

## **General Terms and Conditions of the LBM Techno Gas GmbH & Co. KG (as of Nov. 2017)**

### **§ 1 Scope**

1. Our deliveries, performances and offers shall be made exclusively following the general Terms and Conditions set forth herein. These Terms shall also apply to all future business relations without any need of further express thereon. The present Terms and Conditions are deemed to have been accepted upon receipt of the goods or performances at the latest. Counter-confirmations of the Customer with reference to its own Terms and Conditions or Terms of Sale are hereby objected to.
2. Any agreements which are concluded between the Customer and us, the LBM Techno Gas GmbH & Co. KG, for the purpose of executing contract must be set out in writing.
3. Our Terms of Sale shall only apply to entrepreneurs pursuant to § 310 (1) BGB (German Civil Code).

### **§ 2 Offer and conclusion of contract**

1. Our offers shall be subject to change and non-binding. Declarations of acceptance and all orders shall require our written confirmation or a confirmation by telex to be legally effective.
2. Our employees are not authorized to make any oral collateral agreements or promises going beyond the contents of the written contract.
3. Contracts are concluded under the reservation that we are correctly and punctually supplied by our own suppliers. This shall only apply in the event that we are not responsible for the non-delivery, especially in case of concluding a congruent covering transaction with our supplier. The Customer shall be notified immediately if the performance cannot be provided. Advance payments will be reimbursed immediately.

### **§ 3 Prices and terms of payment**

1. Unless otherwise specified, we shall be bound by the prices quoted in our offers 30 days as of their date. Otherwise, the prices stated by us in our order confirmation plus the statutory VAT shall be applicable. Any additional deliveries and performances shall be invoiced separately.
2. Unless otherwise stated in the order confirmation, our prices shall be ex "warehouse", packaging excluded to be invoiced separately.
3. We reserve the right to change our prices accordingly if after conclusion of the contract cost reduction or increase may occur, in particular due to collective wage agreements or changes in material prices. Upon request we shall provide evidence of these changes to the Customer.
4. Deduction of discounts shall require a special agreement in writing.
5. In the case of default in payment, the statutory regulations shall apply.
6. We are entitled, despite the Customer's other terms, first to offset payments against the Customer's earlier debts. We shall inform the Customer of the nature of the offset performed. If costs and interest have already occurred, we shall be entitled to first credit the payment to the costs, then to the interest, and at last to the principal performance.
7. Set off rights can only be granted to the Customer, if his counter claims have been stated legally binding, undisputed or recognized by our company. Moreover, the Customer shall be entitled to exercise any right of retention only insofar as his counter-claim is based on the same contract.

### **§ 4 Time of delivery and performance**

1. Dates or times of delivery that can be agreed as binding and non-binding shall be in writing.
2. We shall not be responsible for delays in delivery and performance due to force majeure and due to incidents making delivery considerably more difficult or impossible for us - this shall include in particular strikes, lock-outs, official orders, etc. even if they occur with our suppliers or the latter's sub-suppliers -, even in the event of bindingly agreed periods and deadlines. They shall entitle us to postpone the delivery or performance by the duration of the delay plus an appropriate start-up period or to rescind the agreement in full or in part with respect to the part of the contract not yet performed.
3. If the hindrance persists for longer than four weeks, the Customer shall, after having set a reasonable respite period, be entitled to rescind the contract in respect of the part not yet performed. Should the time of delivery or performance be extended or we are released from our obligation, the Customer shall not be able to derive any claims to damages herefrom. We shall only be entitled to refer to the circumstances aforementioned if we inform the purchaser without delay.
4. We shall be at all times entitled to partial deliveries and to performances in part, unless these partial deliveries and performances in part are of no interest for the Customer.
5. Compliance with our contractual delivery and performance commitments shall require the timely and proper fulfilment of the Customer's obligations.
6. If the Customer is in default of acceptance, we shall be entitled to demand compensation for losses incurred; upon default of acceptance the risk of accidental deterioration and accidental loss passes to the Customer.

## **§ 5 Transfer of risk**

The risk shall be transferred to the Customer as soon as the shipment has been handed over to the freight-forwarding person or has left our warehouse for the purpose of dispatch. If the dispatch is delayed at the Customer's request, the risk transfers to the Customer with the notification of readiness for dispatch.

