

General Terms and Conditions of Lallemand Deutschland GmbH

1. Scope of Application, Written Form, Conclusion of Contract

- (1) These General Terms and Conditions ("GTC") apply to all purchase contracts and labour and materials contracts ("Purchase Contract") between Lallemand Deutschland GmbH, Schwarzenbach a. d. Saale (Germany) and our customers ("Purchaser"). The GTC do only apply if the purchaser is an entrepreneur (Section 14 German Civil Code [BGB]), a corporate body under public law or a special fund under public law. The GTC are exclusively valid; General Terms and Conditions of the Purchaser shall not apply either, if he explicitly refers to them in his order.
- (2) The GTC shall apply as framework agreement also to future purchase contracts with the same Purchaser without reference made to them on our part in each single case. We will inform the Purchaser about any amendments of our GTC by sending him the new GTC. The new GTC shall then be valid as of the next order of the Purchaser as new framework agreement, unless the Purchaser does not object to them within 3 calendar days after receipt of the new GTC. In this case, we are entitled to rescind from the relevant order for which the new GTC shall apply and to not deliver the goods. In this case, the Purchaser shall not be entitled to demand damages for non-delivery.
- (3) Individual agreements including trade clauses have priority over the GTC. A written contract or our written confirmation, resp., is decisive for the content of such agreements, provided they are not confirmed by the Purchaser together with the GTC. In case of doubt, international trade clauses according to the INCOTERMS® of the International Chamber of Commerce in Paris (ICC) shall be provided in its latest version when the contract is concluded.
- (4) Any information regarding the validity of legal provisions have clarifying meaning only. Even without such a clarification, the legal provisions shall, thus, apply, unless they are not directly amended or explicitly excluded in these GTC.
- (5) Declarations and notifications relevant in law which are provided by the Purchaser after conclusion of contract (e.g. setting a deadline, revocations, notices of defects, notification about withdrawal or reduction), require written form to become effective. Apart from that, in the case of contractual or legally prescribed written form of notifications, the text form shall suffice for the preservation (in particular telefax or email).
- (6) Our offers are, unless otherwise provided for, nonobligatory and non-binding. The written order of goods by the Purchaser shall be deemed as binding contract offer which due to the absence of a deviating provision remains valid for at least 8 days.
- (7) A binding purchase contract is concluded upon written order confirmation or delivery of goods by us. This shall also apply if the order confirmation has minor deviations from the order or such that are normal in trade. Such deviations are regarded as approved if and insofar the Purchaser does not object immediately (normally within 8 days). If order and order

confirmation match, the Purchaser shall not have the right of objection.

2. Delivery, Place of Fulfilment, Transfer of Risk

- (1) Unless otherwise agreed, the delivery is made ex works which is defined in the order confirmation, where also the place of fulfilment for the delivery and a possible supplementary performance shall take place. The delivery is made according to the agreed kind of delivery to the place of business of the Purchaser or to the delivery address he indicated in his order. If no kind of delivery is agreed upon, we shall be entitled to determine it ourselves.
- (2) The dispatch of the goods is effected at the costs and risk (destruction, deterioration and delay) of the Purchaser. If the dispatch is delayed because of reasons which we are not responsible for, the risk shall be transferred to the Purchaser after notification that the goods are ready for shipment. The legal transfer of risk due to default of acceptance as well as other rights deriving from the default of acceptance (e. g. compensation for storage costs or other additional costs) shall remain unaffected.
- (3) As far as it is reasonable for the Purchaser, we shall be entitled to part deliveries.

3. Delivery Deadline, Non-Availability of Performance, Delay in of Delivery

- (1) The delivery deadline is agreed individually or indicated by us in the scope of the order confirmation. If this is not the case, the delivery period is about 2 weeks as of conclusion of the contract.
- (2) If we are not able to keep a binding delivery deadline due to reasons which we are responsible for (non availability of performance), we shall immediately inform the Purchaser by indicating the reason for the delay and, if possible, the new expected delivery deadline. If the performance is not available at all or not available even within the new delivery deadline available, resp., we shall be entitled to completely or partly withdraw from the contract; in any case, we will then immediately repay any consideration already made by the Purchaser. In particular, non-availability of performance is given if we are not supplied in time by our pre-supplier and it is neither our fault nor that of our pre-supplier or if we were from the outset not obliged to procure as well as in cases of force majeure. The rights of the Purchaser in the case of delay in delivery shall remain unaffected.
- (3) The preconditions of the delay in delivery are stipulated in the legal provisions, however, in all cases a written reminder of the Purchaser is necessary.
- (4) Any claims of the Purchaser for damages instead of performance pursuant to Figure 9 as well as our legal rights, in particular in the case of exclusion of the obligation to perform (e. g. due to impossibility) shall remain unaffected.

