



# LIBERTY

## General Conditions of Sale of Liberty Commercial Germany GmbH

### Section 1 Scope - full agreement

- 1.1. These General Conditions of Sale (hereinafter referred to as "GCS") apply to all products, accessories and services (hereinafter collectively referred to as "Goods") sold by the seller (hereinafter referred to as "Seller") to the customer (hereinafter referred to as "Customer"). Customers are exclusively entrepreneurs within the meaning of Section 14 of the German Commercial Code (BGB). The GCS, together with the provisions arising from the Seller's Order Confirmation or Purchase Agreement (hereafter collectively referred to as "Order Confirmation"), and any such other documents incorporated by reference herein, constitute the entire agreement between the Seller and the Customer. Deviating, conflicting or supplementary General Conditions of the Customer shall become an integral part of the contract only if and to the extent that the Customer has expressly consented to the application thereof. This approval requirement applies in any case, for example, even if the Seller unconditionally provides deliveries or services to the Customer in the knowledge of the Customer's General Terms and Conditions. These GCS also apply to similar future contracts, even if the Seller does not reiterate their validity.
- 1.2. Legally relevant declarations and notices of the Customer (e.g. setting a deadline, reminder, withdrawal) must be in writing (email, fax, letter). Statutory requirements on form remain unaffected. Communication in text form may only be made between the liable persons listed in the Order Confirmation.
- 1.3. In the absence of a clause to the contrary, documents, catalogs and cost estimates will only be sent for information purposes, and any Seller's offers without an Order Confirmation are not binding. No additions to or variations from the terms hereof, whether set forth in Buyer's purchase order or in any other documents, including shipping documents, shall be binding upon Seller unless expressly agreed in writing by Seller. The Order Confirmation signed and returned by the Customer shall also be deemed an acceptance of the contractual terms and conditions contained therein, such as the failure to reject the Order Confirmation within 8 days of receipt of such Order Confirmation. Seller's failure to exercise any right or assert claims, shall under no circumstances constitute a waiver of such rights or claims. In the event of a sale

contract concluded via an electronic marketplace, Order Confirmation shall contain all those specific elements of the Customer's purchase order that the Seller has expressly confirmed. In case of conflict between the provisions in the Order Confirmation and the wording of the present GCS the provisions in the Order Confirmation shall prevail.

## **Section 2      Prices, payment**

- 2.1. All prices are calculated on the basis of Goods as measured and weighed at the place of dispatch. Unless otherwise expressly stated in Order Confirmation, prices are net; Customer shall pay all taxes as well as transport, insurance, shipping, storage, handling, demurrage and other costs.
- 2.2. Invoice payment shall be made without any deduction, within 30 days from the day of Delivery. If the due date of the invoice payment is a bank holiday in the country of the receiving bank, the invoice must be settled on the last bank working day prior to the due date of the invoice payment.
- 2.3. If it becomes apparent after conclusion of the contract that the Seller's claim to payment of the price is threatened by the Customer's inability to perform, the Seller is entitled to execute the outstanding delivery and services only against advance payments or securities. If the Customer fails to comply with the request for advance payments or securities, the Seller is entitled to withdraw from the contract after the lapse of 14 days, reserving the right to claim damages. A threat means, for example, but not exclusively, the filing for the opening of insolvency proceedings against the assets of the Customer.
- 2.4. If the Customer is in default with his obligation to pay, it is obliged to pay default interest in the amount of 9 percentage points above the base interest rate. The remaining rights and claims of the Seller due to this default in payment remain unaffected.
- 2.5. Seller reserves the right to offset incoming payments from the Customer and/or to use payments for the settlement of the invoices that are outstanding for more than 30 days, including default interest and other costs in this order: costs, interest, principal.
- 2.6. The Customer may offset the Seller's claim for payment only against the claims or assert rights of retention which are legally established or undisputed. Any counterclaims due to non-contractual performance by the Seller remain unaffected.
- 2.7. All bank fees, save the Seller's bank fees, shall be borne by the Customer.

## **Section 3      Transfer of risk - delivery - shipping - sales tax**

- 3.1. Except as may be otherwise specified in writing, the transfer of risk shall take place at Seller's plant before loading and in case of the use of Incoterms, risk shall pass in accordance with the applicable term - latest version of the Incoterms issued by the ICC - (Delivery). Should Buyer fail to take delivery of Goods, Seller may store them at Buyer's risk and expense and following

a notification of their availability, invoice them as having been delivered. In any event, Seller remains entitled, without any special notice, to resell them and to claim applicable damages. Any claims for damages of the Seller remain unaffected.

