

Betreff/ Subject

General Terms and Conditions of Offer, Delivery and Payment

of Ledermann GmbH & Co. KG in 72160 Horb

Datum/Date
01/2013**Kontakt / Contact**
Ledermann GmbH & Co. KG
Willi-Ledermann-Str. 1
D-72160 Horb a.N.
Tel. +49 (0) 74 51 / 93 - 0Seite / Page
01/03info@stehle-int.com
www.stehle-int.com

§ 1 Scope of Terms and Conditions, Exclusion of Conflicting Terms and Conditions

- (1) Our General Terms and Conditions shall apply to all our offers, deliveries and services. The following Terms and Conditions shall only apply to entrepreneurs according to Section 14 German Civil Code, legal entities under public law or an asset under public law (hereinafter referred to as the „Customer“).
- (2) Within a permanent business relationship, our General Terms and Conditions shall also apply to all our future offers, deliveries and performances relating to the Customer without requiring any further reference or agreement.
- (3) Our GTC shall also apply if we effect delivery without reservation while being aware of conflicting or different general terms and conditions of the Customer.
- (4) Our General Terms and Conditions shall apply exclusively. We shall not accept different general terms and conditions of the Customer unless they have been confirmed by us in writing.

§ 2 Conclusion of Contract, Scope of the Delivery, Prohibition of Assignment

- (1) As a general rule, our offers are free of charge and non-binding, unless agreed upon otherwise in writing.
- (2) Any deal or agreement requires our written acceptance of order or our delivery of the goods. The same shall apply to any amendments, changes or side agreements.
- (3) Our written acceptance of order or, in the event of lack of such acceptance of order, our offer shall be authoritative for the scope of delivery and the service to be rendered.
- (4) All information about our products, in particular pictures, sizes, performance criteria and any other technical data contained in our offers and brochures shall be regarded as approximate average values. Tolerances in quantity, weight, number of pieces and dimensions customary in this line of business are expressly reserved.
- (5) All documents and data on which our offer is based, such as technical drawings, illustrations, descriptions, weights and sizes, shall only be binding if expressly agreed upon in writing. We reserve the right to make minor changes and modifications to the extent such changes or modifications do not substantially impair the purpose of the contract and the delivery. All our documents and data remain our property. Such documents may neither be retained nor copied or otherwise reproduced or made available to third parties by the Customer and have to be handed out to us immediately upon our request. Even if we leave these documents to the Customer, our intellectual property rights remain unaffected hereby.
- (6) The Customer shall not be entitled to assign any claims against us without our prior consent. The same shall apply to any of the Customer's claims against us in connection with the contractual relationship which have arisen by operation of law.
- (7) In the event of manufacture according to the Customer's specifications (e.g. drawings, samples or other information) we shall only be liable for producing the goods according to such specifications.
- (8) No liability is assumed by us that the goods produced according to the Customer's specifications are suitable for the Customer's purposes and that they work together with existing components.
- (9) The Customer shall be solely responsible for the documents which have to be provided by him such as drawings, models, samples or the like. The Customer shall ensure that the manufacturing drawings don't infringe third party intellectual property rights. The Customer shall indemnify us and hold us harmless against all third party claims in this respect.

§ 3 Delivery Times

- (1) If a term of delivery is agreed, such term shall begin at the earliest with the date of conclusion of contract, however, not before complete clarification of all commercial and technical questions and not before delivery of all necessary documents and approvals to be provided by the Customer and/or receipt of any advance payments that may have been agreed upon.
- (2) If we should be unable to make a delivery due to reasons caused by the Customer, a term of delivery shall be deemed complied with if the item to be delivered has been handed over to a person in charge of the transport or has been notified to the Customer as ready for dispatch before such term of delivery has expired.
- (3) A term of delivery shall be extended appropriately in the event of Force Majeure or any unforeseen obstacles which affect us or our suppliers. Such an unforeseen and extraordinary obstacle shall be particularly given in the event of unrest, strike, lock-out, fire, confiscation, embargo, statutory or official orders and constraints or incorrect and/or delayed self-supply, if and to the extent such obstacles have not been culpably caused by us and such obstacles have influence on our ability to timely fulfil our obligations under the contract. If

due to such circumstances the term of delivery shall be extended for a commensurate period of time, the Customer shall be entitled to withdraw from the contract after expiry of such extended term of delivery. If the Customer is interested in partial performance of the contract, he may withdraw from such part of the contract that is yet unfulfilled. If we have already performed in part, the Customer may only withdraw from the entire contract if the Customer can evidence that he has no interest in partial delivery and/or service by us. Further statutory or contractual rights to withdraw from the contract remain unaffected hereby.

