



**General Terms and Conditions of LION Smart GmbH  
For Use in Business Transactions with Companies  
(As of 19.02.2021)**

**1. General**

1.1 The deliveries, services and offers of LION Smart GmbH (hereinafter the "Supplier") are made exclusively on the basis of these terms of delivery. They apply to all future business relationships, even if not expressly agreed again. At the latest upon receipt of the Supplier's order confirmation, these terms are deemed accepted. Counter-confirmations by the Customer referring to its own terms of business or purchase are hereby objected to.

1.2 Deviations from these terms of delivery are only effective if confirmed in writing by the Supplier. Amendments and supplements require written form.

**2. Offer and Conclusion of Contract**

2.1 The Supplier's offers are non-binding and subject to change. The Customer's order is a binding offer to conclude a purchase contract. The Supplier may accept this offer within the period stated in the offer, but no later than four weeks after receipt, by sending an order confirmation. The contract is only concluded upon the Supplier's written order confirmation.

2.2 Drawings, illustrations, dimensions, weights, other performance data and/or other information and data are not guaranteed characteristics. They are only binding if expressly agreed in writing. The characteristics set out in the service description conclusively define the properties of the service.

**3. Prices**

3.1 The prices stated in the Supplier's order confirmation do not include statutory value added tax. It will be shown separately at the applicable rate.

3.2 Unless otherwise agreed, prices are ex works, 85748 Garching.

**4. Delivery and Performance, Liability for Delay**

4.1 Delivery dates are only binding if they have been agreed in writing and expressly designated as binding.

4.2 Correct and timely self-supply remains reserved. The Supplier shall inform the Customer without undue delay of the non-availability of the item to be delivered and, in the event of withdrawal, promptly refund any corresponding consideration received from the Customer.

4.3 In the event of delays in performance, the Supplier is liable in accordance with the statutory provisions if the Supplier, its representative or its vicarious agent is responsible for the delay. However, in cases of simple negligence, the Supplier's liability is limited to the foreseeable damage typical for the contract. Otherwise, the Supplier's liability for delay in performance is limited to 5% for damages in addition to performance and to 15% for damages in lieu of performance, of the value of the delivery/service. Further claims of the Customer – including after expiry of any period for performance set by the Customer for the Supplier – are excluded. The above limitations do not apply to liability for intent, gross negligence or injury to life, body or health.

4.4 If the delivery/service is impossible, the Customer may claim damages in accordance with the statutory provisions. However, the Customer's claim for damages in addition to or in lieu



of performance, and for reimbursement of futile expenditure, is limited to a maximum of 10% of the value of that part of the delivery/service which cannot be used due to the impossibility. Further claims of the Customer due to impossibility are excluded. This limitation does not apply insofar as liability arises in cases of intent, gross negligence or injury to life, body or health. The Customer's right to withdraw from the contract remains unaffected.

4.5 Force majeure releases the Supplier from its obligation to perform the contract for the duration and extent of the event. Force majeure includes, in particular, natural disasters, epidemics, pandemics, war or threat of war, nuclear accidents, industrial disputes, strikes, lockouts, unforeseeable operational disruptions or shortages of raw materials, restrictions on the energy supply by third parties, and other similar events not attributable to the Supplier. Damage claims of the Customer are excluded in cases of force majeure. If the Supplier is released from its obligation to perform the contract for more than four (4) weeks due to force majeure or actual or economic impossibility, the parties have the right to withdraw immediately; any advance performances already rendered shall be returned. This also applies if such circumstances arise after the delivery date has passed. A case of economic impossibility exists if prices have risen by 10% due to force majeure.

4.6 In the event of improper or non-intended use of the delivered product (hereinafter the "Product") by the Customer, a claim for defect warranty and/or damages in accordance with Section 4 exists only if the Customer proves that the defect occurred independently of the improper or non-intended use. Improper use exists in particular where:

- The Product is operated in an unforeseen environment,
- The Product is operated without regard to the statutory safety regulations relevant at the place of use,
- The warnings and safety instructions in all documents relevant to the Product are not observed,
- The Product is operated with faulty safety and protection conditions,
- The Product or the supplied software is modified without authorization, or
- Connected or neighboring devices affect the Product beyond the legally permitted limit values.