- 3.2. Unless otherwise specified in Order Confirmation, Goods are sold delivered to their destination, and Seller shall determine the route and means of transportation, as well as the selection of forwarding agents and carriers. Buyer shall be responsible to supply to Seller, sufficiently in advance in order to permit Seller to make the necessary shipping arrangements, all appropriate information including
- a) marking and shipping instructions,
  - b) import certificates, documents required to obtain necessary government licenses and any other documents prior to their shipment; and
  - c) Buyer's confirmation that it has caused the opening or establishment of a letter of credit if required.

If the Seller does not receive one of these instructions, documents or confirmations, or to the extent required, or if, according to the Seller's judgment, they lead to unreasonable costs or delay in performance, the Seller may, at its option, postpone the shipment and/or withdraw from the contract if the Customer fails to remedy the defect on demand; if delivery times have been agreed, these shall be postponed by the period of time elapsed until the defect is remedied by the Customer. Other claims of the Seller remain unaffected.

- 3.3. Unless otherwise expressly agreed, delivery times are not binding and delays in delivery do not entitle the Customer to claim any damages resulting there from. Delays in delivery entitle the Customer to withdraw only in respect of such Goods that are not yet in the manufacturing process and only after it has granted the Seller a reasonable grace period for its performance and notified it in writing of the delay. Partial deliveries are permitted and may be invoiced independently, provided that the interests of the Customer are respected, in particular the scope of delivery is not changed and the Customer can be expected to accept the delivery in parts and time intervals, taking into account the type of Goods and their typical use. The delivery shall be deemed fulfilled when the Goods are delivered with a tolerance of  $\pm 5\%$  on weight.
- 3.4. If the sale of the Goods qualifies for a VAT exemption - because of an intra-Community sale (within the European Community) or an export destination that enables it - and if the Customer has taken over all or part of the shipment at its own risk and expense (delivery conditions EXW, FOB, FCA, etc.), the Seller is required to apply for VAT exemption only if the Customer so requests and sufficiently proves the transport to the country of destination (transport document: CMR, bill of lading, CIM, export declaration, etc.).
- 3.5. At the request of the Seller, the Customer is obliged to provide the Seller with the following documents within 10 working days of receipt of the delivery:

- 3.5.1. a copy of the receipt for the delivered Goods, showing the date and a legible signature (first and last name) and confirming the delivery of the Goods to the address stated in the invoice in the manner and quantity specified in the delivery instructions and referred to in the invoice.
- 3.5.2. a copy of the bill of lading or other transport documents to which the Delivery Confirmation of the Goods is attached.
- 3.6. The Customer must notify the Seller immediately (within 1 to 3 working days) of the following:
  - 3.6.1. change of Customer's VAT identification number for intra-Community business,
  - 3.6.2. change of company name and/or company address.

#### **Section 4 Agreement - inspection**

- 4.1. Changes to production for technical reasons and deviations in dimensions, weights etc. remain reserved insofar as such changes are reasonable for the Customer, particularly in cases where such changes and/or deviations preserve or improve quality. This applies to supplemental deliveries accordingly. The Customer must immediately inspect the Goods in detail after their receipt as long as they are in the condition of delivery, or upon collection, and notify any complaints immediately in writing, otherwise the assertion of the warranty rights is excluded. The notification period does not apply to hidden defects. Defective Goods shall be kept ready for inspection by the Seller in the condition in which they were at the time the defect was discovered.

#### **Section 5 Material defects**

- 5.1. Documents and/or information regarding the Goods and type of use (such as designs, diagrams, dimensions, weights, utility values and other performance data), regardless of whether expressly agreed upon in writing or not, are only descriptions and/or identifications and not guarantees, nor do they represent guaranteed qualities or contractually stipulated conditions and the like.
- 5.2. Deviations customary to the industry are reserved insofar as they are acceptable to the Customer, particularly if such deviations preserve or improve the value of the Goods. Transport staff employed by the Seller are not authorized to accept notices of defects. Complaints about defects are excluded in any case after machining or processing, insofar as the defect is detectable in the condition of delivery during inspection.
- 5.3. Claims and rights of the Customer due to defective delivery, with the following exceptions, become time-barred after one year from the Passing of Risk insofar as they refer to newly manufactured Goods or services. This does not apply if the law stipulates longer periods in accordance with Section 438 (1) (2), Section 445b (1) and Section 634a (1) (2) BGB. Any claims

regarding material defects are excluded in the case of delivery of used Goods – subject to statutory regulations and other agreements.

