

General Business Terms and Conditions of Life Utensils GmbH

§ 1 Area of application

1. Sales agreements between the seller (Life Utensils GmbH, Gellenbeckstraße 11, D-48607 Ochtrup, Germany, represented by the Managing Director, Ludger Gaupels) - hereafter referred to as L.U. - and the customer arise solely on the basis of these underlying General Business Terms and Conditions.
2. These General Business Terms and Conditions regulate the realisation of an agreement between L.U. and the customer, the handling of concluded agreements and the reciprocal rights and obligations.
3. The following General Business Terms and Conditions - in the version that is valid at the time the agreement was concluded - shall solely govern the legal relationship between L.U. and the customer. Deviating General Business Terms and Conditions of the customer are rejected. These shall only be effective if they are expressly confirmed by L.U. in writing.

§ 2 Concluding the contract

1. L.U.'s offers are always subject to confirmation.
2. For their validity, any issued orders require L.U.'s written confirmation. Orders received by post or by telephone are only accepted if L.U. has confirmed them in writing.
3. Contractual agreements and other agreements, in particular cost estimates, are only binding once L.U. has confirmed them in writing.
4. Collateral agreements or assurances which exceed the scope of the written sales agreement or the house brochure always require L.U.'s written confirmation. This also applies if collateral agreements or assurances have been made by employees of L.U.

§ 3 Prices

1. The relevant valid price is always the price stated in the version of the price list that was applicable on the date the order was issued.
2. All prices stated exclude the statutory value added tax.

§ 4 Technical equipment

1. The technical features described in our house brochure always apply to the purchase item. Information related to measurements, weight, material, performance, colour, etc. is merely a guideline.
2. Technical modifications within the scope of technical development, a more cost-efficient mode of production as well as changes to shape and colour remain reserved and must be accepted by the customer.

§ 5 Delivery

1. Delivery is ex-manufacturer. Delivery dates are generally non-binding unless the contrary has expressly been agreed to in writing between the parties.
2. The sequence of certain delivery terms and deadlines does not release the customer, who wishes to withdraw from the agreement or assert claims for damages, from granting a reasonable period of grace to provide the service (supplementary performance period). Other conditions only apply if L.U. has expressly stated that the date for the performance is binding.
3. Part deliveries to a reasonable extent are permissible.
4. The delivery term is accordingly extended - even within a period of delay - in the event of force majeure and/or in the entry of unpredictable hindrances occurring after the agreement was concluded and for which L.U. is not responsible as far as such hindrances considerably affect the delivery of the sold item. This also applies if such circumstances occur with L.U.'s suppliers. The customer will be notified as soon as possible of the beginning and the end of such hindrances. The customer can then demand L.U. to declare whether L.U. wishes to withdraw [from the agreement] or deliver the goods within a reasonable period of time. If L.U. does not make a declaration, the customer can withdraw from the sales agreement. The deadlines are extended by the period the customer is in arrears with his contractual obligations - within a current business relationship also with regard to other agreements.

§ 6 Shipment risk and transfer of risk

1. Unless expressly agreed to otherwise in writing, L.U. chooses the shipping route and mode of dispatch.
2. At the customer's request and at his expense, the shipment can also be insured.
3. Unless explicitly agreed to otherwise in writing, the shipment of the goods is always for the customer's account and risk.
4. Risk passes to the customer when the goods are handed to a forwarder or carrier; however, at the latest when the goods leave the works. The same applies to carriage paid deliveries.
5. If dispatch is delayed at the customer's request or due to customer's culpability, the goods are stored at the customer's expense and risk. In this case, the notification of the readiness for dispatch is equal to the actual dispatch.

§ 7 Payment terms

1. First orders of new customers as well as individual orders (hand deliveries) are exclusively dispatched on a pay-on-delivery basis. Invoices are due within 10 days net without any deductions. The invoice date is decisive.
2. Deliveries abroad are only made on the basis of cash-in-advance; exceptions are subject to special agreements.
3. If the payment date is exceeded, L.U. is entitled to charge interest as from the time the delay occurred. Interest is charged at standard bank rates, however, at least at the rate of the statutory interest rate. Interest is charged to merchants at least on due date according to sections 352 and 353 of the HGB [Handelsgesetzbuch/Commercial Code].
4. If the customer does not meet his payment obligations or his obligations arising from reservation of title, stops his payments or composition or insolvency proceedings are initiated against his assets, the entire outstanding debt arising from the business relationship becomes due.

§ 8 Reservation of title

1. The delivered goods remain the property of L.U. until full settlement.
2. The customer is entitled to resell the goods during the normal course of business under the condition that the receivables from the resale pass to L.U. as follows.
The customer already now assigns all receivables with all ancillary rights to L.U. which accrue to him from the resale against the purchaser or against third parties, irrespective of whether the goods under reservation were sold without or after processing. The customer remains entitled to collect this claim even after the assignment. This does not affect L.U.'s authorisation to personally collect the receivables; however, L.U. undertakes not to collect any receivables as long as the customer properly meets his payment obligations. The customer undertakes, at L.U.'s request, to notify L.U. of any assigned receivables and their relevant creditors, to provide all information regarding such collection, to hand over any associated documents and to notify his creditors of the assignment. If the goods are resold together with other goods which do not belong to L.U., the customer's claim against the purchaser shall be the amount of the delivery price agreed to between L.U. and the customer and shall be deemed as having been assigned. The customer's resale right expires on the cessation of payment.

