

General Business Terms and Conditions for the Purchase of Deliveries and Services of LEMKEN GmbH & Co. KG (Orderer)

I. Prevailing Provisions

The legal relationships between the Supplier and the Orderer are in accordance with these terms and conditions and any other agreements. Amendments and supplements shall be required to be in writing. Other general terms and conditions shall then also not be valid if they were not expressly objected to in the individual case.

II. Order

1. Supply agreements (order and acceptance) as well as their amendments and supplements shall be required to be in writing.
2. If the Supplier does not accept the order within three weeks of its receipt, then the Orderer shall be entitled to cancel the order. Delivery recalls are binding at their latest if the Supplier does not make an objection within two weeks of its receipt.
3. To the extent that it is reasonable for the Supplier, the Orderer may demand modifications to the delivered goods in construction and implementation. At the same time, the ramifications, particularly with respect to additional and minimum costs as well as delivery dates, are to be appropriately provided for in agreement.

III. Payments, Assignment of Claims

1. In the event of a faulty delivery and service, the Orderer shall be entitled to retain the payment on a proportional value basis until the proper fulfillment thereof is made. With respect to the acceptance of early deliveries and services, the due date shall be in accordance with the agreed-upon delivery date.
2. Without the prior written approval of the Orderer which may not be unfairly withheld, the Supplier shall not be entitled to assign its claims against it or to have them asserted by third parties. In the event of an extended retention of ownership, the consent shall be considered to have been granted.
3. If, contrary to Paragraph 2, the Supplier assigns its claim against the Orderer to a third party without the consent of the Orderer, then the assignment is nevertheless legally valid. However, the Orderer may in its discretion make payments to the Supplier or the third party with a discharging effect upon the obligation.

IV. Notification of Defects

The Orderer is to make immediate notification in writing of the defects of the delivery and performance to the Supplier as soon as they are determined in accordance with the conditions of a proper course of business. In this respect, the Supplier waives the right to raise objections to a late notification of defects.

V. Maintenance of Secrecy

1. The contractual partners are obliged to handle as business secrets all business and technical information that has not been made public which they become aware of through the business relationships.
2. Drawings, models, templates, samples and similar objects may not be turned over to unauthorized third parties or otherwise made accessible to them. The reproduction of such objects is only permitted in accordance with operational requirements and the provisions under copyright law.
3. Sub-contractors are to also be obligated accordingly.

VI. Delivery Dates and Terms

Agreed-upon dates and terms are binding. The receipt of the goods by the Orderer is prevailing for the adherence to the delivery date or term. If delivery "ex works" has not been agreed upon, then the Supplier is to provide the merchandise in a timely manner while taking into consideration the customary time for loading and shipping. The delivery to the factory is to take place within the customary business hours, i.e. weekdays between 7:30 a.m. and 2:00 p.m.

VII. Delivery Delay

In the event of a delay in delivery, the Orderer shall be entitled to a contractual penalty, regardless of the legal claims, in the amount of 0.5 % of the value of the goods delivered per each week that has begun, nevertheless a maximum of 5 %. The Orderer shall be entitled to assert this contractual penalty in addition to the fulfillment of the contractual obligation.

VIII. Shipping

With respect to freight forwarding shipments, all deliveries must take place prepaid to the place of delivery designated by the Orderer. The risk shall only then be transferred to the Orderer after the delivery to the designated location has taken place. This condition shall also then apply if, as an exception, the Orderer assumes the freight charges. Shipping notices and invoices are to be immediately submitted in two copies after the shipment has taken place.

IX. Packaging

Provided it isn't contained in the price of the merchandise, any packaging costs are to be included with the cost price.

X. Quality

The Supplier is to adhere to the recognized rules and regulations of technology, the safety directives and the agreed-upon technical data for its deliveries and services. Modifications to the delivered goods shall require the prior written approval of the Orderer.

XI. Warranty

1. The Supplier shall warrant that the delivery and service are free from all obvious and hidden defects and that they take place with the agreed-upon and guaranteed quality standards. Regardless of the rights of the Orderer derived from the statutory liability for defects, the warranty for the flawless delivery shall extend for a period of two years, calculated from the receipt of the merchandise by the Orderer, in such a way that all defects and damages which occur during this time as a result of faulty construction, unsuitable materials or improper carrying out of the work, are to be eliminated immediately at the expense of the Supplier and in the discretion of the Orderer, either through a correction of faults or a faultless compensation / replacement delivery. At the time of the warranty period it is presumed that the delivery was already defective when risk passed unless that presumption is incompatible with the nature of the delivery or of the defect.
2. The Supplier is obliged to exempt the Orderer from all claims of third parties with regard to the delivery and service, especially from claims due to infringement of industrial property rights.

XII. Use of Production Materials and Confidential Information of the Orderer

1. Tools and models for the production of parts in accordance with the specifications of the Orderer, which have been paid for completely or in part by the Orderer, shall become the property of the Orderer with the providing of or manufacture by the Supplier. The Supplier shall safeguard such tools and models without compensation, maintain them at its own expense and insure them against fire and theft. The Orderer will turn over such tools and models to the Supplier; nevertheless, the Orderer shall be entitled to take them back if the delivery of parts does not take place in a proper manner or if the Supplier demands higher prices for the parts in future orders than was agreed upon for the first delivery with respect to these tools.
2. Models, tools and other production materials, which are provided to the Supplier by the Orderer or were produced in accordance with the specifications of the Orderer, may be used for deliveries to third parties only with the prior written approval of the Orderer. The same shall also apply for confidential information of the Orderer with respect to the Supplier.

XIII. Compliance with Security Standards

1. With the acceptance of the order the Supplier declares that goods delivered to the Orderer or taken for delivery by the Orderer are produced, stored, prepared and loaded in secure business premises and secure loading and shipping areas and that such goods are protected against unauthorized interference during production storage, preparation, loading and transport.
2. Moreover the Supplier declares that reliable staff is employed for the production, storage, preparation, loading and transport of these goods and that business partners who are acting on his behalf are informed that they also need to ensure the supply chain security as mentioned above.

XIV. General Provisions

1. If the Supplier discontinues its payments or bankruptcy proceedings with respect to its assets or judicial or extra-judicial composition proceedings are applied for, then the Orderer shall be entitled to withdraw from the agreement for the part which has not been fulfilled.
2. In the event that a provision of these terms and conditions and the affected further agreements should be or become invalid, then the legal validity of the remainder of the agreement shall not be affected by this. The contractual partners are obliged to replace the legally invalid provision with a provision that most closely approaches the economic intent of the invalid provision.
3. The law of the Federal Republic of Germany shall apply exclusively, provided that nothing else to the contrary has been agreed upon.
4. The place of performance and legal venue shall be the commercial residence of the Orderer. The Orderer shall also be at liberty to bring a legal matter before another competent court.