

## **General Terms and Conditions for international Transactions (Commonwealth) - LAMILUX Composites GmbH-**

### **I. General Terms**

1. Our terms and conditions apply to all present and future transactions with our contracting partner, hereinafter called Customer, even if we do not express our objection to divergent Terms of Purchase or counter-confirmations which we do hereby expressly reject. They are considered accepted by the Customer at the latest upon acceptance of delivery or service.
2. Our silence concerning contractual declarations of the Customer shall never imply our consent.
3. The Incoterms 2010 are applicable in cases of uncertainty concerning the interpretation of trade clauses.
4. Any assignment of a claim against us requires our express confirmation in writing.
5. All documents and information – especially tender documents – which are handed over to us for generation of offers are of pure informative nature and only become a part of our contractual relation with our express consent.

### **II. Offers and Conclusion of Contract**

1. Our quotations are subject to change and without committal. Offers are subject to prior sale. All supply agreements, other agreements and deviations from our Terms and Conditions only become binding on us after our written confirmation and only on the terms confirmed by us.
2. The legal relationship between Lamilux and Customer is exclusively governed by the respective written contracts, including these General Terms and Conditions. The written agreements are final and contain all agreements between the contracting parties.
3. The contractual relationship or rather the performance of the contract is subject to the necessary export permits being granted and to there being no other obstacles arising from German or other relevant export regulations.
4. Amendments to and modifications of all contractual stipulations, including these General Terms and Conditions, are only valid and binding if made in writing.

### **III. Product quality, specimens and samples; guarantees**

1. Unless otherwise expressly agreed, the quality of the goods is exclusively determined by Lamilux's product specifications valid at the time the order was placed. Product specifications do not constitute any guarantees, but are solely specifications and characterizations of the delivery or service.
2. The properties of specimens and samples are binding only if and to the extent they have been explicitly agreed upon in writing as definitions of the quality of the goods.
3. The Customer shall not receive guarantees in the legal sense from us.

### **IV. Scope of Performance**

1. Our confirmation of order is decisive for the size of the delivery.
2. We reserve our copyright for any sketches, drawings and other documents provided by us.
3. In case of cancellations of orders for reasons which are not our responsibility, we are entitled to claim labor and administrative costs in the amount of fifteen per cent of the value of the goods contained in

the respective order confirmation as liquidated damages. In this case, all freight and transportation costs for transport and return transport are to be borne by the party returning the goods. Materials which were manufactured or designed bespoke to suit customer requirements are excluded from the return consignments and reimbursement.

4. Deliveries – also those which are performed free warehouse – are performed at the Customer's risk, assuming that the street used for delivery was built for trucks with a total weight of up to 38 tons. The ware must be able to be stored on the building site without the necessity of additional transport. If the aforementioned conditions are not fulfilled and, thus, additional expenses occur, such expenses will be invoiced separately to the Customer.

## V. Prices

1. The prices included in the sales agreement are binding for an agreed time of delivery of up to 4 months. We are – after having given prior notice - entitled to apply the current prices and delivery terms, if the delivery is executed after a period exceeding four months after the conclusion of the contract. Customer is entitled to rescind the contract within fourteen days in case of a price increase. All additional and special services will be billed separately. Our price calculations are carried out exclusively in EUROS.
2. The prices for deliveries abroad are to be understood as ex works (EXW) Rehau (Incoterms 2010). Those for Lamilux rolls and reelstands exceeding 200 m<sup>2</sup> are free.
3. We do not accept any collateral security for invoice amounts of less than EUR10,000. We will solely furnish security by way of bank guaranty for the aforementioned invoice amounts, if the Customer bears all costs relating to such security.

## VI. Payment Terms

1. Invoices shall be due on receipt of the invoice not later than 7 days of the date of the invoice unless otherwise agreed in written. All terms of payment are under reserve of confirmation of cover by our credit insurance. In the case that goods ordered are not called they will become payable 4 weeks after the initially agreed delivery date.
2. Regardless of the place of delivery of goods or documents, place of payment is at the legal seat of Lamilux.
3. Customer may only set off claims against Lamilux against an undisputed or adjudicated counterclaim. The offsetting of all other claims against Lamilux is subject to Lamilux's prior written consent. Customer's exercise of any rights to refuse performance and of rights of retention is likewise subject to our prior written consent.
4. Bills of exchange will only be accepted, if agreed upon in advance. Any discount charges and other expenses will be charged to the Customer. All bills of exchange must be issued in accordance with the requirements laid down by the central bank. If bills of exchange are not presented within due time, we are authorized to demand immediate payment.

