

General terms and conditions of Lucas-Nülle GmbH

Article 1

Scope of terms and conditions

1. All supplies, performance and offers by the vendor are made exclusively on the basis of these terms and conditions. These terms and conditions therefore also apply to all future business relationships even if they are not again explicitly agreed. Any terms and conditions of the buyer which depart from or add to these terms and conditions shall not become a constituent part of the contract even if the vendor does not explicitly object to such terms and conditions.
2. All agreements made between the vendor and the buyer shall be in writing; ignoring written form shall not affect the validity of the agreement.

Article 2

Offer and conclusion of contract

Offers made by the vendor shall be non binding. The buyer has an acceptance period of three weeks with regard to binding offers made by the buyer, starting from the receipt by the vendor of the buyer's offer. Any offers by the buyer which are not accepted by the vendor within the specified period extinguish when the acceptance period expires. Any (oral or telephone) declarations of acceptance and all orders made by the vendor shall be confirmed in writing or by telex by the vendor. Non confirmation shall not affect the validity of the oral (telephone) declarations of acceptance and orders.

Article 3

Prices

1. The prices stated in the confirmation of order issued by the vendor shall apply plus value added tax (where applicable) at the valid rate. All other additional supplies and performance shall be invoiced separately.
2. Unless otherwise agreed prices are valid Ex Works Kerpen, packing excluded (Incoterms 2000)

Article 4

Delivery and performance time

1. Delivery times or deadlines, which can be agreed to be either binding or non binding, shall be made in writing; ignoring the written form shall not affect the validity of the agreement of delivery dates and deadlines. Non binding delivery dates can be exceeded by us by up to six weeks. Only after this time may the ordering party issue a dunning letter claiming default. Delivery deadlines shall start with conclusion of contract. In the case that contractual changes are subsequently agreed, the delivery date should also be simultaneously renegotiated if necessary.
2. Supply and performance delays resulting from force majeure, natural catastrophes or due to labour disputes not the fault of the company, transport and operational interruptions not the fault of the company, non culpable lack of materials, political constraints and similar reasons at either the vendor, its sales partners or its suppliers entitle the vendor to withdraw from the contract in whole or in part or to extend the delivery deadline by the period of the interruption as caused by the circumstances – by a maximum of two months – without entitling the buyer to make any claims against the seller for non-fulfilment of obligations. The buyer is entitled to withdraw from the contract in so far as for the reasons described above a deadline is extended by more than two months; this does not affect the buyer's right to exercise his legal right to withdraw from the contract at some earlier time for example due to the collapse of the business basis or the inability of the vendor to fulfil the performance for a reason not the fault of the vendor.

3. We are entitled to undertake supply and performance in instalments insofar as the contractual provisions do not demand full unitary delivery and full unitary performance and insofar as supply and performance in instalments can be reasonably accepted by the buyer. Any claims of the buyer shall be unaffected by this; in particular the buyer is entitled – if pertinent legal circumstances prevail – to withhold payments until the full delivery has been realised (plea of non-fulfilled contract) and in the event of delay with respect to residual delivery or the impossibility of residual delivery to withdraw from the contract in total (withdrawal from total contract) or to demand substitution of the total amount of damages incurred (damage compensation because of non-fulfilment with respect to the total contract). Supply and performance in instalments shall not affect any possibly existing delay on the part of the vendor. If an order is for several items which can be used independently of one another compliant with their specified usage, the delivery of individual items but not all ordered items does not represent partial delivery or partial performance.
4. The fulfilment of delivery and performance obligations by the vendor presumes punctual and regular fulfilment by the buyer of buyer's obligations.
5. If the buyer defaults on acceptance, the vendor is entitled to demand compensation for additional costs incurred due to the unsuccessful offer or for the safekeeping and maintenance of the item owed; the commencement of the acceptance default marks the transfer of the risk to the buyer of coincidental deterioration and coincidental loss.

Article 5

Forwarding and transfer of risk

1. Place of fulfilment is Kerpen.
2. In the case of supplies to buyer-specified destinations, the risk shall transfer to the buyer as soon as the consignment is handed over to the forwarding agent. If the vendor is able to forward the goods at the contractually agreed time point and if the forwarding is delayed at the wish of the buyer, the risk transfers when the vendor issues notice of readiness to forward.
3. At the wish of the buyer, deliveries may also be insured in the buyer's name and at the buyer's expense.
4. Forwarding shall be done by specialist service providers in accordance with the valid legal stipulations for the respective material.

