



## § 1 General / Validity

( 1 ) Our sales terms and conditions are solely applicable; we do not accept any deviation from these or any contradicting terms and conditions of our customers unless we have explicitly approved their validity in writing. Our sales terms and conditions are also valid in the event of our carrying out the delivery unreservedly to our customer in knowledge of his deviating or contradicting purchasing terms and conditions.

( 2 ) All agreements that have been set up between our customer and ourselves for the purpose of executing this contract have been included in writing in this contract.

( 3 ) Our general terms and conditions are only applicable towards enterprises as defined by § 310 para. 1 BGB.

( 4 ) Our general terms and conditions are also valid for future contracts.

## § 2 Quotation / Quotation Documents

( 1 ) Our quotations are without obligation and remain valid for a maximum of 3 months after the date of quotation.

( 2 ) We reserve the right to accept/refuse small orders (below our minimum order quantity or below our minimum order value) as well as to determine minimum order quantities and/or minimum order values. Information on minimum order quantities or minimum order values can be found in our catalogue, which the customer can obtain upon request. Should the customer refrain from doing so, he cannot later claim to have been ignorant of minimum order values. Minimum order quantities for special production runs are dependent on the type of product and must be agreed on by the parties.

( 3 ) If an order qualifies as an offer according to § 145 BGB, we have the right either to accept it within 2 weeks or to submit a counteroffer. In any case the customer has to confirm his unlimited acceptance of this counteroffer to us in writing. Changes to the counteroffer are to be understood as a new offer on the part of the purchaser.

( 2 ) Samples available to the purchaser prior to an order represent only the general character of the goods, however, they are not binding for the delivery. By placing an order the purchaser acknowledges the quality of our samples. In this case a separate written release is not necessary. Discrepancies between the delivery and prototypes, samples and prior deliveries are allowed according to the provisions of DIN standards valid at that time or according to other relevant technical standards and do not give the purchaser any right for complaint. We reserve the right to alter the specification of the product according to legal requirements as long as this does not result in any deterioration in terms of quality and suitability.

( 3 ) Property rights and copyrights of designs, drawings, specifications, calculations and any other documents remain the property of La-Pha-Pack. This is also valid for written documents that are marked "confidential". They may be made accessible to third parties only with our explicit permission.

## § 3 Prices / Terms of Payment

( 1 ) The sales price is the price indicated by us. Where it is not mentioned, it is the price stated in the price-list valid at the time of ordering. We reserve the right to increase the price after informing the customer in good time and before delivery of the goods to such an extent that is necessary according to general cost developments out of our control (such as exchange rate fluctuations, currency regulations, changes in customs duties, increases in costs of

materials, wages or manufacturing) or according to changes concerning our delivery services.

( 2 ) Unless otherwise indicated in the confirmation of order, our prices are to be understood as „ex works“. While our prices include our chosen form of standard packaging, they do not, however, include the costs for pallets that are excluded from an exchange deal. Costs for pallets are dependent on the number of pallets, the type of pallet (oneway / EURO / plastic / wood fibre pallets) and on possibly additionally required packaging instructions (export packaging / edge protection, etc.) and can be determined only after commissioning of the order. These costs will be invoiced in all cases. Special packaging requires a written agreement. The resulting costs are covered by the purchaser. We take back transport packaging (cartons) within legal regulations on condition that the purchaser returns it to us freight-free and within an appropriate period.

( 3 ) VAT is not included in our prices; it will be indicated separately on the invoice in the legally fixed amount valid on the date of invoicing.

( 4 ) Costs for certificates and authentication forms required by customs or export regulations are not included in the price. In all cases these costs must be covered by the purchaser and will be invoiced.

( 5 ) The deduction of cash discount requires a special written agreement. We do not accept any differing terms of payment.

( 6 ) Unless otherwise indicated in the confirmation of order, the invoice must be paid net (without any further reduction) within 30 days from the invoice date. Settlement of the invoice must take place within this period in such a way that the balance is at our disposal on the due date. All expenses connected to payment (such as bank charges, commission etc.) are covered by the purchaser. In the event of default in payment legal regulations apply.

( 7 ) The purchaser only has the right to offset our claims against his counterclaims if his counterclaims have been determined legally binding, are undisputed or have been accepted by us. Furthermore, he is entitled to make use of the right to retain only as long as his claims are based on the same contract.

( 8 ) In the event of improper settlement of open invoices we are entitled to withdraw from the contract if we learn about the liquidation of the purchaser's company, about an oath of disclosure or about a change of ownership as a result of financial difficulties. If any doubts arise about the purchaser's ability to pay, either before or after conclusion of the contract, we have the right to ask for an advance payment at any time.

## § 4 Delivery Time

( 1 ) Delivery times are not binding and represent only the estimated delivery time, unless compliance to it has been explicitly guaranteed in writing. Consequently, stated delivery times are under no circumstances to be understood as firmly fixed delivery times. The start of the delivery period indicated requires previous clarification of all technical and commercial queries.