- 5.4. In the event of material defects, the Seller shall first be given the opportunity to remedy the defect at its reasonable discretion within a reasonable period of time by either rectifying the defect or delivering the Goods free from defects. In the latter case, the Customer is obliged to return the defective Goods at the request of the Seller in accordance with statutory provisions. If the subsequent performance fails, the Seller refuses definitively and seriously supplementary performance (also pursuant to Section 439 (3) BGB), the subsequent performance is unacceptable to the Customer or the case of Section 323 (2) BGB occurs, the Customer may, without prejudice to any claims for damages, withdraw from the contract or reduce the consideration.
- 5.5. Claims and rights of the Customer due to defects do not only apply in the case of a minor deviation from the agreed quality, with only an insignificant restriction in the fitness for use, natural wear and tear or damage as far as these are based on the faulty or negligent handling or storage, excessive use, unsuitable consumables or special external Influences not envisaged in the contract.
- 5.6. Recourse claims of the Customer against the Seller according to Section 445a BGB apply only to the extent that the Customer has not made any agreements with its buyer beyond the statutory claims for defects.
- 5.7. Claims with regard to partial deliveries do not entitle the Customer to reject the respective rest delivery, unless the Customer is not interested in the latter because of the defects of the partial deliveries.
- 5.8. The shortened limitation period and the exclusion of liability pursuant to this Section 5 shall not apply to cases of intentional or negligent injury to life, limb or health, in the event of intentional or grossly negligent breach of duty by the Seller, fraudulent concealment of a defect, pertinent guarantee of quality or claims under the Product Liability Act.
- 5.9. In the case of defects of title, the provisions in this Section 5 apply accordingly.

## **Section 6      Limitation of liability for other breaches of duty**

- 6.1. Without prejudice to Section 5, the Seller shall be liable in the event of a breach of contractual and non-contractual obligations (e.g. due to delay in delivery, impossibility of delivery or due to other legal reasons) in accordance with the statutory provisions, taking into account the following provisions.
- 6.2. Claims for breach of duty against the Seller - for whatever legal reason – can be raised in the context of fault liability only in cases of intent and gross negligence. In the case of simple negligence, the Seller is liable only for damages resulting from injury to life, limb or health and for damages resulting from the significant breach of a material contractual obligation. An

essential contractual obligation is an obligation the fulfillment of which enables the proper execution of the contract in the first place and on the fulfillment of which the Customer regularly relies and may rely; however, in such case Seller's liability is limited to compensation for foreseeable, typically occurring damage

- 6.3. Seller's liability will in any event be limited to 100 % of the invoiced value of the defective or damaged Goods, however, this does not apply to intentional or grossly negligent behaviour.
- 6.4. The statutory limitation rules apply to the claims referred to in Section 6.2. All other claims against the Seller shall be subject to a limitation period of two years, commencing at the end of the year in which the claim arose and the creditor acquired knowledge of the circumstances giving rise to the claim and of the person of the debtor or should have acquired knowledge thereof without gross negligence, unless the law stipulates a shorter limitation period.
- 6.5. The limitations of liability according to Sections 6.2 and 6.3 also apply to the benefit of the bodies and vicarious agents of the Seller.
- 6.6. Liability under the product liability law remains unaffected.
- 6.7. Timely and correct self-delivery is reserved.

## **Section 7      Retention of title**

- 7.1 Delivered Goods shall remain the property of the Seller until the fulfillment of the Customer's payment obligations described above. Therefore, the following applies:
  - 7.1.1 If Goods are combined, mixed and/or blended by processing with Customer's items, then the Seller is entitled to the sole ownership of the new items. If Goods are combined, mixed and/or blended by processing with the items from other suppliers, the Seller is entitled to co-ownership of the total value of the new items with these suppliers. In this case, the co-ownership share of the Seller is calculated on the basis of the invoice value of its Goods in relation to the invoice value of all the Goods used to produce the new items.
  - 7.1.2 Insofar as the Customer duly fulfills all its obligations and reserves the right of ownership, it is entitled to resell the Goods, but only within the scope of the normal course of business. If the Goods are used to fulfill service contracts or contracts that are aimed at a work, a work performance or a delivery of materials, this shall be deemed resale. The Customer is not allowed to dispose of the Goods in any other way. Furthermore, the Customer must refrain from any disposal of the Goods - in particular assignment, pledging and transfer of possession - as long as they are in the sole ownership or co-ownership of the Seller.
  - 7.1.3 The claims of the Customer from the resale of the Goods are herewith exclusively assigned to the Seller as a security. If the Goods are sold by the Customer together with other Goods not sold by the Seller, the claim shall be assigned to the Seller from the

