

Date: 05.04.2023

General Terms & Conditions (T&C)

Terms & Conditions of:

Likamed GmbH

Likamed Service GmbH & Co. KG

Likamed Pulverbeschichtung GmbH & Co. KG

LiKAMED[®]

I. Scope of Application

Our General Terms and Conditions outlined below apply exclusively to contracts with companies, corporate bodies under public law and special funds under public law.

The following conditions shall apply to all contracts concluded between us and the customer regarding services to be furnished by us, such as delivery and/or production of goods, repairs and other services including advisory services and provision of information.

They shall also apply to all future business relationships even if they are not being agreed exclusively again. Any deviating conditions of the customer that we have not expressly agreed to in writing shall be non-binding for us even if we do not expressly object to them. The following terms shall also apply if we perform the customer's order unreservedly despite knowing of the customer's contradictory or deviating conditions.

All agreements that are made between us and the customer in connection with the respective contracts shall be put into writing within the contracts, these terms and conditions, and our offers.

II. Offer and Conclusion of Contract

Our offers are non-binding.

An order from the customer that qualifies as an offer for conclusion of a contract can be accepted by us within five working days in written form by way of sending an order confirmation. A contract is only concluded when a written order confirmation has been delivered.

This also applies to additional agreements, contract amendments and supplements, and assurance of certain properties.

Drawings, images or other specifications of the orderer shall only become part of the contract if we confirm these expressly in writing.

We reserve the unlimited rights to quotations, drawings and other documents with regard to ownership rights and copyright. They must not be made accessible to third parties. This applies in particular to disclosing quotations/prices to competitors.

Spare parts orders must be placed stating the item number in the spare parts list. Should the item number be missing, the customer shall have to bear any potentially arising costs for wrong delivery.

III. Delivery Time and Time of Performance

Delivery dates or deadlines that have not expressly been made in writing as binding, are exclusively non-binding. The delivery time stated by us only begins once all technical questions have been clarified. Likewise, the customer must fulfil all his/her contractual obligations duly and on time.

The delivery deadline starts with the sending of the order confirmation at the earliest.

In the event of the delivery being delayed due to reasons of force majeure or any other unforeseeable, extraordinary reason which we are not responsible for, e.g. in case of material procurement difficulties, operational interruptions, strike, lack of transport means (even if these are caused by our upstream supplier), the delivery deadline shall be extended proportionally. Should delivery become impossible or unacceptable due to the above named circumstances, we shall become exempt from the obligation to deliver. In this case we shall inform the customer immediately about the unavailability or unacceptability and shall reimburse any reward that we may have already received to the customer without delay. In the event of the delivery delay caused by the a.m. reasons lasting longer than two months, the customer shall be entitled to withdraw from the contract. In either of the aforementioned events the customer shall not be entitled to claim damages.

Further more, in the event of delivery default, the regulations according to Clause VII of these terms & conditions shall apply.

IV. Passing of risk

Our deliveries are freight collect ex works.

The risk passes to the customer as soon as the product leaves our factory or depot. This also applies when we bear the cost of other services, especially those of packaging and delivery.

Upon customer request the consignment can be insured by us against breakage, transport and fire damage; the customer bears the cost for this insurance.

V. Retention of Title

1. Until all outstanding accounts, including all outstanding balance claims from open accounts which we have against the customer now or in the future, have been settled, the delivered goods (goods under retention of title) shall remain our property. In the event of the customer acting contrary to the contract, e.g. late payment, we shall have the right, after having giving a reasonable period of time, to claim back the goods under retention of title. In the event of us taking back the goods under retention of title, this will represent withdrawal from contract. We shall be entitled to exploitation rights for the goods under retention of title after having taken them back. After deduction of a reasonable amount for exploitation costs, the exploitation proceeds shall be set off against the outstanding balance of the customer.

1. We are entitled to insure the goods under retention of title against theft, breakage, fire, water and other damages at the customer's expense, unless the customer can provide evidence that he/she has taken out such insurance already.
2. The customer herewith assigns his/her current and future claims against any respective insurer to us now. We accept the assignment.
3. The customer is entitled to sell and/or utilise the goods under retention of title in orderly business operations as long as there is no delay in payment. Pledging or assignments as security are not permitted. The customer assigns as security all receivables in full that result from selling-on or from any other legal reason (insurance, damage claims) with regard to the goods under retention of title (including all outstanding balance claims from open accounts); we herewith accept the assignment.

We revocably authorise the customer to collect the receivables assigned to us for their invoice under their own name. The direct debit authority may be revoked at any time, if the customer does not meet his/her payment obligations. Neither is the customer entitled to assign this amount receivable for the purpose of debt collection as part of factoring, unless the factor's obligation is constituted in making the counter performance directly to us to the value of the outstanding debt as long as we still have accounts receivables against the customer.

