General Terms and Conditions of Sale and Delivery of LÖMI GmbH (12/2024)

1. General /Scope

(1) The following General Terms of Business shall apply to any and all business relations between LÖMI and the customer. The version applicable at the time of concluding the contract shall be authoritative.

(2) Any diverging, conflicting or supplementary general terms of business shall not become part of the contract, regardless of LÖMI's knowledge thereof, unless their validity has been acknowledged by LÖMI in writing.

2. Conclusion and Extent of Contract

(1) The conditions for LÖMI's goods are subject to confirmation and not binding. The presentation of LÖMI's goods and services on the internet does not form any offer, but a non-binding invitation to the customer to order. However, to a reasonable extent, LÖMI reserve the right to make technical changes or other changes to form, colour or weight.

(2) By ordering the goods required, the customer declares his[1] contractual offer with binding force. LÖMI shall confirm receipt of the customer's order without delay, with such confirmation of receipt, however, not forming any binding acceptance of the order. The confirmation of receipt shall only form a declaration of acceptance, if this has been explicitly declared by LÖMI. The taking of a telephone order shall not form a binding acceptance thereof on LÖMI's part. LÖMI shall be entitled to refuse acceptance of the order, for example, after checking the customer's creditworthiness.

(3) Conclusion of contract shall be effected on the proviso of non-delivery or part delivery in case of wrong or improper delivery by LÖMI's suppliers. This shall, however, only apply, if such non-delivery is beyond LÖMI's responsibility. LÖMI shall inform the customer immediately, should products be unavailable in part or on the whole, with customer's consideration being reimbursed without delay in that case.

(4) The execution of the order and the scope of delivery shall be made in accordance with the terms of LÖMI's order confirmation. LÖMI reserve the right to correct obvious inaccuracies (e.g. clerical or calculation errors) at any time. If the customer does not understand the details of the order confirmation, he shall promptly notify LÖMI thereof, requesting, if necessary, a drawing, which LÖMI shall send to the customer for reviewing and countersigning. By countersigning, the customer shall acknowledge the correctness of all the details of the drawing, particularly with respect to constructional measures already carried out or yet to be carried out by the customer that have been included in the drawing, as well as the type and style of the goods ordered. As regards warping in the welding process, production tolerances shall remain reserved. If and insofar as LÖMI state any measures and weights, they shall be deemed approximates, unless LÖMI explicitly point out in writing that they are functional dimensions.

3. Retention of Title

[1] Any reference to the male gender shall include the female as well as the singular and the plural. The term person shall include a corporate as well as an incorporate person.

(1) LÖMI reserve title to the goods until full payment of all outstanding amounts resulting from a current business relationship with the customer is received. This shall also apply, if individual or all of LÖMI's claims have been added on a current account, balanced and acknowledged.

(2) Should the value of the retained goods (goods sold under retention of title) exceed the debts to be covered in respect of the current business relationship with the customer by more than 15 per cent, then LÖMI shall be obliged to (partly) release the retained goods upon the customer's request.

(3) While the retention of title is in effect, the customer shall be obliged to handle the goods with due care. Should maintenance and inspection work be required, then the customer shall be obliged to carry them out at regular intervals at his own cost.

(4) The customer shall notify LÖMI immediately about any seizure of the goods by any third party, and particularly about any measures of execution as well as any damage to or the destruction of the goods. Any records of seizure handed over to him shall be passed on to LÖMI without delay. The customer shall promptly notify LÖMI of any change of possession of the goods, the change of his address or the shipment of the retained goods. The customer shall indemnify LÖMI for any damage or cost resulting from any infringement of this duty or any necessary intervention measures against attachments by third parties.

(5) Should the customer act contrary to the terms of the contract, especially as regards default in payment, LÖMI shall be entitled to cancel the contract and demand return of the goods. Upon infringement of an obligation under paragraph 3 of this provision, LÖMI shall moreover be entitled to withdraw from the contract and demand return of the goods, if adhering to the contract cannot be reasonably expected from LÖMI.

(6) The customer shall be entitled to resell the goods within the ordinary course of business. The customer hereby assigns to LÖMI any and all future claims, up to the amount invoiced by LÖMI, resulting from the resale to any third party. LÖMI hereby accept the assignment. Upon assignment of the amount, the customer shall be entitled to collect the claim. LÖMI reserve to right to recover the debt ourselves, should the customer fail to properly meet his payment obligations, getting into arrears. In this case the customer shall disclose to LÖMI any detail concerning the third party's identity without any undue delay and surrender all documents necessary for the collection of the assigned debt.