4.7 The Supplier is only entitled to make partial deliveries and partial performances that it can invoice accordingly if the partial delivery is usable by the Customer within the contractual purpose, the delivery of the remaining ordered goods is assured, and the Customer does not incur any significant additional effort or additional costs as a result.

## **5. Safety Provisions**

Where safety provisions are enclosed with the Supplier's delivery or service, the Customer shall observe them carefully. By receiving these safety provisions, the Customer undertakes to create the operational conditions necessary to ensure their precise observance. Any liability of the Supplier for damages resulting from non-compliance with these safety provisions is expressly excluded.

## **6. Shipping and Transfer of Risk**

6.1 The Customer bears the costs of shipment from the location of the Supplier's place of business.

6.2 The method of shipment and the means of transport are at the sole discretion of the Supplier. Packaging costs are not included in the price. This applies in particular to higher costs arising from special packaging that is requested or required. Insurance against transport damage of any kind will only be taken out upon express request and at the Customer's expense. The Supplier is not liable for transport damage. The risk of accidental



loss or accidental deterioration of the goods passes to the Customer at the latest upon handover of the items (commencement of loading) to the carrier, freight forwarder or other third party.

## **7. Defect Notices, Warranty and Liability for Defects**

7.1 The Supplier warrants that the products are free from manufacturing and material defects. The warranty period is 24 months. It begins on the date of delivery.

7.2 If the Supplier's operating or maintenance instructions are not followed, or if changes are made to the products without the Supplier's consent, parts are replaced or consumables are used that do not conform to the original specifications, all warranty claims lapse unless the Customer disproves that one of these circumstances caused the defect.

7.3 The Customer must notify the Supplier in writing of any apparent defects or incomplete delivery without undue delay, and at the latest within one week of receipt of the delivered item, with a detailed description of the defects complained of. Defects that cannot be detected even upon careful inspection within this period must be notified to the Supplier in writing without undue delay after discovery. Claims based on belatedly reported defects or incomplete delivery are excluded. The processing of complaints does not constitute a waiver of the right to rely on a belated or improper notice of defects.

7.4 Defect claims do not exist in the case of only insignificant deviations from the agreed characteristics or only insignificant impairment of usability.

7.5 For defective items, the Supplier will, at its discretion, provide subsequent performance either by remedying the defect ("repair") or by delivering a defect-free item ("replacement"). Subsequent performance does not constitute an acknowledgment of a legal obligation to do so. The Supplier may refrain from subsequent performance if the costs of subsequent performance exceed 30% of the market value of the sold item; in this case, the Customer's rights are determined in accordance with Section 7.6. In the case of repair, the remaining part of the original warranty period under Section 7.1 begins to run upon return of the repaired item. The same applies in the case of replacement. The Customer bears the expenses required for subsequent performance insofar as they increase because the delivery is taken to a location other than the Customer's place of business, unless such transfer corresponds to its intended use.

7.6 If subsequent performance fails twice, or if a reasonable period set by the Customer for subsequent performance has expired unsuccessfully, or if it is dispensable under the statutory provisions, the Customer may withdraw from the contract or reduce the purchase price. Damage claims exist only in accordance with Section 7.9.

7.7 Guarantees, in particular guarantees of characteristics, are binding on the Supplier only to the extent that they (i) are contained in an order confirmation, (ii) are expressly designated as a "guarantee" or "guarantee of characteristics", and (iii) expressly define the obligations resulting from such a guarantee for the Supplier.