In case of any decline regarding the financial circumstances of the customer and/or any reservations about the credit standing of the customer (e.g. futile enforcements, revocation of credit insurance coverage) we are entitled to refuse our services until – at our option – an advance payment or payment of an appropriate surety is made. In the case that our demand for such advance payment or bail is not complied with within an appropriate period – as a rule two weeks – we are entitled without setting a further period to withdraw from the contract or to claim for damages for default. If the deal is a trading transaction for the customer and the above premises exist we can – at our choice – either ask for immediate payment of all claims whether due or undue resulting from all contracts existing between us or ask for a bail for these claims. We are entitled to refuse performance until payment or reception of a bail.

5. Invoices sent by e-mail are to be considered legally binding.

## **VII. Delay in Payment**

1. Customer's failure to pay the stipulated price by the due date constitutes a fundamental breach of contractual obligations.
2. In the event of a default in payment by Customer, Lamilux is entitled to charge interest on the outstanding amount at the rate of 8 percentage points above the base interest rate announced by the German Federal Bank at the time payment is due if the amount is invoiced in Euros, or, if invoiced in any other currency, at the rate of 8 percentage points above the discount rate of the main banking institution of the country of the invoiced currency at the time the payment is due.
3. If Customer fails to pay on due date, Lamilux is entitled to demand the temporary surrender of the goods owned by Lamilux at Customer's expense, without rescinding the sales agreement and without granting a period of grace.

## **VIII. Period of Delivery**

1. Statements concerning delivery dates are to be understood as estimations. We do not guarantee the meeting of delivery deadlines. We default only if the circumstances leading to non-performance are attributable to us. Any claims for damages by the Customer for default of delivery or impossibility are excluded – except for cases of injury to person, life or health or gross negligence.
2. Stipulated delivery times commence upon our written order confirmation and are subject to timely clarification of all details of the order and timely performance of all prerequisite advance performances of Customer, like, for example, provision of letters of credit and guarantees or payment of down payments.
3. The time of dispatch from Lamilux's plant or warehouse is decisive for the determination of compliance with delivery times. Delivery times are considered having been complied with upon notification of the good's readiness for dispatch ex works ex warehouse, if the goods cannot be shipped for reasons for which Lamilux is not legally responsible.
4. If and to the extent that any incident or circumstance beyond Lamilux's control (including natural occurrences, war, strikes, lock-outs, shortages of raw materials and energy, obstruction of transportation, breakdown of manufacturing equipment, fire, explosion, acts of government), reduces the availability of goods from the plant from which the Lamilux receives the goods such that Lamilux cannot fulfill its obligations under this contract (taking into account on a pro rata basis other supply obligations), Lamilux shall (i) be relieved from his obligations under the contract to the extent that Lamilux is released from its respective obligations and (ii) has no obligation to procure goods from other sources. The first sentence does also apply to the extent that such incident or circumstance renders the contractual performance commercially useless for Lamilux over a long period or these circumstances have arisen with Lamilux's suppliers. If and to the extent that the aforementioned events last for a period exceeding 3 months, Lamilux and Customer are entitled to withdraw from the contract without having to compensate the other party. It is irrelevant in this context whether Lamilux or one of our suppliers is affected by these events.
5. The parties may only rescind a contract to the extent that deliveries have not yet been effected. In case of partial deliveries having been effected, Customer may only rescind the entire contract if and to the extent that they are worthless for him.
6. Lamilux is entitled – regardless of any potential default claims against Customer – to demand an extension of delivery and service periods for the duration of Customer's default. in performance owed to Lamilux.
7. Lamilux is entitled to effect partial deliveries if and to the extent that a) the partial delivery is suitable for Customer under the stipulated contracts; b) delivery of the remaining goods is secured and c) the partial delivery does not incur unreasonable significant additional expenses or costs for Customer (unless Lamilux agrees to assume such additional expenses or costs).