- (4) If we should be in delay of delivery and after a reasonable grace period defined by the Customer has expired unsuccessfully, the Customer shall be entitled to withdraw from the entire contract or, if the Customer is interested in partial performance of the contract, withdraw from such part of the contract that is yet unfulfilled. If we have already performed in part, the Customer may only withdraw from the entire contract if the Customer can evidence that he has no interest in partial performance. Further claims of any kind, in particular claims for damages based on bad performance or damage caused by delay, are excluded. § 10 remains unaffected hereby. If and to the extent we are liable for damages caused by delay according to § 10, the Customer is entitled to claim compensation for the default, which shall amount to 0,5% of the contract price for every full week of the delay, but not more than 5% in the aggregate amount, for that part of the delivery which cannot be used in time because of the delay. The parties are free to demonstrate that the actual damage is actually incurred was higher or lower than this amount.

- (5) We are entitled to deliver before the expiry of the delivery date and to deliver in partial deliveries, unless agreed upon otherwise in writing.

§ 4 Prices, Payments, Partial Payments

- (1) Our stipulated prices shall be on an Ex Works, Incoterms 2010, basis and are net prices excluding VAT at the rate applicable at a time (even if not separately shown), costs for packaging, freight, assembly, postal charges, insurance costs, customs duties, any costs for bank or payment transactions as well as any other additional costs will have to be paid in addition.
- (2) Our invoices are immediately due for payment without any deduction.
- (3) At the latest 30 days after the receipt of the invoice the Customer shall be deemed in delay unless circumstances exist (e.g. reminder or a shorter payment term or a payment term determinable by calendar) that cause the Customer to be deemed in delay earlier. When the Customer is in delay of payment, the Customer shall pay interest at a rate of annually 8 percentage points above the base interest rate.
- (4) In the event of delay of payment we are entitled to make any further deliveries dependent on the complete settlement of such outstanding payments.
- (5) Unless agreed upon otherwise in writing, we are entitled to unilaterally raise the prices and/or charges for freight in the event of substantial increases of salaries, prices of raw materials and supplies, energy costs, costs for freight and customs duties or other materials. The same shall apply to contracts for the performance of a continuing obligation.
- (6) Furthermore, we are entitled to refuse our performance if and to the extent circumstances become known after the conclusion of the contract that give cause to reasonable doubts that the Customer will – in total or in part – not duly or timely perform, unless the Customer has provided adequate securities. This applies in particular if our commercial credit insurer refuses to insure the risk of non-payment of the purchase price after the conclusion of the contract.
- (7) Without requiring a prior reminder, we shall be entitled to demand interest payable from the due date at an annual rate of at least 5 percentage points above the base interest rate.
- (8) The Customer may only offset receivables due to us with counter claims or claim a retention right, if such counter claims are undisputed or have been established by a court of law in an unappealable manner.
- (9) Cheques and drafts will only be accepted as means of payment after previous agreement in writing. Any costs incurred by us resulting from such a payment shall be borne by the Customer.
- (10) All payments shall be effected in the euro-currency directly to us. Any exchange rate risks shall be borne by the Customer.

§ 5 Termination of Contract

- (1) In the event of termination of the contract before the delivery date, the Customer's duty to pay the purchase price remains unaffected hereby. Any expenses saved as a result of the termination or any profit not gained as a result of the non-delivery may be reduced from the purchase price. We are free to choose the appropriate calculation method.
- (2) In the event of termination of contract by the Customer before the start of production of the items to be delivered, the amount which has to be reimbursed by the Customer shall

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be a lump-sum of 10 % of the purchase price. The Customer as well as we are free to demonstrate that the actual damage incurred was higher or lower than this amount.

§ 6 Passing of Risk, Dispatch, Packaging

- (1) Unless agreed upon otherwise in writing, our deliveries are carried out on an Ex Works basis.
- (2) The risk of accidental loss passes to the Customer no later than when the delivery item is handed over to the person in charge of the transport. This shall also apply if we are in charge of the transport even if we bear the costs for packaging and shipment. If the delivery is delayed due to reasons caused by the Customer, the risk already passes to the Customer on the day we have informed the Customer that the delivery item is ready for dispatch.
- (3) We may at our discretion determine the method of packaging, unless agreed upon otherwise in writing.
- (4) A transport insurance is only provided upon the Customer's written request and only if the costs are borne by the Customer.

