

General Terms and Conditions of Contract, Delivery and Payment A 2009



Lechler GmbH
Precision Nozzles · Nozzle Systems
P.O. Box 13 23
72544 Metzingen / Germany
Phone: +49 (0) 71 23 962-0
Fax: +49 (0) 71 23 962-333

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E-Mail: info@lechler.de
Internet: www.lechler.com

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

1. Our General Terms and Conditions for sale and delivery shall apply to all our offers, deliveries and performances.
2. 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"). Such 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. As a general rule, our General Terms and Conditions apply exclusively. Any contradicting, conflicting or additional general terms and conditions used by the Customer are expressly excluded and rejected.

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

1. Our offers are subject to change and are non-binding. In order to become binding, any orders or agreements require our written order confirmation or our delivery of the goods. The same shall apply to any amendments, changes or side agreements.
2. All information about our products, in particular pictures, sizes, performance criteria and any other technical data 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.
3. Our written order confirmation or, in the event of lack of such order confirmation, our offer shall be relevant determining the scope of delivery and/or the service to be rendered.
4. Any agreement, side agreement, warranty or modification to the contract must be reduced to writing in order to be binding. The foregoing shall also apply to a waiver of such written form requirement.
5. Any documents such as drawings, pictures, descriptions and specifications of weight and dimensions which form the basis of our offer shall only become an integral part of the contract if they are expressly made a part of the offer. We reserve the right to make modifications to the extent such modifications are not essential and the subject of the contract is not unreasonably impaired for the Customer.
6. The Customer shall not be entitled to assign or to transfer any claims or rights resulting from the business relationship with us without our prior consent. The same applies to any of the claims or claims against us which have directly arisen by operation of law.

§ 3 Prices, Payments, Set Off and Rights of Retention

1. Our prices are net-prices and shall be on an Ex-works Metzingen basis, 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. For payments made within 14 days after the invoice date, we grant a 3% cash discount. The timeliness of the payments is determined by the date the amount is credited to the point of payment indicated by us. Where the Customer is in delay with any payment, the invoice shall be immediately due for payment without any discounts.
3. In the event of payments outstanding from the Customer - also in relation to other contractual relationships between the Customer and us - we are entitled to make any further deliveries dependant on the complete settlement of such outstanding payments.
4. Where our Customer is in delay with payments, payment conditions are not met, insolvency proceedings with regard to the assets of our Customer are filed for or any other circumstances become known or apparent that give cause to reasonable doubts with respect to the Customer's creditworthiness, including such facts that existed at the time of the conclusion of the contract beyond our best knowledge, we shall be entitled to stop any delivery and to demand advance payment or the provision of securities acceptable for us with respect to any outstanding deliveries. If such securities should not be granted after an adequate grace period, we shall be entitled to withdraw from the contract. Our further statutory rights shall remain unaffected. The Customer shall be liable for all damages arising from the resulting non-performance of the contract.
5. In the event of substantial increases of material prices, salaries or energy costs between the time of the conclusion of the contract and the delivery date, we are entitled to unilaterally raise the prices reasonably (Section 315 German Civil Code), if and to the extent the period of time between the time of the conclusion of the contract and the delivery date is longer than 4 months.
6. With respect to orders under framework agreements, delivery on demand or call orders that have not been placed yet, we reserve the right to adjust the prices in the event substantial changes in material prices should occur during the term of such framework agreements or delivery on demand/call orders. Such adjustments require a notice period of 4 weeks and can only be made if our costs (in particular caused by increases of material prices, salaries or energy costs) should increase more than 5 percentage points in the aggregate. If the resulting increase in price should exceed 10 percentage points, the Customer is entitled to rescind 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 against counter claims or claims which are undisputed or have been established by a court of law in an unappealable manner. Notices of defect furnished by the Customer shall neither affect the Customer's payment obligations nor the date a payment falls due. The Customer hereby waives any right to refuse performance as well as any retention right. Such waiver shall not apply if we, our representatives or our vicarious agents have committed a fundamental

breach of contract or the Customer's counterclaims which form the basis for the right to refuse performance or the retention right, are undisputed or have been established by a court of law in an unappealable manner.

9. 30 days after the receipt of the invoice the Customer shall be deemed in delay unless circumstances exist (e.g. reminder or terms of payment determinable by calendar) that cause the Customer to be deemed in delay earlier. When the Customer is in delay with payment, our receivables shall bear and the Customer shall pay interest at a rate of annually 8 percentage points above the base interest rate.

