

LUPEG GmbH General Terms and Conditions for Business Customers

Section 1 General Conditions

1. On concluding a contract the principal or customer - referred to hereinafter as the "Customer" - fully and unconditionally acknowledges these General Terms and Conditions of Business (T&Cs) of the contractor, LUPEG GmbH, Ludwig-Jahn-Straße 7, 91257 Pegnitz - referred to hereinafter as the "User".
2. The following General Terms and Conditions of Business will not affect consumers and apply only in the course of business.
3. The conditions of business will also be an integral part of ongoing business relationships, even if the User has not expressly referred to them.
4. The following T&Cs apply exclusively. Other conditions (including but not limited to the Customer's purchasing conditions) will not become part of the contract, even if the User does not expressly object to them.
5. Should individual provisions of these general terms of business be or become wholly or partially invalid, this will not affect the validity of the remaining provisions. The invalid clause will be replaced by the provisions of the law.

Section 2 Offer, Documentation and Intellectual Property

1. The User's offers, including but not limited to those found on its website, are generally non-binding. In accepting a non-binding offer the Customer will be bound to the aforementioned order (offer). The User will accept the order by confirmation (acceptance). The contract will come into being by confirmation of the order by the User.
2. If a transaction is preceded by oral, telephone or telefax (e.g. electronic) negotiations, subsequent confirmation by the User of the contents of the contract will be legally binding. This will not apply if the contents of the confirmation deviate from the result of the negotiations to such an extent or if the User deliberately reproduces the proceedings of the contract negotiations incorrectly that the User cannot expect the consent of the Customer. If the Customer objects to the confirmation immediately, its contents will not become part of the contract.
3. Offers, computations, plans, drawings, calculations, reviews of calculations, cost estimates or other documents belonging to the User may not be duplicated, altered or made available to third parties without the consent of the User and are to be returned to the User immediately if a contract is not concluded. In this case, any duplicates made are to be destroyed. The User reserves all rights due to it, including but not limited to those due to it that arise from copyright or patent rights to the material. In the event that a contract is concluded and unless explicitly agreed, the Customer will acquire no intellectual ownership of the files, documents, material or other items given to the Customer by the User for the purposes of fulfilling the contract.
4. If official or other approvals, releases or documents are necessary for the User to fulfil contracts, these are to be obtained by the Customer and made available to the User in a timely manner. The Customer will be required to hand over the necessary material to the User for this purpose. This includes but is not limited to approvals by overseas authorities and other bodies. The Customer will also be required to carry out its own necessary preparatory tasks before the User performs its services.

Section 3 Prices

1. The agreed prices are net prices in euros (€) excluding the currently legally applicable German value added tax. Increases in value added tax will be passed on immediately. The prices do not include incidental costs for transportation, packaging, insurance and similar expenses.
2. If no fixed compensation has been arranged for the User, then the User's prices valid on the day the User provides the service will prevail.
3. For periods of performance more than four months in the future, the User is entitled to adjust the fixed prices by a reasonable amount to compensate for increases in wages, freight rates, energy costs, value added tax, customs duties, etc.

Section 4 Scope and Performance of User's Services

1. The scope of the services performed by the User is determined to be binding when the User issues a written order confirmation. Information and illustrations contained in documents supplied by the User are provided for the purpose of clarification and do not require the User to provide services that are true to image or true to scale.
2. Any agreed performance deadlines will not commence for the User until the Customer has supplied all necessary documents, approvals and releases and completed its own preparatory tasks in full.
3. If no completion deadlines are defined for performing work or services, then work must commence immediately following order confirmation, at the latest however 14 days following the Customer's request, provided the Customer has supplied the necessary approvals, documents and releases and completed its own preparatory tasks in full according to Section 2 No. 4 of these Terms and Conditions.
4. If advance payment is arranged, then the performance deadlines - regardless of whether according to Section 4 No. 2 or Section 4 No. 3 - will not commence for the User until advance payment has been made in full.
5. If a sales contract is concluded between the User as the Seller and the Customer as the Buyer or if regulations on the sale of goods, including but not limited to those outlined in Section 651 of the German Civil Code (BGB) are applied, then the following must be observed:
 - a. Delivery will be made to the Customer's branch office or company headquarters. Express contractual agreement is required for destinations that deviate from these locations. The Customer will bear the costs for packaging and transportation. No price discounts are awarded to Customers who collect goods themselves.
 - b. Loading and shipping are insured at the Customer's expense. The User will choose the method of shipping insofar as no method of shipping is agreed by the Parties.
 - c. For all deliveries the risk of accidental loss of goods is transferred to the Customer from the moment the shipment is handed over to the shipper or freight forwarder or personnel specifically assigned the task of transport by the User.
 - d. The Customer must ensure that the shipment is accepted on site. The Customer must provide the necessary personnel to unload the goods on site at its own expense. If the User incurs additional expenditure due to a breach of the aforementioned obligations on the part of the Customer, then the Customer will bear the cost of said expenditure.
 - e. The delivery period commences when the Customer receives the order confirmation.