( 2 ) Compliance with our obligation for delivery occurs on condition that the purchaser has fulfilled his contractual obligations properly and in good time. We reserve the right to make an objection to an unfulfilled contract.

( 3 ) In the event of default of acceptance or should the purchaser fail to meet other obligations through his own fault, we are entitled to demand compensation of any resulting damage including possible additional costs. We reserve the right to further claims.

( 4 ) Provided that the conditions outlined in para. 3 are applicable, the risk of accidental loss or deterioration of the purchased item is transferred to the purchaser if he is in default of acceptance or in default of the debtor.

( 5 ) We are liable according to legal regulations provided that the contract constitutes a time purchase as defined by § 286 para. 4 BGB or by § 376 HGB. We are also liable according to legal regulations provided



that, due to default in delivery caused by us, the customer has the right to claim a lapse in interest in the further fulfilment of the contract.

( 6 ) Furthermore, we are liable according to legal regulations should the default in delivery be due to a violation of the contract caused by us either deliberately or out of gross negligence; we take full responsibility for any fault on the part of our representatives or our agents. Should the default in delivery not have been caused by a deliberate violation of the contract, our liability for compensation is limited to the predictable, typically occurring damage.

( 7 ) We are also liable according to legal regulations if we are responsible for default in delivery that has been caused by a violation of an essential contract obligation on our part; in this case, however, liability for compensation is limited to the predictable, typically occurring damage.

( 8 ) Unless otherwise defined by the law, the predictable, typically occurring damage is fixed to a maximum of the value of the goods.

( 9 ) We reserve the right to make partial deliveries.

( 10 ) Our goods are excluded from exchange; legal regulations remain unaffected by this. Samples of standard products, provided they are in stock, can be provided at any time free of charge and without obligation in order to enable the purchaser to convince himself of the suitability of the product for its intended purpose in advance. Should the purchaser refrain from sampling the product beforehand, he will later have no right to exchange the product due to non-suitability. Our goods are also excluded from returning due to ordering errors. We are under no obligation to provide a certain quantity of samples free of charge or to supply these free of freight and customs charges to the recipient's address.

## § 5 Devolution of Risk

( 1 ) The risk of damage to or loss of the goods will be transferred to the purchaser as follows:

- Provided that the goods are not delivered in our business premises transfer will occur at the time of handing over to the haulage contractor, carrier or other transportation persons or, if the purchaser is in default of acceptance, at the time that the goods are offered for handing over;
- Provided that the goods are delivered in our business premises ( ex works ) transfer will occur at the time that we inform the purchaser that the goods are ready for collection.

( 2 ) If the purchaser wishes, we can arrange for the delivery to be insured against risk of transport. The resulting costs are covered by the purchaser.

## § 6 Liability for Defects

( 1 ) Claims in respect of defects made by the purchaser require that he has complied with his responsibility to investigate and complain according to § 377 HGB. If the purchaser does not give us the opportunity to convince ourselves of the defect, especially as long as he does not provide us with samples of the goods complained of upon request, he cannot make a claim in respect of defects. Goods complained of cannot be returned to us until a full investigation and clarification of the claim as well as consultation with us have taken place.

( 2 ) A defect only exists if there is an objective discrepancy between the purchased goods and the specifications or designs that they are based on. A complaint cannot be made about product features that are not specified and therefore not guaranteed.

( 3 ) If a defect in the purchased goods is found to exist, the purchaser is entitled to demand remedy either in form of a correction of the defect or in form of the delivery of new goods free of defects, in which case the cheaper alternative should be chosen first. We are responsible for carrying all costs involved in the correction of the defect, particularly transport costs, labour costs and material costs, as long as these are not increased as a result of transportation of the purchased goods to a place other than the place of fulfilment.

( 4 ) If a correction of the defect or delivery of new goods free of defects fail to take place, the purchaser has the right to either withdraw from the contract or to demand a reduction.

( 5 ) We are liable according to legal regulations if the purchaser sets up a claim for damages that are caused by intention or by gross negligence, including those caused by intention or by gross negligence on the part of our representatives and employees. Unless we are guilty of intentional violation of the contract, liability for claims for damages is limited to the predictable, typically occurring damage .

( 6 ) We are liable according to legal regulations if we are guilty of violating an essential term of the contract; in this case, however, liability for compensation is limited to the predictable, typically occurring damage.

( 7 ) Should the purchaser be entitled to compensation instead of delivery of the goods, liability by us is limited to the predictable, typically occurring damage. This includes cases outlined in ( 4 ).

**( 8 ) Unless otherwise defined by the law, the predictable, typically occurring damage is fixed to a maximum of the value of the goods.**

( 9 ) Liability for violation of life, of the body or of health remains unaffected; this is also valid for imperative liability according to the product liability law.

( 10 ) Unless otherwise stated in the above, liability is excluded.

( 11 ) The statutory period of limitation for claims for damages is 12 months, starting at the time of devolution of risk.