10. The minimum net order value is € 100,-, in the event of custom-made products € 250,-.

11. Cheques and drafts will only be accepted after previous agreement and only on account of performance. Interest and costs shall be borne by the Customer.

§ 4 Delivery Time, Partial Deliveries, Deviations in Quantity

1. If a term of delivery is agreed, such term shall begin with the date of our order confirmation, however, not before complete delivery of the documents to be provided by the Customer and/or receipt of any advance payments that may have been agreed upon. 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 left our premises or has been notified to the Customer as ready for dispatch before such term of delivery has expired.

2. A term of delivery shall be extended appropriately in the event of Force Majeure or any unforeseen obstacles such as unrest, strike, lock-out, fire, confiscation, embargo, statutory or official constraints of energy consumption or incorrect and/or not timely self-supply, if and to the extent such obstacles have not been culpably caused by us and - despite reasonable care - we were unable to avert such obstacles and such obstacles have influence on our ability to timely fulfil our obligations under the contract. If due to such circumstances the extension of the term of delivery should exceed a reasonable time, 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.

3. 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 including consequential damages, shall be excluded. § 9 remains unaffected hereby.

4. We are entitled to deliver before the expiry of the delivery date and to deliver in partial deliveries, provided that any conflicting interests of the Customer are not affected in an unacceptable manner.

5. In the event of custom-made products, the ordered number of items cannot always be adhered to because of considerations concerning production and the aligned risk of deficient products. We reserve the right to minor excess deliveries and short deliveries which shall lead to a proportionate reduction or increase of our remuneration; these deliveries do not represent a defect in terms of the German Civil Code.

§ 5 Passing of Risk, Delivery, Packaging

1. Unless agreed upon otherwise, our deliveries are carried out on an Ex-Works basis.

2. The risk including the risk of seizure passes in all events, even if the delivery is free of transportation charges, 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 when ourselves are in charge of the transport or if we engage a third party with the transport even if we have assumed the duty to transport or to deliver on our own costs. 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.

§ 6 Retention of Title

1. We retain the title to the goods delivered until complete fulfillment of all claims resulting from the business connection with the Customer including claims resulting from cheques and drafts and any claims for recourse resulting from payments of cheques and drafts accepted only on account of performance. 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 resulting from the drafts issued by us has ceased to exist.

2. Any reprocessing or change of the delivered goods by the Customer will be done for us without creating any obligations for us. If the delivered item is connected, mixed, mingled or processed 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 value of the new product. The Customer is authorized to connect, mix, mingle or process the delivered item in the regular course of business, provided that the aforementioned security interests are preserved.

3. The Customer is only entitled to sell the delivered items and the items coming into existence from them according to subsection 2 above (hereinafter collectively referred to as "goods subject to retention of title") 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 pledge, lease, rent or transfers by way of security shall not be permitted.

4. The Customer hereby assigns to us all claims including any future claims resulting from the resale or

other use of the goods subject to retention of title. 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 the claim which corresponds to the proportionate value of our joint ownership.

5. The Customer is only authorized dispose, process, connect, mix or mingle the good subject to retention of title and to collect the assigned claims 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 heavily indebted or the opening of an insolvency proceeding has been applied for. In such an event, the Customer shall notify the debtor of the assignment upon our request, furthermore we are entitled to disclose the extended retention of title to the Customer's client. If the permission to collect has been revoked, the Customer shall inform us about the name and address of his Customer.

6. The Customer's authorization to dispose of, to process, to connect, to mix or to mingle the good subject to retention of title and to collect the assigned claims shall terminate without express revocation in the event of insolvency, 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.

7. In the event of subsection 5 and 6, we are entitled to request the return of the good subject to retention of title after reminder and fruitless expiry of an appropriate additional period. The Customer is obliged to release such goods. The Customer shall immediately disclose to us the name of the assigned claim's debtor. We are also authorized to disclose the extended retention of title to the Customer's client.

8. 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.

9. The Customer shall immediately inform us in writing about any future or past third parties' access to the goods subject to retention of title or the assigned claims by handing us out all documents necessary for an intervention. Any intervention costs, including costs of litigation, shall be borne in the relationship between us and the Customer by the Customer.

