



Terms of Delivery and Payment for Lohmann & Rauscher GmbH & Co. KG, Neuwied

1. General

These Terms of Delivery and Payment form an integral part of all our offers and contracts in the course of commercial and/or corporate business, also during current and future business relationships. No further reference to these Terms of Delivery and Payment needs to be made in future orders.

We hereby explicitly reject conflicting general terms and conditions of business, in particular terms of purchase. Such terms shall only apply provided we have consented to them in writing. Accordingly, agreements that depart from these Terms of Delivery and Payment, in particular oral agreements, shall only be binding provided we confirm them in writing.

The formation of a contract shall not fail merely as a result of conflicting general terms and conditions.

2. Offers; prices; samples and specimens

Our offers are not binding but should be interpreted as a request to the customer to make an offer. The contract shall arise as a result of an order from the customer (offer) and our acceptance of the same. If this differs from the order, it shall be deemed to be a new, non-binding offer.

The prices charged shall be those from our most recent price list.

Samples, specimens, verbal instructions, recommendations and other documents and specifications such as photocopies, drawings, dimensional and weight specifications are only deemed approximate and not binding, unless an explicit written assurance or guarantee has been given.

3. Place of performance; delivery

The place of performance for both contracting parties shall be D-56567 Neuwied.

We reserve the right to make partial deliveries and also over-deliveries and under-deliveries, in particular with a view to efficient contract processing, provided it would not be unreasonable to expect the customer to accept them. Unless agreed otherwise, invoices shall be amended accordingly on a pro rata basis. Each partial delivery shall be deemed to represent execution of a separate order for the purposes of these Terms.

Unless explicitly and in writing designated as binding, delivery times shall be subject to alteration, but shall be deemed indications by approximation ("circa"-indications) which shall be adhered to as far as possible.

Delivery shall be made within Germany "free domicile" and in the case of cross-border movement of goods "free carrier and place of destination", in accordance with FCA Destination Irlicher Straße 55, D-56567 Neuwied in accordance with INCOTERMS® 2020, as amended at the time of conclusion of the contract.

The customer must undertake immediate and proper unloading. Waiting times shall be charged to the customer.

4. Observance of legal requirements by the customer

Unless specifically agreed otherwise, the customer shall be responsible for observing legal and official regulations in relation to the import, transport, storage and use of the goods.

5. Receipt of notifications

Notices and other notifications to be made to a party shall be effective upon their receipt by that party. If a time limit is to be adhered to, the notification must be received within that time limit.

6. Unforeseeable circumstances; Acts of God

Unforeseeable extraordinary circumstances, in particular acts of God, war, mandatory measures, labor disputes, traffic disruptions, system malfunctions, machine damage, raw material shortages etc. of which we have informed the customer without undue delay shall release us from our delivery obligation for their duration, plus a reasonable start-up period, without being obliged to pay damages or other compensation to the customer, in particular on the basis of default, impossibility of performance or other disruption to performance, and shall entitle us to cancel the contract where we have not yet performed it. The above provision shall not apply to the extent we have caused such events by culpable conduct.

7. Complaints; warranty; liability; culpability

Immediately upon receipt of the goods, and in all cases prior to their processing or installation, the customer must file a written (in text form pursuant to § 126b BGB [German Civil Code of Law], i.e. by e-mail, telefax etc.) complaint in relation to all identifiable defects.

The customer must record and document defects in an appropriate manner and must in particular note in detail on the transportation documents any transport damage, where possible at the time of delivery, and must take photographs of the damage. The customer must also keep the goods affected ready for expert examination by ourselves or by our insurer, unless the customer cannot be reasonably expected to do so in any particular case. If we are disadvantaged as a result of failure to meet this obligation through the fault of the customer, and in particular if our insurer justifiably refuses to make payments under the policy, the customer must indemnify us in this respect.

No complaints may be filed in relation to standard breakages and wastage or in relation to merely minor variations from the contractually agreed performance. In no circumstances may liability or warranty claims be made on the basis of wear and tear caused through normal usage.

Except in circumstances in which we are liable on the basis of intent, a warranty period of one (1) year shall apply.

In the event of a timely complaint which we have acknowledged as justified, we may elect either to provide subsequent performance by making a replacement delivery or by rework. We shall be entitled to make two attempts at subsequent performance.

