

General Terms of Delivery and Payment

1. Scope, Deviating Agreements

The following terms of delivery and payment exclusively apply to all orders we have accepted. If separate terms are agreed for certain orders, these terms of delivery and payment apply subordinately and as a supplement.

Any terms of the customer which deviate from or are supplementary to these terms of delivery and payment are non-binding for us, even if we do not object or the customer declares he only wishes to conclude the contract under his terms.

Amendments and supplements to these terms of delivery and payment must have our express written approval. This also applies to an agreement on the non-observance of the requirement of written form.

If we have approved of amendments or supplements to our terms of delivery and payment or have accepted the term of the customer, the individual terms of our delivery and payment terms which have not been defined in deviating form by way of the amendment or the respective term of the customer remain effective, so that these terms of delivery and payment maintain their effectiveness in all other cases unless expressly specified.

2. Offers and Orders

All offers are subject to change.

Orders, sales and commitments on the part of our staff, as well as verbal agreements or agreements made by phone only become binding for us after a written confirmation has been issued to the customer in writing or by email or fax.

In the case of imported goods, conclusion of contract is made on condition that we are granted any necessary export or import licenses.

Any errors in orders, order confirmations, invoices etc., including calculation and spelling errors do not bind us in any form.

3. Prices

Unless otherwise agreed, our prices apply 'free in' from our warehouse. If carriage free delivery has been agreed, this only applies to delivery via our own vehicles. In the case of rail shipment, cartage costs are borne by the customer via an official rail forwarder.

Prices are based on the material prices, salaries, cargo and dues valid on the day of the offer or confirmation of offer.

Import duties and public dues introduced or increased after the day of the conclusion of contract by way of law are borne by the customer.

The prices of earlier or current orders are not binding for repeat orders.

Our prices are net prices and are subject to the legal rate of VAT at the rate valid at the time of delivery; this VAT is specified in addition to the price in the invoice, and is to be paid together with the net price.

4. Terms of Payment

Our invoices are payable within the agreed period – unless agreed otherwise – by the 15. of the month following delivery – without deduction in cash, by cheque or bank transfer to one of our accounts, irrespective of the arrival of goods and irrespective of the right of notification of defects, on exclusion of offsetting against disputed claims or claims not enforced by law. If the customer has claims against us, our claims are due on

expiry of our liabilities. In such a case, accounting is made via value setting.

The customer agrees that the contractor can offset against the customer all claims on the customer made by the L&M Group as well as companies in which the L&M Group has a majority holding at all levels, directly or indirectly, at the time of offsetting (group companies), with all liabilities of the L&M Group as well as the aforementioned companies, based on a respective authorization existing due to a Group regulation.

Offsetting is also admissible if cash payment has been agreed on one side, and payment by bill of exchange or another method has been agreed on the other side on account of performance.

The customer is not entitled to assert rights of retention against us concerning any counterclaims from other transactions. Offsetting with counterclaims of the customer is only admissible if these have been accepted by us or are due and enforced by law.

The customer waives the right to object to our term of claims to be offset in the case of a majority ratio in receivables. (§ 396 par. 1 line 2 BGB).

We only accept bills of exchange offered on condition that discounting is possible at our bank. We are not obliged to accept bills of exchange. If we have expressly declared that we are willing to accept a bill of exchange, all resultant bank and collection expenses are borne by the customer and are immediately payable in cash.

Credit notes for bills of exchange or cheques only apply in condition of receipt, and irrespective of earlier payment date of the purchase price on default of the customer. It is made in accordance with the respective value setting on the day on which we can dispose of the equivalent amount.

In the case of payment default on the part of the buyer, we will assert legal default interest. We may provide evidence for higher damages.

Payment is also to be made, if dispatch of the goods has become impossible within a period of 8 days after we have notified the customer of readiness for dispatch of the goods, and the customer has not called up the goods ready for dispatch within the previous period.

Non-observance of terms of payment or circumstances which become known to us after the respective conclusion, and which reduce the creditworthiness of the customer, entitle us to only perform outstanding deliveries on advance payment or collateral security, and to withdraw from the contract after an appropriate period of grace, or to demand damages, irrespective of the right of redemption of the goods delivered subject to reservation of title, at the expense of the customer.

In the case of export of material, the customer assigns all claims to us which he is now, or in future, entitled in connection with the export against domestic and foreign banks, especially claims from collection orders from letters of credit or confirmations of letters of credit as well as securities and guarantees.