4. Purchase Price, Ancillary Costs, Due Date

- (1) Unless otherwise stipulated in our order confirmation or individual agreements, our prices valid when the

order is placed shall apply, namely ex works plus legal VAT and other public charges (e. g. customs, fees). Furthermore, the Purchaser shall bear other ancillary costs of the purchase, in particular in individual cases charged costs for packaging, dispatch and insurance.

- (2) The purchase price with ancillary costs is due for payment within 14 days as of invoice date (provided the invoice is received within 5 days after invoice date) and delivery of goods without deductions, unless otherwise agreed or stated in the invoice in favour of the Purchaser (e. g. discount, longer payment deadline). We are entitled to carry out the relevant delivery partly or completely against pre-payment only. We will explain the respective proviso in our order confirmation at the latest.
- (3) All payments shall be made by bank transfer in EUROS to our bank account which is indicated in our invoice.

5. Delay in Payment, Counter-Rights, Objection of Uncertainty

- (1) When the payment deadline expires pursuant to Figure 4(2) the Purchaser is in default. The purchase price shall bear interest during the delay. The relevant applicable legal default interest rate shall apply - subject to further damage caused by default. Our claim to commercial maturity interest pursuant to Section 353 German Commercial Code [HGB] shall remain unaffected.
- (2) The Purchaser shall only be entitled to offset rights or rights of retention insofar if his claim is legally effective or undisputed. In the event of defects in delivery, counter-rights of the Purchaser, in particular pursuant to Figure 8(5) shall remain unaffected.
- (3) If it becomes recognizable after conclusion of the contract that our contractual payment claims are endangered through a lack of performance of the Purchaser (e. g. permanent or temporary impediments of performance), we are according to the legal provisions entitled to refuse performance and - if necessary, after setting a deadline - to withdraw from the contract (Section 321 BGB). We can immediately declare out withdrawal from contracts about the production of specific individual items (custom-made items); the legal regulations about the dispensability of setting a deadline shall remain unaffected.

6. Reservation of Ownership

- (1) Until full payment of all claims resulting from the purchase contract and an ongoing business relationship, we remain ownership of the goods ("goods subject to reservation of title"). If further formalities are necessary for the effective agreement of the reservation of ownership according to the relevant applicable local property law of the Seiler (e.g. registrations), the Purchaser shall be obliged to contribute correspondingly if and insofar this shall be legally or actually necessary.
- (2) The Purchaser shall handle the goods subject to reservation of title with care and, if necessary, carry out necessary maintenance and inspection work in time. The goods subject to reservation of title are to be insured to the usual extent at their

replacement value against property damage (especially fire, water and theft damage).

- (3) The goods subject to reservation of title may neither be pledged to third parties nor assigned as collateral prior

to full payment of the secured claim. The Purchaser shall immediately inform us in writing if and when third parties seize the goods subject to reservation of title.

