

General Terms and Conditions



I. General

1. All our deliveries and services shall be based on these terms and conditions as well as all and any specific contractual agreements. Deviating terms and conditions of purchase of Orderer shall not become contents of the contract by acceptance of order.

This shall particularly apply if orders are confirmed on Orderer's own forms for organisational reasons. In the absence of a specific agreement, a contract shall be come into force with our written order confirmation.

2. LESER shall reserve copyright and property rights to samples, estimates, diagrams and similar information of a physical and non-physical nature, also in an electronic form; they may not be made accessible to third parties. LESER engages only to make information and documents designated by Orderer as being confidential accessible to third parties with Orderer's approval.

II. Scope of Delivery

For the scope of the delivery, the written order acknowledgement from LESER shall be decisive, in the event of a quotation with binding to time and punctual acceptance, the quotation, insofar as no punctual order acknowledgement is presented. Subsidiary agreements and amendments shall require in writing by LESER.

III. Price and Terms of Payment

1. If not agreed otherwise, the prices shall be valid ex FCA factory Hohenwestedt pursuant to Incoterms 2000 inclusive of cardboard packaging. Value Added Tax to the statutory amount at the time in question shall be added to the prices (if applicable).

2. If not agreed otherwise, payment shall be made without any deduction to LESER's account within 30 days of the date of the invoice net without deduction by transfer (the date of crediting being decisive). Deduction of discount shall require a specific written agreement. Payment shall be made independent of the receipt of the consignment and the inspection documents and notwithstanding the right to notification of defects. If payment is delayed, LESER shall be entitled to claim default interest.

3. Any withholding of payments or deductions for any counter-claims of the buyer disputed by us will not be permitted.

IV. Delivery period, Arrears of work

1. The delivery period shall result from the agreements of the contracting parties. Compliance with it by LESER shall presuppose that all commercial and technical questions between the contracting parties have been clarified and that Orderer has fulfilled all obligations assumed by it, e.g. provision of the necessary official certifications or approvals or of a down-payment. If this is not the case, the delivery period shall be extended to a suitable extent. This shall not apply to the extent that LESER shall be answerable for the delay.

2. Compliance with the delivery period shall be subject to correct and punctual delivery to us.

3. The delivery period shall be complied with if the object of delivery has left LESER's factory or readiness for dispatch has been reported before its expiry. If an inspection is to take place, the inspection date shall be decisive – with the exception of justified rejection of inspection – alternatively the report of readiness for inspection.

4. If dispatch or inspection of the object of delivery is delayed for reasons for which Orderer shall be answerable, the costs incurred by the delay shall be charged to it, starting one month after the report of the readiness for dispatch or inspection, as the case may be.

5. If failure to comply with the delivery period is to be put down to force majeure, industrial disputes or sundry incidents outside LESER's sphere of influence, the delivery period shall be extended to a suitable extent. This shall also apply if these circumstances originate with suppliers. LESER shall notify Orderer of the start and end of such circumstances as soon as possible.

6. Orderer can withdraw from the contract without setting a deadline if the total performance finally becomes impossible for LESER before passage of risk. Over and above this, Orderer can withdraw from the contract if performance of a part of the delivery becomes impossible in an order and it has a justified interest in rejecting the part delivery. If this is not the case, Orderer shall pay the contractual price for the part delivery. The same shall apply in the event of inability to perform on the part of LESER. Apart from this, Section VIII. 2 shall apply.

If impossibility or inability to perform occurs during arrears in acceptance or if Orderer is solely or predominantly responsible for these circumstances, it shall remain obliged to consideration.

7. If LESER gets into arrears and Orderer suffers damage thereby – which is particularly not assumed if the object of delivery is not collected despite an agreement with Orderer – it shall be entitled to demand a lump-sum default reimbursement. Taking an agreed subsequent period of 5 working days into account, it shall amount to 0.5 %, albeit no more than a total of 5 %, of the value of the part of the overall delivery which cannot be used punctually or contractually due to the delay for each complete week of the delay.

If Orderer grants LESER a suitable period for performance in arrears – taking the statutory exceptions into account – and if the period is not complied with, Orderer shall be entitled to withdraw within the framework of the statutory provisions.

Further claims from arrears in delivery shall be determined exclusively pursuant to Section VIII.2 of the present terms and conditions.

