caused the delay; any liability of the contractual partners in connection with the delay shall be excluded, insofar as we have not culpably caused the delay. If we or already our suppliers are not granted any necessary export licences or transfer authorisations or other necessary approvals by the competent authorities through no fault of our own or not in due time or other obstacles prevent the fulfilment of the contract or the delivery in whole or in part through no fault of our own due to customs, foreign trade and embargo regulations to be complied with by us as exporter or transferor or by our suppliers according to law applicable to them, we shall be entitled to withdraw from the contract or withdraw from the individual supply or service obligation, unless we have expressly assumed a no-fault liability under a guarantee for their provision.

This shall also apply if corresponding export control and embargo obstacles – e.g. through a change in the legal situation – only arise through no fault of our own between conclusion of the contract and the delivery or performance of the service and in the assertion of warranty rights and make performance of the delivery or service temporarily or permanently impossible. This may be the case because export licences or transfer authorisations or other foreign trade authorisations or approvals granted to us or our suppliers are revoked by the competent authorities through no fault of our own or other legal obstacles due to customs, foreign trade and embargo regulations to be complied with prevent fulfilment of the contract or the delivery or service through no fault of our own. Damage claims by the buyer for this reason shall be excluded, unless we have expressly assumed a no-fault liability under a guarantee for the provision of the aforementioned authorisations or documents.

- 12.3. The contractual partners shall inform each other immediately after becoming aware of any foreign trade regulations which may lead to the restrictions, prohibitions or delays referred to in Sections 12.1 and 12.2. The customer must comply with any re-export requirements arising from authorisations granted to us by the competent authorities or courts. The customer shall accordingly bind its consumers contractually and provide us with proof of this upon request. We shall inform the purchaser of the scale and scope of such requirements imposed on us at the latest with the delivery.
- 12.4. Upon request, the contractual partner shall be obliged to provide LEMKEN with all information and documents which are required for compliance with foreign trade regulations or which are requested by authorities in this respect. These obligations may include, in particular, information regarding the end customer, as well as the place of destination and the intended use of the deliveries. LEMKEN shall be entitled to withdraw from the contract or to refuse performance if the contractual partner fails to provide LEMKEN with such information and documents within a reasonable period of time.

- 12.5. If the contractual partner transfers deliveries from LEMKEN to a third party (including affiliated companies of the contractual partner), the contractual partner undertakes to comply with the foreign trade regulations. If the contractual partner violates this obligation, LEMKEN shall be entitled to refuse fulfilment of the contract or to terminate this contract for good cause.
- 12.6. Any liability of LEMKEN for damages in connection with or due to the refusal of performance of the contract or due to the termination of this contract by LEMKEN pursuant to Sections 12.1, 12.2, 12.4 and 12.5 shall be excluded.
- 12.7. In the event of deliveries by the contractual partner across customs borders to LEMKEN, the contractual partner shall be obliged to provide LEMKEN with all necessary documents and information, such as a commercial invoice and delivery note for a complete and correct import customs declaration of the delivery. In the case of deliveries free of charge to LEMKEN, the contractual partner shall be obliged to indicate in the pro forma invoice a statement of value reflecting the customary market price as well as the following notation "For Customs Purpose Only". All components of the goods (hardware and, if applicable, software) shall be taken into account when determining the value.
- 12.8. If import and / or export licenses, foreign exchange permits or similar permits are required for the execution of the contract, the contractual partner responsible for the procurement shall be obliged to make all reasonable efforts to provide the required licenses or permits in due time.
- 12.9. In the event of export of the purchased goods, the contractual partner shall be obliged to obtain the necessary export and customs permits and the like at its own expense and to hand over the original versions of these to LEMKEN. LEMKEN shall not be liable for the permissibility of the export of the goods and their compliance with the legal and technical regulations of the importing country, nor for their compliance with the technical status in the importing country. The contractual partner shall indemnify and hold LEMKEN harmless with regard to any shipping and customs expenses that may arise.
- 12.10. Any customs costs shall be borne by the contractual partner.
- 12.11. The customer shall in particular check and ensure, and, on request, provide evidence to us that, insofar as there is no legal permissibility or permissibility under export law in accordance with the relevant export provisions:
- the products provided are not intended for use in armaments, nuclear facilities or weapon technology;
  - no companies and persons specified on the US Denied Persons List (DPL) are supplied with original US goods, US software and US technology;
  - no companies and persons specified on the US Warning List, US Entity List or US Specially Designated Nationals List are supplied with original US products without relevant authorisation;
  - no companies and persons are supplied who are specified on the List of Specially Designated Terrorists, Foreign Terrorist Organizations, Specially Designated Global Terrorists or the EU Terrorist List or other relevant negative lists for export controls;
  - no military recipients are supplied with the products delivered by us;
  - no recipients are supplied that violate other export control regulations, especially of the EU or the ASEAN countries;
  - all early-warning indications of the competent German or national authorities of the respective country of origin of the delivery are complied with.
- 12.12. The customer shall indemnify us against all damages and expenses resulting from the culpable breach of the aforementioned obligations pursuant to Sections 12.1 to 12.11. Excluded are the costs for own employees. Section 254 of the German Civil Code (BGB) (contributory negligence) shall remain unaffected.