## **§ 6 Liability for defects**

1. The Customer's claims for defects assume that Customer has properly fulfilled his duties to inspection and objection pursuant to § 377 HGB (German Commercial Code).
2. In the event of defects in goods delivered by us, we shall be entitled, at our sole discretion, to opt for repair of the defect or replacement by non-defective goods. In the event of a repair of defects, we shall be obligated to bear all expenditures necessary for the repair of defects, particularly freight, transport, labour, and material costs, unless these costs increase due to the fact that the goods were brought to a location other than the place of fulfilment.
3. In the case subsequent performance fails, the Customer shall be entitled to rescission of the contract or to a price reduction at his discretion.
4. We are liable in accordance with legal provisions if the Customer asserts claims for damages that are due to criminal intent or gross negligence, including those due to the criminal intent or gross negligence of our agents or auxiliaries. Unless we are accused of intentional breach of contract, liability shall be limited to foreseeable loss that may typically be expected.
5. We are liable in accordance with statutory provisions, inasmuch as we are culpably in breach of a material duty under the contract; in this event, however, the liability to pay compensation is limited to the foreseeable loss that may typically be expected.
6. Liability for culpable injury to life, limb or health remains unaffected; this also applies to mandatory liability in accordance with the product liability law.
7. Unless otherwise regulated in the foregoing provisions any further liability shall be precluded.
8. The statute of limitation for claims for defects is 6 month, beginning with the transfer of risk.
9. In general, only the properties resulting from the technical product description shall be accepted as the qualities of the goods. Public statements, any type of praising or advertising by the manufacturer do not constitute any additional contractual representation as to the condition of the goods.

## **§ 7 Total liability**

1. Any and all liability for damages in addition to the liability stated under § 6 shall be excluded, notwithstanding the legal nature of the claim. This shall apply in particular to claims for damages resulting from culpa in contrahendo, for damages because of other breach of duties, or damages because of tortious claims for compensation for damage to property pursuant to § 823 BGB (German Civil Code).
2. The limitation acc. to para. (1) shall also apply in the event that the Customer instead of a claim for damages demands the replacement of useless expenditure in place of the performance.
3. Insofar as the liability for damages on our part is excluded or restricted, this shall also apply with respect to the personal liability for damages of our employees, workers, staff, agents and auxiliaries.

## **§ 8 Retention of title**

1. We shall retain full title of the goods until receipt of all payments arising from the business relationship with the Customer. In case of breach of contract by the client, in particular in case of default of payment, we shall be entitled to take back the object of sale. The taking back of the goods by us does also constitute our withdrawal from the contract. After taking back the purchased goods, we shall be entitled to dispose of them. We shall offset the proceeds from such a sale against the client's liabilities, less appropriate administrative cost. The Customer must inform us immediately in writing in relation to any attachments asserted by third parties, or any other such interventions, so that we can take legal action in accordance with § 771 ZPO (German Code of Civil Procedure). Unless the third party shall be able to reimburse judicial and extra-judicial costs of an action in accordance with § 771 ZPO, the Customer shall be liable for our loss.
2. The Customer is entitled to market the goods in the ordinary course of business; Customer, however, shall already now assign to us all claims up to the respective final invoice sum (including VAT) due to him from their customers or third parties from the resale - regardless of whether the goods were resold before or after processing. The Customer shall still be authorised to collect this debt after the assignment. Our right to collect the debt ourselves shall remain unaffected hereof. However, we commit ourselves not to collect the debt as long as the Customer meets his payment obligations from the sales earnings, does not get in arrears and, in particular, no insolvency proceeds have been opened against the Customer and the Customer has not suspended payment. However, if any such circumstances arise, we can demand the Customer to inform us about the assigned claims and their debtor, indicating all details needed for collection, to hand over to us the relative documentation and to inform the debtors (third parties) about the assignment.

### **§ 9 Product modification**

We reserve the right to carry out modifications to the product and production any time.

### **§ 10 Confidentiality**

Unless otherwise expressly agreed in writing, any information provided to us in connection with the order shall not be deemed confidential.

### **§ 11 Applicable law, place of jurisdiction, partial invalidity**

1. For these Terms and Conditions and for the complete legal relationship between the Customer and us, German law shall be exclusively applicable. The provisions of the UN Sales Convention shall not apply here.

2. As far as the Customer is a merchant, a legal entity under public law or public special fund entity, the place of jurisdiction for all disputes arising directly or indirectly from this contractual relationship shall be our registered office.

3. In the event of a provision in these Terms and Conditions or a provision in the context of other agreements proving to be or becoming invalid, the validity of all other provisions or agreements remains unaffected.