

General terms and conditions of sale

LEICHTMETALL Aluminium Giesserei Hannover GmbH

As of: 15/09/2022

1. General and scope of application

1.1

These General Terms and Conditions of Sale (hereinafter: GTCs) shall apply exclusively. LEICHTMETALL does not recognize any terms and conditions of business on the part of the Customer that are contrary to or deviate from these GTCs, particularly in the form of General Terms and Conditions of Purchase, unless LEICHTMETALL has expressly agreed to their validity in writing. The GTCs shall also apply if LEICHTMETALL fulfills delivery to the customer without reservation in the knowledge that the customer's terms and conditions conflict with or deviate from its own GTCs. Counter-confirmations of the customer with reference to the customer's terms and conditions are hereby objected to.

1.2

LEICHTMETALL is a company that produces aluminum alloys. Legal transactions under a purchase agreement are concluded exclusively under the terms and conditions stipulated in these GTCs. The purchased goods, primarily in the form of aluminum round bars, is a semi-finished product requiring further processing. Any kind of further processing by the customer or third parties may have a detrimental effect on the quality of the purchased goods.

1.3

The GTCs shall only apply to entrepreneurs within the meaning of § 14 BGB (German Civil Code) and to all current and future business relations with them.

2. Offer and offer documents

2.1

Offers made by LEICHTMETALL are subject to change unless they are expressly designated as binding in writing. This shall also apply to agreements made with the customer in individual cases, including collateral agreements, supplements and amendments, which shall also only be binding if they have been confirmed in writing.

2.2

LEICHTMETALL reserves all proprietary rights and copyrights to illustrations, drawings, calculations, cost estimates and other documents. This also applies to any written documents that are designated as confidential. The customer shall require express written consent from LEICHTMETALL before passing any such documents on to third parties.

3. Prices and payment terms

3.1

LEICHTMETALL shall not be obligated to stock raw materials vis-à-vis the customer itself or via third parties, but shall be entitled to order them on the London Metal Exchange (hereinafter: LME) as a fixed-date transaction in accordance with the delivery time agreed with the customer. The basis for the calculation of raw material prices by LEICHTMETALL shall be the official quotation on the LME. The calculation includes the usual exchange rate fluctuations.

3.2

LEICHTMETALL reserves the right to increase its prices if the customer announces, after conclusion of the contract, that they will not take delivery of the purchased goods within the agreed delivery period and LEICHTMETALL has already ordered the raw materials via the LME but has not yet taken delivery itself. If the acceptance of the raw materials ordered on the LME by LEICHTMETALL is delayed due to the customer's notification, additional costs may be incurred by LEICHTMETALL in the form of contango or similar price increases. Contango means that the price curve on the LME moves upwards between two points in time, i.e. that the raw material price at which LEICHTMETALL has contracted on the LME for the purchased goods (spot price) is lower than the price at which LEICHTMETALL later takes delivery of the raw materials based on the customer's notification (future price). LEICHTMETALL may increase the prices agreed with the customer by the cost of the price difference without requiring the customer's consent. LEICHTMETALL shall be obligated to provide evidence of costs leading to price increases to the customer upon request. The customer shall not be entitled to a price reduction if the forward price is lower than the spot price, i.e. the price curve is moving downwards.

3.3

Unless otherwise stated in the contract documents, LEICHTMETALL's prices are ex works excluding packaging and any ancillary costs arising from transport, load securing, etc., if and to the extent that these are necessary. The statutory value-added tax is not included in the prices; it will be indicated separately in the invoice. The deduction of discounts, regardless of the type and designation, shall require a special written agreement. Invoices from LEICHTMETALL are due for payment net (without deduction) within 30 days of the invoice date, even in the case of the customer's deviating terms and conditions of purchase. If any deviating provisions regarding the due date are agreed with customers, these shall take precedence. The statutory rules on default of payment apply, whereby LEICHTMETALL is entitled, in such a case, or, in the event of the customer's imminent insolvency, to demand immediate payment of all outstanding claims, including deferred amounts, or to demand corresponding securities.

3.4

The customer is only entitled to set-off rights if their counterclaims have been legally established, are undisputed or have been recognized by LEICHTMETALL. Furthermore, the customer shall only be entitled to exercise a right of retention to the extent that its counterclaim is based on the identical contractual relationship.

4. Delivery and delivery time

4.1

Unless otherwise stated in the contract documents, delivery ex works is agreed. LEICHTMETALL shall provide delivery with the packaging that is suitable and necessary according to the type and scope of the purchased goods. The costs of special packaging and additional freight shall be borne by the customer. If and insofar as LEICHTMETALL is obliged by law to recover the packaging used for transport, the customer shall bear the costs for the return transport of the packaging and the costs of its recovery or any additional costs incurred for the reuse of the packaging. Leichtmetall complies with the legal requirements of the VerpackG (German Packaging Act) and shall inform the customer thereof on request.