5. Delivery dates

The delivery period commences on the day of final confirmation of order, but not before complete clarification of all execution details. Part deliveries are permitted and each part delivery is treated as an individual transaction. The agreed delivery period is extended accordingly in the case of unforeseeable impediment which influences completion or processing or dispatch of the goods, irrespective of whether such impediment occurs at the customer or at our company.

The agreed delivery period is extended – irrespective of our rights concerning default on the part of the customer – by the period for which the customer is in default with his obligations from this respective agreement. This applies accordingly, if a delivery date has been agreed.

The periods we specify commence on the date of our written declaration of acceptance or confirmation, but not before the customer has submitted necessary documents, approvals and releases, prior to existence of all other necessary conditions and receipt of all due payments.

By way of amendment to the contract, the periods planned are extended accordingly.

If proportional delivery or proportional collection has been agreed, the volume to be delivered or collected is to be split in roughly equal portions across the agreed period of delivery.

In the case of default on our part, the customer is entitled to grant us an appropriate period of grace. The customer can only cancel the order if the goods are not delivered within this period of grace or are not declared as ready for dispatch. Any claims for damages on the part of our customer are excluded pursuant to item 11 of these terms.

6. Force Majeure / Proviso of stock supplies

In the case of force majeure, we are entitled to postpone delivery for the duration of the obstruction and to specify an appropriate lead time or to withdraw from the contract on account of the part of the contract not yet fulfilled.

Circumstances of unforeseeable obstruction are equivalent to force majeure which influence, impede or make impossible the completion or processing or dispatch of goods, irrespective of whether such obstructions occur at our company or at the customer.

The customer can demand a declaration from us as to whether we intend to withdraw or to deliver within an appropriate period.

If we do not issue an appropriate declaration, the customer can withdraw from the contract. Any claims to subsequent delivery etc. are excluded. In case of delay or discrepancy of our own stock supplies we will inform the customer immediately of the non-availability of the material and reserve the right to cancel the contract. In this case we will promptly reimburse any value possibly received.

7. Acceptance

Unless a special quality has been guaranteed, the material is supplied in normal commercial quality. If goods with special quality regulations and those to be directly forwarded to third parties are to be tested and inspected, this must be expressly specified in the order.

Actual inspection and acceptance costs are invoiced separately unless expressly included in the price. Personal acceptance costs are borne by the customer.

The customer must accept delivery/service immediately on request.

If the customer does not accept the delivery/service, we are entitled to refuse fulfilment of the contract after setting an appropriate period, and to demand damages, either refund of damage caused or – without evidence of damage – 10 % of the agreed price, at our discretion.

Our customer is expressly permitted to provide evidence that damages have not occurred or have not occurred at this level, or are much less than the flat-rate of 10 % of the agreed price.

8. Accounting and Deviation as well as Notification of Defects

Deviations to dimension, weight and quality are admissible in line with normal practice.

The total net weight we define is applicable for calculation. The individual weights placed in our dispatch notifications or invoices are non-binding.

We provide a guarantee for defects to material delivered or services provided notified to us in writing by the customer after detection, in that we decide whether to rework the material or to re-deliver perfect material. The customer is only entitled to rescind the contract or reduce payment if substitute delivery or reworking is not possible in an individual case, remains culpably incomplete despite written request by the customer specifying appropriate period, or reworking repeatedly fails.

Notifications of defect as well as other claims concerning quality, defective or incorrect delivery, weight or calculation must be asserted to us in writing within a period of ten days after receipt of goods at the latest. Defects which can not be detected within this period even after careful inspection are to be notified to us in writing immediately on being detected.

Our guarantee obligations expire, if the material deliveries or services provided have been changed or incorrectly handled.

The period of guarantee is one year for all products we sell, commencing on delivery of the item.

9. Shipment and Passing of Risk

Shipment is always made on the account and risk of the customer. In case of delivery free place of destination via our own truck, risk also passes on to the customer on shipment of the goods, i.e. on passing over to the forwarder or haulier, or at the latest on leaving our warehouse.

The selection of mode of transport as well as conveyance and protective equipment, which are invoiced separately as are covered and special wagons, is made at our discretion without liability for the cheapest shipping if no specific instructions are given.

Storage equipment (supporting blocks, scaffold, covers etc.) are used by us at the risk of the customer for separate lease fee or refunding of costs arising for us; in the case of loan, the storage equipment is to be returned at the risk and cost of the customer.

Transport insurance is only provided on specific request of the customer and at his expense.

Goods notified as ready for shipment must be collected immediately; otherwise, or in the case of impossibility of shipment for which we are not responsible, we are entitled to store the goods at our discretion at the cost and risk of the customer and to invoice the goods ready for shipment.