4. A processing or transformation of the goods under retention of title by the customer is performed at all events on our behalf. In as far as the goods under retention of title are processed with other goods that do not belong to us, we shall become part-owners of the new good being produced pro rata of the value of the good under retention of title (final invoice sum inclusive of VAT) in relation to the other goods processed at the time of processing. For the new good resulting from this processing the same shall apply as for the goods under retention of title.
5. In the event of the indivisible amalgamation of the good under retention with other goods that do not belong to us we shall receive part-ownership of the new good in proportion of the value of the good under retention of title (final invoice sum inclusive of VAT) to the other amalgamated goods at the time of the amalgamation. Is the good of the customer to be regarded as the main good as a consequence of the amalgamation, the customer and us agree that the customer shall assign us proportional part-ownership of the good; we herewith accept this assignment. The customer shall detain the thus attained sole or part-ownership of the good on our behalf.
6. In the event of seizure of the goods under retention of title, especially in case of execution, the customer shall point out our ownership and shall inform us immediately so that we can enforce our ownership rights. In as far as the third party is unable to reimburse us any legal or out-of-court costs that may have arisen from this, the customer shall be liable for such costs.
7. We are obligated to release securities to which we are entitled in as far as the realisable value of our securities exceeds the receivables to be secured by more than 10 %; we are free to select the securities to be released at our discretion.

VI. Warranty

1.a) The customer is only entitled to claim for defects, if the customer has fulfilled his/her inspection obligation and obligation to give notice of defects appropriately in accordance with Article 377 HGB [German Commercial Code].

b) The customer is obligated to inspect the consignment immediately upon arrival for transport damages and to notify us without delay about any potential damages or losses by submitting a statement of fact report supplied by the forwarding agent. Customers that have contracted their own forwarding agent for the consignment are obligated to claim transport damages from their forwarding agent. Spare parts deliveries that become necessary as a result from transport damages are only effected against separate invoice.

Upon our request, faulty delivery goods must be returned to us in the condition they were in at the time of discovering the fault/s, if requested at our costs.

2.a) In the event of eligible notice of defects we shall be under obligation to the customer to either remove the defect (amendment) or deliver new goods. The choice is at our discretion.

Replaced parts as part of the supplementary performance can be returned to us at our costs if requested.

b) In the event of removal of defects we shall bear the cost of the necessary expenditure as long as they do not increase due to the contractual item being in a location that differs from the customer's establishment.

The right to refusal of supplementary performance, if it is connected with excessive costs (Article 439 III BGB [German Civil Code]), remains unaffected.

c) Has the supplementary performance failed, the customer has the option to demand, in accordance with legal regulations, a reduction of the purchase price (reduction) or declare withdrawal from contract.

d) Damage claims due to defects can be made by the customer in accordance with the following conditions only when supplementary performance has failed. The customer's right to bring further damage claims in accordance with the following conditions remains unaffected by this.

3. The customer's warranty claims become statute-barred two years after passing of risk. This does not apply if a longer warranty or longer statute of limitations is mandatory by law. Furthermore, it does not apply in the event that we, our legal representatives or our vicarious agents have acted deliberately or with gross negligence, nor in the event of culpable injury to life, body or health being caused by us, our legal representatives or our vicarious agents. Furthermore, it does not apply in the case of building structures and items that have been used in accordance with their standard manner of use and have caused their defectiveness.

In addition, it does not apply in case of malice or breach of guarantee of quality.

Article 479 BGB remains unaffected.

VII. Damages/Liability

1. Our liability for damages is limited to deliberate acts and gross negligence.
2. This does not apply
 - to injury to life, body and health
 - to damages based on the lack of a guaranteed quality or durability of the goods
 - to damages resulting from a culpable breach of a significant contractual obligation (cardinal duty)
 - to damage liabilities covered by the product liability law.
2. In as far as damage liability is not based on damages covered under the product liability law, it is limited to the foreseeable, typically occurring damage, as long as we, our legal representatives or our vicarious agents have not acted deliberately and as long as it is not a case of injury to life, body or health.

Further claims of the customer are excluded.

VIII. Place of Fulfilment/Place of Jurisdiction

1. Place of fulfilment for deliveries and payments for the purchase contracts concluded between us and the customer shall be Eppingen. Place of jurisdiction for all potential disputes arising between us and the customer shall be Heilbronn.
2. The relations between the contractual parties shall be regulated exclusively by German law. The application of UN purchase law is excluded.
3. Should individual regulations in these general terms and conditions or a regulation as part of any other agreement between the customer and us be ineffective, the effectiveness of the remaining regulations shall remain unaffected by this. In such an event the contractual parties shall be obligated to agree an effective regulation that comes closest to the economic intentions and purpose of the ineffective clause/s.