resale in proportion of the Seller's invoice value of the Goods to the invoice values of the other Goods used. The Customer is entitled to collect the claims from the resale as long as the Seller does not revoke the direct debit authorization - in case of doubt about the solvency and/or the creditworthiness or in case of the Customer's default with one of its payments. If the Seller revokes the direct debit authorization, the Customer is obliged to (i) immediately notify its customers of the assignment of the claims to the Seller and the Seller's ownership to the Goods and (ii) provide the Seller with any information and documents necessary to enforce and confirm the rights and claims of the Seller against third parties. If the contractual provisions of a third party with the Customer contain an effective limitation of the assignment authority, or if the third party makes the assignment dependent on its consent, this must be immediately communicated to the Seller in writing. In this case, the Seller shall be irrevocably authorised to collect the claim in the name and for the account of the Customer. At the same time, the Customer shall hereby irrevocably issue payment instructions to the third party in favor of the Seller. The Customer must notify the Seller without delay of any seizure or other impairments by third parties. The Buyer shall bear any costs required to suspend such seizure or return the Goods, unless they are borne by a third party.

- 7.2 If the value of the existing securities assigned to the Seller by the Customer exceeds the total invoice amount of the Customer by more than 20 %, the Seller is obliged, at the Customer's request, to release the Goods at the Seller's discretion.
- 7.3 The Customer shall be solely responsible and shall bear all costs and risks for unloading, proper handling and adequate storage of the Goods and/or new items according to Section 7.1.1. In addition, the Customer undertakes (i) to take out general liability insurance at its own expense to cover all risks the coverage of which also covers the damage and/or theft of all or part of the Goods and/or new items, and (ii) to provide the Seller on demand with a corresponding certificate of insurance and proof of payment of the insurance fees.
- 7.4 In the event of a breach of duty by the Customer, in particular in the event of default in payment, the Seller shall be entitled, after unsuccessful expiry of a reasonable deadline set to the Customer, to perform the contract, rescind the contract and take back the Goods - without prejudice to further claims for damages; the statutory provisions on the dispensability of a deadline remain unaffected. The Buyer is obligated to surrender and assign its claims for return. The same applies if circumstances arise that significantly deteriorate the Buyer's financial situation and jeopardize the Seller's claim for payment. For the Goods taken back, a credit note is issued in the amount of the former invoice amount less a flat deduction of 10 % per commenced month from delivery until the return. The Seller is entitled to prove a greater damage, the Customer is entitled to prove a lower damage.

## **Section 8      Packaging**

8.1. Unless otherwise agreed, the Customer shall be responsible for providing the packaging material used for transport and the means of attachment and securing. If the Customer fails to comply with this obligation, then it must indemnify the Seller in full from any claims, if this makes it liable for damages. The Customer is not entitled to pass the costs of destruction, recycling or storage to the Seller. Marking, if necessary, shall be made in accordance with the standards used by the Seller, unless the Customer makes other requirements that the Seller has accepted.

## **Section 9      Force majeure**

9.1. The production, dispatch and delivery by the Seller may be impaired by wars (whether declared or not), strikes, labor disputes, accidents, fires, floods, natural disasters, transportation delays, material shortages, equipment failure cases, factory conditions, laws, ordinances, regulations of administrative authorities or other reasons beyond the reasonable control of the Seller. The Seller is not liable for delays or disruptions of performance that are wholly or partly the result of these events; this also applies to the occurrence of an unforeseen event whose non-occurrence was a basic assumption of the Order Confirmation and whose occurrence renders the fulfillment by the Seller impracticable. In each of these cases, the Seller is entitled to fulfill its obligations within a reasonably extended period of time and to divide its production among its customers in accordance with the principles of good faith. This provision also applies mutatis mutandis to the Customer. The occurrence of one of these cases of force majeure shall be notified to the other party in writing within 3 days of its occurrence.

## **Section 10      Final provisions (language, court of jurisdiction and applicable law)**

10.1. These GCS are available in English and German. A copy of the text in one of these languages will be provided upon request or can be viewed on the Seller's website <https://www.libertyostrava.cz/products-and-services/general-conditions-of-sale.aspx>. In the event of contradictions and ambiguities, only the English version shall prevail.

10.2. The exclusive place of jurisdiction for any disputes between the contracting parties out of or in connection with the contract shall be the registered office of the Seller. However, the Seller is entitled, at its discretion, to assert claims against the Customer at any other competent place of jurisdiction.

10.3. This contract is subject to the provisions of the German substantive law with the exclusion of CISG.