### **13. Secrecy, data protection**

- 13.1. All business or technical or product-related information, calculation data, manufacturing instructions, recipes, production and other internal company information and data made available to the customer by us, irrespective of the type, including other development or manufacturing features manifested in writing, as samples, characteristics or as data, which may have been handed over to the customer by us or our vicarious agents, items, documents or data handed over to the customer by us or our vicarious agents and other knowledge or experience and data on our part or on the part of our customers disclosed to the customer, as long as and insofar as they are not demonstrably public knowledge or a legal or official obligation to disclose exists, are to be kept secret from third parties and may only be made available in the customer's own company to those persons who must necessarily be involved in their use for the purpose of the delivery or service to us and who are also obliged in writing to maintain secrecy; they shall remain exclusively our property. This shall apply irrespective of whether they constitute trade secrets within the meaning of Section 2 of the German Act on the Protection of Trade Secrets (GeschGehG) or not. The provisions of the German Act on the Protection of Trade Secrets (GeschGehG) shall remain unaffected.
- 13.2. Such information and / or data may not be reproduced or used commercially by the customer without our prior express agreement. The aforementioned non-disclosure agreement shall continue to apply after the end of the delivery or performance relationship until it lawfully enters the public domain, but for no longer than 5 years after the end of contract processing (excluding the warranty limitation period) between us and the customer in relation to the contract in the context of which the relevant information was disclosed or handed over to the customer. The aforementioned obligation of non-disclosure shall not exist if the supplier can prove that it developed the transmitted information itself legally before disclosure, or was already aware of it (whereby the supplier shall inform us of this in writing or in text form without delay after transmission of the information, but no later than within 14 calendar days after this; if this is not done, it may no longer have recourse to this exception), or this entered the public domain by means of a written statement on our part, or there is a statutory or official obligation to disclose.
- 13.3. All information and data that originate from us (if prepared, including copies or records that were made) and items handed over as loans shall be returned on demand by us without delay and in full or destroyed and destruction confirmed in writing or in text form. If the information that was passed to the customer is embodied in data, it shall be deleted in full by being overwritten at any time on first demand by us and deletion shall be confirmed without delay in writing or in text form.
- 13.4. In addition, in the case of data we transmitted to the customer, we have the right to submission to us by the customer of a declaration of discontinuance under penalty that contains a contractual penalty for each culpable incident of contravention of the declaration of discontinuance of further use of data that we transmitted or copies thereof, their return or deletion by the customer, which we may stipulate at our reasonably exercised discretion (Section 315 of the German Civil Code (BGB)) relative to the payment of the supplier and the tendency to cause damage of the breach of duty. This may be reviewed by the courts and reduced on application by the customer (Section 315 III of the German Civil Code (BGB)). The supplier shall not be obliged to discontinue if it is subject to a statutory duty to disclose or use data.
- 13.5. We reserve all rights to such information and data (including copyright and the right to apply for industrial property rights such as patents, utility models, trademark protection, etc.). Insofar as these were made available to us by third parties, this reservation of rights shall apply as well for the benefit of these third parties.
- 13.6. Licences or warranties are not connected to samples, models, information and / or data transmitted to the customer.
- 13.7. The customer may not use, offer or supply to third parties any products that are produced using materials we drafted, e.g. drawings, samples or models, etc., or based on our confidential information or with our formulas that are not in the public domain or our tools or recreated tools.
- 13.8. Insofar as personal data is processed, LEMKEN shall comply with the statutory provisions on data protection. In this case, the details of the data collected and its respective processing shall

