
GENERAL TERMS AND CONDITIONS
LUX ELEMENTS GMBH & CO. KG
Released December 2017

I) General

1. LUX ELEMENTS GmbH & Co. KG (the Seller) accepts and executes all orders exclusively based on the following terms and conditions.
2. The Buyer accepts these terms and conditions by placing his order. Conflicting purchase terms of the Buyer shall only be binding if accepted by the Seller in writing.
3. Ancillary verbal agreements including discounts, bonuses and dispositions shall only be valid if confirmed in writing by the Seller.

II) Terms of delivery

1. Deliveries are made at the Seller's discretion from the Leverkusen plant or from the Seller's warehouse. Deliveries are at the Buyer's risk if the Buyer is a Merchant and in any case to the account of the Buyer.
2. If the Buyer does not accept the goods at the agreed time, the Seller shall be entitled to withdraw from the delivery contract after setting a one-week acceptance period. The provisions of the German Civil Code (BGB) regarding default of acceptance shall remain unaffected.
3. If, at the request of the Buyer, the Seller takes back any goods as a gesture of goodwill, the Buyer shall bear the return freight. For the processing and handling of the goods, 15 percent of the goods' net value shall be deducted from the credit note to be issued by the Seller. Only goods from the currently valid product range can be returned, with the exception of construction chemical products and custom-made products.

III) Delayed delivery

1. All sales are subject to the timely supply to us by our suppliers. This does not apply if the Seller is responsible for the delay.
2. In case of force majeure, in particular labour disputes, official intervention and operational breakdowns for which the seller is not responsible, the delivery period shall be extended by the duration of the disruption provided that it does not take an unreasonably long time. In case of delays beyond this time, the parties shall mutually agree whether to adhere to or cancel the contract. The buyer shall not be entitled to claim damages in this regard.
3. In the event of delay of the Seller, the Buyer shall grant a period of grace of 10 days unless a firm deal has been agreed upon. This grace period can be set in writing earliest after the expiry of the delivery period.

In the event of delayed delivery, claims for damages due to default shall be excluded in cases of ordinary negligence, if the Buyer is a Merchant, and it is not a firm deal. In any event, in the case of slight negligence, the liability for damages shall be limited to the foreseeable losses.

IV) Warranty

1. The warranty period shall be one year if the Buyer is a Merchant. The Seller will meet its warranty obligation by means of replacement.
2. The Seller shall not be liable for any consequential loss or damages. This shall not apply for consequential damages arising from injury of life, body or health; or which can be attributed to gross negligence, intent or breach of a substantial contract obligation (cardinal obligation); or in case of damages resulting from a failure to achieve warranted characteristics, quality or durability guarantees. If the Seller is liable for consequential damages and the Buyer is a Merchant, the liability of the Seller shall be limited to the foreseeable losses if the damage arises from the negligent breach of a substantial contract obligation (cardinal obligation).
3. If goods such as joint sealing materials are sold as per sample, the guarantee is limited to the professional compliance with the sample.
4. The information provided in the Seller's datasheets is based on the state of knowledge at the time when the datasheets were issued. They are solely intended to describe the products with view to safety requirements.

They do not constitute any assurance of delivery specifications.

5. The instructions for use issued by the Seller should be considered a general guide only. Given the diversity of uses of each product and taking into account the specific application situation, the Buyer shall be responsible to conduct its own trials.

6. Buyers intending to resell the goods received from the Seller take the sole responsibility for the correct packing, classification and marking of hazardous substances, see art. 15 GefStoffV (German Ordinance on Hazardous Substances). In particular the Buyer shall not be entitled to any claims if the packing, classification or marking provided by the Seller does no longer comply with the current regulations as a result of legal changes made after the delivery of the goods. The Seller explicitly does not assume any obligation to provide information on such legal changes.