(7) Any modification of and working on the goods by the customer shall be made in LÖMI's name and on LÖMI's behalf. If the goods are worked on, then LÖMI shall acquire the co-ownership in the newly created goods worth the amount of the goods supplied by LÖMI. The same shall apply, should the goods be combined or mixed with other third-party objects.

4. Compensation, Terms of Payment

(1) Unless notified otherwise, LÖMI's prices are ex works and do not include packing or transport of the goods to the customer. The prices do not include the respectively applicable VAT. LÖMI reserve the right to adapt prices should LÖMI's calculation bases for wages and salaries as well as for the materials to be processed have changed.

(2) With respect to net order values below EUR 5,000, the total invoice amount becomes due for payment within 10 days after placing of orders and issuing of the respective invoices. In the absence of any agreement to the contrary, the customer, with respect to a net order value of at least EUR 5,000, undertakes to

a) pay 40 per cent of the net order value within ten days after receipt of LÖMI's order confirmation plus the turnover tax apportioned thereto against receipt of the respective advance invoice;
b) pay a further 50 per cent of the net order value plus turnover tax apportioned thereto upon delivery, but no later than 10 days upon advice of readiness for shipment against receipt of the respective advance invoice;
c) pay the remaining 10 per cent of the net order value plus turnover tax apportioned thereto upon receipt of the goods, but no later than 30 days upon advice of readiness for shipment at the latest against receipt of the respective final invoice.

Upon expiry of the respective payment period the customer will be in arrears.

(3) While in arrears, the customer shall pay interest on the debt amounting to 8 per cent above the base interest rate. LÖMI reserve the right to prove and assert a claim for higher damage to interest income caused by the delay in payment.

(4) The customer shall not be entitled to any set-off, unless his counterclaims have been recognized by final and absolute judgment or acknowledged by LÖMI. The customer shall only be entitled to exercise his right of set-off, if his counterclaim is based on the same contractual relationship.

(5) The cost for the provision of a performance guarantee requested by the customer shall be borne by the customer or invoiced to him by LÖMI's house.

5. Delivery Times, Delay, Impossibility of Delivery

(1) Unless otherwise agreed or explicitly warranted by LÖMI, the period of delivery shall begin on the date specified on LÖMI's written order confirmation and upon receipt of the advance payment set forth under No. 4 clause 2 sub-clause a).

(2) The customer shall only be entitled to withdraw from the contract on the grounds of a delay in delivery caused by LÖMI, if he has first exhausted the rights due to him in accordance with Sec. 323 BGB (German Civil Code), provided that the application of Sec. 323 Paragraph 4 is excluded.

(3) In case of any delay the customer shall only be entitled to claim damages according to the provisions of Sec. 281 Paragraph 1 Clause 1 BGB and the restrictions imposed by No. 8 of these General Terms of Business below.

(4) LÖMI shall not be liable for any delay in delivery caused by force majeure, strike or other unforeseeable events affecting LÖMI's house or one of LÖMI's suppliers, it being provable that such event has got a substantial adverse effect on LÖMI's delivery. LÖMI shall notify the customer of the respective event, its anticipated duration and the removal of the same without delay. In such case the customer shall be entitled to demand from LÖMI a prompt declaration as to whether LÖMI shall be able to deliver within a reasonable period of time or whether LÖMI shall withdraw from the contract. Moreover, a delay in delivery shall be deemed beyond LÖMI's control, if one of LÖMI's suppliers does not meet his obligation to deliver or does not meet such obligation in a timely manner.

(5) Also, the respective periods of delivery shall extend by such time the customer fails to fulfil his obligations under the ongoing business relationship.

(6) LÖMI shall be entitled, to a reasonable extent, to make part deliveries or part performances. Secs. 281 Paragraph 1, Clause 2, 323 Paragraph 5 BGB shall not apply.

6. Passing of Risk

(1) Transport shall be incumbent on the customer and – unless otherwise agreed – is not included in the purchase price. The customer shall ship the goods ordered that have been declared ready for shipment by LÖMI without delay and at his own expense. Otherwise LÖMI shall be entitled, at LÖMI's reasonably exercised discretion, to have the goods stored at the customer's risk and expense.