result from a data protection declaration provided by LEMKEN or a data processing agreement to be concluded separately. Further information on the processing of personal data can also be viewed at any time on the corporate website at <https://www.lemken/datenschutzhinweise/>.

- 13.9. The personal data of the contractual partner, which the contractual partner discloses in the context of the respective conclusion of the contract, shall be processed by LEMKEN for the purpose of fulfilling the contract as well as for postal advertising of LEMKEN products and services to the contractual partner as well as customer satisfaction surveys, as permitted under the Telecommunications Act; the legal basis for this is Article 6 (1 b and f) of the General Data Protection Regulation (GDPR). The legitimate interest of LEMKEN lies in the direct advertising of products and services to the contractual partner as well as the improvement of the products and services of LEMKEN (Recital 47 GDPR). The contractual partner has the right to object to direct marketing measures. The right to object can be exercised at any time under the link <https://request.privacy-lemken.com/> or via email to [info@lemken.com](mailto:info@lemken.com).

#### **14. Software usage**

- 14.1. To the extent that software is included in the scope of delivery, a non-exclusive right to use the delivered software, including its documentation, to utilise the delivery item shall be granted to the purchaser. The software shall be transferred for use on the intended delivery item only. Use of the software on more than one system is forbidden.
- 14.2. The customer shall only be permitted to duplicate, revise, translate or convert from the object code into the source code to the extent permitted by law (Sections 69a ff of the German Copyright Act (UrhG)). The customer shall be obliged not to remove manufacturer details – in particular copyright notices – or to change these without our prior express agreement.
- 14.3. All other rights in respect of the software and documentation, including the copies, shall remain with us and the software provider. The issuing of sub-licences by the customer is not permitted. In the event of resale of the delivery item, the customer is obliged to restrict the software use of the consumer in the same way and to prove this to us on request.

#### **15. Use of marketing data**

- 15.1. We grant the customer, insofar as it has concluded a cooperation or dealer agreement with us, a simple right of use to the images, texts, videos and data (collectively referred to as "*marketing data*") displayed on our homepage and in our catalogues, brochures, etc. as well as to our company logo or our word / image trademark exclusively for the duration of the agreement. We are the sole originator of all designated data. The right of use extends to the use, duplication and distribution of this data within the customer's distribution system for the purpose of advertising our products, insofar as we have a distribution relationship with the customer. Third parties are not permitted to use this data. Any further transfer of the right of use to third parties requires our written consent. If the aforementioned cooperation agreement or dealer agreement ends, the customer must immediately refrain from using the marketing data and logos or brand labels.
- 15.2. The use of the name "LEMKEN" or "Lemken", whether alone or with a word addition, or as an email address or as an Internet page / webpage, requires our prior written consent.
- 15.3. The right of use ends with the termination of the business relationship between the purchaser and us. We also reserve the right to revoke the granting of the right of use at any time.