Article 6

Deficiencies

1. If a product is found to have deficiencies which were present at the time point of delivery, the vendor shall remedy the deficiency in accordance with the legal stipulations or supply a product free of any deficiencies (subsequent fulfilment). Any expenses incurred pursuant to subsequent fulfilment, in particular transportation, delivery, working and material cost shall be to the debt of the vendor. Any additional costs incurred because the sold product is at a place other than the headquarters or the regional office of the buyer, shall not be to the debt of the vendor, unless this corresponds with the contractually agreed usage. The buyer shall bear the forwarding costs of the costs of subsequent fulfilment in so far as these are unreasonably high compared with the value of the goods. If the subsequent fulfilment is unsuccessful, the buyer is entitled – without affecting any other rights to damages (Article 11.3) – to cancel the contract (withdrawal) or lower the price (reduction).
2. Deviation of the dimensions, the form and the colour of the delivered goods which are within normal business tolerance and are in the nature of the material, do not represent an entitlement for claiming deficiencies.
3. The vendor reserves the right to make any necessary technical changes which do not affect the functionality of the item and which do not reduce the value of the performance as well as the right to make technical improvements.
4. If the vendor's instructions on use and maintenance are not observed, if changes are made to products, parts exchanged or consumables used which do not comply with the written specifications, then the buyer has no right to claim deficiencies if the buyer cannot disprove a suitably argued claim that the deficiency is due to one of these circumstances described above.

5. The buyer shall advise the vendor's after-sales service department in writing of any obvious deficiencies without delay, no later than three weeks after receipt of the delivered item. Any deficiencies which are not discovered within this period even after conscientious inspection shall be reported in writing to the vendor immediately upon their discovery (and must reach the vendor no later than 3 weeks after discovery).
6. Any claim for deficiencies due to normal wear and tear is excluded.
7. Claims for deficiencies against the vendor may only be made by the direct buyer, and cannot be assigned.
8. In so far as the claims are not for damages compensation, any rights arising from deficiencies shall expire after a period of 12 months starting from date of delivery. The limitation of legal rights of recourse is unaffected.
9. The provisions of the articles above shall not apply to used goods of all types, which are supplied under the exclusion of all and any rights to claim for deficiencies.

Article 6 a

Repairs

In the case that the buyer is not entitled to deficiency claims according to Article 6 or deficiency claims that expired according to Article 6.8 and vendor and buyer agree upon repairing the product, claim in case of a deficiency of the repair will expire corresponding to Article 6.8.

Article 7

Spare parts

The vendor shall supply spare parts for a period of two years after delivery of the goods to the currently valid spare parts price lists unless otherwise and explicitly agreed.

Article 8

Conditional ownership

1. The vendor shall retain ownership of the goods until fulfilment of all claims arising from the business relationship for whichever legal reason, including any future or conditional claims. In the event that the realisable value of existing collateral exceeds the value of the secured claims by a total of more than 10 per cent, the vendor is obliged upon buyer's demand to release collateral to this extent as the vendor sees fit.
2. Goods in which the vendor retains ownership rights in accordance with subsections 1 or 2 above shall hereinafter be referred to as conditional goods.
3. The processing or preparation of conditional goods is undertaken for the vendor as manufacturer yet without representing any obligation for the vendor; the processed or reformed goods shall be deemed conditional goods in the sense of subsection 3 above. The processing, compounding or mixing of conditional goods with other goods by the buyer gives the vendor co-ownership rights to the new goods at the ratio of the invoiced value of the conditional goods to the invoiced value of the other materials used. In the event that vendor's co-ownership rights are extinguished due to compounding or mixing, the buyer shall previously transfer to the vendor his ownership rights in the new item or in the new goods to an amount equal to the invoiced value of the conditional goods and shall keep same in safekeeping free of charge for the vendor. The co-ownership rights created by the processing, compounding or mixing shall be deemed conditional goods pursuant to subsection 3 above.
4. The buyer is entitled to process and sell the conditional goods in normal business transactions provided he is not in default. Distraint or transfer of ownership for collateral purposes is unauthorised. The claims (including all setoff claims from current account) arising from the resale or other legal reason (insurance, unauthorised actions) with respect to the conditional goods shall for the sake of prudence be assigned to the vendor by the seller immediately to the full amount. The vendor allows the buyer to demand payment in his name and to his account. The direct debit authorization can only be revoked if the buyer has not properly fulfilled his payment obligations
5. If third parties seek to obtain rights to conditional goods, in particular distraint, the buyer shall advise of the vendor's ownership and shall inform the vendor without delay in order that the vendor can exercise his rights of ownership. In so far as the third party is not able to compensate vendor for court or out-of-court costs in connection with such actions, the buyer shall be liable.

