



Lederfabrik Gmelich + Söhne GmbH
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General Terms of Delivery and Payment of Lederfabrik Gmelich + Söhne GmbH

1. General Provisions

All deliveries of our company with regard to entrepreneurs, governmental entities and special governmental estate s—but not with regard to consumers—shall take place on the basis of the following terms and conditions. They shall also apply on all follow-up orders. Contrary terms of our contractual partner shall only apply if we have expressly agreed upon such terms in writing. This also applies if contrary terms are attached to the customer's order or are mentioned therein. No objection to the customer's terms of purchase is required.

2. Offer, order acceptance, prices, subject matter of the contract

Our offers are always non-binding with respect to the price and the quantity. An order shall not be deemed to be accepted until it is confirmed by us in writing.

The prices are non-binding for us, also after acceptance of the offer by the customer, if the expenses upon which the price determinations are based (material prices, wages and other calculation factors) increase by more than 5%. In this case we are entitled to increase the price by the additional amount in excess of this 5%.

For prices that are quantity-dependent, an excess or short delivery of up to 10% shall be deemed to be agreed upon.

Samples and drawings remain our property and may not be disclosed to third parties without our consent. These are only to be used for contractual purposes and are to be returned to us after the contract has been processed, without request being made therefor.

3. Delivery

The delivery shall take place ex works or by dispatch by rail or postal shipping free at the station of dispatch Großbottwar for the account of and at the risk of the purchaser. Insurance of the delivery shall only be effectuated upon the express request of the purchaser and at the purchaser's expense.

In the absence of any other agreement, the shipping and packaging costs are at the purchaser's expense. If we ship the goods, the goods travel at the risk of the purchaser. Where the goods are to be picked up by the purchaser, the risk of loss transfers to the purchaser upon notification of readiness for delivery.

On call orders must be accepted within 6 weeks subsequent to the release date provided. There must be a reasonable time period between the release order and the desired dispatch. If we store the goods for the purchaser in the event of the purchaser's delay in acceptance, the storage shall take place at the purchaser's expense and risk of loss.

We are entitled to effectuate partial deliveries for the purchaser if a complete delivery was not expressly requested and confirmed by us.

Information with regard to delivery times is approximate unless we have expressly confirmed a delivery date to be binding. Delivery dates commence upon conclusion of the contract, and shall only apply provided that all details of the order are timely clarified and the purchaser has satisfied all of purchaser's obligations, e.g. furnishing all governmental approvals, issuance of letters of credit and guarantees or timely payment of agreed down payments and advance payments. If we are late in making delivery where there is a binding delivery date, the purchaser may set a reasonable grace period, and after its unsuccessful expiration, withdraw from the contract to the extent that the contract is not yet fulfilled. As a general rule, the grace period is unreasonable if it is calculated to be shorter than 4 weeks. Compensatory damage claims for late delivery can only be asserted against us if we have delayed the delivery intentionally or in a grossly negligent manner.

If we have concluded a congruent cover transaction and if we are not adequately or timely supplied by our supplier with the materials necessary for manufacture of the goods in terms of quantity or quality and we cannot otherwise timely obtain this material, or only upon unreasonable terms, we have a right of cancellation vis à vis the customer (delivery by our own suppliers proviso). In such cases we shall

immediately inform the customer of the nonavailability of the goods; the customer shall promptly receive reimbursement of any consideration paid. If we are supplied by our supplier only in part, we are only entitled to withdraw from the contract for the part not supplied. Upon the purchaser's request in such a case we shall assign our claims for compensatory damages against the upstream supplier to the purchaser in the amount of the damages accruing. A right to cancel on our part is excluded if we are responsible for the nondelivery by the supplier.

Impediments due to force majeure for us or our sub-suppliers, in particular labor disputes, equipment damage, shortages of raw materials, government orders, unavoidable disruptions in operations or transportation or difficulties in the delivery of important raw materials—which are outside our influence—and that have lasted for longer than, or will foreseeably last longer than one week, shall without further action extend the delivery date or acceptance date for the duration of the impediment, however, not longer than four weeks in addition to the grace period for delivery. The extension shall not occur if the other party is not immediately informed of the reason for the impediment as soon as it is possible to foresee that the aforementioned time periods cannot be observed. If the impediment lasts longer than four weeks, both contracting parties may withdraw from the contract. In these cases, compensatory damage claims are excluded.