V. Transfer of Risk, Acceptance

1. Risk shall pass to Orderer when the object of delivery has left the factory, even if part deliveries are made or LESER has also assumed further performances, e.g. the dispatch costs or delivery and erection. If acceptance is to take place, it shall be decisive for the passage of risk. It must be done without delay at the acceptance deadline, alternatively following LESER's report of readiness for acceptance. Orderer may not reject the acceptance if an insubstantial defect exists.

2. If dispatch or acceptance is delayed or does not take place due to circumstances not to be put down to LESER, risk shall pass to Orderer from the date of the report or readiness for dispatch or acceptance, as the case may be. LESER engages to conclude insurances which Orderer requests at the latter's expense.

3. Part deliveries shall be admissible to the extent they can be reasonably expected of Orderer.

VI. Retention of Title

1. LESER reserves title to the object of delivery until all payments from the delivery contract have been received.

2. Processing or reforming of the object of purchase by Orderer shall always be done on behalf of LESER. If the object of purchase is combined with other objects not belonging to LESER, LESER shall acquire co-ownership of the new object in the ratio of the value of the object of purchase to the other objects processed at the time of the processing.

3. If the object of purchase is mixed with other objects not belonging to LESER, LESER shall acquire co-ownership of the new object in the ratio of the value of the object of purchase to the other objects mixed at the time of the mixing. If Orderer's object is to be regarded as the main object, Orderer shall transfer co-ownership to LESER pro rata.

4. LESER engages to release the securities accruing to it and stated under 7. and 8. upon request by Orderer to the extent that the value of its securities exceeds the claims to be secured by more than 20%.

5. LESER shall be entitled to insure the object of delivery against theft, breakage, fire, water and other damage at Orderer's expense insofar as Orderer cannot prove that it has concluded the insurance itself.

6. Orderer may not sell, pledge or transfer the object of delivery by way of security. In the event of attachment and arrest or sundry disposals by third parties, it shall inform LESER thereof without delay.

7. In the event of breach of contract by Orderer, in particular in arrears in payment, LESER shall be entitled to take the object of delivery back following a demand for payment and Orderer shall be obliged to hand it over.

8. LESER can only demand return of the object of delivery on the basis of the retention of title if it has withdrawn from the contract.

9. An application for opening of insolvency proceedings shall entitle LESER to withdraw from the contract and to demand immediate return of the object of delivery.

VII. Claims from Defects

LESER shall warrant for factual and legal defects of the delivery, excluding further claims – subject to Section VIII – as follows:

Factual defects

1. All the parts which prove to be defective as a result of a circumstance before the passage of risk shall be reworked or replaced free of defects, at LESER's choice, free of charge. Establishment of such defects shall be reported to LESER in writing without delay. Parts replaced shall become property of LESER.

2. Following agreement with LESER, Orderer shall give the necessary time and opportunity for carrying out all the improvements and replacement deliveries appearing necessary to LESER; if not, LESER shall be released from liability for the consequences thereof. Only in urgent cases of jeopardy of operational safety or to avert disproportionately large damage, with LESER being notified immediately, shall Orderer have the right to rectify the defects itself or have this done by third parties and to demand reimbursement of the necessary expenditure from LESER.

3. Of the costs incurred by the reworking or replacement delivery, LESER shall bear the costs of the replacement item including dispatch – to the extent that the complaint proves to be justified. In the event of reworking, LESER shall bear all the expenditure necessary for the purpose of reworking, in particular transport, labour and material costs.

4. Within the framework of statutory provisions, Orderer shall have a right to withdraw from the contract if LESER – taking the statutory exceptions into account – allows a period for the improvement or replacement delivery on account of a factual defect to expire fruitlessly. If only an insubstantial defect exists, Orderer shall merely have a right to reduction of the contractual price. Apart from this, the right to reduction of the contractual price shall remain ruled out.

5. No warranty shall be assumed, in particular in the following cases:

Unsuitable or improper use, faulty assembly or commissioning by Orderer or third parties, natural wear and tear, faulty or negligent treatment, improper maintenance, unsuitable operating equipment or media, faulty construction work, unsuitable foundations, chemical, electrochemical or electrical influences to the extent that LESER is not answerable for them.

