

# GENERAL SALES CONDITIONS

## Fa. Lenser Filtration GmbH, Senden/Germany

### I. General

The conditions hereafter set out in their respective form exclusively apply to all our deliveries and services. This also applies if the customer uses its own general conditions diverging from our conditions. Such conditions of the customer are hereby expressly rejected. Any deviations from our conditions as well as oral, telegraphic or telephonic statements require, in order to be binding, our confirmation in writing. This does also apply should we unreservedly execute deliveries knowing about deviating conditions of the customer. Our conditions apply as well for any subsequent business transactions.

### II. Conclusion of Contracts

- (1) Our offers are not binding. A contract is concluded only by our offer confirmation or performance of the order. The scope of our delivery obligation is always subject to our order confirmation.
- (2) All our information in offers, sales literature etc. as well as statements as to measures, weight and performance are only approximate and are not guarantees as to quality or durability.
- (3) Modifications which are technically useful and do not impair the usability as provided by contract as well as technical improvements remain reserved.

### III. Orders on Call

- (1) In case of orders on call, each partial delivery will be deemed as a separate contract.
- (2) Subject to any specific other agreement the goods subject to a purchase contract must always be accepted within one year.
- (3) The customer must grant to us a reasonable period of time of at least two months for the delivery under an order on call, depending on the labor market situation.

### IV. Samples/Drawings/Patents/other Industrial Property Rights

- (1) Samples and drawings which have been made available to us shall be returned only upon written request. In case no contract is concluded, we are entitled to destroy samples and drawings 3 months after having submitted our quotation.
- (2) With the delivery of goods made in accordance with drawings, models or samples we do not assume any liability whatsoever in respect to any industrial property rights. The examination of any such industrial property rights is the exclusive obligation of the customer. The customer hereby indemnifies us against any claims of any kind of third parties arising from the infringement of such industrial property rights.
- (3) We retain full title and copyright to all documents such as illustrations, drawings, etc. which we make available to the customer. Such documents may be used by the customer only for the purpose agreed to in the contract. The customer is not entitled to make such documents available to third parties without our prior written consent.

### V. Delivery, Time of Delivery

- (1) Reservation is made that we are supplied in time, correct and sufficient with all material required to fulfill our obligations to the customer failing which we are allowed to withdraw from the contract.
- (2) Time of delivery as indicated by us is always without obligation. In case of an agreed fixed delivery time, the delivery period commences upon dispatch of the order confirmation, but not prior to the customer providing all documents, permissions, clearances etc. and full clarification of all technical issues by the customer. The delivery period shall be met if, prior to its expiration, the goods have been dispatched from our works or if we have notified the customer that the goods are ready for dispatch.
- (3) In the event of special circumstances, such as in particular operational disturbances of any kind, labor disputes, lack of raw materials, governmental measures of any kind, breakdown of important production equipment and any event of force majeure, we are for the duration of the obstacle and to the extent of its effects, released from our obligation to deliver, our obligation to pay damages and any payment of agreed upon penalties, insofar as we are not liable for such situation.

### VI. Delay and Impossibility

- (1) Regardless of the right of the customer to withdraw in case of defects (XII. Warranty) the customer can exercise its right of withdrawal in case of impossibility or delay only in case of the violation of a duty for which we are responsible.
- (2) In case of delay the withdrawal or claim for damages instead of performance require that the customer has previously fixed in writing a reasonable time limit of at least 4 weeks and with it has made it expressly clear that in case of non-compliance with the time limit he will withdraw from the contract and/or claim for damages. After expiration of such deadline the customer is obliged upon request by us to declare whether he further on claims delivery or if he claims damages or withdraws from the contract. If customer within a reasonable time limit set by us does not make such a declaration he is not entitled to refuse delivery and can he cannot withdraw from the contract and cannot claim damages instead of performance.
- (3) The setting of a time limit according VI. (2) above is not necessary if we seriously and finally refuse the contractual performance or if specific circumstances

prevail which justify the immediate withdrawal taking into account the interests of both parties.

- (4) The customer cannot withdraw before performance is due nor in case of a mere insignificant breach of duty by us. Withdrawal is finally excluded if customer alone or predominantly is liable for the circumstances which would entitle him to withdraw or if circumstances prevail during the delay of the customer for which we are not responsible.
- (5) On claims for damages and compensation for expenses due to delayed or impossible performance No. XIII. of these conditions applies.

### VII. Prices

- (1) Subject to any other specific agreement, prices are ex works plus the statutory value added tax as applicable at the time.
- (2) The prices are calculated on the basis of the economic situation at the time of the order confirmation, in particular cost price, i.e. prices for raw-, auxiliary- and working material and the costs for wages and salary. Should we between the order confirmation and delivery increase the price for goods of a similar type due to a change in the economic situation, the new price is applicable. The customer must be notified without delay on the change of the price. Should the customer object to the increase of price within a time limit of one week after receipt of the notification we may either withdraw from the contract or deliver at the originally agreed upon price. We must notify the customer without delay on our decision. Should we chose to withdraw from the contract any further claims of the customer are excluded. The same applies in case of step by step deliveries for quantities which have not yet been delivered.