6. If the buyer is in breach of the contract, in particular in default of payment, the vendor is entitled to reclaim the conditional goods after a suitable deadline has expired or to demand assignment of any right to reclaim possession which the buyer has against third parties. The reclaiming of the conditional goods by the vendor does not represent withdrawal from the contract, unless the vendor expresses this explicitly or the buyer is a consumer.
7. The buyer has the obligation to keep the conditional goods safe, to treat them with care, to maintain them and to advise the vendor without delay of any damage or loss of the goods. In addition, the buyer is obliged to advise the vendor of any change of ownership or of change of address of residence or headquarters.

Article 9

Payment

1. Unless otherwise agreed, the buyer has to pay in advance. The payment is due upon contract conclusion.
2. Payments shall only be deemed fulfilled when the vendor can dispose over the amount. In the case of cheques, payment shall only be deemed fulfilled when the cheque has been honoured.
3. The buyer is in default without receiving a dunning letter if payment has not been made within 10 days of the due date of the vendor's claim and receipt of our invoice or delivery. If the buyer is in default, the vendor is entitled to claim interest from the key date at an amount of 8 % above the basic rate. The vendor is entitled to claim higher damages against verification.
4. If the vendor is aware of circumstances which cast doubt on the credit worthiness of the buyer, in particular if a cheque is not honoured or if payments are discontinued, or if the vendor is aware of other circumstances which raise doubts as to the credit worthiness of the buyer, then the vendor is entitled to demand payment of the outstanding amount even if he has accepted a cheque.
5. The buyer is only entitled to set off if the counterclaim has been legally specified or is undisputed. Withholding rights only exist pursuant to Article 273 civil code and the right to refuse performance pursuant to Article 320 of the civil code are only given if the counterclaims of the vendor are not disputed by the vendor or are legally specified; similar applies to the commercial withholding right pursuant to Article 269 of the commercial code.

Article 10

Breaches of copyright

1. The vendor shall hold the buyer and his customers free of claims arising from breaches of copyright, trade marks or patents unless the design for a delivered item originates from the buyer. The vendor's obligation to hold free is limited to an amount equal to the foreseeable damages. An additional condition for exemption is that the vendor is advised by the buyer of any impending litigation (Article 72 code of civil procedure) and that the claimed legal violation is exclusively due to the construction of the item delivered by the vendor and is not connected or used together with other products.
2. The vendor has the right to free himself of the obligations accepted under subsection 1 above in that he can choose between the following:
 - a) either to procure the necessary licenses with respect to the claimed breach of patent or
 - b) to make a modified item for delivery or parts for delivery available to the buyer which in the case of replacement of the delivered item or parts thereof remedies the claim for breach with respect to the item delivered unless the modified item delivered (or parts thereof) is detrimental to the use of the item and/or reduces its value with respect to the original performance.

Article 11

Liability

1. The vendor may only be held liable for breaches of contractual or extra-contractual obligations, in particular for impossibility, delays or unauthorised actions – also by the vendor's senior employees or other agents – in cases of intent and gross negligence, limited to the damages foreseeable upon conclusion of the contract.

2. These limitations shall not apply for culpable breaches of key contractual obligations in so far as they prejudice the achievement of the purpose of the contract, in cases of obligatory liability pursuant to the product liability law, in the case of injuries to life, limb or health (personal injury) and also not in cases if and in so far as the vendor has deliberately not disclosed pertinent deficiencies or has guaranteed their absence. These provisions do not affect rules pertaining to burden of proof. 3. Claims for compensation for damages due to material deficiencies shall be limited – apart from personal injury or intentional breach of obligations or due to gross negligence – to a period of 12 months from delivery of the goods. This does not affect the limitations of statutory rights of recourse. In the case of claims for damages arising due to other legal reasons, the provisions of the law shall apply.

Article 12

Applicable law, jurisdiction and partial nullification

1. All legal relationships existing between the vendor and the buyer shall be subject to German law complementary to these terms and conditions with the exemption of the regulations of the United Nations Treaty dated 11.04.1980 on international contracts for sale of goods (CISG).
2. In the event that the buyer is a businessman in the sense of the commercial code, a persona legala under civil law or special public assets, Kerpen shall be court of jurisdiction for all disputes arising from this contractual relationship. The vendor is also entitled to litigate against the buyer at the buyer's court of jurisdiction.
3. Should it become apparent that a provision of these terms and conditions or a provision of other agreements is invalid or becomes invalid, this shall not affect the validity of all other provisions or agreements.