10. Retention of title

Until payment of all receivables- including future receivables - our deliveries, irrespective of the legal reasons involved, remain our property, even if payments are made for specified receivables. For outstanding accounts, the retention of title serves as security for our balance claim.

Processing and handling is made for us on exclusion of the acquisition of property pursuant to § 950 BGB, without obliging us. The processed goods serve as a security for us to the amount of the invoice value of the goods under retention of title.

In the case of the customer processing with other goods which do not belong to us, we have co-ownership in the new item, in relation of the value of the goods under

retention of title to the other processed goods at the time of processing. For the new item resulting from such processing, the same applies as for the goods under retention of title. These are goods under retention of title in terms of these conditions.

The customer may only sell our property in normal business transactions and at his normal business conditions, and as long as he is not in default. He is only entitled to re-sell the goods under retention of title, provided the claims from re-selling pass on to us in accordance with the following paragraphs. He is not entitled to any other disposal of the goods under retention of title.

Claims of the customer from re-selling of the goods under retention of title are herewith assigned to us, irrespective of whether the goods under retention of title are re-sold before or after processing, or to one or several clients. The assigned claim serves to secure the value of goods of the respective goods sold under retention of title.

If the goods under retention of title are sold by the customer alone or together with other goods not belonging to us, with or without processing, assignment of claims is only valid to the level of value of the goods under retention of title.

The customer is entitled to collect receivables from re-selling up to our revocation, which can be declared at any time. However, he is not entitled to dispose of such claims via assignment. At our request he is obliged to inform his customers of his assignment to us and to provide us with the information and documents required for collection. If the value of the securities which exists for us exceed our claim by a total of more than 20 %, we are obliged to release securities at our discretion on request of the customer.

In the case of attachment or any other legal restriction by a third party, the customer must notify us immediately.

As owner and indirect holder of the goods under retention of title we have the right to enter the premises of the ordering party during normal business hours. In addition, for the duration of the retention of title, the goods under retention of title are to be fully comprehensively insured by the ordering party at our request, on condition that the rights from such comprehensive insurance apply for us. However, we are also entitled to take out such insurance at the cost of the ordering party.

On account of the retention of title we can demand return of the item from the customer, if we have withdrawn from the contract. Such right of withdrawal exists if the customer is in default of payment or has infringed against other contractual duties.

In case of discontinuation of payment, application for or initiation of insolvency proceedings, the right to re-sell expires as well as the right to collect assigned claims. Collection authorization also expires in the case of summary proceedings concerning bills of exchange and cheques. On revocation of the collection authorization, any claims assigned to us are to be paid onto a separate account.

In case of discontinuation of payment or application for insolvency proceedings, the customer is obliged to immediately provide us with a list of goods under retention of title still available, even if they are linked to other goods, as well as a list of claims to garnishees with a copy of invoice.

If the retention of title is not effective in the form intended here for legal reasons, e.g. abroad, the ordering party is obliged to ensure the security of our rights

appropriately and to cooperate in action required for such.

Rights from retention of title and all special forms specified in these conditions apply until complete release from contingent liabilities the supplier has entered into in the interests of the customer.

11. Limitation of Liability

Claims on the part of the customer for damages are excluded. However, this does not apply to damages from injury to life, body or health caused by intentional or negligent violation of duties on our part, or by intentional or negligent violation of duties on the part of our legal representative or vicarious agents; the exclusion of liability also does not apply for other damages caused by intentional or negligent violation of duties on our part, or by intentional or negligent violation of duties on the part of our legal representative or vicarious agents.

Exclusion of liability for simple negligence in other cases of damage does not apply if we infringe essential contractual duties; in such a case our liability is limited to the typical damage foreseeable. Claims on the part of our customer pursuant to Product Liability Act and other claims from manufacturer's liability remain unaffected.

12. Applicable Law, Venue of Jurisdiction, Partial Nullity

The law of the Federal Republic of Germany applies exclusively for these business terms and all legal relations between us and the customer, without application of the UN Convention on Contracts for the International Sale of Goods. In so far as the law of the Federal Republic of Germany refers to the law of another nation or to international law, e.g. to the aforementioned UN Convention on International Sale of Goods, such reference is expressly waived.

If the customer is a registered trader in terms of the Commercial Code, a corporate body under public law or a separate estate under public law, Velbert is the exclusive venue of jurisdiction for all direct or indirect disputes arising from the contractual relationship. We are entitled to sue the customer at his general venue of jurisdiction.

If the customer is among the persons specified in the foregoing section, Velbert is also the venue of jurisdiction for all rights and duties arising from this contract, especially duty of payment on the part of the customer.

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