examine the goods as to defects according to the legal

- (4) If the Purchaser behaves contrary to the contract, especially in the event of non-payment of the due purchase amount, we are entitled to withdraw from the contract according to the legal provisions and/or to demand the return of the goods subject to reservation of title due to the reservation of ownership. Likewise, the claim for the return of the goods shall not be regarded as declaration of withdrawal; moreover, we are entitled, to just demand the return of the goods subject to reservation of title and to reserve us the withdrawal. If the Purchaser does not pay the due purchase price, we can only assert these rights if we have set the Purchaser an appropriate deadline for payment before which was unsuccessful or such setting of a deadline is unnecessary according to the legal provisions.
- (5) Until revoked according to the following point c), the Purchaser shall be entitled to resell and/or to process the goods subject to reservation of title in the ordinary course of business ("extended reservation of title"). In this case, the following provisions shall additionally apply:
- a) The reservation of title shall cover all products produced by manufacturing, mixing or combination of our goods at their full value, whereas we are deemed as manufacturer. If the ownership of third parties continues to exist with a processing, mixing or combination with goods of them, we shall acquire co-ownership in the ratio of the invoice values of the processed, mixed or combined goods. Apart from that, the same shall apply to the product being created as to the goods subject to the reservation of title.
 - b) The Purchaser hereby already assigns to us any arising claims against third parties from the resale of the goods subject to the reservation of title or the product in the full amount as collateral. We accept the assignment. The Purchaser's duties stipulated under (2) and (3) shall also apply in view of the assigned claims.
 - c) The Purchaser shall remain entitled to collect the assigned claim in addition to us. We shall be obliged to not collect the claim as long as the Purchaser fulfils his payment duties towards us and we do not assert the reservation of title by exercising a right according to Figure 6 Par.(4) If this is the case, we can demand that the Purchaser notifies us about the assigned claims and their debtors, provides all necessary details for collection, hands over all associated documents and informs the debtors (third parties) about the assignment. Furthermore, in this case we shall be entitled to revoke the permission of the Purchaser for resale and processing of the goods subject to retention of title.
 - d) If the realisable value of the collaterals exceeds our claims by more than 10 %, we will release collaterals on demand of the Purchaser at our own discretion.

7. Examination, Approval

- (1) The Purchaser shall be obliged to immediately

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provisions (Sections 377, 381 HGB) and the following regulations (including wrong and short delivery). He shall also examine a suspicious case of defect to a reasonable effort.

- (2) If the examination shows immediately or later (also due to complaints of the customer of the Purchaser) a defect, we shall be immediately notified about that in writing. "Immediately" means if the notification is made within two weeks.
- (3) Irrelevant of the above-mentioned obligation of examination and complaint, the Purchaser shall notify us in writing about obvious defects within two weeks as of delivery. In additions, any transport damage, if possible, shall be directly reported and complaint about to the transport company and stated in the acknowledgement of receipt.
- (4) If the Purchaser fails the proper examination and/or notice of defects, the goods shall be deemed as approved regarding the not reported defect.

8. Claims for Defects of the Purchaser

- (1) Unless otherwise agreed hereinafter, the legal provisions shall apply to the rights of the Purchaser in the event of material defects and defects of title (including wrong and short delivery as well as inappropriate assembly or deficient assembly instructions). In all cases, the legal special provisions remain unaffected at final delivery of the goods to a consumer (Supplier Regress pursuant to Sections 478, 479 BGB) as well as manufacturer warranties delivered with the goods. Manufacturer warranties apply, however, unless otherwise agreed, only towards the last consumer; the Purchaser cannot refer to them.
- (2) The basis for the liability for defects is, first of all, the made agreement about the nature of the goods. All product specifications which are the subject of the individual purchase contract or which are publicly announced by us (especially in catalogues or on our interne! homepage) are deemed as agreement about the nature of the goods. We shall not be liable for public statements of third parties (e. g. advertisement statements of subcontractors).
- (3) Apart from that, the question about the defectiveness shall be assessed according to the legal provision. If, in this context, compliance with product requirements subject to public law are relevant (including product or market-based behavioral obligations), only the relevant provisions for us in the Federal Republic of Germany shall serve as a rule. Different product requirements abroad, especially those of the country of destination of the product, shall only be regarded if this is explicitly agreed in the individual case.
- (4) The claims for defects of the Purchaser require that he has fulfilled his obligations regarding examination and notification about defects pursuant to Figure 7. Minor deviations or those that are common in business in the delivery from the goods ordered, viewed or illustrated or described in catalogues or on our interne! homepage (e. g. regarding surfaces, colours, design, material combination, etc.) are not regarded as defect.

- (5) If the delivered goods are defective, we can choose if supplementary performance is effected through elimination of the defect (subsequent improvement) or delivery of a defect-free item (replacement delivery). The right to refuse subsequent improvement under the legal preconditions shall remain unaffected. We can

make the supplementary performance dependent on the payment of the due purchase price by the Purchaser. The Purchaser is entitled on his part to temporarily withhold a part of the purchase price in an appropriate ratio to the defect.

