

LEIBINGER GmbH

GENERAL DELIVERY AND SALES CONDITIONS

§ 1 Application

(1) All deliveries, services and offers of Leibinger GmbH (hereinafter: Leibinger) shall take place solely based on these general delivery and sales conditions. These shall be part of all contracts that Leibinger enters into with its customers (hereinafter: orderer) for the deliveries or services offered by it. They shall also apply to any future deliveries, services or offers to the orderer, even if they are not separately submitted or enclosed again.

(2) General terms and conditions of the orderer or of third parties shall not be applied, even if Leibinger does not object to their application separately from case to case. Even if Leibinger refers to any letter that contains general terms and conditions of the orderer or a third party or refers to such, this shall not include consent to the application of these general terms and conditions.

§ 2 Offer and Conclusion of the Contract

(1) All offers of Leibinger shall be subject to confirmation and non-binding until final order confirmation, unless expressly marked as binding or containing a specific acceptance period. Leibinger may accept orders or purchase orders within fourteen days of receipt.

(2) The purchase order placed with Leibinger shall be a binding offer of the orderer. Leibinger shall have the right to accept it within 2 weeks by submission of an order confirmation or sending the ordered goods to the orderer within this period. To comply with the period, timely dispatch of the order confirmation or goods shall suffice.

(3) Supplements and modifications of the agreements made, including these general delivery and sales conditions shall require written form to be valid. Except for managing directors or authorized signatories or the sales manager, the employees of Leibinger shall not have any right to enter into any deviating oral agreements. Telecommunication submission, specifically by fax or email, shall be sufficient for maintaining written form, if the copy of the signed declaration is submitted.

(4) Information from Leibinger on the object of the delivery or service (e.g. weights, sizes, usage values, resilience, tolerances and technical data) as well as presentations of these (e.g. drawings and figures) shall only be considered relevant unless usability for the contractually intended purpose requires precise correspondence. They shall not be guaranteed property or durability features, but descriptions or markings of the delivery or service. Common deviations and deviations due to legal provisions or for technical improvement, as well as replacement of components by parts of equal value shall be permitted where they do not impair usability for the contractually intended purpose.

(5) Leibinger reserves title and copyright in any offers and cost estimates made by it and any drawings, figures, calculations, leaflets, catalogues, models, tools and other documents and aids provided to the orderer. The orderer must not make these objects as such or their contents accessible to third parties, disclose them, use them directly or via third parties or reproduce them without the express consent of Leibinger. On request of Leibinger, he shall return these objects to it completely and destroy any copies made when they are no longer needed by him in the proper course of business or if negotiations do not lead to the conclusion of a contract.

§ 3 Prices and Payment

(1) The prices shall apply to the scope of service and delivery listed in the order confirmations. Additional or special services shall be settled separately. The prices shall be in EURO ex works, plus packaging, freight, statutory VAT, and in expert deliveries plus customs and fees and other public duties.

(2) Leibinger reserves applying its prices with a surcharge of up to 100 % of the price lists valid at the time the order is placed for express services.

(3) Invoiced amounts shall be payable without deduction within 14 days of the date of the invoice unless agreed differently. The date of the payment shall be according to receipt by Leibinger. Checks and bills of exchange shall only be accepted in lieu of payment and shall only be deemed a payment after redemption. If the orderer does not pay when due, the outstanding amounts shall bear interest at 8 % p. a. from the due date onwards; assertion of higher interest and further damage in case of default shall be unaffected.

(4) Set-off against counter-claims of the orderer or retention of payments due to such claims shall only be permissible if the counter-claims are undisputed or finally determined.

(5) Leibinger shall have the right to providing or rendering pending deliveries or services only against advance payment or collateral if circumstances become known to it after conclusion of the contract that are suitable to essentially reduce the creditworthiness of the orderer and by which the payment of the unpaid claims of Leibinger by the orderer from the respective contractual relationship (also from other individual orders subject to the same framework agreement) is endangered.

§ 4 Delivery and Delivery Period

(1) Deliveries shall be made ex works.