In principle, a reference to standards or another description of the goods shall only be deemed a detailed designation of the goods and shall not constitute an assurance or a guarantee of quality, unless this has been explicitly agreed. Neither statements in relation to specific features of the product, even if made on the basis of our test results, nor our instructions for use shall exempt the customer from the duty to conduct tests itself.

In cases where there has been intent or gross negligence on the part of our statutory representatives, managers or agents for whom we are vicariously liable, we shall be fully liable for their culpability, while in cases of slight negligence, we shall only be liable where material contractual obligations (in other words those obligations, the fulfillment of which enables the contract to be properly implemented

and the observance of which the parties to the contract regularly rely upon and are entitled to expect) have been breached, and in this case only up to the limit of the typical and predictable loss. The above restriction shall not apply in cases of loss of life, personal injury or damage to a person's health or the Product Liability Act (Produkthaftungsgesetz) applies.

In the event of a material recall related to Lohmann & Rauscher products, in particular after processing, the customer shall be obliged to inform Lohmann & Rauscher in good time of any recall actions and to support Lohmann & Rauscher in the recall. In addition, the customer is obliged to compensate Lohmann & Rauscher for any damage arising from the recall and for which the customer is responsible.

8. Returns

Returns of any kind, including in the event of transport damage, shall require our prior approval.

9. Payments; discount; special right of cancellation; set-off and retention

Unless agreed otherwise in the individual contract, payments shall fall due upon receipt of the invoice. The net payment term shall be 30 days, calculated from the date of the invoice.

Payments by cheque or bill of exchange shall constitute undertakings to pay, and shall require our approval. In principle, we accept no bills of exchange with a term of longer than three months. All bank, discount and collection charges incurred must be reimbursed.

Our invoices shall be deemed to have been acknowledged unless they are objected in writing (in text form pursuant to § 126b BGB [German Civil Code of Law], i.e. by e-mail, telefax etc.) within 30 days of the invoice date.

Default interest in the amount of the statutory default interest shall be charged. We reserve the right to claim further losses.

If a discount is agreed, only the value of the goods excluding freight costs shall be eligible for a discount. In any event, an entitlement to a discount shall apply only if there are no other outstanding invoice amounts in the customer's account.

In the event of payment default or a cheque or bill being challenged, we shall be entitled to only execute further deliveries subject to payment in advance, to immediately call in all outstanding invoice amounts (including any deferred amounts), and/or to demand cash payment or the provision of collateral in return for bills of exchange or cheques accepted as undertakings to pay. We are also entitled to these rights if the customer suspends payments, if insolvency proceedings are instituted in relation to its assets, or if the application to institute such insolvency proceedings is refused owing to the lack of assets.

Furthermore, we are entitled to demand an appropriate contractual penalty in the event of culpable default in payment. This measure serves to safeguard our interest in timely payment. The amount of the contractual penalty will be determined for each individual case, taking into account the respective circumstances of the delay. It is based on the total delivery and the extent of the delay, whereby we are entitled to set an appropriate contractual penalty at our discretion, but at least a lump sum of €40. The contractual partner is at free to prove that no or significantly less damage has been incurred as a result of the default in payment. Our claim for commercial maturity interest (Section 353 of the German Commercial Code (HGB)) against merchants remains unaffected.

Failure to take delivery of the contractual quantity at the delivery date or failure to comply with the payment obligations shall cause the right of the customer to receive further deliveries to lapse, without prejudice to our right to require delivery to be accepted even after the due date. This shall not affect our right to make further claims, in particular damages claims.

No set-off may be applied, with the exception of set-off based on uncontested debts, or debts that have been declared final and non-appealable by the competent court. The same shall apply to the assertion of rights of retention that arise out of a different contractual relationship.

10. Reservation of title

Until such time as all debts are paid, including payment balance requests that are owed to us by the customer on any legal basis, we must be provided with the following collateral, which we may elect to release in full or in part upon request, provided its value consistently exceeds 20% of the amounts owed to us:

The goods delivered shall remain our property. Any processing or transformation that they undergo shall in all circumstances take place on our behalf. Should our (joint) title lapse as a result of their being combined, mixed or blended, it is hereby agreed that a pro rata share of the value of the customer's (joint) title (based on the relevant invoice amount) to the resulting item shall transfer to us. The customer shall protect our (joint) title free-of-charge. Goods to which we have (joint) title are further described as "reserved goods".