## **IX. Delivery, Transfer of Risk, Acceptance, Default of Acceptance**

1. Deliveries are effected ex works Rehau, Germany, which is also the place of performance. At Customer's risk and expense the goods will be shipped to another destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, Lamilux is entitled to choose the means of transport (especially, but not limited to carrier, dispatch route and packaging).
2. The risk of accidental loss and deterioration passes to Customer at the latest when the goods are handed over to Customer. In cases of sales by delivery to a place other than the place of performance, however, the risk of accidental loss and deterioration passes to Customer when the goods are handed over to carrier, forwarding agent or any other person charged with the execution of the forwarding. If and to the extent acceptance of the goods is stipulated, the statutory provisions of German law governing contracts for work and services are authoritative for the passing of risk. Customer is obliged to execute the acceptance promptly on the scheduled acceptance date, respectively after Lamilux's notification of the goods being ready for acceptance. Customer is not entitled to refuse acceptance in case of non material defects. Customer's default of acceptance will be considered as handing over or accepting the goods.
3. In cases of Customer's default of acceptance or failure to render necessary assistance, or in cases of a delivery being delayed due to reasons which are Customer's legal responsibility, Lamilux is entitled to compensation for any damages resulting therefrom, including additional expenses (e.g., storage costs).

## **X. Disclaimer of Warranties**

The warranties in these Terms and Conditions are in lieu of all other warranties, express or implied (other than Good title), including without limitation, any warranties of merchantability or fitness for a particular purpose, whether otherwise arising by Law, custom, usage, trade practice, course of dealing, or course of performance, said warranties being expressly disclaimed. Under no circumstances can LAMILUX be held responsible for the performance of products to standards specific to the country of import unless such country is specifically noted on a written document from customer to LAMILUX and such warranty for country standards was accepted in writing by LAMILUX.

## **XI. Indemnity**

Advice as to the applications in words, writing and through experience only consists of non-binding information, including with respect to any third-party industrial property rights, and shall not discharge the Buyer from verifying the products supplied by us for their suitability for the intended processes and purposes. The application, use and processing of the products are beyond our control and fall under the Buyer's exclusive responsibility. Should liability come into question, this is limited for all damages to the value of the goods supplied by us and used by the Buyer. We naturally guarantee the flawless quality of our products. This does not concern experimental products.

## **XII. Customer's Remedies of Lack of Conformity of the Goods**

1. Lamilux is to be promptly notified in writing of any lacks of conformity of the goods, at the latest seven days after date of delivery. Lacks of conformity which, even upon careful examination, could not be discovered within this time period are - with immediate discontinuation of any use or processing thereof - to be notified in writing without delay after discovery, at the latest one year after date of delivery.
2. Customer loses his right to rely on any such lack of conformity, after the performance of an agreed acceptance of the goods, if the lack of conformity was detectable in the course of the agreed-upon acceptance.
3. With regard to goods which are sold as substandard products and seconds ("Ila material"), no remedies shall be granted to Customer with regard to the declared defects and those normally to be expected from such Ila material products.

4. Unless otherwise expressly provided in this section, articles 45 to 51 of the CISG apply with respect of Customer's rights for lacks of conformity of the goods. Customer's rights to claim damages are exclusively governed by section XIII of these General Terms and Conditions.
5. Customer's claims for defective goods are subject to a period of limitation of one year from receipt of the goods. In the following cases the legal periods of limitation apply instead of the one-year period:
  - a) liability for willful misconduct,
  - b) fraudulent concealment of a defect,
  - c) claims against Lamilux relating to the defectiveness of goods that when applied to a building in the ordinary manner caused it to be defective,
  - d) claims for damage to life, body and health caused by Lamilux's negligent breach of duty, or by willful or negligent breach of duty on the part of Lamilux's legal representative or vicarious agent,
  - e) claims for other damage caused by Lamilux's grossly negligent breach of duty, or by willful or grossly negligent breach of duty on the part of Lamilux's legal representative or vicarious agent, and
  - f) in the event of a Customer's recourse claim based on consumer goods purchasing regulations.
6. Minor changes in color – e.g. resulting from environmental influences – do not constitute a defect. The same is applicable to minor changes of the surface (color, form) and all other minor changes of the material if and to the extent that it does not impair its functional capability.
7. Lamilux will assign all warranty claims against manufacturers of prefabricated parts or enforce such warranty claims in the name and on the account of Customer with regard to defects of prefabricated parts of other manufacturers which cannot be remedied by Lamilux for license, patent or effective reasons. In any such case, Customer only has warranty claims against Lamilux if the respective requirements of these General Terms and Conditions are met and if the judicial enforcement of the aforementioned claims against the manufacturer or supplier was unsuccessful or futile because of manufacturer's or supplier's insolvency or bankruptcy. The statute of limitation for the respective warranty claims is suspended for the duration of the judicial proceedings.
8. Lamilux expressly excludes all warranties, if Customer or a third party modifies the delivered goods without Lamilux's prior written consent and if this modification results in the remedy of defects becoming impossible or unreasonable. If such modification results in additional costs for the remedy of defects, Customer will bear in any case these additional costs.