7.8 Warranty claims against the Supplier are available only to the direct Customer. They are not assignable.

7.9 The Supplier is liable in cases of intent or gross negligence on the part of the Supplier, its representatives or vicarious agents in accordance with the statutory provisions. Otherwise, the Supplier is liable only under mandatory statutory provisions, in particular under the Product Liability Act, for injury to life, body or health, for breach of an expressly agreed



guarantee of characteristics, or for culpable breach of material contractual obligations (obligations whose fulfillment makes the proper performance of the contract possible in the first place and on whose compliance the Customer regularly relies and may rely). However, the claim for damages for breach of material contractual obligations is limited to the foreseeable damage typical for the contract, unless intent or gross negligence is present. The Supplier is not liable for damage sustained by the delivered item itself, and in particular not for lost profit or other financial losses of the Customer. The provisions of this section apply to damages in addition to performance and to damages in lieu of performance, regardless of the legal basis, in particular for defects, breach of obligations arising from the contractual relationship or unlawful acts. They also apply to claims for reimbursement of futile expenditure. Liability for delay is governed by Section 4.3, and liability for impossibility by Section 4.4.

## **8. Payment**

8.1 Unless otherwise agreed, 35% of the order value is payable by the Customer upon receipt of the order confirmation, and a further 35% upon notification that half of the order has been completed. The remaining 30% of the order value is due for payment after delivery to the Customer.

8.2 Unless otherwise agreed in writing, the Customer is in default 30 days after the due date if it has not paid. The Customer is only entitled to withhold payments or to set off counterclaims if its counterclaims have been legally established, are undisputed or have been acknowledged by the Supplier, or arise from the same contractual relationship.

8.3 If the Supplier becomes aware of circumstances that call into question the Customer's solvency and creditworthiness, in particular if the Customer ceases its payments or files an application to open insolvency proceedings, the Supplier is entitled to declare the entire outstanding balance due and to make further deliveries only against advance payment.

## **9. Retention of Title**

9.1 The delivered item remains the property of the Supplier until all claims the Supplier has against the Customer arising from the business relationship have been satisfied. In the event of a breach of duty by the Customer, in particular payment default, the Supplier is entitled, even without setting a deadline, to demand the return of the delivered item and/or to withdraw from the contract; the Customer is obliged to surrender the item. A demand for return of the delivered item does not constitute a declaration of withdrawal by the Supplier unless this is expressly declared.

9.2 If the delivery or service subject to the Supplier's retention of title is inseparably combined or mixed with other items, the Supplier becomes the owner or, if the processing involves materials of several owners or the value of the processed item is higher than the value of the reserved goods, co-owner of the new item in proportion to the value of the reserved goods to the value of the new item. If no such acquisition of ownership by the Supplier occurs, the Customer hereby transfers its future sole or co-ownership of the new item to the Supplier as security. The Customer assigns to the Supplier its claims arising from the resale of the reserved goods in proportion to the value of the reserved goods.

## **10. Compliance with Laws and Export**

10.1 The Customer must comply with all official requirements and all applicable laws, in particular the laws of the country in which the Customer conducts business. The Customer must obtain in good time all required approvals and licenses, as well as all other necessary permits required for the use or export of the delivered item under all such applicable laws. In



the event of a breach of the foregoing obligations, the Customer shall indemnify the Supplier against claims of third parties.

10.2 The Supplier may withhold its performance from the Customer if the Customer would violate such applicable laws, or if not all required approvals are in place and this is not due to the fault or responsibility of the Supplier.

## **11. Industrial Property Rights, Copyrights and Confidentiality**

11.1 The Supplier remains the holder of the industrial property rights and copyrights it holds at the time of the respective conclusion of the contract. No rights of use or exploitation are granted to the Customer. Industrial property rights include, in particular, patent and design rights, utility models and know-how. All ideas, inventions, know-how, samples, models, cost estimates, drawings and the like, and information of a physical or non-physical nature (including in electronic form) arising in the course of the Supplier's performance are the intellectual property of the Supplier. Insofar as the use of the Supplier's industrial property rights and copyrights is necessary for the Customer's agreed purpose of use, the Customer receives a simple, non-transferable and revocable right of use, limited in terms of location, time and content to the agreed purpose of use. Items and documents provided, as well as electronic information, that have not led to a contract must be destroyed or returned, at the Supplier's option, and proof thereof provided by the Customer no later than two months after the last business contact between the Supplier and the Customer.