For contract processing orders, the customer must deliver the necessary goods free to factory. The contract processed goods shall be returned by freight collect. We are not obligated to examine goods sent in for processing for their suitability. Liability is excluded for damages and losses attributable to the quality of the goods. For contract processing orders, the ordering party bears the risk of accidental loss or deterioration of the material to be processed.

4. Right to withdraw on the part of Gmelich + Söhne GmbH

In the following cases we are entitled to withdraw from the contract: if it emerges, contrary to the assumption existing prior to the time of concluding the contract, that the customer is not creditworthy. Creditworthiness can readily be assumed in the event of a bill or check protest, stop payment by the customer or an unsuccessful attempt at compulsory enforcement against the customer. For this purpose it is not necessary that the underlying measures are undertaken by us.

If it emerges that the customer has provided inaccurate information with respect to his creditworthiness and this information is of material importance.

If the goods subject to our reservation of ownership are sold other than in the usual business trade of the purchaser, in particular through transfer by way of security and by pledging, except if we have provided our written agreement in advance with the specific measure.

5. Reservation of ownership

We reserve ownership in the goods supplied by us up until there is complete payment of all claims arising from the business relationship, including any refinancing and reversed bills.

The purchaser is entitled, within the scope of proper business management, to resell, finish and process our goods. If the reserved goods are processed with other items not belonging to us, we shall acquire co-ownership in the new objects in the proportion of the invoice value of the reserved goods to the other items processed.



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In the event of a resale of the reserved goods or the new product prior to full payment settlement, the purchaser hereby already assigns to us his purchase price claims in the amount of our claim. In this case, the sales price takes the place of the goods.

Insofar as we have not retained the right to collect the assigned claim or for as long as we have not given the purchaser any other instruction, the purchaser is authorized to collect this for us in a fiduciary capacity. He must manage the payments received separately and must promptly transfer these to us until our claim is settled. If the third party payment takes place by transfer to the purchaser's bank, purchaser hereby irrevocably assigns to us the claim to which purchaser is entitled towards his financial institution. Furthermore, the purchaser is obligated, upon our request, to identify the third-party debtor and to notify this debtor of the assignment.

Transfers by way of security and pledging goods that we own or co-own or of claims assigned to us are not permitted. If the purchaser makes a general assignment of his claims to a third party, this assignment—to which the purchaser hereby irrevocably agrees—shall in no case extend to claims assigned or to be assigned according to the abovementioned provisions.

The purchaser is obligated to commensurately insure the goods we own or co-own against fire, water damage and theft. Purchaser hereby irrevocably assigns the claims to which purchaser is entitled against his insurance carrier upon the occurrence of a loss event, to the extent that these claims are related to our ownership or co-ownership.

In the case of a third party attachment of goods we own or co-own or of claims to which we are entitled, in particular for seizures, the purchaser must immediately call to the attention of the third party or enforcement body our (co-)ownership or ownership of the claims, submitting the receipts as proof. In addition, the purchaser must immediately inform us of the attachment and provide us with the documentation required for intervening.

The purchaser's right of resale and processing the reserved goods, and collecting on the claims assigned to us shall lapse upon the occurrence of a stop payment, filing for or opening insolvency proceedings, a check or bill protest or the occurrence of an attachment against the purchaser. Payments made on claims assigned to us that are thereafter received by the purchaser must be immediately collected in a special account.

Insofar as we avail ourselves of the right to take back the goods on the basis of our reservation of ownership, this is not to be viewed as a cancellation of the purchase contract.

If the value of the security according to the above-mentioned paragraphs exceeds the amount of the still outstanding claims secured hereby by more than 25% for a foreseeable time period, the purchaser is authorized to request the release of the security from us to the extent that the excess exists.

The assertion of our rights arising from the reservation of ownership does not release the purchaser from his contractual obligations. The value of the goods on the date they are taken back shall only be deducted from our claim against the purchaser.

6. Notice of defects

The purchaser is obligated to promptly inspect the delivered goods after their delivery and to promptly (that is to say, not later than within one week after receiving the goods) inform us in writing of existing defects insofar as hidden defects are not involved. We must be notified of hidden defects in written form not later than two working days after their discovery. Notice of defects as against transportation companies or other third parties are not legally effective against us. Defects of which notice was given contrary to the above-mentioned obligations, in particular late notice, shall be deemed to be approved and are excluded from warranty.

