

General Terms and Conditions of Sale and Delivery of LM LIFTMATERIAL GmbH

I. Applicability

The following terms and conditions shall apply towards:

1. a person or partnership with legal capacity acting in the exercise of its commercial or independent professional activity (entrepreneur) when concluding the contract;
2. legal entities under public law or a special fund under public law

II. General

1. All deliveries and services are based on these terms and conditions, as well as on any separate contractual agreements. Deviating terms and conditions of purchase on the part of the Purchaser shall not become part of the contract, even upon acceptance of the order.
In the absence of a special agreement, a contract shall be concluded with LM LIFTMATERIAL's written confirmation.
2. LM LIFTMATERIAL reserves the property rights and copyrights to samples, cost estimates, drawings and the like, information, physical and non-physical in nature - also in electronic form; they may not be made accessible to third parties.

III. Price, payment, financial situation of the Purchaser

1. In the absence of a special agreement, prices shall be ex works, including loading at the plant, but excluding packaging and unloading. Value added tax applicable at the respective statutory rate shall be added to the prices.
2. **The minimum order value per order is EUR 100.00.**
3. In the absence of a special agreement, payment shall be made without any deduction, i.e. the total amount is due without deductions as soon as the Purchaser has been informed that the main parts are ready for collection.
4. The Purchaser shall only have the right to withhold payments or offset them against counterclaims to the extent that his counterclaims are undisputed or have been finally determined by a court of law.
5. The application to open insolvency proceedings against the Purchaser's assets entitles LM LIFTMATERIAL to withdraw from the contract and to demand the immediate return of the delivery item.
6. If credit information on the financial situation of the Purchaser indicates that granting credit no longer appears justified, LM LIFTMATERIAL shall be entitled to demand immediate payment instead of the agreed payments at any time, to claim ownership of the delivery item, to remove it and to withdraw from the contract. The right to claim for damages shall remain unaffected.

IV. Delivery periods and dates, delay in delivery

1. Deliveries are made EXW in accordance with Incoterms 2010 from the respective company of LM LIFTMATERIAL or from another place as designated by LM LIFTMATERIAL, unless expressly agreed otherwise.
2. Delivery periods and dates shall be individually agreed. They are non-binding, unless they are expressly specified as binding in the individual contract. Delivery deadlines shall commence upon conclusion of the contract, unless expressly agreed otherwise. However, delivery deadlines shall not commence until all commercial and technical questions between the parties to the contract have been clarified and the Purchaser has fulfilled all cooperation obligations incumbent upon him, such as the provision of the necessary official certificates or permits, and, to the extent that advance payment has been agreed, not before receipt of the agreed payment by LM LIFTMATERIAL. This does not apply when LM LIFTMATERIAL is responsible for the delay.
3. Subsequent changes to the contract may result in an extension of the agreed delivery deadlines and a postponement of the delivery dates.
4. Compliance with the delivery deadlines and dates shall be subject to the correct and punctual delivery to us on the part of our own suppliers.
5. LM LIFTMATERIAL shall make the delivery item available for collection by the Purchaser at the contractually-agreed place of delivery before expiry of the respective delivery deadline and inform the Purchaser accordingly. The Purchaser shall collect the delivery item at the contractually agreed place and date of delivery. Deviating agreements are reserved.
6. If the delivery of the delivery item is delayed for reasons for which the Purchaser is responsible, the costs incurred as a result of the delay shall be charged to the Purchaser.
7. If non-compliance with the delivery periods and dates is due to force majeure, industrial disputes or other events beyond LM LIFTMATERIAL's control, the delivery periods shall be extended and the delivery dates postponed accordingly. LM LIFTMATERIAL shall inform the Purchaser of the beginning and end of such circumstances as soon as possible.
8. The Purchaser can withdraw from the contract without setting a deadline if LM LIFTMATERIAL's entire performance becomes finally impossible before the transfer of risk. In addition, the Purchaser may withdraw from the contract if the execution of part of the delivery becomes impossible for an order and he has a justified interest in rejecting the partial delivery. If this is not the case, the Purchaser shall pay the contract price attributable to the partial delivery unless he proves that LM LIFTMATERIAL has suffered no damage or less damage. Section VIII.2 of these Terms and Conditions shall apply in all other respects. If the impossibility occurs during the delay in acceptance or if the Purchaser is solely or predominantly responsible for these circumstances, he shall remain obliged to counter-performance, unless he proves that LM LIFTMATERIAL has suffered no damage or less damage.
9. If the Purchaser grants LM LIFTMATERIAL, who is in delivery delay, a reasonable period for performance and if this period is not observed, the Purchaser shall be entitled to withdraw from the contract within the framework of the statutory provisions. Further claims arising from delay in delivery shall be governed exclusively by Section VIII.2 of these Terms and Conditions.