§ 7 Retention of Title

- (1) We retain the title to all goods delivered by us until complete fulfilment of all claims resulting from the business connection with the Customer including claims resulting from cheques and drafts. If payment is agreed upon with the Customer on the basis of cheque-draft-procedure, the retention of title shall last until the danger of recourse has ceased to exist.
- (2) The Customer shall, at any time upon our request and in the event of an insolvency application clearly mark the goods subject to retention of title as "property of Ledermann GmbH & Co. KG".
- (3) Any processing of the delivered goods by the Customer will be done for us as producer according to § 950 German Civil Code. If the delivered item is processed or inseparably connected with other items not belonging to us, we acquire joint ownership of the new goods. The share of the joint ownership corresponds to the relation of the invoice value of the delivered item to the invoice values of the other used items. The Customer is authorized to process the delivered item in the ordinary course of business, provided that the aforementioned security interests are preserved.
- (4) The Customer is entitled to sell the delivered items in the ordinary course of business provided that the extended retention of title (assignment of claims according to subsection 4) is ensured. Any other acts of disposal, in particular transfer, transfer by way of security, pledge or the like shall not be permitted.
- (5) The Customer hereby assigns to us all claims resulting from the resale of the delivered goods to third parties. We hereby accept this assignment. If the good subject to retention of title is jointly owned by us, such assignment shall only relate to the amount of our claims against the Customer.
- (6) The Customer is authorized to collect the assigned claims for the account of us in his own name in the ordinary course of business and only revocably. Any revocation may only occur if the Customer has not correctly fulfilled his duties, in particular his payment duties, if he is insolvent or unable to pay, if he has applied for the opening of an insolvency proceeding or the opening of such proceeding has been refused due to lack of sufficient assets. If the permission to collect has been revoked, the Customer shall notify the debtor of the assignment. Furthermore we are entitled to disclose the extended retention of title to the Customer's client.
- (7) The Customer's authorization to dispose of, to process or to collect the assigned claims shall terminate without express revocation in the event an insolvency proceeding is opened or the opening is refused due to lack of sufficient assets, cessation of payments, a filing for insolvency concerning the Customer's assets by the Customer or a third party or in the event of establishment of over-indebtedness. In these events as well as in the events of § 7 sect. 5 we are entitled to withdraw from the contract and to request the return of the good subject to retention of title after reminder and fruitless expiry of an appropriate additional respite. The Customer is obliged to release such goods. The proceeds resulting from the collection of the goods subject to retention of title minus the collection costs shall be deducted from the obligations vis-à-vis us.
- (8) In the event the Customer's authorization to collect the assigned claims is revoked, the Customer shall immediately disclose to us in writing the name of the assigned claim's debtor and the amount of the claims.
- (9) If the realisable value of the securities allowed according to the above-stated regulations exceeds our claims more than 20 %, we will at our discretion release our securities upon the Customer's request.
- (10) The Customer shall immediately inform us in writing about third parties' access to the goods subject to retention of title, the assigned claims or any other documents and data. Any costs incurred by a legal defense of the goods subject to retention of title including costs vis-à-vis third parties shall be borne by the Customer.