### **XIII. Security Interest**

#### **1. Applicable to US-American Customers**

- a) Customer hereby grants Lamilux a first priority security interest in the delivered products (hereinafter referred to as "Secured Goods") and all proceeds hereof to secure Customer's obligations to Lamilux. From time to time, Lamilux shall be entitled to exercise all rights and remedies available to a secured creditor under applicable law. At Lamilux's request, Customer agrees to execute and deliver to Lamilux any and all documents necessary to perfect Lamilux's security interest, including all UCC financing statements. Customer further irrevocably appoints Lamilux as Customer's attorney in fact for the limited purpose of executing all documents on Lamilux's behalf, which are necessary to perfect and maintain Lamilux's security interest in the Products.
- b) Lamilux is not obligated to release its security interest in the Secured Goods or any other collateral until all outstanding debts in connection with the business relationship with Customer have been completely paid.

#### **2. Applicable to Non-US Customers**

##### **a) Extended Retention of Title**

Lamilux retains title to the goods delivered (hereinafter referred to as "Retained Goods") until all outstanding debts in connection with the business relationship with Customer have been completely

paid. If and to the extent Customer's assistance is needed for the constitution of Lamilux's retention of title (e.g. registration), Customer will perform all respective necessary activities at his own costs. Stand 02/10

**b) Processing Clause**

In the event Customer processes the Retained Goods, Lamilux will be considered manufacturer (if and to the extent legally possible) and will directly acquire sole title to the newly produced goods. If the processing involves other materials, Lamilux will directly acquire joint title to the newly produced goods pro-rata the invoice value of the Retained Goods to the invoice value of the other materials.

**c) Combination and Blending Clause**

If in the ordinary course of business, the Retained Goods are combined or blended with material owned by Customer, which has to be considered the main material, it is deemed to be agreed that Customer transfers to Lamilux the joint title to such main material respectively assigns the proceeds to Lamilux pro-rata the invoice value of the Retained Goods to the invoice value (or, if the invoice value cannot be determined at the market value) of the main material. Lamilux hereby accepts such transfer respectively assignment. Customer fiduciary holds any sole or joint ownership originating therefrom for Lamilux at no expense for Lamilux. Customer hereby assigns to Lamilux any future confirmed balance claims under current account agreements in the amount of the outstanding claims of Lamilux when concluding the sales agreement with Lamilux. Lamilux herewith accepts the assignment. Customer may collect the payments on Lamilux's account in his own name until Lamilux terminates this authorization.

**d) Extended Retention of Title with blanket assignment**

Customer shall have in the ordinary course of business free disposal of the Retained Goods, provided that Customer meets its obligations under the business relationship with Lamilux in due time. Customer hereby assigns to Lamilux all claims arising out of or in connection with the sale of the Retained Goods, if and to the extent that Lamilux acquires joint title in case of processing, combination or blending, such assignment to Lamilux takes place in the proportion of the value of the Retained Goods delivered by Lamilux to the value of the goods of third parties with retention of title. Customer hereby assigns to Lamilux any future confirmed balance claims under current account agreements in the amount of the outstanding claims of Lamilux when concluding the sales agreement with Lamilux. Lamilux herewith accepts the assignment. Customer may collect the payments on Lamilux's account in his own name until Lamilux terminates this authorization.

e) At Lamilux's request, Customer will provide Lamilux with all necessary information on the inventory of Retained Goods and on the claims assigned to Lamilux. Furthermore, at the request of Lamilux, Customer will identify Lamilux's title to the Retained Goods on the packaging and shall notify its customers of the assignment of the claims to Lamilux.

f) Upon request of Lamilux, Customer will provide Lamilux with all reasonable information appertaining to the Retained Goods and the claims assigned to Lamilux. Upon request of Lamilux, Customer is likewise obligated to mark the Retained Goods as being owned by Lamilux and to notify his buyers of the assignment.

