

# GENERAL SALES AND DELIVERY TERMS AND CONDITIONS

## LISTA AG

### 1. Scope

These general sales and delivery terms and conditions apply to all legal transactions which Lista AG (hereinafter «the vendor») concludes with another company or with end users (jointly referred to hereinafter as «the buyer»). They apply both for the supply of goods as well as for the provision of services. Variations to these general sales and delivery terms and conditions only apply if accepted in writing by the vendor. The vendor does not recognise any other sales and delivery terms and conditions other than his own. The buyer expressly renounces the right to apply his own purchase and delivery terms and conditions.

### 2. Quotation – Quotation documents

The vendor's quotations are subject to confirmation. The details quoted in the vendor's catalogues, ring binders, brochures, price lists, etc. are not binding.

### 3. Conclusion of contract

- 3.1 The contract is deemed to exist once the vendor has sent a written order confirmation or a delivery to the buyer, following receipt of an order from the buyer. The content of the contract is defined solely by the text of the order confirmation, the content of deliveries and these general sales and delivery terms and conditions.
- 3.2 The details quoted in our catalogues, ring binders, brochures and similar as well as by other written or verbal statements by the vendor are only binding if and insofar as they are explicitly referred to in the order confirmation.
- 3.3 Subsequent amendments and additions to the contract must be confirmed in writing by the vendor in order to be valid.

### 4. Prices

- 4.1 The prices agreed in the contract are stated ex-works or ex-warehouse of the vendor. If levies, taxes, customs duties or other charges are incurred during delivery, these are to be borne by the buyer. In addition, the buyer must pay all ancillary costs including e.g. freight, small orders, insurance, authorisations for export, transit, import or other authorisations, and certifications.
- 4.2 Where an order differs from the overall quotation, the vendor reserves the right to adjust the prices accordingly.
- 4.3 The vendor reserves the right to adjust the prices as needed if the delivery due date is subsequently delayed due to one of the reasons listed under points 5.3, 5.4 or 5.5, or if the type or scope of the agreed deliveries of goods and supplies of services are changed, or if the materials or design are changed because the information and documentation supplied by the buyer do not correspond to actual conditions or were incomplete.

### 5. Delivery

The delivery period starts at the latest with the following points in time:

- a) Date stated in order confirmation or date of the order confirmation;
  - b) Date when all the technical, business and other preconditions incumbent on the buyer have been fulfilled;
  - c) Date on which the vendor receives an advance payment or deposit prior to delivery of goods.
- 5.2 The vendor has the right to carry out partial and pre-deliveries and to invoice these accordingly. If call-off delivery has been agreed, then the goods are deemed to have been called-off at the latest 90 days after being ordered.
  - 5.3 If unforeseen circumstances or circumstances beyond the parties' control, such as an Act of God, arise which prevent the observation of the agreed delivery period, this is extended at least by the duration of these circumstances. This includes in particular armed conflict, public authority intervention and bans, in transport and customs clearance, damage in transit, energy or raw material shortages, industrial disputes as well as the loss of a supplier who is difficult to replace. The circumstances listed above also permit the extension of the delivery period when they apply to a supplier of the vendor.
  - 5.4 The delivery period will be extended as appropriate if the vendor does not receive in good time from the buyer the information which he requires to complete the contract, or if the buyer subsequently amends this and therefore causes a delay in delivery.

5.5 If the delivery date is subsequently changed, for reasons for which the buyer is responsible, or if the goods are not collected on the agreed date, then the vendor has the right to invoice the buyer for the costs of storage and handling from the 7th day. Per day, CHF 3.00 per loading metre or the actual storage and handling costs incurred and stated by the vendor will be charged to the buyer.

5.6 If the parties agree on a penalty for delivery delay when concluding a contract, this will be applied according to the following rules, whereby non-application of any one aspect of these rules does not affect the application of the rest: A delay in supply which is demonstrably the sole fault of the vendor entitles the buyer to claim a punitive rate of a maximum of ½ % for each complete week's delay, up to a ceiling of 5 % of the value of that part of the total delivery of goods which, because of the failure to deliver a significant part on time, were unable to be used, provided that the buyer has actually suffered damages of that amount. Further claims arising from delivery delays are determined exclusively according to point 5 of these general sales and delivery terms and conditions.

