

General Terms and Conditions

I. GENERAL

1. All product offers and sales by the seller, or product orders with the seller, are conducted in business transactions with business partners based on these General Terms and Conditions. Individual agreements made in specific cases require written form. Any general terms and conditions of the buyer are hereby expressly excluded. The version of the T&Cs provided on the seller's website at the time of conclusion of the contract shall apply.
2. In these General Terms and Conditions, „Seller“ means: LUCOBIT AG; „Buyer“ means: Any natural or legal person or other partnership that places an order for products or with whom a contract is concluded; „Products“ means: Any type of products or parts thereof offered for sale by the seller; „Contract“ is any agreement between seller and buyer regarding the products.

II. PRICES

1. The seller has the right to set the prices at which it offers products for sale at any time and anew.
2. Unless otherwise agreed in the acceptance of the order by the seller, the price for products or parts thereof shall be the price stated in a binding order confirmation from the seller to the buyer in written form.
3. The price offered by the seller for the products is a net goods price and is understood to be ex works plus any costs for freight and insurance plus the statutory value-added tax applicable at the time of delivery. Duties and costs arising outside of Germany, such as taxes, customs, fees, acceptance costs, etc., are to be borne by the buyer.

III. ORDERS AND DELIVERIES

1. Offers from the seller are subject to change and non-binding unless they are marked as binding. Orders from the buyer become binding for the seller only through binding acceptance in written form or with the delivery of the products, whichever event occurs first. Upon the buyer's order, the buyer will receive either a binding order confirmation or only a preliminary, non-binding order confirmation from the seller, with the latter not yet accepting the buyer's order and only providing a preliminary working price/target price if the sales price cannot yet be determined. Only with the binding order confirmation does the buyer's order become bindingly accepted, and the purchase contract is concluded at the price stated therein. Both the preliminary and the binding order confirmation require written form to be effective. Order changes made by the buyer are binding for the seller only after confirmation in written form.
2. Commercial deviations in terms of the weight or volume of the products delivered compared to the buyer's order are permissible and are deemed to have been agreed upon as conforming to the contract. The buyer has to pay for the actual quantity delivered. Within a reasonable and tolerable range for the buyer, the seller is entitled to partial deliveries, the additional costs of which are borne by the seller.
3. The application of further delivery conditions, such as the Incoterms, requires their agreement, which can be made in particular by corresponding references in the binding order confirmation from the seller.
4. Delivery dates are only binding if they have been agreed upon individually as binding.
5. The seller reserves the right to claim all storage and other costs incurred from the delivery date onward, if these are due to a delay in acceptance caused by the buyer.
6. If delivery is made in truck containers, the buyer must return these to the respective transport company in perfect condition for return no later than one business day from the time the products arrive at the buyer. In case of a delayed return for which the buyer is responsible, the buyer must pay the seller damages in the amount of the rent usually charged by the seller. The assertion of further damage remains reserved. The buyer is allowed to prove that the damage was less.
7. The risk of accidental loss or damage to the product passes to the buyer at the time of delivery. The time of delivery is (I) in the case of collection by the buyer, the handover to the buyer (II) in the case of dispatch to the buyer – even if the dispatch is agreed as an additional service by the seller individually – the handover to the respective forwarder or carrier.
8. The buyer will comply with all procedures regarding proper, safe handling and use as well as all governmental requirements regarding safety and health in connection with the products and take appropriate measures to inform his employees, agents, contractors, customers, and other affected third parties regarding the requirements for proper use and handling and risks associated with the products. These measures include in particular the dissemination of the respective information on the SDS. The buyer will not deliver or hand over any products to parties if the buyer reasonably believes that these parties will handle, transport, use, store, or dispose of the products in an unsafe manner or contrary to laws or the seller's advice. The buyer agrees that the seller is entitled to immediately stop deliveries of products to the buyer if the buyer does not take the necessary measures within a commercially reasonable time to avert or mitigate an imminent threat to human health, safety, or the environment in relation to the storage, handling, and use of the products by the buyer or his agents or helpers.