The customer is entitled to process and sell the reserved goods in the course of its normal business. Reserved goods may not be pledged, nor may they be transferred by way of security. The customer hereby assigns to us in full, by way of security, the claims arising from a further disposal of the reserved goods or on any other legal grounds associated with the reserved goods. We irrevocably authorize the customer to collect the claims that are assigned to us, on our behalf, in its own name. At our request, the customer shall disclose the assignment and shall provide us with the necessary information and documents.

If third parties gain access to the reserved goods, the customer shall make them aware of our title to them and shall immediately notify us. The customer shall bear any costs and losses incurred as a result of such events.

11. Quality Management

The customer undertakes to inform us of defective deliveries and complaints which affect the quality or safety of the products without undue delay.

In particular, the customer shall inform us immediately of any incidents which cannot be ruled out as being due to an undesirable side effect of a product, a malfunction, a deterioration in the properties or performance of a product, including application errors due to ergonomic features or an inadequacy of the information provided by the manufacturer, and which directly or indirectly had or could have had one of the following consequences:

1. the death of a patient, user or other person,
2. the temporary or permanent serious deterioration of the state of health of a patient, user or other person; or
3. a serious risk to public health.

The customer supports us in carrying out field safety corrective actions (e.g. sending safety information and/or recalls).

The customer fulfills the notification and reporting obligations to the responsible authorities imposed on him by the applicable law.

The customer may make subsequent changes to the product, its labeling/packaging as well as its intended purpose only if these have been approved in advance and in writing by us, or if the customer himself is a legal manufacturer.

The customer may only use product claims provided by us in writing or approved in writing, if the customer is not a legal manufacturer himself.

Where required by law, the customer must ensure that he has all the necessary authorizations and complies with the relevant legal and regulatory requirements.

More extensive requirements apply to distributors. A distributor is a natural or legal person in the supply chain who makes products available until they are put into service on the market, without themselves being a manufacturer or importers of such products.

Insofar as our customer is a distributor, he must maintain a quality management system that meets the requirements of the currently valid ISO 9001 and/or ISO 13485. The distributor allows us and the responsible authorities to carry out audits on his premises.



The distributor ensures batch traceability to his customers and documents complaints, non-compliant products, recalls and returns. The distributor must comply with his distributor obligations in accordance with the applicable laws and regulations (for Europa e.g. insofar applicable article 14 and/or 16 of Regulation EU 2017/745 on medical devices).

The distributor shall keep traceability records for at least ten years after making the last product available on the market.

12. Non-disclosure; title to materials; proprietary rights

The customer must treat the commercial and technical details that come to its knowledge in association with the processing of the order as commercial secrets, and must treat them as confidential.

Drawings, models, tools, samples, dies or other materials which we provide to the customer are our property, and the customer may not use, copy, sell, pledge or otherwise make them accessible to third parties for other commercial purposes without our prior written approval. The customer shall hold the materials for us free-of-charge, shall insure them as third party property, and must return them to us immediately and automatically after execution of the order.

In particular, we reserve title to all relevant proprietary rights, especially patents and copyrights associated with illustrations, drawings, calculations and other documents produced by us. The documents may be used exclusively for the purposes of the contractual relationship in question, and must be returned to us immediately upon request.

13. Data processing

We shall be entitled to process data relating to the customer as specified in the respective applicable data protection regulations, in particular without limitation in the EU General Data Protection Regulation and/or in the Bundesdatenschutzgesetz [Federal Data Protection Act], as amended from time to time. The according data privacy statement can be found on the internet at www.lohmann-rauscher.de and/or will be transmitted by mail/email on request.

14. Place of jurisdiction; governing law

The competent courts at D-56567 Neuwied shall have exclusive jurisdiction over all disputes arising directly or indirectly out of the contractual relationship, and also over actions in relation to bills of exchange or cheques.

The legal relations between ourselves and the customer shall be governed exclusively by German law. Provisions that could cause them to be governed by a different legal system, in particular the provisions of international private law, are hereby explicitly excluded. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) are also explicitly excluded.

15. Law on alternative Dispute Resolution for Consumer Disputes

We do not intend and we are not obliged to take part in any alternative dispute resolution procedure offered by any alternative dispute resolution entity for consumer disputes.

16. Severability clause

Should individual sections of these Terms of Delivery and Payment be legally invalid, this shall not affect the validity of their remaining sections.

Lohmann & Rauscher GmbH & Co. KG
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