

**§ 1 Scope of Application**

- 1.1 Our Terms and Conditions of sale and delivery apply exclusively; we do not acknowledge any of the buyer's Terms and Conditions which deviate from or conflict with our Terms and Conditions of sale unless we have expressly approved of their validity in writing. Our Terms and Conditions of sale apply even if we carry out the delivery 10 the buyer unreservedly with full knowledge of the buyer's Terms and Conditions which conflict with or deviate from our Terms and Conditions of sale and delivery.
- 1.2 Any agreements which are entered into by the buyer and us for the purposes of executing this contract are set down in this contract in writing.
- 1.3 The Terms and Conditions also apply to any future transactions with the buyer.
- 1.4 Our Terms and Conditions of sale only apply in respect of traders as defined in § 310 Section 1 of the German Civil Code.

**§ 2 Offer**

- 2.1 If the offer qualifies as an offer pursuant § 145 of the German Civil Code, then we can accept this offer within two weeks. Our offer is without obligation unless the order confirmation states otherwise.
- 2.2 Illustrations, measurement, weight and performance data are understood to be approximate. They are non-binding unless they are specifically described as being binding. We retain the rights of title and the copyrights in respect of cost estimates, drawings and other documents. These objects must not be made available to third parties.

**§ 3 Prices - Terms and Conditions of Payment**

- 3.1 All deliveries are charged for according to the price list valid at the time. Partial deliveries are permissible.
- 3.2 We reserve the right to amend our prices accordingly if, after the contract has been concluded, there are decreases or increases in costs, particularly due to wage settlements or changes in the costs of materials. We shall provide documentary evidence of such changes to the buyer upon request.
- 3.3 Statutory VAT is not included in our prices; it will be shown separately in the invoice using the statutory rate which applies on the date of invoice.
- 3.4 Our invoice are payable within 30 days net (with no deduction) to our bank account indicated on the invoice. The credit on our bank account is decisive for payment in due time.
- 3.5 In the event of the credit period being exceeded, the statutory regulations apply regarding the consequences of payment default.
- 3.5 Except with our prior written consent, which may not be unreasonably withheld, the Supplier may not assign his claim against us or have it collected by third parties.
- 3.6 We reserve the right to make further deliveries dependent on the settlement of invoices due for payment without terminating existing supply contracts. If, during the term of the contract, the buyer's financial situation deteriorates or if, in our opinion, we receive unsatisfactory information concerning the buyer or if in the first place it seems to us that the buyer's ability to pay is doubtful or if the buyer does not honour his payment obligations within the period stipulated, we are entitled to demand payment in advance or security in advance to cover the purchase price relating to deliveries under any current contracts. In these circumstances we can also withdraw from the contracts partially or in full subject to all other rights.

**§ 4 Delivery time**

- 4.1 Adherence to our delivery obligation is dependent upon the buyer properly honouring his obligations on time. We reserve the right to plead non-performance of contract.
- 4.2 If the buyer is in default of acceptance or if he culpably fails in his duty to co-operate, we are entitled to demand compensation for any damages we have incurred, including any possible additional expenses. We reserve the right to make further claims.
- 4.3 Goods ordered on a call-off basis are to be purchased within 3 months unless something to the contrary is agreed.
- 4.4 In all cases, sale and delivery of the goods shall be subject to correct and punctual supply to ourselves. This reservation regarding correct and punctual supply to ourselves applies subject to the proviso that we have concluded a corresponding covering transaction in good time and/or we are not ourselves responsible for the late delivery by our suppliers. If, pursuant to the circumstances described above, the disruption in performance lasts extension of time if he cannot reasonably be expected to tolerate the delay in delivery.
- 4.5 In accordance with the statutory provisions, we are liable if, as a consequence of a delayed delivery for which we are responsible, the buyer is entitled to assert that his interest in further contractual performance has ceased.
- 4.6 In accordance with the statutory provisions, we are also liable if delayed delivery is due to an intentional or grossly negligent breach of contract for which we are responsible; blame on the part of our representatives or vicarious agents is to be apportioned to us. Unless delayed delivery is due to an intentional breach of contract for which we are responsible, our liability for damages is limited to the damages typically foreseeable.
- 4.7 In accordance with the statutory provisions, we are also liable if delayed delivery for which we are responsible is due to the culpable breach of a fundamental contractual obligation and this breach jeopardises the achievement of the contractual purpose. In this instance, however, liability for damages is limited to the damages typically foreseeable.
- 4.8 Further statutory claims and rights appertaining to the buyer remain reserved.

**§ 5 Dispatch**

- 5.1 If the order value is EUR 300.00 or more, our delivery is made net franco domicile. If the order value is below EUR 300.00, we charge a flat rate for freight charges of EUR 30.00 for deliveries within and outside the Federal Republic of Germany.
- 5.2 If the buyer requires express and special deliveries, we charge for the additional costs.
- 5.3 If the order value is below EUR 50.00, we charge EUR 5.00 as a surcharge for small volume purchases.
- 5.4 For deliveries on pallets not to be returned to LEIFHEIT via organized pooling, we charge the proportional pallet costs as follows:

- Euro-pallet, 1200 x 800 mm	EUR 6.50 each
- One-way-pallet, 1200 x 800 mm	EUR 3.50 each
- ½ pallet, one-way, 800 x 600 mm	EUR 3.00 each
- ¼ pallet, one-way, 600 x 400 mm	EUR 2.00 each
- Chep pallet, 1200 x 800 mm	EUR 8.50 each
- ½ pallet, Chep (metal), 800 x 600 mm	EUR 6.50 each
- ¼ pallet, Chep (plastic), 600 x 400 mm	EUR 2.00 each

 Excluded are deliveries within Germany, to the Benelux countries and Austria.

ery is delayed for reasons for which the buyer is responsible, the risk transfers to the buyer on notifications that the goods are ready for dispatch.

