

General Terms of Payment and Delivery for LISI Automotive Germany

Range of Applicability

1. The following General Terms of Payment and Delivery shall apply to all professionals as well as corporate bodies under public law and special funds under public law. Our deliveries and services are provided exclusively on the basis of the terms and conditions below. Any terms and conditions of the other party not expressly acknowledged by us in writing shall not apply.

General Terms and Conditions

2. Full details of any verbal agreements will be immediately confirmed in writing by the contracting parties.
3. Any orders qualifying as offers according to § 145 German Civil Code [BGB] will not be binding until they are confirmed by us in writing.
4. Information and illustrations contained in brochures and catalogues are, in accordance with usual trade practice, regarded as approximations unless they have been expressly described by us as binding.

Long-Term and Call-Off Orders, Price Adjustment

5. Unlimited contracts may be terminated by six (6) months' notice.
6. In the event that any essential modification of labour costs, cost of materials or energy occurs with regard to long term contracts (contracts with a term of more than 12 months and unlimited contracts), each contracting party shall be entitled to demand negotiations on an appropriate adjustment of prices in consideration of these factors.
7. Where a binding order quantity is not agreed, our calculation will be based on the non-binding order quantity expected by the other party for a specific period of time (target quantity).
8. In the case of call-off orders, the other party has to inform us by call-off of any binding quantities at least three (3) months before the delivery date, unless otherwise agreed. Any extra cost due to late call-off or subsequent modifications of the call with regard to time or quantity by the other party shall be charged to the latter, with our calculation prevailing in this respect.

Confidentiality

9. Each party to the contract agrees to use any documents (including samples, models and data) and knowledge obtained through the business relationship only for the purposes pursued jointly by both parties and not to disclose such documents and knowledge vis-à-vis third parties by applying the same care as would be given to any comparable own documents and knowledge if the other party to the contract declares such material to be confidential or takes an obvious interest in keeping the material secret.
10. The obligation does not apply to documents and information which are generally known, or which were already known to the contracting partner on receipt and where the contracting partner was not under obligation of secrecy, or where they are subsequently conveyed by a third party who is authorised to pass on such documents or information, or where the documents or information are developed by the receiving contract partner without exploitation of documents or information of the other party.

Designs and Descriptions

11. In the event that any of the parties to the contract provides the other party with designs or technical documents with regard to the goods to be delivered or their production, such material shall remain the property of the providing party.

Samples and Manufacturing Equipment

12. Unless otherwise agreed, the manufacturing costs of samples and manufacturing equipment (tools, moulds, templates, etc.) shall be invoiced separately from the goods to be delivered. This shall also apply to any manufacturing equipment to be replaced because of wear and tear.
13. The cost of maintenance and proper storage as well as the risk of any damage to or destruction of manufacturing equipment shall be borne by us.
14. Where, during the period of manufacture of samples or manufacturing equipment, the other party abandons or terminates the co-operation, all manufacturing costs incurred up to that time will be borne by that party.
15. Even if paid by the other party, manufacturing equipment shall remain in our possession at least until completion of the delivery order. Following this, the other party shall be entitled to reclaim the manufacturing equipment if a mutual agreement on the date of return has been reached and the other party has fulfilled its contractual obligations in full.
16. We shall keep the manufacturing equipment free of charge for a period of three (3) years following the last delivery to the other party. After this date, we will request the other party in writing to comment on the further use of the manufacturing equipment within six (6) weeks. Our obligation to keep the manufacturing equipment shall end if no instructions are received within such a period of six (6) weeks or if no further order is placed. After expiration of aforementioned period, we shall be legal owners of the manufacturing equipment.
17. Any customer-specific manufacturing equipment may only be used for supplying third parties with the prior written consent of the other party.

Price

18. Unless otherwise agreed in writing our prices are quoted in Euro and are exclusive of taxes, duties, charges, packing, freight, carriage and insurance.