g) At Customer's request, Lamilux will release its securities if and to the extent that their realizable value exceeds the value of Lamilux's outstanding claims by more than 15%. Lamilux may choose the securities which are released.

h) If Lamilux's retention of title loses its validity due to shipment abroad or for any other reason, Customer will grant to and create in favor of Lamilux without delay a security interest in the "Retained Goods" or provide other security for Lamilux's claims, which security must be valid under the laws applicable at Customer's seat and match as closely as possible the legal concept of retention of title under German laws described in sec. XII 1 to 4. Customer is obliged to undertake all measures, necessary for creating the aforementioned security interest, including but not limited to the execution and filing of documents and payment of registration fees at his own cost. Customer authorizes Lamilux to file, on one or more occasions, one or more financing statements or other documents creating or evidencing Lamilux's security interest granted by Customer and describing the Product or any other collateral which may be pledged to Lamilux.

#### **XIV. Damages**

1. Lamilux's liability for damages, regardless of the legal ground, is governed and limited by this section XIII.
2. Lamilux's liability for breach of contractual and extra contractual obligations, in particular resulting from nonperformance, delay, culpa in contrahendo and tortious acts – including Lamilux's responsibility for its managerial staff and other persons employed by Lamilux in the performance of its obligations – is restricted to damages caused by wrongful intent or gross negligence and is in any case limited to foreseeable losses in the meaning of Articles 25 and 74 CISG and damages characteristic for the type of contract in question.
3. Lamilux's mandatory statutory liability, especially its statutory liability according to the applicable Product Liability Law remains unaffected from the aforesaid limitation of liability of sec. XIV.2.
4. If and to the extent that a breach of Lamilux's material contractual obligations are concerned, Lamilux is liable for negligence; this liability being limited to the foreseeable losses that are typical for this kind of contract.
5. If and to the extent that Lamilux provides technical information or advises Customer, Lamilux does so free of charge and is not liable for any such information and advice, unless the information and advice falls within the contractually stipulated scope of services to be rendered.

#### **XV. Indemnification**

1. Customer will indemnify Lamilux against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against Lamilux or which Lamilux may pay, sustain or incur if and to the extent that they are a direct or indirect result of any one or more of the following:
  - a) any breach or non-performance of this Agreement by Customer, including any breach of a warranty;
  - b) any wrongful, willful or negligent act or omission of Customer or any of its employees, agents or contractors;

#### **XVI. Secrecy**

1. All documents, tools, products, parts, etc. handed over to the customer may not be provided to third parties and have to be treated as confidential even after the respective transaction.
2. The customer must maintain confidentially regarding all technical data, as well as other commercial and technical information which is not manifest, and which become known to them through the business relationship. He is not permitted to pass this information on to third parties. The customers' clients have to be obligated accordingly in writing.
3. The customer undertakes to commit all employees entrusted with the confidential data to strictly secrecy. This obligation shall obtain to us on demand.

#### **XVII. Miscellaneous**

1. Unless specifically agreed otherwise, Customer is responsible for compliance with all laws and regulations regarding import, transport, storage and use of the Products.
2. Any notice or other communication required to be received by a party is only effective upon actual receipt. If a time limit has to be observed, the notice or other communication has to reach the recipient within such time limit.
3. The failure of Lamilux to insist, in one or more instances, on performance by Customer in strict compliance with the terms and conditions hereof may not be deemed a waiver or relinquishment of any right granted hereunder with respect to any succeeding breach of the same or other provision hereof.

4. If any portion or provision of this Agreement should be or become invalid or unenforceable in whole or in part, then such invalid or unenforceable portion or Provision will be deemed severed from this Agreement and the remainder of this Agreement will remain in full force and effect.
5. The assignment of any claims against us is subject to Lamilux's prior written consent.
6. The courts of Hof/Saale have jurisdiction over any dispute arising out of or in connection with these Terms and Conditions. Lamilux is entitled to sue Customer at his regular place of business.
7. The contractual relationship is governed by and will be construed in accordance with the laws of the Federal Republic of Germany, including the provisions of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG), irrespective of whether Customer's place of business is located in a CISG state or not. The German laws on conflict of laws do not apply.
8. If these General Conditions of Sale are made known to Customer in another language, in addition to the language in which the sales contract has been concluded (Contract Language), this is merely done for Customer's convenience. In case of differences of interpretation, the version in the Contract Language prevails.