4.2

The transfer of risk is considered to be connected with the handover of the purchased goods including the accompanying materials to the customer. In the case of goods being shipped, the risk shall pass to the customer when the consignment has been handed over to the carrier. If shipment is delayed for reasons for which LEICHTMETALL is not responsible or if shipment becomes impossible, the risk shall pass to the customer upon dispatch of the notice of readiness for shipment to the customer. Insofar as the customer requests this, LEICHTMETALL will cover the delivery using transport insurance; any costs incurred in this respect shall be borne by the customer.

4.3

Partial deliveries are permitted insofar as this is reasonable for the customer. This applies, in particular, if (i) the partial delivery is usable for the customer within the scope of the contractual intended purpose or (ii) the delivery of the remaining ordered goods is ensured and the customer shall not incur any significant additional expenses or costs as a result of the partial delivery. In the event of a delay in acceptance or a delay in delivery of partial services, Sections 4.6 and 4.7 shall apply accordingly. LEICHTMETALL is entitled to make an under- or over-delivery in the amount of 10% of the respective quantity. Under- and overdeliveries of this kind are due to technical production reasons and are considered by the customer to comply with the contract. They have no influence on the offered and agreed prices.

4.4

If the loading or transport of the goods is delayed for a reason for which LEICHTMETALL is not responsible, LEICHTMETALL is entitled, but not obligated, to store the goods at the customer's expense and risk and under exclusion of liability at its reasonable discretion - if necessary, outdoors - to take all measures deemed suitable for the preservation of the goods and to invoice the goods as delivered. In case of default in acceptance of delivery, LEICHTMETALL is entitled to charge the customary storage fees.

4.5

All delivery times stated by LEICHTMETALL are non-binding if and to the extent that they do not constitute a binding written commitment to the customer. The beginning of such a delivery time assured by LEICHTMETALL presupposes the clarification of all technical questions with the customer. The delivery time applies only insofar as LEICHTMETALL itself has been supplied correctly and on time. Even in the case of bindingly agreed delivery times, LEICHTMETALL is not responsible for delays in performance due to force majeure or due to events that make delivery significantly more difficult or impossible for LEICHTMETALL. In such cases, LEICHTMETALL is entitled to postpone delivery for the duration of the obstruction plus a reasonable start-up period. Any subsequent requests for changes or additions by the customer shall extend the delivery time accordingly. LEICHTMETALL's compliance with its delivery obligation further requires the timely and proper fulfillment of all of the customer's due obligations. The right to plead non-performance of the contract is reserved.

4.6

If the customer is in default of acceptance or culpably violates other duties to cooperate, LEICHTMETALL is entitled to demand compensation for the damage incurred by LEICHTMETALL in this respect, including any additional expenses. Further claims or rights remain reserved. In such a case, the risk of accidental loss or accidental deterioration of the purchased goods shall pass to the customer at the point in time at which the customer is in default of acceptance.

4.7

If a delay in delivery occurs for reasons for which LEICHTMETALL is responsible in accordance with p. 3 et seq. of this Clause, the customer shall be obliged to declare, within a reasonable period of time, whether they continue to insist on delivery or demand withdrawal from the contract and/or damages in lieu of performance due to the delay. A grace period shall only be waived if the underlying contract is a transaction for delivery by a fixed date within the meaning of Section 376 (1) of the German Commercial Code (HGB), in particular, if the customer can claim that they no longer have an interest in the further performance of the contract.

5. Liability for defects

5.1

Information on the purchased goods and their intended use, e.g. dimensions, weights, specifications, are merely descriptions or descriptions of the goods. These are only characteristic values and not warranted properties. These values are non-binding guideline values and are only considered warranted to the extent that they have been tested for a specific application by the customer and correspond to the samples released for this purpose. The customer shall have no claims for defects in the event of deviations in quantity pursuant to Clause 4.3, Sentence 4 of these GTCs.

5.2

Claims for defects on the part of the customer presuppose that the customer has duly fulfilled their obligations to inspect the goods and give notice of defects in accordance with § 377 of the German Commercial Code (HGB). If the purchased goods are defective, LEICHTMETALL is entitled to choose between subsequent performance either by rectifying the defect or by delivering a new item free of defects. The place of performance of the supplementary performance is LEICHTMETALL's registered office.

5.3

The limitation period for claims based on defects shall be 12 months, calculated from the date of transfer of risk, subject to any statutory provisions to the contrary, insofar as these are mandatory.

5.4

LEICHTMETALL's liability is governed by the provisions stipulated in Clause 6.

6. Total liability

6.1

LEICHTMETALL is only liable in cases of intent, gross negligence or the breach of an essential contractual obligation. In the event of a slightly negligent breach of a material contractual obligation, LEICHTMETALL's liability shall be limited to the foreseeable, typically occurring damages. The same shall apply in the event of a breach of a contractual obligation due to gross negligence. The above limitations of liability shall also apply if and to the extent that the customer demands compensation for useless expenses instead of a claim for damages in lieu of performance.

6.2

Any fault on the part of LEICHTMETALL's representatives or vicarious agents shall be attributable to LEICHTMETALL.

6.3

The aforementioned limitations and restrictions of liability shall not apply in the event of intent or fraudulent intent, in the event of culpable injury to life, limb or health or in the event of mandatory liability pursuant to the Product Liability Act. Unless otherwise stipulated above, liability is excluded in all other respects.