An objection is precluded subsequent to cutting or the start of other processing of the delivered goods unless involving a hidden defect that despite the processing and also applying the usual care could not be discovered by the customer.

Variations customary in the trade or immaterial variations in the quality, color, material strength, weight, design, etc. do not represent a defect within the meaning of legal rights. If the goods were furnished with the customer's name or another trademark or sign desired by the customer, a notice of a defect can only then be made and to the extent that it is unreasonable to expect the customer to accept the goods due to material quality defects.

The return of the goods to us required in the event of a defect may only take place with our prior agreement. We are not required to accept returns of goods that take place without this agreement. In this case the customer shall bear the cost of the return.

The presence of a defect determined to be such and communicated to us by a valid notice of defect forms the basis of the following purchaser's rights:

In the case of defectiveness, the purchaser first of all has the right to demand supplementary performance from us. We shall make the decision in our own discretion as to whether we provide a replacement item or whether reworking is carried out.

In addition, we have the right to undertake (once again, according to our choice), subsequent to the failure of an attempted supplementary performance, a renewed attempt at supplementary performance. Only after the repeated supplementary performance also fails does the purchaser have the right to withdraw from the contract or to reduce the purchase price.

If reworking or a replacement delivery is not possible or not possible within a reasonable time period—which as a general rule is two months after receipt of the returned merchandise—the purchaser can demand, according to purchaser's option, a reduction of the purchase price or rescission of the contract.

The purchaser can only demand compensatory damages or reimbursement for futile expenditures in cases of gross negligence or where there is an intentional violation of the duty to deliver items free of defects—either by us or our vicarious agents. Purchaser must prove the damages accruing, both in terms of the grounds and the amount. The same applies to futile expenditures.

The warranty period is one year from the delivery date. The purchaser bears the burden of proof that the defect was already present on the delivery date.

The application, use and processing of the offered and ordered goods is exclusively within the customer's scope of responsibility. We provide application-technical consultations to the best of our knowledge and based on our experience. These consultations are however non-binding and do not free the customer from the customer's own inspection of the products' suitability for the intended methods and purposes. The customer is responsible for observing statutory and governmental regulations for the use of our goods.

7. Payment

Our prices are quoted without any deduction and are plus VAT in the respective statutory amount. Any grant of discounts must be in written form; discounts lapse if the purchaser is late with the payments incumbent upon the purchaser.

The payment terms that are specified in the order confirmation, and alternatively in the invoice, shall apply.

The invoices shall be issued on the date of dispatch or acceptance of the goods. For early delivery, the agreed delivery date shall be deemed to be the issue date. For on call orders the purchase price is due, in the absence of a different agreement, as soon as the intended on call order date is exceeded by 4 weeks.

Discounting and collection costs are always at the expense of the customer.

The date of payment shall be the date on which we receive the payment.



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Payments are always applied for settlement of the oldest liability items due in addition to interest for late payment accruing thereon.

In the case of late payment, interest for late payment in the amount of 8% points above the respective base interest rate will be calculated.

If the customer is in arrears with a payment that is due in an amount that is not immaterial, or if there is a material impairment in the customer's financial situation, we may cancel the target period allowed for payment and demand payment in cash prior to delivery of the goods, as well as the immediate payment of all open and also not as yet due invoices for as still outstanding deliveries from any contract still in force.

Retention of a payment or an offset on account of existing customer counterclaims, where applicable, is precluded with the exception of undisputed claims or those that are not subject to judicial appeal.

8. Place of performance and venue

The place of performance for all obligations resulting from this contractual relationship is Großbottwar. The venue for all disputes arising from this contractual relationship is likewise Großbottwar. Notwithstanding this, we reserve the right to file suit at the location of the customer's company seat.

The law of the Federal Republic of Germany and excluding the UN Sales Convention (CISG) also applies for contracts with a connection to foreign countries.

9. Miscellaneous

Verbal side agreements and amendments to the contract are only binding for us if they are confirmed by us in writing.

If individual provisions of these terms are invalid, the validity of the remaining provisions shall not be affected thereby. The invalid provision is to be replaced by a provision that most closely approximates the economic outcome intended.

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