Terms of Payment

19. Invoices shall be due for payment within 30 days from the date of invoice, provided that the contracting party is not in default of payment of any other accounts receivable.
20. Where we have indisputably supplied goods which are partly defective, the other party is nevertheless obliged to pay for the non-defective part, unless partial delivery is of no use to him. In other respects the other party may only set off payment against counter-claims which have been determined by final judgement or are not disputed.
21. If the period allowed for payment should be exceeded, we shall be entitled to charge interest on arrears in the amount of the rate we are charged by the bank for advances on current account, however, no less than a default interest of nine (9) percentage points above the respective base rate pursuant to § 247 BGB. Moreover we shall be entitled to charge a fixed amount of 40 Euros to compensate for recovery costs pursuant to § 288, paragraph 5 BGB. The claim for further damage for delay is not excluded.
22. In the event of any delay in payment we may, after giving notice in writing to the other party, suspend our obligations until payments have been received.
23. Bills of exchange and cheques will only be accepted where this has been agreed, and only on account of performance and on condition that they may be discounted. Discount charges will be calculated from the due date for payment of the invoice amount. A guarantee for presentation of bills of exchange and cheques at the due and proper time and for the lodging of a protest is excluded.
24. If it becomes apparent after conclusion of the contract that our claim to payment is at risk owing to the other party's lack of adequate financial capacity, we shall be able to refuse performance and to set the other party a reasonable deadline within which it must make payment or provide security concurrently with delivery. If the other party refuses to do so or the deadline expires without result, we shall be entitled to withdraw from the contract and demand damages.

Delivery

- 24a. We are committed to deliver the goods as fast as possible at any given time. However, unless otherwise expressly agreed in writing, we do not commit to firm delivery deadlines. In the event that a firm delivery deadline has been agreed upon and the delivery is delayed, the other party has to grant us a reasonable grace period for delivery. Our performance of the contract is subject to the condition of our own complete and timely supply.
25. Unless otherwise agreed upon in writing, we shall deliver "ex works". Our notice of readiness for dispatch or collection shall be decisive for whether the delivery date or the period of delivery is met.
26. In case a firm period of delivery has been agreed upon, this period shall commence with the posting of our order confirmation, however not earlier than the latest of the following events, if applicable:
 - Supply by the other party of the material, tools, machines, specimen and/or data necessary to carry out the order;
 - Performance by the other party of its obligations due before delivery (e.g. down payment, advance payment). The period of delivery is reasonably extended as appropriate where the provisions of section 55 below apply.
27. Partial deliveries are permitted within reason. They will be invoiced separately.
28. Production-related long or short deliveries are permitted within a tolerance of 10 per cent of the total order quantity. The total price will be adjusted accordingly.

Shipment and Passage of Risk

29. Goods which are notified as being ready for dispatch are to be taken over immediately by the other party. We are otherwise entitled, at our option, to dispatch them or to store them at the cost and risk of the other party. In the event that the other party is in delay in taking delivery or violates any other cooperation duty, we shall be entitled to request damages, including any possible additional expenses.
30. In the absence of a special agreement, we shall select the means of transport and routing.
31. The risk is transferred to the other party on handover to the railway, forwarding agent or freight carrier, or on commencement of storage, but in any case not later than departure from the factory or warehouse; this also applies if we have undertaken delivery.

Delay in Delivery

32. In the event that it is foreseeable that the goods cannot be delivered within the period of delivery, we shall inform the other party immediately in writing, giving the reasons and, if possible, the expected delivery date.
33. In the event of delivery being delayed by one of the circumstances as set forth in Article 55 below, or as a result of any action or omission on the part of the other party, an extension of the delivery period will be granted appropriate to the circumstances.
34. In case of late delivery, the other party shall only be entitled to cancel the contract if we are answerable for the delay and after having allowed us a reasonable period of grace without result.