### 6. Transfer of use and risk

The use and the risk for the purchased goods transfer to the buyer, irrespective of the type of delivery, with dispatch/transportation from the loading bay. Transportation/dispatch from the loading bay of the works is considered to be the time of delivery. The vendor accepts no liability whatsoever for damage during transport.

### 7. Payment

- 7.1 The vendor's invoices are due for payment net without discount within 30 calendar days from the invoice date. Unjustified deductions will be re-invoiced. In individual cases, the vendor may reserve the right to require advance payments.
- 7.2 In the case of partial invoices, the relevant part-payments are due on receipt of each invoice. This also applies to invoice amounts which arise as a result of follow-up deliveries or other agreements which arise beyond the original final total, irrespective of the payment terms agreed for the main delivery.
- 7.3 Payments must be made without any deduction of discount or charges to the vendor's payment collection point in the agreed currency.
- 7.4 The buyer is not entitled to retain payments on the basis of claims under guarantee or other counterclaims nor to offset these against payments due.
- 7.5 A payment is deemed to be settled on the day on which the vendor has the funds at his disposal.
- 7.6 If the buyer is late in making an agreed payment or other agreed action arising from this or any other transaction, then the vendor may, without prejudice to his other rights:
  - a) delay fulfilment of his own commitments until payment is made or the other action is completed, and extend the delivery period accordingly.
  - b) declare all open invoices relating to this transaction and others to be due and start charging late payment interest of 1.25 % plus VAT per month on these amounts from the relevant due date, unless the vendor can prove he has incurred costs in excess of this. In any case, the vendor is entitled to invoice preparatory costs for court action, in particular the cost of sending reminders and legal costs.
- 7.7 Any discounts or bonuses granted by the vendor are automatically void if the buyer is late with a payment.
- 7.8 If legal transactions take place between the vendor and the buyer via purchasing organisations (buyer groups, etc.), then the payments by the buyer to the buyers' group do not cancel the debt to the vendor. The debt is only settled when the vendor receives the payment.
- 7.9 The vendor retains title to all goods delivered by him until full payment has been received by the buyer. The vendor is entitled at any time to register the retention of title in the Register of Retained Titles at the registered address of the buyer. If no registration of retention of title is possible at the buyer's address, then the vendor is entitled to avail himself of all other available and comparable rights for his invoices. In the event that the property were to be sold on by the buyer through transfer to a third party, despite the reservation of title, then the buyer will

assign to the vendor, as a guarantee for the purchase price debt, the debt owed to him by the third party as a result of the resale of the goods to which title was reserved, and undertakes to make an entry to this effect in his books or on his invoices. On demand, the buyer must inform the vendor of the details of the assigned debt and the debtor and provide all relevant information and documents to him. Equally, the buyer must inform the third-party debtor of the assignment of the debt. If subject to distraint or other claims, the buyer is required to declare the title held by the vendor and must inform the latter without delay.

## 8. Guarantee, liability

### 8.1 Defects

The vendor undertakes to supply the goods and services as described and defined in the specifications in the delivery contract or in the applicable order confirmation. A supply of goods or services is defective if it is not suitable, or only to a limited extent, for the defined use agreed in advance in the specifications between the vendor and the buyer.

### 8.2 Obligation to submit complaint

The buyer must inspect the goods for externally visible defects immediately upon receipt and in the presence of the truck driver making the delivery. The buyer must immediately note down any externally visible defects on the delivery note, giving precise details of the circumstances and nature of the defect under complaint. The buyer must send a copy of this delivery note to the vendor without delay. Any hidden defects must likewise be reported in writing to the vendor, on the delivery note and within 7 calendar days. Any claims which are received late will not be recognised by the vendor. Complaints do not abrogate the obligation to pay (item 7).