#### **16. Applicable law, place of jurisdiction, other provisions**

- 16.1. The statutory regulations shall apply if a provision of this contract is or becomes wholly or partly invalid / void or infeasible as a result of the provisions governing the general terms and conditions of business pursuant to Sections 305 to 310 of the German Civil Code (BGB).

If the invalidity of a provision of this contract is based exclusively on another reason, the following shall apply:

If any provision of this agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this agreement which shall remain in full force and effect. The same

applies if the agreement does not contain a provision that is necessary in itself. In such a case, the parties shall enter into negotiations with the aim and mutual claim of replacing the invalid or unenforceable provision or loophole with a valid and enforceable provision which reflects as closely as possible the intended sense and economic purpose of the invalid or unenforceable provision according to the understanding of both parties. The legal concept of Section 139 of the German Civil Code (BGB) shall not apply – not even in the sense of a burden of proof rule.

- 16.2. All agreements, collateral agreements, assurances and changes to the agreement must be in writing. This shall also apply to cancellation of the written form requirement. The priority of individually agreed terms (Section 305b of the German Civil Code (BGB)) in written, text or oral form shall remain unaffected.
- 16.3. The laws of the Federal Republic of Germany shall apply exclusively. If the preconditions of Article 1, 3 of the United Nations Convention on Contracts for the International Sale of Goods (CISG) are met, the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall apply. It is expressly stated that this choice of law is also deemed to be such choice within the meaning of Art. 14 (1b) Regulation (EC) No. 864 / 2007 and shall, therefore, also apply to non-contractual claims within the meaning of that Regulation. If the application of foreign law is mandatory in individual cases, our GTC shall be interpreted as meaning that the economic intent they pursue is preserved to the maximum possible extent.
- 16.4. If court proceedings are held in the Federal Republic of Germany the contract, procedural and court language is German.
- 16.5. The place of performance is the agreed delivery / performance location, and in the absence of such agreement, the site of the registered office of LEMKEN.
- 16.6. The exclusive place of jurisdiction for any dispute arising – insofar as the customer is a merchant within the meaning of the German Commercial Code (HGB) – is the registered office of our company. For the avoidance of doubt, this jurisdiction regulation in Clauses 1 and 2 shall also apply to such circumstances between ourselves and the purchaser which can give rise to non-contractual claims within the meaning of Regulation (EC) No. 864 / 2007. We shall also be entitled, however, to bring an action against the customer at its place of general jurisdiction.

If the customer has its place of business outside the European Union (EU), the following shall apply instead:

A final decision on all disputes of whatever nature between the parties arising from this contract or in connection with its implementation, including such disputes regarding the validity of this contract and this arbitration clause, shall be made without recourse to ordinary courts of law by three arbitrators according to the Arbitration Rules of the German Institution of Arbitration (DIS, Deutsche Institution für Schiedsgerichtsbarkeit e.V.) at the time of receipt of the request for arbitration at the DIS, including the Expedited Arbitration Rules. The language of arbitration is English. An arbitration award made can on application be declared enforceable by the competent national court. There is no appeal against the award of the arbitration tribunal. The award shall also include a decision on the costs of the proceedings including the remuneration of the arbitrators. The place and venue of arbitration is Düsseldorf, Federal Republic of Germany. For the avoidance of doubt, the parties stipulate that the national courts remain competent for measures ordered by way of interim relief. In this respect, the parties agree that the exclusive place of jurisdiction shall be Düsseldorf, Federal Republic of Germany.

- 16.7. We store data from the contractual relationship pursuant to Section 26 of the German Federal Data Protection Act (BDSG) and the EU General Data Protection Regulation (GDPR) for the purpose of data processing. Detailed information on the handling of personal data is provided in the data protection information on the LEMKEN website "LEMKEN.com".
- 16.8. The German version of these General Terms and Conditions of Sale is the legally binding version. Other language versions are intended solely for communication and information.