(2) The effecting of transport insurance is not included in the purchase price. It shall only be effected upon the customer's separate order and against the respective compensation.

(3) Should LÖMI also take over the shipping of the goods (sale by delivery to a place other than the place of performance), then it shall be made at LÖMI's reasonably exercised discretion, as shall be the choice of the packing material. LÖMI shall not give any warranty that the mode of shipment chosen by LÖMI is the least cost-effective.

(4) Should the customer or any third party commissioned by him collect the goods, then the risk of accidental destruction or accidental deterioration of the goods shall pass to them upon handing the goods over to the customer or such third party. In case of a sale by delivery to a place other than the place of performance the risk passes to the forwarder, carrier or other person or body commissioned to carry out the shipment upon handing the goods over to such person or body.

(5) The delivery is presumed to have taken place even if the customer has delayed actual receipt of the product.

(6) As regards downloads and the transfer of data on the internet, the risk of destruction and corruption of the data shall pass to the customer upon their crossing the network interface.

7. Warranty

(1) Should the goods be defective, then LÖMI first fulfil warranty by either subsequent improvement or delivering substitute goods at LÖMI's discretion. LÖMI shall be granted a reasonable period of time for the removal of defects.

(2) The customer shall not be entitled to remove possibly occurring defects himself, unless LÖMI's house should be behind schedule with the removal of the defect or, due to the defect, there should be imminent danger to life, health and property. In the latter case, any measures adopted shall aim at the removal of the imminent danger. Should the customer be entitled to the removal of defects, then he shall also be entitled to demand reimbursement of the cost incurred by him in removing the defect. Detrimental consequences resulting from improper removal of defects by the customer shall be borne by the customer.

(3) Should subsequent improvement be unsuccessful, the customer shall principally, at his discretion, demand abatement of the purchase price (reduction) or cancellation of the contract (rescission) as well as claim damages. With respect to minor defects, the customer shall not be entitled to any right of withdrawal. If the customer chooses a payment of damages, then the limitation on liability under No. 8 Clauses 1 and 2 of these General Terms of Business shall apply.

(4) A warranty obligation shall be excluded where a defect is based on improper use or any unauthorised modification of the good supplied by LÖMI. Should such modification be detected, then it shall be presumed that the defect is based thereon, unless the contrary is proved by the customer. LÖMI shall be entitled to withhold performance of LÖMI's obligation to remove defects until full payment of the purchase price has been effected.

(5) The customer shall be obliged to immediately examine the goods delivered for variations in quality or volume, and notify obvious defects in writing within a period of one week from receipt of the goods. Otherwise, any enforcing the warranty shall be excluded. Hidden defects must be notified in writing within a week of discovery. To meet the deadline, timely mailing shall suffice.
The customer shall bear the full burden of proof for any and all claim requirements, particularly for the defect itself, the time the defect was discovered and the timeliness of the notification of defect.

(6) The warranty period shall be one year from delivery/acceptance of the goods. The one-year warranty period shall not apply in case of gross negligence on LÖMI's part or in case of physical injury or damage to health imputed to LÖMI or loss of life. LÖMI's liability under the Product Liability Act shall not be affected hereby.

(7) If acceptance of the goods supplied by LÖMI has been agreed, then such acceptance shall take place at LÖMI's works. Acceptance shall be presumed to have taken place, even if the customer, through negligent conduct, fails to observe the date for acceptance or culpably discontinues the acceptance procedure before it has been completed. Discovered defects, if any, shall be put down in an acceptance record signed jointly by both parties.

(8) LÖMI do not make any promise of guarantee to the customer in the legal sense. with manufacturers' warranties furnished by LÖMI's suppliers remaining unaffected thereby.

8. Limitation of Liability

(1) With respect to breaches of obligations resulting from slight negligence, LÖMI's liability and that of the people employed by LÖMI in the performance of LÖMI's obligations (vicarious agents) shall be limited to direct, average damage that is foreseeable and typical for this type of contract. Neither LÖMI nor the people employed by LÖMI in the performance of LÖMI's obligations shall be liable for breaches of non-substantive contractual obligations resulting from slight negligence that do not infringe the performance of the contract. The above-mentioned limitations of liability shall not affect the customer's claims under the Product Liability Act or a warranty. Moreover, the limitation of liability shall not apply in case of physical injury or damage to health imputed to LÖMI or loss of the customer's life.