§ 7 Warranty

1. We are to be held responsible for material defects and defects of title according to the following provisions.

2. Certain characteristics shall only be considered as warranted if expressly confirmed in writing. A guarantee shall only be deemed issued if 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.

4. The Customer shall immediately give notice in writing of any hidden material defects, at the latest within 7 days after their discovery.

5. The Customer shall give us the opportunity to jointly assess the notified complaint and to be present at any withdrawal for material examination.

6. Unless provided otherwise, all claims for defects are subject to a limitation period of 12 months after the passing of risk. There shall be no reduction of the limitation if the delivered item is used for a building according to its intended use and has caused the building's defectiveness, as well as for claims according to Section 478 German Civil Code (right of recourse); instead, the statutory provisions on limitation periods shall apply.

7. Unless provided otherwise in this § 7, our warranty for defects of quality and for 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 (subsequent improvement) 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 demand a reduction of 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 for damages, are excluded unless provided otherwise in the following § 9. Replaced parts shall be returned to us upon our request.

8. The Customer shall return the defective good to us for subsequent improvement or replacement, 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. We shall take title to the replaced delivery items or parts thereof or, as the case may be, they remain our property.

9. The Customer has to give us the necessary time and opportunity for supplementary performance. 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 the delivered item to the Customer is 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.

10. 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.

11. 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.

12. 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.

13. Claims based on defects shall be excluded in the event of minor deviations from the agreed or usual characteristics or utility.

14. The recognition of a material defect always requires the written form.

15. 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.

§ 8 Withdrawal, Impossibility of Performance

1. Irrespective of other provisions in these General Terms and Conditions, the Customer may withdraw from the contract in writing, if and to the extent the performance of the contract has become entirely impossible before the passing of the risk. 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. Further claims of the Customer are excluded unless provided otherwise in the following § 9. 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 a part of the purchase price in proportion to the part of the contract already performed.

§ 9 Liability

1. Our liability for damages, out of which legal reasons whatsoever, is limited to

a) our acts of intent or gross negligence including acts of our leading employees and vicarious agents

b) culpable injury of life, body, health

c) culpable material breach of contract

d) if we have intentionally misrepresented the defect by silence or if we have guaranteed the absence of defects

e) to the extent we are liable for personal and material damages with respect to privately used items under the German Product Liability Act.

2. Further claims for damages are excluded.

3. In the event of a culpable material breach of contract, our liability is limited to losses reasonably foreseeable and typical for this kind of contract. The foreseeable loss typical for this kind of contract shall generally be the amount of the contract value of the particular performance.

4. If the risk of loss foreseeable and typical for this kind of contract according to § 9 subsection (3) above is covered by a liability insurance, our liability including the liability of our legal representatives and vicarious agents is limited to the insurance payments. To the extent the insurer is not liable to pay, we shall pay compensation limited by the amount of the insurance sum.

§ 10 Intellectual Property Rights, Tools

1. We reserve all title and rights including copyrights and other intellectual property rights in application recommendations, drafts, drawings and other documents. These documents may not be passed to third parties without our consent and they have to be returned to us upon request.

2. If we have delivered products according to drawings, samples or other documents supplied by the Customer, the Customer warrants that these documents are free of any third party rights. If an infringement occurs, the Customer shall immediately defend us, incur his harmless and indemnify us against all loss, damages, costs and expenses awarded against or incurred by us. The Customer shall reimburse us all expenses including attorney's fees incurred due to such claims.

3. Tools, necessary for the production of the delivery item and manufactured by us, remain our property, even if we are charging the Customer for the costs on a pro-rata basis.

§ 11 Assembly

With respect to assembly, the standard terms of assembly of the "Verein Deutscher Maschinenansteller e.V.", Frankfurt, Germany, shall apply.

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

1. For all claims arising out of the business relationship, the place of performance shall be 72555 Metzingen, Germany.

2. The exclusive place of jurisdiction for all claims resulting from the business relationship including claims from cheques and drafts shall be with the court locally competent for our principal place of business. We are also authorized, however, to sue our Customer at his general place of jurisdiction.

3. These General Terms and Conditions 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.

4. 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. The parties shall undertake to replace such provision by a valid provision the business purpose of which is as close as possible to that other cancelled provision.

5. Any changes of these General Terms and Conditions require the written form. This applies mutatis mutandis to a waiver of the written form.