( 12 ) In the event of a recourse concerning the delivery, the statutory period of limitation according to §§ 478, 479 BGB remains unaffected; it amounts to 5 years, starting with the time of delivery of the defect goods.

( 13 ) As far as mass production goods are concerned, we are entitled to deliver up to 10 per cent more or 10 per cent less than the ordered quantity without having to adapt our selling price; it is also agreed that goods delivered on this basis are regarded as conforming to the contract.

## § 7 Protective Rights

( 1 ) If goods are manufactured according to the customer's specifications, the customer is responsible for ensuring that possible industrial property rights belonging to a third party are not affected by the production of these goods. The purchaser is liable to us for all damages caused by the assertion of industrial property rights.

## § 8 Total Liability



( 1 ) Further liability for compensation than outlined in § 6 is excluded regardless of the legal nature of the claim. This is valid in particular for claims for compensation due to violation of other obligations or for tort claims for material damages according to § 823 BGB at the time of conclusion of the contract.

( 2 ) The limitations stated in paragraph ( 1 ) are also valid should the purchaser demand compensation of unnecessary expenditures and not compensation of damages instead of fulfilment.

( 3 ) If liability for compensation by us is excluded or limited this is also valid for the personal liability for compensation of our employees, representatives, agents and other members of staff.

## **§ 9 Proprietary Rights**

( 1 ) All goods remain in our property until complete payment as stated in the delivery contract has been received. In the event of any breach of contract on the part of the purchaser, in particular default in payment, we have the right to withdraw the goods. A withdrawal of the purchased goods by us equates to a withdrawal from the contract. We have the right to commercialize the goods after withdrawing them, the resulting profits are to be deducted from the purchaser's debts after allowing for a reasonable amount for any costs resulting from commercialisation of the goods.

( 2 ) The purchaser has an obligation to handle the purchased goods carefully, particularly to insure these sufficiently against fire and water damages as well as theft at nominal value at his own expense. In the event of maintenance or inspection works becoming necessary, the purchaser must carry these out in good time and at his own expense.

( 3 ) In the event of seizure or other interventions by third parties, the purchaser must inform us immediately in writing to enable us to institute proceedings according to § 771 ZPO. If the third party is not in a position to refund the legal and extrajudicial costs of the proceedings according to § 771 ZPO, the purchaser is liable for the deficit resulting to us.

( 4 ) The purchaser has the right to resell the purchased goods in the ordinary course of business; however, he assigns to us all claims amounting to the total sum of our invoice (incl. VAT) and arising from the resale of the goods to his customers or any third parties, independently of whether processing of the goods has taken place or not before the resale. The purchaser remains entitled to collect the claim after transferral of claims has taken place unless he has become the debtor in an insolvency proceeding or he has become unable to pay, in which case he must notify us immediately. Our right to collect the claim ourselves remains unaffected. However, we commit ourselves not to collect the claim as long as the purchaser meets his obligations to pay out of the sales proceeds, does not make default in payment and particularly as long as no composition proceedings or insolvency proceedings have been instituted or payments have been stopped. In this case, however, we have the right to demand that the purchaser inform us about the assigned claims and their debtors as well as all details necessary for collection, that he hands over all appropriate documents and that he notifies the debtors (the third party) about the assignment of the claims.

( 5 ) Any reprocessing or modification of the purchased goods on the part of the purchaser is always carried out for us. In the event of the purchased goods being reprocessed with other goods not belonging to us, we acquire joint ownership of the new product in the ratio of the value of the purchased goods (total invoice amount including VAT) to that of the other processed goods at the time of reprocessing. In addition, the same is valid for the new product resulting from reprocessing as for the purchased goods delivered under reservation of proprietary rights.

( 6 ) In the event of purchased goods being unseparably mixed with goods not belonging to us, we acquire joint ownership of the new product in the ratio of the value of the purchased goods (total invoice amount including VAT) to that of the other mixed products at the time of mixing. If the mixing is done in such a way that the purchaser's goods can be regarded as the main component, it is agreed that the purchaser assigns to us proportional joint ownership. The purchaser takes the resulting product in sole or joint ownership into safe-keeping for us. In addition, the same is valid for the resulting product as for the purchased goods delivered under reservation of proprietary rights.

( 7 ) The purchaser also assigns to us the claims for the protection of our claims against him, arising either through a connection of the purchased goods with real estate or against a third party.

( 8 ) We commit ourselves to releasing sureties entitled to us upon the purchaser's request if the achievable value of our sureties exceeds our secured claims by more than 10 per cent; the selection of the sureties to be released is made by us.

## **§ 10 Applicable Law / Place of Jurisdiction**

( 1 ) This agreement is subject to German law excluding UN purchasing law.

( 2 ) The purchaser agrees to the responsibility of the court of jurisdiction at our business location. However, we also have the right to institute proceedings at the court of jurisdiction responsible for the purchaser or at any other court of jurisdiction that is responsible according to national or international law.

## **§ 11 Others**

Should any of the general terms and conditions mentioned above be totally or partially invalid, the validity of the remaining terms and conditions remains unaffected.