(2) Any deadlines and dates for deliveries and services promised by Leibinger shall always only be deemed agreed as approximates unless a fixed deadline or a fixed date has been promised or agreed expressly. The prerequisite for this shall be complete technical clarification and provision of the documents, samples, approvals or releases to be procured by the orderer where required. Where shipment has been agreed, delivery terms and delivery dates shall refer to the time of handover to the forwarder, carrier or other third parties charged with transport.

(3) Leibinger may – notwithstanding its rights from default of the orderer – demand an extension of delivery and performance periods or delay of delivery and performance dates from the orderer by the period in which he does not meet his contractual obligations towards Leibinger, e.g. in case of an agreed down payment.

(4) Leibinger shall not be liable for impossibility of the delivery or for delivery delays, where these are caused by force majeure or other events that were not foreseeable at the time of Conclusion of the contract (e.g. operating interferences of all kinds, difficulties in the material or energy procurement, transport delays, strikes, rightful lockout, lack of workers, energy or resources, problems in procurement of necessary authority approvals, authority measures or the lack of, incorrect or non-timely delivery by the supplier) and that are not due to the fault of Leibinger. Where such events make delivery or performance essentially more difficult or impossible for Leibinger and the impairment is not temporary in nature, Leibinger shall have the right to declare rescission of the contract. In case of temporary obstacles, the delivery or performance periods shall extend or the delivery or performance dates be delayed by the period of the impairment plus an appropriate start-up period. Where it is not reasonable for the orderer to accept the delivery or performance due to the delay, he may declare rescission of the contract by written declaration towards Leibinger without delay.

(5) Leibinger shall have the right to make partial deliveries if The partial delivery can be used in the scope of the contractual purpose by the orderer, The delivery of the remaining ordered goods is ensured and No considerable additional effort or additional costs result for the orderer from this (unless Leibinger agrees to accept these costs).

(6) If Leibinger enters default of delivery or performance or if any delivery or performance becomes impossible for it, no matter the reason, the liability of Leibinger shall be limited to damages according to the proviso of § 8 of these general delivery and sales conditions. If the delivery periods and deadlines are exceeded, however, Leibinger shall only enter default if an appropriate grace period of at least 14 working days set by the orderer in writing has expired, unless the delivery date or delivery time are expressly defined fixed in the order confirmation.

(7) Repairs and conversions of machines and machine parts shall be performed by specialists. The resulting time expenditure, including travelling and waiting times, the required spare parts, mounting material used and tests prescribed with test inspections shall be invoiced to the orderer at the common prices by Leibinger.

§ 5 Place of Performance, Shipping, Packaging, Passing of Risk, Acceptance

(1) The place of performance for any obligations from the contractual relationship shall be Teningen, unless determined differently. If Leibinger also owes installation, the place of performance shall be the place where the installation is to take place.

(2) Election of the shipping type and packaging shall be subject to Leibinger, and must be appropriate for the delivery.

(3) The risk shall pass to the orderer at the latest at indication of readiness of the object of the delivery for operation and the then-present readiness for shipment of the object of the delivery. This shall also apply if partial deliveries are made or if Leibinger has assumed other services as well (e.g. shipment or installation).

(4) Storage costs after passing of the risk shall be assumed by the orderer. At storage by Leibinger, the storage costs shall be 0.25 % of the invoiced amount for the objects of the delivery to be stored per expired week. Assertion and proof of other or lower storage costs is reserved.

(5) The shipment shall be insured by Leibinger against theft, breakage, transport, fire and water damage or other insurable risks only upon express request of the orderer and at his expense.

(6) Where acceptance is required, the purchased object shall be deemed accepted if the delivery and, if Leibinger also owes installation, installation has been completed, Leibinger has informed the orderer of this under indication of the acceptance fiction pursuant to § 5 para. 6 of these general delivery and sales conditions and asked him to accept, Twelve working days have passed since delivery or installation or the orderer has started to use the purchased object (e.g. taken the delivered system into operation) and six working days have passed in this case since delivery or installation and The orderer has neglected acceptance within this period for any other reasons than a defect reported to Leibinger that makes use of the purchased object impossible or essentially impairs it.