3. The customer is entitled to process the delivered goods and to combine them with other products within the scope of his proper course of business. To secure its stated claims L.U. attains co-ownership of the items created through processing and combining; the customer herewith assigns such co-ownership. The customer is obliged to keep those items safe which are co-owned by L.U. The scope of the co-ownership is determined according to the relationship of the value of L.U.'s product and the relevant item created by processing and combining. Assigned receivables serve as collateral for all aforementioned claims.
4. The claimant is not entitled to any other dispositions for items which are subject to retention of title or co-ownership by L.U. or any assigned receivables; the customer must notify L.U. without delay of any pledges and other legal infringements which are associated with the items in whole or in part. L.U. is at any time entitled to demand the return of those goods it owns if the customer is in arrears with a payment or if his financial situation deteriorates considerably. If L.U. makes use of this right then - irrespective of other mandatory legal provisions - a withdrawal from the agreement is only deemed to have taken place if this is expressly declared. L.U. undertakes to release the collateral to which it is entitled insofar as the value of the securable receivables - as far as these have not been settled - exceeds more than 25%.

§ 9 Warranty

1. The customer's right to warranty is in accordance with the general legal provisions as far as nothing else is determined in the following.
2. There is no warranty for damage which arose due to an unprofessional or unsuitable use [of the item], faulty commissioning or assembly, normal wear and tear, negligent or faulty use, non-compliance with the maintenance or operating instructions as well as unprofessional maintenance work or modifications carried out by the customer or a third party.
3. Warranty for entrepreneurs according to Section 14 BGB [Bürgerliches Gesetzbuch = (German) Civil Code]: If the customer is an entrepreneur according to Section 14 BGB, warranty claims on the part of the customer, the following is also deemed to be agreed to in addition to Section 9 Para 1 and 2: As far as L.U. has to provide a warranty by way of a supplementary performance due to a defect, L.U. shall be entitled to choose whether it wishes to provide the supplementary performance by way of repair or a replacement delivery. A reasonable period of time shall be granted for a replacement delivery. The customer shall immediately examine the goods received and check for defects, composition and, if applicable, assured quality. L.U. must be notified in writing of defects without delay; at the latest, however, within 10 calendar days after the delivery of the goods. Hidden defects must also be notified in writing; however, at the latest within 10 calendar days after they have been discovered. For the rest, L.U. must be notified of hidden defects no later than 6 months after the delivery date. The calculation for these deadlines is based on the delivery date and the date the notification of defects was received.

§ 10 Liability

1. As far as nothing else is stipulated to the contrary, claims for damages on the part of the customer are excluded. The aforementioned liability exclusion is also valid vis-à-vis L.U.'s legal representatives and vicarious agents as far as the customer asserts claims against them. Any claim arising from legal provisions is restricted to the amount of the purchase price and to such damage which arose by an alternative procurement of the goods as far as these are reasonable. L.U. is not responsible for delayed or missing deliveries (impossibility) for which its suppliers are to blame.
2. Not included in the liability exclusions in terms of § 10 Para 1 are claims for damages which arise from an injury to life, body, health and claims for damages due to a violation of significant contractual obligations. Significant contractual obligations are those whose fulfilment is required to obtain the objectives in terms of this agreement. Also excluded from the liability exclusion is the liability for damages which are based on wilful intent or a grossly negligent violation of obligations on the part of L.U., its legal representative or vicarious agents.

§ 11 Statutory period of limitation

1. The statutory period of limitation for warranty claims on the part of the customer for consumers is 2 years for newly created items; for used items, this period is 1 year. The statutory period of limitation vis-à-vis entrepreneurs for newly created items is 1 year; for used items, this period is 6 months.
2. The aforementioned shortened statutory period of limitation does not apply to claims for damages on the part of the customer based on an injury to life, body, health as well as for claims for damages based on a violation of significant contractual obligations. Significant contractual obligations are those whose fulfilment is required to obtain the objectives in terms of this agreement. The aforementioned shortened statutory period of limitation also does not apply to claims for damages on the part L.U. based on an injury to life, body, health as well as for claims for damages based on a violation of significant contractual obligations.

§ 12 Offset

The customer is only entitled to offset if his counter-claims are legally determined or are undisputed. Further, the customer is only entitled to carry out a right of retention as far as his counter-claim is based on the same contractual relationship.

§ 13 Prohibition of assignment and pledging

The assignment or pledging on the part of the customer vis-à-vis claims or rights to which L.U. is entitled is excluded as far as L.U. has not given its written approval. L.U. is only obligated to approve if the customer can prove an eligible interest in the assignment or pledge.

§ 14 Data protection

The customer's data required to process the contractual relationship is stored. Naturally, all data is treated as strictly confidential and the protectable interests of the customer are considered in terms of legal guidelines.

§ 15 Applicable law and place of jurisdiction

1. The contractual relationship between L.U. and the customer is exclusively subject to the laws of the Federal Republic of Germany.
2. For entrepreneurs, the place of performance and the place of jurisdiction is the seat of L.U. Irrespective thereof; however, L.U. has the right to file for an action at any other legally competent place of jurisdiction.
3. The same applies if the customer does not have a local general court, moves his place of residence or his normal place of domicile to one abroad or whose place of residence or normal place of domicile is unknown at the time of filing the action.

§ 16 Severability clause

1. Should one of the provisions of these General Business Terms and Conditions be ineffective, this will not affect the validity of the other provisions.
2. The ineffective provisions should be replaced by regulations which come closest to the economic objective of the agreement and the appropriate safeguarding of mutual interests.