11.2 All industrial property rights and copyrights in the product belong exclusively to the Supplier in relation to the Customer, including where they arise from specifications or the cooperation of the Customer.

11.3 All information, knowledge, results, data and documents designated by the Supplier as "secret" or "confidential" ("Confidential Information") may not be reproduced by the Customer or made available to third parties without the express consent of the Supplier. This includes, in particular, the direct or indirect disclosure or inspection by third parties, whether for consideration or free of charge. The Customer undertakes to ensure that all natural and legal persons who become aware of Confidential Information in the performance of the contract are bound to confidentiality in accordance with these provisions. Within the scope of legal possibilities, these obligations will also be imposed on the Customer's employees for the period after they leave the Customer.

11.4 The Customer undertakes to keep this Confidential Information secret, as a trade and business secret, even after termination of the contract, and to use it only for the purposes of the concluded contract and its performance. Internal disclosure within the Customer's organization must be limited to what is strictly necessary for the performance of the contract ("need-to-know").

## **12. Rights of Third Parties**

12.1 The Supplier shall endeavor, with the care customary in the industry, to ensure that the delivered item does not infringe any industrial property rights or copyrights of third parties in the country of the place of performance. This endeavor includes neither a search for nor an evaluation of conflicting industrial property rights or copyrights. If the use of the delivered item leads to an infringement of industrial property rights or copyrights, the Supplier will, at its option and at its own expense, either procure for the Customer a right of further use sufficient for the agreed or assumed use, or modify or replace the delivered item in a manner reasonable for the Customer so that the infringement no longer exists. If this is not possible or not reasonable for the Supplier, both parties have the right to withdraw from the contract.

12.2 Subject to damage claims under Section 7.9, the Supplier's obligations under Section 12 are exhaustive in the event of an infringement of industrial property rights or copyrights. They only apply if: (a) the Customer informs the Supplier in writing without undue delay of any asserted infringement of industrial property rights or copyrights; (b) the Customer supports the Supplier to a reasonable extent in defending against the asserted claims or enables the Supplier to carry out modification measures; (c) the Customer does not admit or acknowledge the existence of an infringement to third parties; (d) all defense measures and settlement negotiations remain reserved to the Supplier; and (e) the infringement was not caused by the Customer or by third parties commissioned by it having modified the delivered item without authorization, or having used it in a manner not intended by the Supplier or together with products not provided by the Supplier.

12.4 Insofar as the Customer is responsible for the infringement of the property right, its claims are excluded.

12.5 The Supplier is not responsible for infringements of industrial property rights or copyrights caused by the Customer or by third parties commissioned by it having modified the delivered item without authorization, or having used it in a manner not provided for by the Supplier, or together with products not provided by the Supplier. Furthermore, the Supplier is not responsible for infringements of combination or process patents relating to the use of the Supplier's products in conjunction with other materials or goods not originating from the Supplier.

12.6 If the Supplier performs the order in accordance with the specifications or with products provided to it by the Customer, the Supplier is excluded from any liability for infringements of industrial property rights. The Customer shall indemnify and hold harmless the Supplier from all losses arising from any claim for infringement of industrial property rights.

### **13. Miscellaneous**

13.1 The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Munich.

13.2 These terms of delivery and all legal relations between the Customer and the Supplier are governed by German law, excluding the UN Convention on Contracts for the International Sale of Goods and German private international law.

13.3 Should any provision of these terms of delivery or any other contractual agreement in the legal relations of the parties be or become invalid or unenforceable, the validity of all other provisions or agreements shall not be affected. The invalid or unenforceable provision shall be replaced by the parties with a reasonable and lawful provision that comes closest to the regulatory purpose of the original provision. This also applies in the event of a gap in the regulations.