- (6) The Purchaser shall grant us the necessary time and opportunity for supplementary performance, especially he shall hand over the defective goods for examination purposes. In the event of a replacement delivery, the Purchaser shall return the defective item according to the legal provisions. The supplementary performance does neither contain the dismantling of the defective item nor the new assembly.
- (7) We bear the expenses necessary for examination and supplementary performance purposes, especially work and material costs (not: dismantling and assembly, travelling and transport costs) if a defect actually exists. If it turns out, however, that the demand for remedying the defect of the Purchaser is not justified, we can demand the reimbursement of the incurred costs from the Purchaser.
- (8) If the supplementary performance fails or an appropriate deadline set by the Purchaser has unsuccessfully expired or is unnecessary according to the legal provisions, the Purchaser can withdraw from the purchase contract or reduce the purchase price. In the event of an insignificant defect, however, the right of withdrawal shall not exist.
- (9) If third parties have intellectual property rights at the goods which prevent the Purchaser from using the goods as intended or impede the usage, this shall be deemed as defect of title. In the scope of the supplementary performance, we are in particular entitled to eliminate the defect through obtaining rights of use in favour of the Purchaser, through change of the goods or through exchange of goods free of defects of title.
- (10) Deviating from Section 438 Par. 1 No. 3 BGB, the general limitation period for claims deriving from material defects and defects of title (limitation period) is one year as of delivery. After expiry of the limitation period, claims for defects are excluded; legal special provisions regarding the limitation period (especially Sections 438 Par. 1 No. 1 and 2, Par. 3, 479 BGB) shall remain unaffected. Any claims for damages pursuant to Figure 9 shall become statute-barred exclusively according to the legal provisions.
- (11) Any claims of the Purchaser for damages or replacement of wasted expenditures exist in the case of defects only according to the above-mentioned provisions in connection with Figure 9 and, apart from that, are excluded. As a rule, we are not obliged towards the Purchaser to examine the components processed in our goods. If such an obligation, however, exists due to the circumstances in the individual case, it shall not be deemed as an essential contractual duty. We do not take over any responsibility for the manufacturing process of our subcontractors.

9. Damages, Withdrawal

- (1) We are liable for damages according to the

legal provisions, unless otherwise agreed hereinafter. For breaches of duty - irrelevant of the legal ground - we shall be responsible for intent and gross negligence. In the case of ordinary negligence, we shall only be liable a) for damage from injury to life, to body or health and

- b) for damage from not insignificant injury of an essential contractual duty (obligation, the fulfilment of which makes the proper execution of the contract possible in the first place and on which adherence the contractual partner regularly trusts and may trust); in this case, however, the liability is limited to the replacement of the foreseeable, typically occurring damage.
- (2) The above-mentioned limitations of liability shall also apply in favour of our employees, representatives and helpers. The legal provisions shall exclusively apply to claims according to the product liability act.
- (3) Due to a violation of a contractual obligation, which is not a defect, the Purchaser can only withdraw or cancel if we are responsible for the violation. The right of withdrawal of the Purchaser in the case of a delay in delivery pursuant to Figure 3(3), including the legal provision as to the burden of proof, shall remain unaffected. Apart from that, the legal preconditions and legal consequences shall apply to rights of withdrawal and rights of cancellation.

10. Choice of Law, Place of Jurisdiction

- (1) These GTC and the contractual relationship between the parties shall be governed by the law of the Federal Republic of Germany to the exclusion of the International uniform law, especially the UN sales law. The choice of law shall also apply to non-contractual obligations which are closely related to the contract. Apart from that, scope and scale of the choice of law are determined according to the legal provisions.
- (2) If the Purchaser is a merchant, a corporate body under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising from the contractual relationship shall be the local court or regional court of Hof, Germany. The same applies if the Purchaser is an entrepreneur. In all cases, we are also, however, entitled to file a suit at the place of fulfilment of the delivery obligation pursuant to Figure 2(1) or a higher ranking individual oral agreement or at the general place of jurisdiction of the Purchaser.