§ 8 Warranty

- (1) We are to be held responsible for defects in workmanship and defects of title according to the following provisions.
- (2) Certain characteristics are only considered as warranted if expressly confirmed in writing. A guarantee shall only be deemed issued if a characteristic is expressly denominated as „guaranteed“ in writing.
- (3) The Customer shall immediately give notice in writing of any kind of obvious material defects, deviations in quantity and false deliveries, at the latest within one week after delivery, in any case before connection, mixture, processing or installation; otherwise, the goods are considered to be approved despite these defects, unless we, our legal agents or our vicarious agents have acted with fraudulent intent. The Customer shall immediately give notice in writing of any hidden material defects, at the latest within 7 days after their discovery. In addition, Sections 377, 378 German Civil Code shall apply.
- (4) The Customer shall give us the opportunity to jointly assess the notified complaints and to be present at any withdrawal for material examination.
- (5) If the delivered item is used for a building according to its intended use and has caused the building's defectiveness, the limitation period shall be 5 years after the delivery date. All other claims for defects are subject to a limitation period of 12 months after the delivery date.
- (6) Our warranty for defects of quality and defects of title shall be limited to supplementary performance. Within the scope of our supplementary performance obligation, we are entitled, at our discretion, either to remedy the defect (supplementary performance) or to the delivery of faultless material (replacement). If our supplementary performance is delayed beyond a commensurate period of time or if the supplementary performance is unsuccessful despite repeated efforts, the Customer is entitled to reduce the purchase price or to withdraw from the contract. A withdrawal from the contract is excluded if the defect is irrelevant. Furthermore, in the event of faultless partial deliveries, the Customer may only withdraw from the entire contract if he can evidence that he has no interest in the partial performance. Further claims, in particular claims for reimbursement of expenses and claims for damages, are excluded unless provided otherwise in the following § 10. We shall take title to the replaced parts or, as the case may be, they remain our property and they shall be returned to us upon our request.
- (7) The Customer shall return the defective good to us for subsequent improvement or replacement at his own risk, unless a reshipment is not possible because of the kind of delivery. We shall bear the costs for transportation due to supplementary performance, however only from the place where the good has been delivered to according to the terms of contract and limited by the amount of the purchase price.
- (8) The Customer has to give us the necessary time and opportunity for subsequent improvement or replacement. Only in the event of urgent cases of risk to the plant safety, the protection against unreasonably high damages or delay with the removal of defects, the Customer shall be entitled to cure the defect by himself or by a third party after prior notice and to demand from us restitution of the necessary costs.
- (9) Claims for recourse according to Sections 478, 479 German Civil Code are excluded, unless the claim by the consumer was legitimate and only within the limits of statutory regulations except for gestures of goodwill which were not coordinated with us. Such claims require the observation of own duties of the person entitled to recourse, in particular the observation of the requirement to make a complaint in respect of a defect immediately on receipt of goods.
- (10) The processing or installation of delivered items is always deemed to be a waiver of the notice of defects to the extent the defect was obvious.
- (11) In the event of legitimate notices of defects, payments by the Customer may only be withheld in an adequate proportion to the material defects occurred. In the event of an unjustified notice of defects, we are entitled to demand from the Customer reimbursement of the expenses resulting therefrom.
- (12) Claims based on defects are excluded in the event of minor deviations from the agreed or usual characteristics or utility.
- (13) The recognition of a material defect always requires the written form.
- (14) There shall be no warranty obligation if the intended use of the delivery item by the Customer deviates from the common use, unless agreed upon in writing.
- (15) Improper or incorrect use, fair wear and tear, defective or careless treatment, improper maintenance, inappropriate operating materials, mechanical, chemical, electronic, electric and comparable influences which do not correspond to the average standard influences are not subject to any warranty rights.
- (16) If our liability for defects is based on materials which we have acquired from third parties, the Customer shall exclusively assert any claims against our supplier. In such an event, we shall assign our claims against our supplier to our Customer. The Customer accepts the assignment. If the legal proceeding against our supplier shall fail, we shall be liable according to § 8 of these General Terms and Conditions.

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§ 9 Withdrawal, Impossibility of Performance

(1) Irrespective of other provisions in these General Terms and Conditions, the Customer may withdraw from the contract by statement in writing, if and to the extent the performance of the contract has become entirely impossible before the passing of the risk to the Customer. In the event of partial impossibility of performance, the Customer may only withdraw from the contract if he can evidence that he has no interest in the partial delivery or partial performance. Otherwise, the Customer may demand a commensurate reduction of the purchase price. Furthermore, the Customer may only withdraw from the contract if the breach of duty is substantial.

(2) In the event that no party is responsible for the impossibility of performance, we are entitled to demand payment of the parts of the contract already performed.

§ 10 Liability

- (1) Our liability for damages, out of which legal reasons whatsoever, is limited to
- our acts of intent or gross negligence including acts of our legal agents and vicarious agents
 - culpable injury of life, body, health
 - culpable material breach of contract
 - if we have intentionally misrepresented the defect by silence or if we have guaranteed the absence of defects
 - to the extent we are liable for personal and material damages with respect to privately used items under the German Product Liability Act.
- Further claims for damages are excluded.

(2) A contractual obligation shall be material if its fulfilment is a precondition for the proper performance of the contract and on the observance of which the contractual partner generally relies and may rely.

(3) In the event of a culpable breach of a material contractual obligation, our liability is limited to losses reasonably foreseeable and typical for this kind of contract.

(4) The foreseeable loss typical for this kind of contract shall generally be the amount of the contract value of the particular performance.

§ 11 Special Tools

All tools not listed in our catalogue shall be special tools according to these Terms and Conditions. In the event of an order of such special tools by the Customer or in the event of an order of hard metal forms, the delivery quantity may exceed or fall below the ordered quantity by 20 % without constituting a defect of the delivery to the Customer.

§ 12 Place of Performance, Place of Jurisdiction, Applicable Law

(1) For all claims arising out of the business relationship between the Customer and us, the place of performance shall be 72160 Horb, Germany.

(2) The exclusive place of jurisdiction for all claims resulting from the business relationship including claims from cheques and drafts shall be the place of performance, if the Customer is a businessman, a legal entity under public law or an asset under public law. We are also authorized, however, to sue our Customer at his general place of jurisdiction.

(3) All disputes arising from contracts to which these General Terms and Conditions apply and all disputes arising from business relationship between us and our Customer shall exclusively be governed by German law excluding the rules of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and international private law.

§ 13 Final Clauses

Should one or another provision of these General Terms and Conditions be or become fully or partly invalid, the validity of the remaining provisions shall remain unaffected hereby.

Ledermann GmbH & Co. KG
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Status: January 2013