(2) Save for cases of intentional or grossly negligent acts on LÖMI's part, the customer's claim to damages ensuing from delay shall be limited to a maximum of 10 per cent of the value of such part of the overall delivery which cannot be used or cannot be used in time due to such delay or an ultimate non-delivery.

(3) LÖMI's liability shall be excluded, if and insofar as damage has occurred for the following reasons:

a) unsuitable or improper use of the containers and/or other apparatuses;
b) defective installation or initiation by the customer or any other third party not commissioned by LÖMI;
c) wear and tear through operational stress or contraction/shrinkage (of material);
d) defective or unauthorised subsequent treatment by the customer or any other third party not commissioned by LÖMI;
e) use of unsuitable operating supplies by the customer or any other third party not commissioned by LÖMI;
f) exchange of materials or components not explicitly authorised by LÖMI carried out by the customer or any other third party not commissioned by LÖMI;
e) chemical or electrical influences/attacks beyond LÖMI's control;
g) unsuitable building ground;
h) defective construction work by the customer or any other third party not commissioned by LÖMI;

i) incorrect statements concerning the operational and technical requirements and chemico-physical conditions for the use of LÖMI's delivery item made by the customer or any third party commissioned by him.

(4) Links to third-party sites ("Hyperlinks") do not constitute an endorsement of such third-party sites by LÖMI and LÖMI is not responsible for the availability of these sites or their contents. The hyper linking to these sites is at the User's own risk. Should LÖMI obtain knowledge about unlawful contents on external websites, LÖMI shall inactivate the access to those sites immediately.

9. Assembly, Repair

(1) Unless agreed otherwise, assembly shall not be contained in the purchase price and shall be subject to separate compensation. If LÖMI have been commissioned with the assembly of the goods delivered by LÖMI, the pertaining containers and apparatuses, then the customer shall be obliged to assist LÖMI's assembly operator by providing a sufficient number of assistant workers, suitable lifting devices, adequate light sources, cleaning agents and all other means necessary for assembly at his own expense. The customer shall also provide sufficient heating.

(2) Should preceding work be necessary to meet the constructional requirements (e.g. foundation, walls, scaffolding), then this work shall be carried out at the customer's expense and risk. The customer shall ensure that this work will be finished in time.

(3) Any repair work commissioned and carried out beyond the scope of LÖMI's warranty obligations shall be subject to separate compensation. Cost estimates shall only be given upon the customer's explicit request and shall also be subject to separate compensation. The place of repair shall be determined at LÖMI's reasonable discretion.

10. Data Protection

(1) In LÖMI's „Information on Data Protection" LÖMI instruct LÖMI's customer about

a) the nature, scope, duration and purpose of the collection, processing and use of the personal data required for the execution of orders and settlements;
b) his right to object against the preparation and use of an anonymised user profile for advertising and market-research purposes as well as the need-based shaping of LÖMI's offer;
c) the distribution of data to enterprises commissioned by LÖMI that have been bound to observe the statutory provisions on data protection for the purpose and duration of reviewing the creditworthiness as well as the shipping of the goods;
d) his right to gratuitous disclosure of the personal data stored by LÖMI;
e) his right to correction, deletion and locking of the personal data stored by LÖMI;

(2) The collection, processing and use of the personal data for marketing purposes shall require the customer's approval. The customer will be given the opportunity to grant such approval before placing his order. The customer shall be entitled to withdraw such approval at any time with prospective effect.

11. Final Provisions

(1) The Laws of the Federal Republic of Germany shall apply to the exclusion of the provisions of the UN Sales Convention.

(2) If the customer is a merchant under the German Commercial Code, a legal person under public law or a special fund under public law, then the place of performance and exclusive place of jurisdiction ensuing from this contract shall be LÖMI's place of business. The same shall apply, if the customer has not got a general place of jurisdiction in Germany or his place of residence or habitual residence should not be known at the time of bringing an action.

(3) Any and all agreement shall require written form to be effective. This shall also apply to this requirement of written form itself.

(4) Should individual provisions of the contract with the customer, including these General Terms of Business, be or become ineffective as a whole or in part, then the effectiveness of the remaining provisions shall not be affected thereby. The wholly or partly ineffective provision shall be replaced by a provision the economic purpose of which shall come as close as possible to that of the ineffective provision.