§ 6 Warranty, Defects of Material

(1) The warranty period shall be two years from delivery or, where acceptance is required, from acceptance.

(2) The delivered objects shall be examined carefully without delay after delivery to the orderer or the third parties determined by him. They shall be deemed approved by the orderer regarding obvious defects or other defects that would have been recognizable at careful examination without delay, unless Leibinger receives a written complaint about defects within seven working days of delivery. Regarding other defects, the objects of the delivery shall be deemed approved by the orderer if Leibinger does not receive a complaint about defects within seven working days after the time at which the defect became evident; if the defect was already recognizable for the orderer at normal use at an earlier time, however, this earlier time shall be essential for the commencement of the complaint period. On request of Leibinger, an object of delivery subject to complaint shall be returned postage paid. If the complaint about the defect was justified, Leibinger shall compensate for the costs of the most cost-efficient shipping method; this shall not apply if the costs increase because the object of the delivery is in a different location than the site of intended use.

(3) In case of defects of material of the delivered objects, Leibinger shall initially have the obligation and the right to improvement or replacement delivery according to its choice to be declared within an appropriate period. If this fails, i.e. if the improvement or replacement delivery is impossible, unreasonable, refused or inappropriately delayed, the orderer may declare rescission of the contract or reduce the purchasing price appropriately.

(4) If a defect is due to the fault of Leibinger, the orderer may demand damages under the prerequisite according to § 8.

(5) In case of defects of parts of other manufacturers that Leibinger cannot remove for licensing or factual reasons, Leibinger shall, at its discretion, assert its warranty claims against the manufacturers and suppliers for the account of the orderer or assign them to the orderer. Warranty claims against Leibinger under the other prerequisites and according to the proviso of these general delivery and sales conditions shall only be present at such defects, if the enforcement of the above claims against the manufacturer and suppliers in court has been unsuccessful or is without expectation of success, e.g. due to insolvency. During the term of the dispute, expiration of the respective warranty claims of the orderer against Leibinger shall be suspended.

(6) The warranty shall not apply if the orderer changes the object of the delivery or has it changed by third parties without the consent of Leibinger and if this makes removal of the defects impossible or unreasonably difficult. In any case, the orderer shall assume the additional costs arising for removal of the defect from the change. Leibinger also shall not be liable for defects due to unsuitable or improper storage/use, defective installation by the orderer or third parties, natural wear, defective or negligent treatment, improper maintenance, unsuitable usage conditions and chemical, electrochemical, electrical, or weather-related influences.

(7) Any delivery of used objects agreed with the orderer from case to case shall be under exclusion of any warranty for defects of material.

§ 7 Property rights

Leibinger represents that the object of the delivery is free of any commercial property rights or copyright of third parties. Each contracting partner shall inform the other contracting partner in writing without delay if any claims are asserted against him due to violation of such rights.

§ 8 Liability for Damages Due to Fault

(1) The liability of Leibinger for damages, no matter the legal reason, specifically from impossibility, default, defective or wrong delivery, violation of the contract, violation of obligations in contractual actions and tort, shall be limited according to the provisions of the following rules where fault is relevant for them.

(2) Leibinger shall not be liable in case of simple negligence of its bodies, statutory representatives, employees or other servants except in case of violation of essential contractual obligations. Essential contractual obligations shall be the obligation to timely delivery and installation of the object of the delivery, its freeness from defects that impair its function or suitability for use more than inessentially, as well as consulting, protection and custodial obligations that are to enable the orderer to use the object of the delivery contractually, or that are targeted at protection of life and limb of staff of the orderer or the protection of his property from considerable damage.

(3) Where Leibinger is liable for damages for reasons according to § 8 para. 2, this liability shall be limited to damage that Leibinger has foreseen as a possible consequence of violation of the contract at conclusion of the contract or that it would have had to foresee at application of common diligence. Indirect damage and consequential damage that are the consequence of defects of the object of the delivery shall also only be reimbursable where such damage is typically expected at intended use of the object of the delivery.