Further, LESER shall assume no warranty for the selection of the materials of the object of delivery if conditions of use and medium composition are insufficiently known or only laboratory tests or operational experience of Orderer can give information about the selection.

6. If Orderer or a third party reworks improperly, no liability shall accrue to LESER for the consequences thereof.

The same shall apply for alterations of the object of delivery done without LESER's prior approval.

Return

7. Goods delivered contractually shall not be taken back. If LESER declares its willingness to take goods back in individual cases, they shall be delivered freight prepaid Hohenwestedt and at least 15 % of the value of the goods shall be paid for processing

and handling costs. Special productions and valves which LESER has amended according to a contract cannot be taken back under any circumstances. Subsidiary costs, e.g. inspection fees or test costs, cannot be reimbursed.

Legal defects

8. If the use of the object of delivery leads to a breach of commercial protection rights or copyrights in Germany, LESER shall procure the right to further use for Orderer at its own expense as a matter of principle or modify the object of delivery in such a way reasonable for Orderer that the breach of protective rights no longer exists.

If this is not possible on economically suitable terms or within a suitable period, Orderer shall be entitled to withdraw from the contract. Under the above mentioned prerequisites, a right to withdrawal from the contract shall also accrue to LESER.

Over and above this, LESER shall hold Orderer harmless against undisputed or legally effective claims made by the owners of the protective rights in question.

9. The obligations of LESER stated in Section VII. 8 shall finally be subject to Section VIII.2 for the event of a breach or a protection right or copyright.

They shall only exist if

- Orderer notifies LESER without delay of breaches of protection rights or copyrights being claimed,
- Orderer supports LESER to an adequate extent in the defence of the claims being made or enables LESER to carry out the modification measures pursuant to Section VII. 8,
- all defence measures, including extra-judicial regulations, are reserved for LESER,
- the legal defect is not based on an instruction from Orderer and
- the breach of the rights was not caused by the fact that Orderer has high-handedly amended the object of delivery or used it in a non-contractual way.

VIII. Liability

1. If the object of delivery cannot be used contractually by Orderer through fault of LESER as a result of omitted or faulty implementation of suggestions and consultations made before or after conclusion of the contract or by a breach of other subsidiary contractual obligations, in particular instructions for operation and maintenance of the object of delivery – the regulations of Sections VII and VIII.2 shall apply accordingly, ruling out further claims of Orderer.

2. For damage not incurred on the object of delivery itself, LESER shall only be liable, regardless of the legal reason

- in malice aforethought or
- in gross negligence or
- in culpable injury of life, limb, health or
- in faults which have been concealed deceitfully or the absence of which has been guaranteed or
- in defects of the object of delivery to the extent that there is liability for damage to persons and objects for privately used objects according to the Product Liability Act.

In the event of culpable breaching of essential contractual obligations, LESER shall also be liable for slight negligence, limited in this latter case to damage typical for the contract and reasonably foreseeable. This limitation of liability shall not apply for injury to life, limb or health.

Further claims shall be ruled out.

IX. Barring by Limitation

All claims of Orderer – for whatever legal reasons – shall be barred by limitation after 12 months. The statutory periods shall apply for malice aforethought or deceit and also for claims according to Section VIII point 2. They shall also apply to defects in a construction or for objects of delivery which are used for a construction on the basis of their customary mode of use and have caused the faultiness thereof.

X. Use of Software

To the extent that software is contained in the scope of delivery, Orderer is granted a non-exclusive right to use the software supplied including its documentations. It shall be provided for use on the object of delivery intended therefor. Use of the software on more than one system shall be forbidden.

Orderer may only copy, process, translate the software or transfer from the object code to the source code to the legally admissible extent (§§ 69 a et seq. Copyright Act). Orderer engages not to remove manufacturer's information – in particular copyright remarks – or to amend them without the prior express approval of LESER.

All other rights to the software and the documentations, including the copies, shall remain with LESER or the software supplier, as the case may be. Granting of sub-licences shall not be admissible.

XI. Applicable Law, Venue

1. All the legal relationships between LESER and Orderer shall be exclusively governed by the law of the Federal Republic of Germany.

2. The venue shall be the Court responsible for LESER's headquarters. However, LESER shall be entitled to sue at Orderer's headquarters.

This is a translation, the German version is valid. For German version see www.leser.com. Hamburg, October 2002