7. Retention of title

7.1

LEICHTMETALL retains ownership of the purchased goods until all payments arising from the business relationship with the customer have been received. In the event of a breach of contract by the customer, in particular, in the event of a default in payment, LEICHTMETALL is entitled to take back the purchased goods. The taking back of the purchased goods by LEICHTMETALL shall constitute a withdrawal from the contract. After taking back the purchased goods, LEICHTMETALL is entitled to utilize them; the proceeds of the utilization are to be credited against the customer's liabilities after deduction of reasonable utilization costs.

7.2

The customer is obligated to treat the purchased goods with care and, in particular, to insure them adequately at replacement value against fire, water and theft damage at their own expense. If and to the extent that maintenance and inspection work is required, the customer must perform such work in a timely manner at their own expense.

7.3

In the event of seizures or other interventions by third parties, the customer must immediately notify LEICHTMETALL in writing so that LEICHTMETALL can initiate any legal steps, particularly in accordance with Section 771 of the German Code of Civil Procedure (ZPO). If the third party is unable to reimburse LEICHTMETALL for the judicial and extrajudicial costs of legal action, the customer is liable for the loss incurred by LEICHTMETALL.

7.4

The customer is entitled to resell the purchased goods in the ordinary course of business; the customer hereby assigns to LEICHTMETALL all claims in the amount of the final invoice amount (including value added tax) of LEICHTMETALL's claim accruing to it against its customers or third parties from the resale, irrespective of whether the purchased goods have been resold without or after processing. The customer remains authorized to collect this claim even after its assignment. LEICHTMETALL's right to collect the claim itself shall remain unaffected. However, LEICHTMETALL undertakes not to collect the claim as long as the customer meets their payment obligations from the collected proceeds, is not in default of payment and, in particular, no application for the opening of restructuring or insolvency proceedings has been filed or no cessation of payments has occurred. In such a case, LEICHTMETALL may demand that the customer inform LEICHTMETALL of the assigned claims and their debtors, provides all information required for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.

7.5

The processing or transformation of the purchased goods by the customer is always deemed to have been carried out for LEICHTMETALL. If the purchased goods are processed with other goods not belonging to LEICHTMETALL, LEICHTMETALL acquires co-ownership of the new goods in the ratio of the value of the purchased goods (final invoice amount including VAT) to the other processed goods at the time of processing. In all other respects, the same shall apply to the item created as a result of processing as to the purchased goods delivered subject to retention of title.

7.6

If the purchased goods are inseparably mixed with other items not belonging to LEICHTMETALL, LEICHTMETALL shall acquire co-ownership of the new goods in the ratio of the value of the purchased goods (final invoice amount including VAT) to the other mixed goods at the time of mixing. If the mixing takes place in such a way that the customer's goods are to be regarded as the main goods, it is deemed to be agreed that the customer transfers co-ownership to LEICHTMETALL on a pro rata basis.

7.7

The customer shall retain the resulting sole ownership or co-ownership rights on behalf of LEICHTMETALL.

7.8

The customer shall also assign to LEICHTMETALL any claims to secure its own claims against it that arise against a third party as a result of the connection of the purchased goods with real estate.

7.9

LEICHTMETALL undertakes to release the securities to which it is entitled at the customer's request to the extent that the realizable value of the securities exceeds the claims to be secured by more than 10%; the selection of the securities to be released shall be a matter for LEICHTMETALL.

8. Assignment of rights and legal succession

8.1

The customer may only assign rights and claims arising from the contract to third parties with prior consent from LEICHTMETALL. LEICHTMETALL is entitled to transfer its contractually established rights and claims to third parties and in particular to factoring companies, even in the event of the customer's deviating general terms and conditions of purchase. LEICHTMETALL is entitled to have all obligations fulfilled by third parties. In this case, the customer shall accept the service rendered as a service performed by LEICHTMETALL.

8.2

LEICHTMETALL is entitled to change the contractual partner. However, if the contractual obligations have been assumed by a third party, the customer shall have an extraordinary right of termination, which must be exercised in writing within four weeks of becoming aware of the change of contractual partner. After this period has expired, the contractual relationship with the third party shall continue.

9. Final provisions

9.1

In the case of business relations with merchants, legal entities under public law or special funds under public law or with customers without a general place of jurisdiction in Germany, the place of jurisdiction for all disputes shall be Hanover. LEICHTMETALL is also entitled to sue at the customer's place of business. Unless otherwise stated in the contractual documents, the place of performance is LEICHTMETALL's place of business.

9.2

Even if individual provisions are legally ineffective, the remaining parts of these GTCs shall remain binding, unless compliance with them would constitute undue hardship for one of the parties. Verbal collateral agreements regarding these GTCs and / or their validity have not been made. Additions or amendments to these GTCs or parts thereof must be made in writing; this shall also apply to the waiver of the written form requirement itself.

9.3

The contractual relationship between LEICHTMETALL and the customer shall be governed exclusively by the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods and the conflict-of-law rules of private international law.

9.4

If these GTCs are available in different languages, the German version shall be solely authoritative to provide clarity on any issues regarding interpretation.