### 8.3 Guarantee liability and scope of the buyer's rights

The guarantee period for products manufactured by the vendor is 10 years from the date of delivery ex-works; this excludes workbench tops, purchase and trade parts, electronic components, software, custom-made articles and wearing parts for which there is a guarantee period of 12 months. The guarantee includes solely, excluding legally defined options, the vendor's choice of correction or supply of a replacement part for the defective parts. The guarantee is void if the damage was caused during transport. Guarantee by the vendor is void if the loading capacities for the individual components were not complied with by the buyer, the products were not set-up in accordance with the mounting and installation instructions from the vendor or faults have resulted from improper use, poor handling, negligence or corrosion. The guarantee is also void if alleged damage was caused by simple ageing such as through natural fading of painted surfaces, the distortion of wooden panels, etc. In general, the vendor does not accept any liability if repairs were performed by the buyer himself or by third parties.

### 8.4 Guarantee period for repaired or replaced parts

For products manufactured by the vendor which are repaired or replaced, the guarantee period restarts and lasts for 12 months from the date of repair or delivery of the replacement part. Overall, the guarantee period for repaired or replaced products which are manufactured by the vendor is limited in total to 11 years or for workbench tops, trade parts, electronic components, custom-made articles and moving parts to 24 months from the start of the standard guarantee period.

### 8.5 Liability

The vendor's liability is limited to a maximum of the value of the affected products delivered and manufactured by the vendor. No liability is accepted for damages (incl. liability for consequential damages, loss of revenue or lost production) unless required by law.

## 9. Withdrawal from the contract

9.1 The pre-conditions for the buyer to withdraw from the contract are, to the extent that no special arrangements were agreed, a delay in delivery caused by gross

negligence on the part of the vendor as well as continued failure after a subsequent attempt to set an appropriate deadline. Withdrawal must be notified by means of a registered letter.

- 9.2 Irrespective of his other rights, the vendor is entitled to withdraw from the contract,
- if performance of deliveries or the start or continuation of services is rendered impossible by fault of the buyer or, despite efforts to redefine a later deadline, continue to be delayed,
  - if cause for concern arises about the ability of the buyer to pay and the latter fails to respond to requests from the vendor to either make advance payments or to deposit a suitable security prior to delivery, or
  - if the extension to the delivery period due to the circumstances set out in points 5.3, 5.4 or 5.5 together equal more than half of the originally agreed delivery date, however with a minimum of 6 months.
- 9.3 Withdrawal can also be justified by one of the above reasons in relation to the remaining part of the supplies of goods or services.
- 9.4 If insolvency proceedings are initiated in relation to the assets of a party to the contract, or if such a process is not possible due to lack of assets, then the other party to the contract is entitled to withdraw from the contract without first setting a deadline for compliance.
- 9.5 Without prejudice to any claims for damages by the vendor, including preparatory costs for legal action, in the event of withdrawal all prior supplies or partial supplies of goods and services must be invoiced and paid for as set out in the contract. This applies even if the delivery or performance of service has not been accepted by the buyer and also applies to preparatory work carried out by the vendor. The vendor alternatively has the right to require the return of articles which have already been delivered.
- 9.6 No further effects of withdrawal may apply.

## 10. Product liability

The buyer is required to strictly observe the instructions available from the vendor for the setting up and use of the purchased goods. The vendor only accepts liability as defined by the legal requirements.

## 11. Amendments

- 11.1 Amendments and variations to these contractual conditions as well as their suspension require the express written approval of the vendor in order to be legally valid.
- 11.2 Any special sales and delivery terms and conditions by LISTA companies take precedence over these general sales and delivery terms and conditions.

## 12. Technical documentation

The vendor retains the ownership and copyright of all quotations, estimates, calculations, pictures, drawings and other documents. The buyer requires the express written permission of the vendor for any duplication or disclosure to third parties.

## 13. Place of performance, place of jurisdiction and applicable law

- 13.1 The place of performance for deliveries, payments and all undertakings is the location of the LISTA company which issued the invoice.
- 13.2 The place of jurisdiction is the place of business of Lista AG in Erlen/TG, Switzerland. However, the vendor retains the right to address the court which has jurisdiction at the buyer's place of business.
- 13.3 All legal relations between the vendor and the buyer are solely subject to Swiss substantive law, excluding Federal law relating to international private law such as the United Nations Convention of Contracts for the International Sales of Goods dated 11 April 1980 (Vienna Convention).