IV. FORCE MAJEURE

Serious events and circumstances beyond the control of the parties, such as force majeure, labor disputes, riots, war or terrorist conflicts, shortages of raw materials and energy, traffic and operational disruptions, orders from higher authorities, unforeseeable consequences for the performance of the service, release the contracting parties from their performance obligations for the duration of the disruption and to the extent of its impact, even if they should be in default. This does not automatically lead to a termination of the contract. The contracting parties are obligated to inform each other of such an obstacle and to adjust their obligations to the changed circumstances in good faith. In the event of a permanent impediment to performance, the seller has the right to withdraw from the contract with respect to the affected products.

V. PAYMENT

1. Unless otherwise agreed, the buyer is to pay the seller the price for all products delivered by the seller without any right to deduction immediately upon receipt of the invoice or at the agreed/specify date. A set-off by the buyer is only permissible with undisputed or legally established claims.
2. The acceptance of partial payments of an invoice by the seller, regarding which the buyer asserts complete payment, does not affect the seller's right to demand full payment of the respective invoice. In the event of a payment delay, the buyer automatically and without any further required actions or formalities has to pay the statutory default interest applicable to business transactions between companies from the due date until payment.
3. If the buyer defaults on fulfilling his payment obligation or if his financial circumstances deteriorate to such an extent that the fulfillment of the seller's claims is endangered or if circumstances become known after the conclusion of the contract that endanger the seller's claim to payment due to the buyer's lack of performance, the seller is entitled to demand the entire remaining debt, except for time-barred claims. In this case, he is also entitled to demand advance payment or security for all yet to be executed deliveries or to assert a right of retention for all yet to be executed deliveries. If the advance payment or security is not provided despite a reminder with a reasonable deadline, the seller is entitled to withdraw from the contract and claim damages. Further legal rights remain unaffected.

VI. RETENTION OF TITLE

1. The products remain the property of the seller until full payment.
2. If the buyer processes products of the seller, the seller acquires co-ownership of the new items in proportion to the value of his products to the value of the other materials. If in the case of combining or mixing the seller's products with materials of the buyer, the buyer's materials are to be regarded as the main item, co-ownership of the main item transfers to the seller in proportion to the value of the seller's products to the value of the main item. In these cases, the buyer is considered the custodian. All claims arising from the sale of materials to which the seller has property rights are hereby assigned by the buyer to the seller for security purposes (if necessary, to the extent of the seller's co-ownership share of the sold materials). At the seller's request, the buyer must provide all necessary information about the stock of materials owned by the seller and about the claims assigned to the seller and inform his customers of the assignment. If the value of the securities exceeds the seller's claims against the buyer by more than 10%, the seller will release securities at the buyer's request to that extent.

VII. WARRANTY AND LIMITATION OF LIABILITY

1. The owed properties of the products are determined by agreements made about the nature of the products. Any product descriptions that are explicitly part of the individual contract are considered agreements about the nature of the products. Insofar as the nature has not been agreed upon, it is to be judged according to the legal regulation whether a defect exists or not (§ 434 Abs. 1 S. 2 and 3 BGB). Statements in safety data sheets, product data sheets, advertising materials, or similar documents or in public statements also by third parties do not constitute quality specifications. This also applies to statements made in the context of advice by employees or agents of the seller, unless they are expressly made part of the respective contract. Such statements, in particular, do not relieve the buyer from his own examination of the products regarding suitability for the intended use.
2. The buyer is obliged to inspect the delivered goods within 5 working days after delivery in terms of § 377 HGB for defects. Recognizable defects must be reported to the seller in written form within 7 working days of delivery, for defects not recognizable during the inspection, within the same period from discovery. The notification is only timely if the defect is precisely identified within the period. If the buyer fails to properly inspect and/or report defects, the seller's warranty and liability for the defect not reported or not reported in time or not properly are excluded according to the statutory provisions.

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3. In the case of timely inspection and defect notification according to item 2, defects in the delivered product will be remedied by the seller at his choice or a defect-free product will be delivered (subsequent performance). In the event of failure or refusal of subsequent performance, the buyer has the right to withdraw from the contract or reduce the purchase price. In the presence of the legal requirements, he also has claims for damages, unless something else is determined in item 4.