V. Transfer of Risk, Default of Acceptance, Partial Deliveries

1. The risk of accidental loss and accidental deterioration of the delivery item shall pass to the Purchaser upon delivery. When the delivery item is to be accepted by the Purchaser in accordance with the contractual agreement and the type of order, acceptance shall be decisive for the transfer of the risk in cases of accidental loss and accidental deterioration of the delivery item. For the rest, the statutory provisions of the law governing contracts for work and services shall also apply mutatis mutandis to an agreed acceptance. Delivery or acceptance shall be deemed to have taken place if the Purchaser is in default of acceptance.
2. The Purchaser shall be in default of acceptance if he does not collect the delivery item on the bindingly-agreed delivery date or, in the case of contractually-agreed acceptance, does not accept the delivery item despite readiness for acceptance. In the case of non-binding delivery periods or dates, LM LIFTMATERIAL can inform the Purchaser within a period of two weeks that the delivery item is ready for collection and/or, in the case of contractually-agreed acceptance, that the items are ready for acceptance; if the customer does not collect and/or take delivery of the goods upon expiry of the period, he shall be in default of acceptance.
3. If the Purchaser is in default of acceptance, if he fails to cooperate or if LM LIFTMATERIAL delays delivery for other reasons for which the Purchaser is responsible, LM LIFTMATERIAL shall be entitled to demand compensation for the resulting damage and for any additional expenses incurred (e.g. storage costs). LM LIFTMATERIAL will charge the Purchaser additional expenses of EUR 15.00 per square metre and per month for any storage costs incurred for the above-mentioned reasons, unless the Purchaser proves that LM LIFTMATERIAL has incurred no damage or less damage.
4. LM LIFTMATERIAL shall be entitled to make partial deliveries, provided that their acceptance is not unreasonable for the Purchaser, and in particular when the delivery of the remaining ordered delivery item is secured and the Purchaser does not incur any considerable additional expenditure or costs as a result of this (unless LM LIFTMATERIAL declares its willingness to bear these costs).
5. LM LIFTMATERIAL undertakes to take out the insurances as required by the Purchaser at the Purchaser's expense. LM LIFTMATERIAL is entitled to demand the corresponding insurance premiums from the Purchaser in advance.

VI. Retention of title, insurance

1. LM LIFTMATERIAL retains its title to the delivery item until receipt of all payments arising from the delivery contract.
2. When the retention of title expires, in particular due to resale, combination or processing, an extended retention of title shall exist.
a) In the case of combination and processing, LM LIFTMATERIAL acquires indirect possession and all rights resulting therefrom. The Purchaser already now assigns the claims arising from contracts, in particular contracts for work and services, which he receives upon loss of ownership, even if these are not yet due.

- b) When the goods delivered by LM LIFTMATERIAL are resold, the Purchaser is obliged to maintain the retention of title and to reserve ownership against his contractual partner. The Purchaser hereby assigns all claims acquired by him as a result of this to LM LIFTMATERIAL.
3. The Purchaser is obliged, upon request, to provide complete and exhaustive information on the whereabouts of the goods that were delivered subject to retention of title, the type of possible loss of LM LIFTMATERIAL's title, the claims acquired thereby and the person of the third party.
4. Upon receipt of the claims by the Purchaser, the latter shall be obliged to fulfil LM LIFTMATERIAL's claims arising therefrom immediately.
5. Upon request, the Purchaser shall be obliged to hand over a written declaration of assignment to LM LIFTMATERIAL. LM LIFTMATERIAL is entitled to disclose the assignment.
6. Any assignment of claims, as far as they originate from deliveries of goods obtained from LM LIFTMATERIAL to third parties, in particular for the purpose of obtaining credit, is excluded.
7. The Purchaser is obliged to inform LM LIFTMATERIAL immediately of any seizures or other restrictions pertaining to LM LIFTMATERIAL's ownership. A breach of this obligation shall render the Purchaser liable for damages. The consequences pursuant to Section III.5 shall apply. Any intervention costs incurred shall be borne by the Purchaser.
8. LM LIFTMATERIAL shall, at its discretion, release the securities granted to LM LIFTMATERIAL upon request, insofar as their value sustainably exceeds the claims by more than 20 %.
9. The Purchaser must insure the delivery item against transport, fire, theft, and water damage from the time it is handed over to the final transfer of ownership and bear the costs thereof.

VII. Warranty

LM LIFTMATERIAL provides the following warranty for material defects and defects of title of the delivery to the exclusion of further claims - subject to Section VIII:

1. The Purchaser's rights in respect of defects presuppose that he inspects the delivery item on delivery and provides proper notice of defects in accordance with § 377 HGB (German Commercial Code).
2. Complaints must be made in writing with a specific indication of the defect. LM LIFTMATERIAL must be notified in writing of incomplete deliveries and other recognizable defects immediately, but at the latest within one week after delivery; notification is to be made regarding hidden defects immediately and at the latest within one week after their discovery. Acceptance and/or approval of the delivery item may not be refused for reason of insignificant defects. Claims arising from delayed notification of defects are excluded.
3. The costs for the inspection of the delivery item shall be borne by the Purchaser.
4. In the case of defective goods, LM LIFTMATERIAL shall, at its own discretion, provide subsequent performance by remedying the defect (subsequent improvement) or deliver a defect-free item (subsequent delivery).
5. After agreement with LM LIFTMATERIAL, the Purchaser must give LM LIFTMATERIAL the necessary time and opportunity to carry out all repairs and replacement deliveries that appear necessary. Only in urgent cases, where operational safety is endangered, or so as to prevent disproportionately large damage, whereby LM LIFTMATERIAL is to be informed immediately of the intended remedying method and the estimated expenditure for remedying the defect - if possible in writing - and the remedying method is to be agreed with LM LIFTMATERIAL, the Purchaser shall have the right to remedy the defect himself or have it remedied by third parties, and then demand reimbursement of the necessary expenditure from LM LIFTMATERIAL. The right of self-remedy does not exist if LM LIFTMATERIAL would be entitled to refuse a corresponding subsequent performance in accordance with the statutory provisions.
6. Of the costs arising from the repair or replacement delivery, LM LIFTMATERIAL shall bear - insofar as the complaint proves to be justified - the costs of the replacement part, including any agreed shipping costs.
7. Within the context of the statutory provisions, the Purchaser has a right to withdraw from the contract if LM LIFTMATERIAL - by taking into account the statutory exceptions - allows a reasonable period of time to remedy the defect or to make a subsequent delivery owing to a material defect to lapse fruitlessly. The Purchaser's right of withdrawal or the assertion of a claim for damages instead of the entire performance in the event of the existence of an insignificant defect that does not significantly impair the use of the delivery item is excluded.
8. LM LIFTMATERIAL shall only be liable for public statements, in particular in advertising, if LM LIFTMATERIAL has initiated them. In such cases, it is only liable when the advertising actually influenced the purchase decision.
9. Guarantees shall only be assumed by LM LIFTMATERIAL when a special agreement has been made. Any reference to technical standards, e.g. DIN standards, serves only to describe the goods and does not constitute a guarantee.
10. No warranty is assumed in particular in the following cases:
Unsuitable or improper use, faulty assembly or commissioning by the Purchaser or third parties, natural wear and tear, faulty or negligent treatment, improper maintenance, unsuitable operating materials, defective construction work, unsuitable subsoil, chemical, electrochemical or electrical influences - insofar as LM LIFTMATERIAL is not responsible for them.
11. If the Purchaser or a third party carries out improper repairs, LM LIFTMATERIAL shall not be liable for the resulting consequences. The same shall apply to changes to the delivery item made without LM LIFTMATERIAL's prior written consent.
12. The limitation period for warranty rights shall be one year from delivery of the delivery item. However, this limitation shall not apply if (i) a defect has been fraudulently concealed or (ii) a guarantee has been given for the quality of the delivery item (in this respect, the guarantee regulation or limitation period resulting from the guarantee may apply). In the event of claims for damages, this limitation shall not apply in the following cases: (i) injury to life, limb or health, (ii) wilful misconduct and (iii) gross negligence on the part of LM LIFTMATERIAL's officers or directors, (iv) liability according to the Product Liability Act and (v) recourse claims in accordance with § 478 par. 2 BGB (German Civil Code).
13. If the delivery item is a building or an object that has been used for a building in accordance with its usual use and which has caused its defectiveness (building material), the limitation period shall be five years from the date of delivery in accordance with the statutory provisions.

VIII. Liability

1. When the delivery item cannot be used by the Purchaser in accordance with the contract through the fault of LM LIFTMATERIAL as a result of the breach of contractual ancillary obligations, the provisions of Sections VII. and VIII. 2 et seq. shall apply accordingly to the exclusion of further claims by the Purchaser.
2. LM LIFTMATERIAL shall be liable irrespective of the type of breach of duty, including unlawful acts, when LM LIFTMATERIAL acted with intent or gross negligence.
3. LM LIFTMATERIAL shall be liable for any negligence in the event of breaches of essential contractual obligations on the part of LM LIFTMATERIAL that make proper fulfilment of the contract possible in the first place and on the observance of which the Purchaser may rely, but in the case of slight negligence, it shall only be liable up to the amount of the typical, foreseeable damage.
4. The limitations of liability and exclusions in Sections VIII.2. and VIII.3. shall not apply to damages resulting from injury to life, body or health or in the event of fraudulent concealment of defects, or in the event of liability for claims based on the Product Liability Act, or in the event of gross negligence on the part of organs or executive employees of LM LIFTMATERIAL.
5. Insofar as LM LIFTMATERIAL's liability is excluded or limited, this shall also apply to LM LIFTMATERIAL's employees, workers, representatives and vicarious agents.
6. LM LIFTMATERIAL's obligations based on quality or durability guarantees are not restricted by the provisions in Sections VIII.2. to VIII.5.

IX. Statute of limitations

All claims of the Purchaser - on whatever legal grounds - shall become statute-barred after 12 (twelve) months. Provisions in section VII.12. and section VII.13. remain unaffected.

X. Applicable law, place of jurisdiction

1. The law of the Federal Republic of Germany applicable to the legal relationships between domestic parties shall apply exclusively to all legal relationships between LM LIFTMATERIAL and the Purchaser.
2. The place of jurisdiction shall be the court responsible for the registered office of LM LIFTMATERIAL. This is currently Munich. However, LM LIFTMATERIAL is entitled to file a lawsuit at the Purchaser's headquarters.