- 5.6 If the buyer so wishes, we will take out transport insurance to cover the delivery; the buyer will bear the ensuing costs.

**§ 6 Liability for defects**

- 6.1 Warranty claims by the buyer require that he has duly complied with the inspection obligation and requirement to give notice of defects in accordance with § 377 of the German Commercial Code.
- 6.2 If there is a defect in the purchased product, we are entitled to opt to remedy the defect or to deliver a new product free of defects (subsequent performance) to deliver a new product free of defects (subsequent performance).
- 6.3 If subsequent performance fails, then the buyers is entitled to request a cancellation of contract or a reduction in payment.
- 6.4 In accordance with the statutory provisions, we are liable if the buyer asserts claims for damages which are due to intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents. If we are not held liable for intentional breach of contract, then the liability for damages is limited to the damages typically foreseeable.
- 6.5 In accordance with the statutory provisions, we are liable if we are culpably in breach of a fundamental contractual obligation on the breach jeopardises the achievement of the contractual purpose. In this instance, however, the liability for damages is limited to the damages typically foreseeable.
- 6.6 The liability by reason of culpable injury of life, body or health remains unaffected; this applies also to the compulsory liability pursuant to the Product Liability Act. Additionally, we are liable in case of a fraudulent concealment of a defect or if we assumed a guarantee for the condition of the goods.
- 6.7 The period of limitation for claims due to defects is 12 months from the transfer of risk. This does not apply in case of intent or fraudulent concealment of a defect or if we assumed a guarantee for the condition of the goods. Furthermore, this does not apply to claims for damages because of injury of life, body or health, in case of compulsory liability pursuant to the Product Liability Act or gross negligence.
- 6.8 Claims against us by the buyer under a right of recourse in accordance with § 478 of German Civil Code only exist in so far as the buyer has not entered into agreements with his buyer which go beyond the statutory warranty claims.
- 6.9 In the event of a delivery recourse claim in accordance with §§ 478 479 of the German Civil Code, the period of limitation remains unaffected; it amounts to five years calculated from the date of delivery of the defective product.

**§ 7 Joint and several liability**

- 7.1 Liability for damages which extends beyond that provided for in §6 above is ruled out regardless of the legal nature of the asserted claim. This applies in particular to claims for damages ensuring from negligence in contracting, on account of other breaches of obligations or on account of tortious claims for compensation for material damages in accordance with § 823 of the German Civil Code.
- 7.2 If our liability for damages is excluded or limited, this also applies in respect of the personal liability for damages of our salaried personnel, labour force, employees, representatives and vicarious agents.
- 7.3 Unless it is expressly agreed, a contractual penalty will not be accepted.

**§ 8 Retention of title**

- 8.1 In accordance with § 449 et seq. German Civil Code, the goods delivered by us remain our property until all the amounts owed to us are paid in full. This applies even if the purchase price for certain supplies of goods, as referred to by the buyer, has been paid.
- 8.2 The buyer is entitled to resell the goods during his ordinary course of business; however he assigns to us, as of now, all amounts which accrue to him from the resale to his buyers or third parties. We accept this assignment.
- 8.3 The buyer is not entitled to resell goods delivered by us which are subject to retention of title if he agrees to a contractual condition stipulated by his buyer which results in the assignment of a purchase price claim against his buyer being prohibited.
- 8.4 However the buyer remains entitled to collect the accounts receivable assigned to us as long as he honours his payment obligations to us in accordance with the regulations. If we so request, the buyer is obliged to inform us of the names of the debtors who owe the amounts assigned to us and the sums involved. He must also inform the debtors of the assignment.
- 8.5 Processing or reforming of the purchased product by the buyer or a third party is always done on our behalf. If the purchased product is processed together with other items which we do not own, then, at the time of processing, we acquire co-ownership of the new product in the proportion of the value of the purchased product to the other processed items.
- 8.6 If the purchased product is mixed with other items which we do not own, then, at the time of mixing, we acquire co-ownership of the product in the proportion of the value of the purchased product to the other mixed items. If the buyer's product is considered to be the main product, then the buyer must transfer co-ownership to us on a proportionate basis.
- 8.7 If the buyer so requests, we undertake to release, at our discretion, the securities to which we are entitled if their realisable value exceeds the debts which are to be secured by 10 %. It is incumbent upon us to choose the securities which are to be released.
- 8.8 We are entitled to withdraw the supply contract if a purchase price instalment is not paid to us on the due date. Having declared withdrawal, we are entitled to take possession of the goods delivered by us which are subject to retention of title and to remove them from the buyer's business premises if the buyer is unable to make payment. Seizure and recovery of the reserved goods constitutes a withdrawal from contract. The buyer grants us or our representatives access to all his business premises during business hours so that we can check whether the goods which are still subject to retention of title are in stock.
- 8.9 The same applies if bills of exchange or cheques, which have been issued or accepted by the buyer, are not honoured when presented for payment.

**§ 9 Export**

Direct or indirect export to countries outside the EU is not allowed unless, in a particular case, we have previously given explicit written approval.

**§ 10 Place of jurisdiction-Place of performance**

- 10.1 The Law of the Federal Republic of Germany applies under exclusion of UN purchasing law (CISG).
- 10.2 The place of performance for both parties is Nassau
- 10.3 The exclusive place of jurisdiction for both parties is Nassau.
- 10.4 If one of the provisions contained herein is or becomes invalid or if there is an omission in the provisions contained in this contract, this does not affect the validity of the remaining provisions.

- 5.5 Goods are despatched for the account of the buyer. The risk transfers to the buyer on hand-over of the consignment to the carrier, also in the case of "franco domicile" deliveries. If deliv-