4. Only in the case of a culpable breach of a material contractual obligation (obligation, the fulfillment of which enables the proper execution of the contract in the first place and on the observance of which the contractual partner regularly relies and may rely) is the seller liable for damages, limited to the foreseeable, typical damage at the time of contract conclusion, unless in the case of liability under the Product Liability Act, or if damages result from injury to life, body or health, or in the case of assumption of a guarantee or if the claim for damages is based on gross negligence or intent.

5. Any liability of the seller regarding (I) the selection or use of products delivered to the buyer or (II) the storage, handling, or use of the products in a technical respect provided to the buyer by the seller, its employees, agents, or affiliated companies ("technical support") is provided to the buyer at his own risk and accepted as such. Any liability of the seller regarding the use of technical support or the results obtained through this support, except in cases of intent and gross negligence, is excluded. The buyer shall indemnify the seller against losses, damages, or liability arising from claims, demands, or lawsuits – including those from third parties – related to the preparation and provision of technical support.

6. The liability limitations arising from these GTCs also apply in case of breaches of duty by or for the benefit of persons whose fault the seller is responsible for according to legal provisions – and agents and other representatives of the seller.

7. The limitation periods for claims from material and legal defects is one year from the time of delivery. If acceptance has been agreed, the limitation period begins with the acceptance. If the product is a thing that has been used in accordance with its usual use for a building and has caused its defectiveness (building material), the limitation period is 5 years from the time of delivery according to the statutory regulation (§438 Abs. 1 Nr. 2 BGB). This also leaves untouched further special regulations for the statute of limitations (in particular §§438 Abs. 3 and 444, 479 BGB). The above limitation periods of sales law also apply to contractual and non-contractual claims for damages by the buyer based on a defect in the goods, unless the application of the regular legal limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. Claims for damages by the buyer within the framework of fault-based liability for intent and gross negligence as well as for damages from injury to life, body, or health and under the Product Liability Act, however, expire exclusively according to the statutory limitation periods.

VIII. COMPLIANCE

If a delivery violates public-law national or international provisions, in particular, against export control regulations or embargo regulations, the seller can withdraw from the contract. In the case of withdrawal, the statutory provisions apply. In the event of withdrawal, the buyer's assertion of a claim for damages or the assertion of other rights due to the withdrawal is excluded.

IX. MISCELLANEOUS

1. For the purpose of fulfilling contracts, the seller is entitled to store personal information (such as names, addresses, and email addresses) of the buyer as well as employees, agents, and other representatives of the buyer for processing and/or archival purposes.

2. The buyer must treat the contract and business information related to the contract provided by the seller as confidential. The use of the seller's trademarks is only permitted to the buyer after explicit prior written consent from the seller.

3. The seller is entitled to assign all claims against the buyer, including claims for damages, arising in connection with deliveries and other services to the buyer, to third parties. The assignment of claims or the transfer of other rights that the buyer has against the seller is excluded.

4. If provisions of the contract or these General Terms and Conditions are or become invalid or unenforceable, the validity of the remaining provisions remains unaffected. The parties are obliged to agree on an effective provision in place of the invalid or unenforceable provision, which comes economically closest to the invalid provision. In the event of a gap, the parties are obliged to agree on a provision that corresponds to what would have been reasonably agreed according to the meaning and purpose of this agreement, had the matter been considered from the outset.

5. A waiver of the application or enforcement of individual or all provisions of these General Terms and Conditions in individual cases does not constitute a waiver of the application or enforcement in future cases.

X. APPLICABLE LAW, PLACE OF PERFORMANCE AND JURISDICTION

1. The contract is subject to, excluding the UN Convention on Contracts for the International Sale of Goods in all respects, German law and is to be interpreted accordingly.

2. The place of performance for all obligations of both parties from this contract is the seller's headquarters.

3. For disputes arising from and in connection with the contract, the exclusive jurisdiction is Cologne, Germany.

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