(4) In case of liability for simple negligence, the reimbursement obligation of Leibinger for property damage and resulting further asset damage shall be limited to an amount of EUR 50,000.00 per claim (according to the current coverage total of the product liability insurance or liability insurance), also in case of violation of obligations that are essential for the contract.

(5) The above exclusions and limitations of liability shall apply at the same scope for the benefit of the bodies, statutory representatives, employees and other servants of Leibinger.

(6) Where Leibinger provides any technical information or acts as a consultant and such information or consulting are not part of the contractually agreed scope of performance owed by it. This shall be done free of charge and under exclusion of any liability.

(7) The limitations of this § 8 shall not apply to liability of Leibinger due to willful behavior, for guaranteed property features, due to violation of life, body or health or under the product liability act.

§ 9 Retention of Title

(1) The following retention of title shall serve to secure all respectively present current and future claims of Leibinger against the orderer from the delivery relationship between the contracting partners.

(2) The goods delivered by Leibinger to the orderer shall remain the property of Leibinger until complete payment of all secured claims. The goods and any goods replacing them under the following conditions subject to the retention of title are hereinafter called the "goods subject to retention of title".

(3) In case of delay of payment or other behavior of the orderer in violation of the contract, Leibinger shall have the right to take back the goods subject to retention of title if it has declared rescission of the contract. After taking back the goods subject to retention of title, Leibinger shall have the right to utilize them; the revenue from utilization shall be set off against the liabilities of the orderer, minus any appropriate utilization costs.

(4) The orderer shall be obliged to treat the goods subject to retention of title with care, and shall sufficiently insure them at the new value at its own expense against fire, water and theft. The orderer hereby assigns any claims against the insurance to Leibinger. Where maintenance and inspection work is required, the orderer must perform them in time at his own expense.

(5) In case of attachment or other access of third parties, the orderer shall inform Leibinger in writing without delay. Where the third party is unable to reimburse Leibinger for the court and out-of-court costs for a claim purs. to § 771 ZPO, the orderer shall be liable for the loss incurred.

(6) The processing or conversion of the goods subject to retention of title by the orderer shall always take place for Leibinger, without causing any obligations for Leibinger. If the goods subject to retention of title are processed together with other objects that do not belong to Leibinger, Leibinger shall acquire shared title in the new object at the ratio of the value of the goods subject to retention of title to the other processed objects at the time of processing.

(7) If the goods subject to retention of title are inseparably mixed with any other objects that do not belong to Leibinger, Leibinger shall acquire shared title in the new object at the ratio of the value of the goods subject to retention of title to the other mixed objects at the time of mixing. If the mixing takes place in a manner that makes the object of the orderer the main object, it is agreed that the orderer transfers prorated shared title to Leibinger. The orderer shall keep the resulting sole or shared property for Leibinger.

(8) The orderer shall not have the right to sell on the goods subject to retention of title.

(9) Leibinger shall release the goods subject to retention of title and the objects or claims replacing them where the value exceeds the amount of the secured claims by more than 50 %.

§ 10 Final Provisions

(1) If the orderer is a merchant, a legal entity of public law or a public-law special fund, the place of jurisdiction for any disputes for the business relationship between Leibinger and the orderer shall be the seat of Leibinger, i.e. Freiburg.

(2) The law of the Federal Republic of Germany shall apply explicitly. The Convention of the United Nations on contracts for the international sale of goods from 11 April 1980 (CISG) shall not apply.

(3) Where these general delivery and sales conditions contain any gaps, these gaps shall be deemed filled by such legally effective rules as the contracting partners would have agreed on according to the economic targets of the contract and the purpose of these general delivery conditions if they had known of the gap.

(4) These general delivery and sales conditions have been written in the German language in the original. Translations into other languages are to facilitate understanding for the orderer only; the German version shall be exclusively legally binding, especially in case of translation mistakes or other content deviations.

Note:

The orderer takes notice that Leibinger saves data from the contractual relationship pursuant to § 28 Federal Data Privacy Act for the purpose of data processing and reserves the right to pass on the data to third parties (e.g. insurances) where required for performance of the contract.