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Reservation of Title

35. Title of ownership of the goods shall not pass to the other party until such time as the other party has fulfilled all obligations from the business relationship with us, including subsidiary claims, claims for damages and the honouring of cheques and bills of exchange. The right of ownership shall continue to be reserved if some of our claims are added to a running account and the balance has been struck and approved.
The other party shall duly keep the reserved goods on our behalf, maintain and repair them at its own expense, as well as insure the goods against loss and damage at its own expense according to custom and usage. The other party hereby assigns to us his future claims for damages against the insurance company.
36. The other party shall be entitled to sell such reserved goods in the ordinary course of business as long as it meets its obligations under the business relationship in due time and no insolvency proceedings have been filed for its assets. However, the other party must not pledge, pawn or otherwise offer as security the goods under reservation of title. In the event of sale to a third party, the other party must make transfer of title dependent on full payment of the goods by his customers. The other party shall to secure the rights of our company upon any credited sale of the reserved goods.
37. We are entitled to claim restitution of the goods under reservation of title without the setting of a period of grace and without cancellation the contract if the other party is in default on fulfilment of its obligations or if insolvency proceedings have been filed for its assets. Claim of restitution of reserved goods shall only constitute a cancellation of contract if so declared expressly in writing by us. In case of cancellation of the contract, we are entitled to claim adequate compensation for the period of relinquishment of the reserved goods.
38. The other party hereby assigns to us in advance all claims against third parties arising from any resale or rental of reserved goods which may have been allowed by us, as well as all subsidiary rights and security rights including cheques and bills of exchange, as a security for all our claims against the other party arising from the contractual relationship. If reserved goods are sold together with other items for an overall price, the assignment shall be limited to the ratio amount of the invoice value of the reserved goods included in the resale. As long as the other party fulfils its payment obligations on time, we authorize it to collect the claims from resale or rental to third parties. However, the other party shall not be entitled to pledge or assign these claims.
39. Any possible processing or modification of the reserved goods by the other party is deemed having been performed on behalf of our company, without, however, acquiring any claims whatsoever against us as a result of the processing or modification. Or reservation of title shall extend to the products resulting from the processing. If the reserved goods are processed together or inseparably mixed with other goods being the property of third parties, we will acquire joint ownership of the resulting objects at the ratio of the invoice value of the reserved goods to the other processed or mixed goods. If the processing or mixing is done with goods owned by the other party, the other party hereby assigns to us in advance the property rights of the resulting object.
40. If the enforcement of our claims seems at risk, the other party shall, upon our request, inform its customers of the assignment of its claims to us and provide us all necessary information and documentation to enforce our claims.
41. If the value of the existing securities exceeds the secured claims in total by more than 20 per cent, we undertake, at the other party's request, to release securities of our choice in this respect.

Warranty

42. The quality of the goods is determined exclusively by the agreed technical supply specifications. In the event of our having to supply in accordance with drawings, specifications, samples and the like provided by the other party, the latter will take over the risk of fitness for the intended use. The condition of the goods in accordance with the contract is determined as at the time of transfer of risk in accordance with Article 31 above.
- 42a. Our goods comply with the legal regulations as applicable in the European Union and the Federal Republic of Germany, e.g. the Regulation (EC) No. 1907/2006 (REACH), the German law concerning return and environmentally sound disposal of electrical and electronic equipment (Electronic Equipment Act) as the national implementation of the Directive (EC) No 2002/95 (RoHS) and the Directive (EC) 2002/96 (WEEE) and the End-of-life Vehicles Act as national implementation of the Directive (EC) No 2000/52. We shall inform the other party about relevant changes in the product in particular due to the REACH regulation, its supply availability, use or quality and shall in individual cases agree with the other party on suitable measures to be taken.
43. We shall not assume responsibility for any defects caused by inappropriate or improper use, incorrect installation or commissioning by the other party or third parties, normal wear, faulty or negligent treatment or for the consequences of any improper modifications or maintenance work performed by the other party or third parties without our consent. Furthermore, we shall not assume responsibility for defects causing only an insignificant depreciation of value or suitability of the delivered goods.
44. The warranty period shall be twelve (12) months from passage of risk. This period shall be a period of limitation and shall also apply to claims for consequential damages. This shall not apply if mandatory laws require