- f. If the delivery period is delayed due to circumstances that are the fault of the User, then the Customer is entitled to withdraw from the contract or demand compensation for damages due to non-performance, with the proviso that the Customer provides the User with a written refusal to accept delivery and a grace period of a minimum of three weeks and this period has elapsed without result.
- g. If the delivery is delayed beyond the deadlines outlined herein through circumstances that are no fault of the User, then the delivery period will be extended for an additional three weeks. Both User and Customer are entitled to withdraw from the contract after this period elapses. Circumstances beyond the User's control include, but are not limited to, strikes, lockouts and other inevitable circumstances.
- h. Claims on the part of the Customer focused solely on compensation for damages caused by delay due to failure to meet the delivery deadline are excluded notwithstanding the aforementioned rights of the Customer insofar as the User is only responsible for minor negligence with respect to failure to adhere to the agreed delivery period.
- i. The User is entitled to make partial deliveries provided this does not place an undue burden on the Customer.

Section 5 Payment

1. The User is entitled to payment when the contract is concluded; payment is due immediately upon receipt of invoice. Provided no other term of payment is agreed, the Customer is required to remit payment within 30 days of the due date. Customers who remit payment within 14 days of the due date are entitled to a discount deduction of 2 %.
2. Payments must be remitted in cash or via bank transfer. They are considered paid on receipt of the cash amount or the final credit note for the amount of the transfer.
3. Cheques are only accepted for fulfilment. The Customer will bear the costs of cashing the cheque.
4. If the Customer delays payment or enters into default, the Customer is obliged to pay the User penalty charges at an annual rate of eight percent over the basic rate of interest beginning from the start of the delay. The Customer is entitled to provide evidence that the actual costs of the User were less than those outlined above.
5. The User's right to additional compensation remains unaffected as does Section 288 of the German Civil Code.

Section 6 Set-off and Right of Retention

1. The Customer may only set off claims against the User if these counterclaims are undisputed or due for decision or have been legally determined.
2. The User is entitled to withhold delivery or service as long as the Customer has not met obligations to the User under this contract. Likewise, the User is entitled to withdraw delivery or service if the Customer has not met obligations to the User under previously existing contracts.
3. The Customer may only withhold what is owed to the User if the User breaches obligations arising from the contract through gross negligence or the delivery or service is grossly defective.
4. The Customer is entitled to settle any right of retention on the part of the User by providing a bank guaranty limited to the warranty period.

Section 7 Customer Deposit

1. If the net price of the services performed by the User or the goods sold exceeds the amount of € 3,500 plus the legally applicable value added tax, the User is entitled to demand that the Customer provide a security in the amount of the net price plus the legally applicable value added tax in the form of a written, unconditional and absolute guaranty of payment or another form of security in accordance with Section 232 Para. 1 of the German Civil Code before performing its own services.
2. The User must request the aforementioned security from the Customer in writing.
3. The Customer will bear the costs of providing the security.
4. The User must release the security once full payment of the gross price owed has been made.

Section 8 Reservation of Title

1. Title of the goods sold by the User is not transferred to the Customer until the purchase price including interest has been paid in full.
2. The Customer must inform the User immediately whenever measures undertaken by third parties or other events endanger the rights of the User. In the event of attachment or seizure, the Customer is obliged to inform the third party of the ownership on the part of the User. The Customer must inform the User of such measures and events immediately.
3. The Customer is entitled to resell delivery items in the course of normal business transactions, but in doing so hereby assigns all claims to the User in the amount of the total invoice price (including VAT) contractually agreed with the User arising from the resale. The Customer is entitled to settle these receivables after they have been assigned. The User's authority to collect payment remains unaffected by this. However, the User will not collect payment as long as the Customer attends to its payment responsibility from the earnings received, does not enter into default or delay on payment and, in particular, has not filed a petition for the opening of insolvency proceedings or been declared insolvent.
4. Processing or reconstruction of and work on the delivered goods will always be performed in the name of and on behalf of the User. In this case the contingent right of the Customer to the purchased item also extends to the reconstructed item. If the purchased item is processed with other items or materials that do not belong to the User, the User obtains joint ownership of the new item in proportion to the objective value of the User's item in relation to the other items processed at the time of work. The same applies in cases where items are combined with other goods. If the items are combined in a manner that causes the Customer's item to be seen as the main component of the combined product, then it is agreed that the Customer will transfer proportional co-ownership to the User thus safeguarding the resulting sole ownership or co-ownership for the User. To protect the claims of the User against the Customer, the Customer hereby assigns to the User any claims from third parties that arise as a result of the incorporation of the conditional goods in real property. The User hereby accepts this assignment.
5. Should the total value of the securities exceed the User's claim to be secured by more than 20 %, the User agrees to release those securities that exceed the 20 % limit.
6. The right of retention remains unaffected by any statute of limitations on claims made by the User.