### VIII. Terms of Payment

- (1) Our invoices are payable within 14 days from the date of the invoice less a 2 % discount on the value of the goods except extra costs or net cash within 30 days from the date of the invoice. Any discount is excluded if liabilities arising from earlier contracts are not yet settled.
- (2) We shall not be deemed to have received payment in case of acceptance of bills of exchange or checks until the bill of exchange or check has been duly honored. The customer shall bear any banking-, discount- and collecting fees and taxes arising therewith. The acceptance of bills of exchange and checks by us requires a specific agreement set out in the order confirmation.
- (3) Should the customer be in delay with payment of any amount due and payable then after setting a time limit of two weeks failing which we may withdraw from the contract as far as it has not been performed and to request prepayment in cash for further deliveries. We reserve the right to claim damages for default in payment, the costs for reminder and interest at the rate of a current bank credit including expenses at least in the amount of 8 % above the base interest at the time. The costs for collection are to be borne by customer.
- (4) We have a right of retention with respect to further deliveries until all previous deliveries have been paid in full. Should we recognize circumstances after conclusion of the contract which substantially reduce creditworthiness of the customer or should reasonable doubts with respect to the solvency of the customer become obvious we are entitled to reject delivery or to make delivery only after previous payment in cash or offering of security. Should customer not pay or not offer security within a reasonable time limit set by us we are entitled to withdraw from the contract.

### IX. Packaging

Packaging shall be invoiced at cost price and return will not be accepted.

### X. Passing of Risk and Dispatch

- (1) The risk of loss and accidental deterioration of the goods pass to the customer at the time when the goods are dispatched from our works or distribution center even in case freight prepaid was agreed or at the time the goods are in the works or distribution center at the customer's disposal and the customer has been notified accordingly.
- (2) We shall use our best discretion to chose the way and the means of transport. Should special instructions for transport by the customer result in additional costs for packaging and transport, these costs shall be invoiced separately.

### XI. Notice of Defects

- (1) Legal or material defects, absence of quality or durability guaranteed by us of the delivered goods as well as delivery of too much, too little or other than the agreed goods (defects) - as far as obvious - have to be claimed in writing by customer without delay, at least within 14 days after acceptance of the goods. Defects which cannot be recognized at a usual examination upon delivery have to be claimed in writing without delay, at the latest 14 days upon recognition.
- (2) Should defects not be claimed within the time limit as set forth in para (1) above, any claims for defects against us shall be excluded.

### XII. Warranty

- (1) Without any specific agreement we give warranty for correct workmanship and faultless material.
- (2) In case of a defect we will according to our choice repair the defect or deliver replacement, in as far as customer proves that the defect was in existence at the time the risk passed to customer. The time limit any claims for defects are

statute barred is 12 months from delivery of the good. For any claims for damaging of life, limb or health caused by any defect for which we are liable are statute barred 24 months commencing on the delivery of the good. Any warranty is excluded for used goods.

- (3) Should a reasonable time limit set for re-fulfillment has expired, should we have twice repaired or should we have delivered one replacement and could the defect not be repaired and should we have rejected without cause a necessary repair or replacement or should we have delayed such or should the customer not be expected to accept a repair for any other reason, as well as if the prerequisites of §§ 281 para 2 or 323 para 2 German Civil Code prevail, then the customer instead of repair or replacement can request the remedies provided for by law such as withdrawal from the contract or reduction of the price as well as claim damages or compensation for expenses, the latter within the range of No. XIII. below.
- (4) Moreover we are not obliged to repair or replace if this is possible only at unreasonable costs. Such costs are deemed unreasonable if they exceed 25 % of the purchase price of the goods to be delivered, whereby the value of the replacement itself is not to be taken into account.
- (5) Our liability for defects in respect to products which have been supplied by third parties shall be limited to assigning our rights and claims against such third party to the customer. Should the customer not be able to enforce its rights against the third party supplier, we shall be liable for defects as set out in these conditions.
- (6) The customer after consultation with us is obliged to grant us the time required to repair or replace the goods.
- (7) Any parts replaced by us within the frame of our warranty liability shall then be our property. In case of repair or replacement of goods a new warranty period according to these conditions shall commence only in respect to the parts which were actually repaired or replaced.
- (8) If the goods delivered have thereafter been brought to another place then the domicile of customer and if thereby the expenses, in particular costs for transport, labor or material for repair or replacement are increased such increased expenses have to be reimbursed by customer, unless the taking of the goods to another place is within the normal use of the goods delivered.
- (9) We undertake no warranty if the deviation from the agreed quality and the impediment of the usability is insignificant. We furthermore exclude any liability arising in particular from the following grounds: inappropriate or improper use of the goods, defective installation, normal wear and tear, improper or neglect handling, inappropriate working material, as long as these are not caused by fault of us, whereby we are only liable for gross negligence and willful acts as well as faulty violation of major obligations.