- longer periods of limitation, notably in case of defects of a building or materials which are usually used for building causing the defect of a building.
45. Where it is agreed that the goods are to be accepted after completion or that initial samples are to be tested, notification of defects which could have been discovered by the other party under careful acceptance or testing of initial samples is excluded.
46. We must be given the opportunity of assessing the notified defect. The goods complained of must be returned to us immediately; we will take over the transport costs where the notice of defect is justified. In the event of the other party failing to observe these obligations, or carrying out modifications of the goods which are complained of without our consent, it will lose any claims for material defects.
47. In the event that the complaint is justified and lodged within the time limit, we shall rectify the rejected item or provide faultless substitute delivery at our own choice. In the case of bulk supply, the other party shall at short notice provide us with the opportunity to sort the defective items out.
48. In the event of our failing to meet our warranty obligations, or failing to do so within a reasonable time in accordance with the terms of the contract, the other party may set in writing a final deadline within which we must fulfil our obligations. In the event of this period expiring without result, the other party may demand reduction of the price, withdraw from the contract or himself carry out, or have the necessary subsequent improvement carried out by a third party at our cost and risk. If such rectification has successfully been effected by the other party or any third party, any claims of the other party shall be deemed settled by reimbursement of the necessary costs incurred by it.
49. Recourse claims against us shall only exist to the extent that the other party has not made any agreements with its purchaser which go beyond the statutory claims for defects. In addition, section 48, last sentence, applies accordingly to the scope of the rights of recourse.

Other Claims, Limitation of Liability

50. Unless otherwise specified below, any additional or more extensive claims by the other party against us are excluded. This shall apply in particular to claims for damages for a breach of duties arising from the obligation or from unlawful acts. We are therefore not liable for any damage not deriving from the delivered goods themselves. We are in particular not liable for any loss of profit or other financial losses by the other party.
51. The aforesaid limitations of liability shall not apply in the case of intent, gross negligence of our legal representatives or executive employees and in the case of culpable breach of any material contractual duties. In the case of culpable breach of material contractual duties we shall be liable - except for any cases of wilfulness or gross negligence on the part of our legal representatives or executive employees - only for any damage that could reasonably be expected, at the time of the conclusion of contract, to occur during the execution of the contract.
52. In addition to the above, the limitation of liability shall not apply in any cases of defects in the delivered goods with liability for personal injury or damage to items used privately being subject to product liability law. Neither shall the limitation apply to the lack of any warranted qualities if and in so far as the particular purpose of such assurance has been to protect the other party against any damage not originating in the delivered goods themselves.
53. In so far as our liability is excluded or limited, this shall also apply to any personal liability of our salaried employees, wage earners, assistants, legal representatives and vicarious agents.
54. The aforesaid shall not affect any legal arrangements with regard to the burden of proof.

Force Majeure

55. Force majeure, labour disputes, riots, official measures, the non-delivery of supplies by our suppliers and any other unforeseeable, inevitable and serious events shall release the parties to the contract from their duties to perform for the duration of such events and to the extent of their impact. This shall also apply if such events occur at a point in time when the party concerned is in default. The parties to the contract shall within the scope of what is reasonable be obligated to provide the required information immediately and adjust their obligations to the changed circumstances in good faith.

Place of Performance, Jurisdiction and Applicable Law

56. Unless provided otherwise in the acknowledgment of order, the place of performance is our principal place of business.
57. Our principal place of business shall be the exclusive place of jurisdiction for all legal disputes, including any action relating to payment bills of exchange or cheques. We shall also be entitled to file a lawsuit at the other party's place of business.
58. The contractual relationship shall exclusively be governed by the law of the Federal Republic of Germany.