7. The same (6) shall apply if goods of the Seller are packed using packing material of the Buyer. In this case the Buyer takes the entire responsibility for the packing and marking. As regards insufficient packing and/or marking, the Buyer shall indemnify the Seller from all third party claims.

V) Terms of payment

1. The invoice is issued on the day of despatch or availability of the goods after receipt of the delivery note. Unless otherwise agreed, the price shall be calculated based on the prices in effect on the day of delivery.
2. Invoices shall be payable within 14 days of the invoice date after deducting a discount of 2 percent or within 30 days net.
3. The offsetting against counter-claims shall not be permitted unless the Buyer's claims are undisputed or have been determined as legally binding.
4. A significant deterioration of the Buyer's financial situation shall entitle the Seller, with no prejudice to any other rights, to execute the remaining orders on a delivery against payment basis. Under the same preconditions, the Seller's claims for payment from previous deliveries shall become due for immediate payment.

5. Merchants shall be entitled to the right of retention arising from alleged deficiencies of the goods only if the deficiencies of the goods are undisputed or have been determined as legally binding. In all other instances, the Buyer may demonstrate the deficiency of the goods supplied through a professional opinion which is not arbitration opinion and which has been provided by a publicly appointed and sworn expert whereupon the Seller remains free to raise objections to this opinion.

VI) Retention of title

1. The Seller shall retain title to the delivery items until complete payment of the purchase price. If the Buyer is a Merchant, the Seller shall in addition retain title to the delivery item until all its claims against the Buyer arising out of the entire business relationship have been settled.
2. In the event the goods supplied are processed or combined with other material, the Seller shall become co-owner of the new manufactured items in the ratio the value of goods subject to retention of title bears to the value of the new items so resulting from the production process. The time of such processing decides upon the value of the goods subject to retention of title as well as the value of processing. During the processing, the Buyer shall act on behalf of the Seller without, however, acquiring any entitlement against the Seller as a result of the processing. The Buyer is obliged to store the goods subject to retention of title carefully on behalf of the Seller. If the Seller does not obtain co-ownership of the combination of several items, the Buyer shall already transfer a co-ownership share in accordance with the provisions of section 6 no. 2 sentences 1 and 2. The required declarations of intent are already being executed.

3. Where the new product is resold by the Buyer, the Buyer's claim to the purchase price shall, by way of security, take the place of the product in accordance with the provisions of section 6 no. 2 sentences 1 and 2. The Buyer shall assign the claims to the purchase price on a pro-rata basis to the Seller who hereby accepts the assignment.

4. If the Buyer re-sells the unprocessed goods, the Buyer shall hereby assign all claims, including any ancillary rights, to the Seller up to the amount of his claims. The Seller hereby accepts the assignment.

5. The amounts collected are to be transferred to a separate account for the benefit of the Seller.

6. If the value of the securities exceeds the Seller's claims by more than 10 percent, the Seller shall, at the request of the Buyer, release the exceeding amount of the securities to the Buyer.

7. The Buyer shall inform the Seller immediately in writing if an attachment is enforced upon the goods subject to retention of title or upon goods in the co-ownership of the Seller or upon claims transferred to the Seller by way of an advance assignment. The Buyer must inform the enforcement authority and the judgment creditor without delay that the goods are subject to retention of title or co-owned by the Seller or the fact that the claim has been assigned to the Seller.

VII) Place of performance and jurisdiction

1. Place of performance for all goods and services arising from this supply contract is the domicile of the Seller's commercial establishment.
2. For Merchants, the place of jurisdiction for all obligations of the parties (including actions on bills of exchange or cheques) is Leverkusen.

VIII) Applicable law

The purchase contract shall be subject to German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980.

IX) Final provisions

The invalidity of one or more provisions of these terms and conditions shall in no way affect the validity of the remaining provisions.

LUX ELEMENTS GmbH & Co.KG,
An der Schusterinsel 7, D-51379 Leverkusen,
Tel.: +49 (0)2171-7212-0, Fax: +49 (0)2171-7212-30