Section 9 Warranty

1. For works contracts, Customer warranty claims are subject to a statute of limitations of one year following the Customer's acceptance of the works. This does not apply in cases where a longer warranty period is required by law, including but not limited to the fraudulent concealment of a defect, for example.
2. The duty to remedy defects does not apply to damage that occurs following acceptance as a result of improper operation or damage caused by the action of violent external forces, unavoidable chemical or electrical influences or as a result of normal wear and tear.

3. If the works are defective, the User will either improve the works or replace them. The User must always be afforded the opportunity to correct defects through subsequent performance within four weeks. If the improvements likewise fail to remedy the defects, then on request the User must be permitted to improve the works again within an additional period of four weeks. If this improvement still fails to remedy the defects, then the Customer is entitled to withdraw from the contract or lower compensation.

3. If a sales contract is concluded between the User as the Seller and the Customer as the Buyer or if regulations on the sale of goods, including but not limited to those outlined in Section 651 of the German Civil Code (BGB) are applied, then the following must be observed:

a. The User will provide a three-month warranty for used movable property. For new movable property the User's warranty is one year.

b. The Customer's obligation to inspect and provide notice of defects in accordance with Section 377 of the German Commercial Code (HGB) is subject to the proviso that the inspection is performed by an expert. Defects that are identified must be reported to the User immediately in writing and include a description of the defect(s) along with the complaint. If the Customer subsequently discovers defects that were not detected during the inspection, these must be reported to the User immediately following discovery in writing and include a description of the defect(s) along with the complaint. Otherwise (no, insufficient and / or delayed inspection and / or complaint) the goods are considered to be accepted as free from defects and all rights relating to defects are waived.

c. If the delivered goods have defects that were present at the time of the transfer of risk, then the User will - subject to a timely and proper notice of defects according to Section 9 No. 3b - either improve the goods or deliver replacement goods at its discretion. The User must always be afforded the opportunity to correct defects through subsequent performance within four weeks. Rights of recourse remain unaffected by the aforementioned provision without restriction.

d. If the improvements likewise fail to remedy the defects or the replacement delivery is also defective, then on request the User must be permitted to improve the product again within an additional period of four weeks.

e. If this improvement still fails to remedy the defects, then the Customer is entitled to withdraw from the contract or lower compensation - notwithstanding any claims for damages.

Section 10 Liability

1. Essential contractual obligations:

a. Essential contractual obligations are obligations that the contents of the contract pose on the User in order to achieve the purpose of the contract, the fulfilment of which makes proper execution of the contract possible in the first place and which the Customer can regularly rely on the User to abide by.

b. For sales contracts essential contractual obligations of the User include but are not limited to the provision of property and goods without defects; for lease and hire agreements they include but are not limited to granting the use of the item for hire, leaving the item for hire in a condition suitable for use in accordance with the contract and maintaining the item so that it remains suitable for use; for service contracts they include but are not limited to the agreed services; for works contracts they include but are not limited to the production of the agreed work.

2. The User is liable in accordance with the statutory provisions in the event that the Customer makes claims for damages resulting from intent or gross negligence of the User or its representatives or agents. Provided the User is not responsible for wilful breach of contract, the liability is limited to the foreseeable, typically occurring damages - but subject to a limitation on the amount of liability on the part of the User of € 3,000,0000 [three (3) million euros].

3. Furthermore, the User is liable in accordance with the statutory provisions in the event that the User culpably breaches an essential contract obligation according to Section 9 No. 1. In this case, liability for damages is limited to the foreseeable, typically occurring damages - but subject to a limitation on the amount of liability on the part of the User of € 3,000,0000 [three (3) million euros]. This limitation does not apply if the User is guilty of gross negligence.

4. Liability for culpable injury to life, body or health remains unaffected. The same applies to mandatory liability in accordance with product liability law.

5. Unless otherwise specified above, all liability on the part of the User is excluded.

6. The exclusion and limitation of liability according to the aforementioned T&Cs applies both for the User and the personal liability of the User's staff members, employees, workers, representatives and agents.

Section 11 Final Provisions

1. The place of performance for all obligations arising from this contractual relationship is Pegnitz, Germany.

2. Provided the Customer is a legal entity or a special public fund the location of the User's registered office will be the place of jurisdiction for all legal disputes arising from this contract. This is also the case in the event that the Customer has no general place of jurisdiction within the Federal Republic of Germany or changes its place of residence or general place of business to a place outside of the Federal Republic of Germany or a general place of residence or business is unknown at the time the complaint is filed. The same applies if the Customer is a businessman under the German Commercial Code and the legal transaction that is the basis for the claim is a commercial business for him. The User is entitled to take legal action against the Customer in another jurisdiction.

3. The laws of the Federal Republic of Germany apply for all disputes arising from this contract and all disputes regarding the validity of this contract, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

4. The applicable language of contract is German. These Terms and Conditions are available in German and English.