In addition the warranty is excluded if the goods have been modified or repaired by the customer or third parties, if the operating- or maintenance instructions were not complied with, if the goods were modified, if parts were exchanged or if materials were used which are not in compliance with the original specifications, unless the customer proves that these measures have not contributed to the creation or deterioration of the defect.

### **XIII. Damages**

- (1) Unless otherwise agreed in these conditions all claims of customer for damages of any kind whatsoever as well as indemnification for disbursements and consequential damages are excluded. This applies in particular for claims from violation of duties from the contractual relationship as well as from tort. These exclusion of liability does also apply if we have used helpers or assistants.
- (2) Divergent from No. XIII. (1) above we are liable in case we, our employees or assistants are liable of gross negligence or willful act as well as in all cases in which we, our employees or assistants have with fault violated major obligations and the purpose of the contract in total is thereby impaired.
- (3) In case of the violation of major obligations our liability is limited in case of light negligence to the amount of the value of the order.
- (4) Should in case of No. XIII. (3) above exceptionally the value of the order not correspond to the damage which would typically be foreseeable then our liability is in any event limited to the damage which is typically foreseeable.
- (5) The exclusion of liability shall, however, not be applicable in respect to claims arising under the act of strict liability for products or in case a guarantee has been undertaken for the quality or durability of the good delivered. Furthermore the exclusion of liability shall not be applicable for violation of life, limb or health.

### **XIV. Retention of Title**

- (1) The title in the goods shall remain with us until full payment of all amounts due, regardless on which ground, at the time the contract is concluded. Should we have undertaken any commitments in the interest of the customer we retain title in all deliveries until we are completely released from such commitments, in particular bills of exchange. Should we have undertaken any commitment in the interest of customer we retain title in all deliveries until we are totally released from such commitments in particular bills of exchange. The same applies should payment have been made for clearly specified claims. In case of a current account the retention of title remains as security for the balance of the account.
- (2) In case goods in which we have retained title are mingled or combined according to §§ 947, 948 German Civil Code, we will become co-owner of the whole item according to the legal provisions. Should customer alone become owner by combining or mingling he already now transfers co-ownership to us in proportion of the value of the goods related to the new item at the time of mingling or combining.

- (3) If goods in which we have reserved title are sold by customer singly or together with other goods in which we have no title, customer already now assigns all claims resulting from such sale to us in an amount equivalent to the value of the goods in which we have reserved title. The value of the reserved goods is the amount of the invoice. If we are co-owner of the sold goods the assigned claim is equivalent to the value of our co-ownership in the goods. The customer is obliged to name us all purchasers of the reserved goods in case he does not meet his obligations resulting from the contract with us.
- (4) Should the customer be in breach of contract, in particular be in default of payment, we shall have, upon prior notice and setting of a time limit to the customer be entitled to request and customer is obliged to return the goods to us. The retaking of the goods as well as pledging the goods by us is not considered a withdrawal from the contract.
- (5) The customer may sell, use or install goods in which we have reserved title only in the ordinary course of business and only with the understanding that the claims assigned to us shall be transferred to us. The customer is not entitled to dispose of the reserved goods in any other way. The customer is not entitled to pledge the reserved goods or to give them as a security.
- (6) The customer has to inform us immediately about any means of execution of third parties into the reserved goods or in the assigned claims and transmit to us all documents necessary for objections.
- (7) Customer has to insure all goods in which we have reserved title at its own cost, in particular against fire and theft. All claims against the insurer with respect to the reserved goods are here with assigned from the insurer to us. We herewith accept such assignment.
- (8) We oblige ourselves to release all securities as far as our securities exceed 150 % of the secured claim.

### **XV. Right of Retention/Set-off**

- (1) Any set-off of customer's claims against our claims is not allowed unless such claims of the customer are undisputed or are subject of final judgment of a competent court.
- (2) Furthermore retention of any payments resulting from any claims of the customer, which result from any other contract concluded with us are excluded.

### **XIV. No Assignment**

The rights of the customer arising under the contract with us cannot be assigned without our prior approval.

### **XVII. Place of Performance, Jurisdiction, Applicable Law**

- (1) Place of performance for delivery and payment is Senden/Ilter.
- (2) The parties being merchants agree for all present and future claims resulting from the business connection including claims from bills of exchange and checks Neu-Ulm as place of jurisdiction. Plaintiff is entitled to sue at the domicile of Defendant.
- (3) This contract is subject to German law. The United Nations Convention on Contracts for the International Sale of Goods of 11th April 1980 is excluded.

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