

## **General Terms and Conditions** (as of 01/01/2010)

### **1. Preface**

The following General Terms and Conditions (hereinafter referred to as "GTC"), shall apply exclusively for all deliveries and services of the company LABOR DR. MERK & KOLLEGEN GMBH (hereinafter referred to as "LMK"). The GTC of LMK shall be deemed to have been accepted with the placement of an order. They shall also apply for all future business relations, even if no express reference is made to their applicability.

Deviating or additional agreements, in particular the terms and conditions of the Client, only become the subject matter of the contract if LMK has confirmed and accepted such in writing. The silence of LMK shall not be deemed to be agreement. Confirmations by the Client with deviating terms and conditions are hereby expressly contradicted by LMK in advance.

### **2. Offers, Subject Matter of the Contract**

**2.1** Offers of LMK are subject to change without notice.

**2.2** The agreed upon services of LMK result from the written order confirmation of LMK. LMK reserves the right to state order confirmations orally or through conclusive action. Written form shall apply for all agreements including supplements, amendments and ancillary agreements. Supplements, amendments and ancillary agreements to an order concluded in writing can be agreed to without compliance with the written form requirement, if LMK expressly consents thereto.

**2.3** Compliance with the performance obligations of LMK assumes the timely fulfilment of the obligations of the Client.

**2.4** Dates and deadlines for deliveries and services are binding with written confirmation by LMK.

**2.5** Events of force majeure, strike, lockout, official orders, general power and miscellaneous supply difficulties, disruptions in public transportation companies and shutdowns at LMK as well as the consequences of such events release LMK from liability for damages for the duration of the disruption and in the scope of their effects, to the extent the events and their consequences are not the responsibility of LMK. Such events and their consequences further entitle LMK to not perform contractually agreed services without the risk of an obligation to indemnify. In these cases, LMK will immediately inform the Client concerning this circumstance and refund compensation already paid.

**2.6** The risks of loss or the damage of goods transfer to the Client upon delivery of the goods, as soon as the shipment is handed over to the carrier. If the shipment becomes impossible without LMK being at fault, the risk transfers with the written notice to the Client of readiness for shipping.

### **3. Prices / Terms of Payment / Retention of Title**

**3.1** The respectively current prices of the respectively applicable price lists of LMK apply on closure of the contract. With direct purchase the prices are understood strictly net ex works. The statutory sales tax, supplementary costs, especially packaging and freight costs are not contained in the prices. Except if this has been specifically agreed otherwise in writing and been confirmed. Conceded discounts are calculated on the basis of the prices excluding sales tax, packaging and freight cost share.

**3.2** Our invoices are due and payable immediately without deduction. In the event of a default in payment, the statutory provisions shall apply.

**3.3** The Client or purchaser is only entitled to offset and retention with counterclaims, if such are uncontested or have been judicially determined.

**3.4** LMK reserves the ownership to all deliveries and services up to the complete fulfilment of all payment claims against the Client or purchaser already incurred at the time of delivery.

**3.5** The packaging and freight costs per delivery within Germany are determined according to the dimensions and the weight of the shipment, as well as according to the requested delivery time. Tuesdays to Fridays a delivery with Express Saver can be performed by 12.00, with Express by 10.30 or Express Plus by 9.00. The surcharge for delivery on Saturday by 12.00 is € 18.00. Repeat orders are generally subjected to packaging and freight costs.

**3.6** The packaging and freight costs for domestic deliveries is based on the value of goods, the dimensions and the weight of the package, as well as on the desired time of delivery. The accruing costs will be calculated per delivery and invoiced to the foreign customer.

#### **4. Supplementary Performance in the Event of Deficiencies in Performance**

- 4.1** LMK shall perform its deliveries and services in accordance with the rules of technology generally recognised at the time of assignment and with the care customary in the industry. In the event of the existence of such a deficiency, LMK shall be liable – to the extent technologically possible – through the repetition of the delivery or service free of charge.
- 4.2** The Client is only entitled to a right to abatement or withdrawal from the contract if the supplementary performance under clause 4.1 fails or is impossible for other reasons.
- 4.3** The claim to supplementary performance must be asserted in writing by the Client immediately after ascertainment of the deficiency. In the event of a mutual commercial transaction, the examination and notice of non-conformity obligations of § 377 HGB (German Commercial Code) shall also apply for the Client for the work and services of LMK. In the event of complaints, the order data, number and date of the delivery receipt as well as the batch number must be indicated. For products with a one-week shelf-life, deficiencies must be asserted within two days after receipt of the goods; for products with a longer shelf-life and for all other services of LMK, the visible deficiencies must be objected to within seven days after receipt of the goods. Goods complained of may only be returned with our agreement.

#### **5. Liability and Compensation for Damages**

- 5.1** LMK shall be liable according to the provisions of the Product Liability Act, in the event of the issuance of a guarantee, in the event of intentional or grossly negligent breaches of duty and in the event of claims due to damages arising out of death, injury to body and health without limitation. LMK shall be liable in excess thereof, to the extent the Client is another company,
1. for slightly negligent breaches of duty of its simple vicarious agents only if a material contractual obligation has been breached,
  2. for negligent breaches of duty that do not fall under sentence 1, limited in amount to the damages typical and foreseeable in this type of contract.
- 5.2** The regulations of 5.1 shall apply to all claims to compensation for damages, irrespective of the legal grounds on which they are based.
- 5.3** Any personal liability of the vicarious agents of LMK in respect to the Client – irrespective of the legal basis on which they are based – is limited to intentional and grossly negligent actions.
- 5.4** In the event of delay, LMK shall be liable for damages caused by delay in performance only up to the amount of the stipulated fee for the service, with which LMK is in default.

#### **6. Limitation of Actions**

The limitation of claims shall be based on the statutory provisions. A limitation period of one year shall apply for defect claims arising out of deliveries and services of LMK to other companies.

#### **7. Supply of Substances for Examination and Other Test Objects**

- 7.1** The Client shall bear the costs and the risk of the supply of substances for examination and other test objects (samples). The samples shall remain the property of the Client. In the event of shipment by the Client, the substance for examination must be packaged properly and in accordance with any instructions issued by LMK.
- 7.2** The Client is obligated to inform LMK of all risks and handling instructions, if he should supply samples or prototypes with hazardous contents. He affirms that all samples and prototypes are in a stable condition and that they pose no risk whatsoever. The Client is liable for all damages, injuries and cases of illness that result to LMK or its employees or third parties as a consequence of a breach of the preceding obligations.

## **8. Exclusivity, Protection of Work Results, Publications**

- 8.1** LMK agrees to make all test results acquired in the execution of an order exclusively available to the Client. During the contract period, the Client can inspect all documents at any time after arrangement of an appointed time and review the proper execution of order processing.
- 8.2** LMK and its employees are entitled to make scientific publications, which have general knowledge obtained within the scope of a project order or process developed by LMK as their object. The publication of specific test results requires the consent of the Client.
- 8.3** The Client is entitled to publish the complete test report. The publication of partial results or extracts of the test report requires the prior written consent of LMK.
- 8.4** LMK reserves the right to the copyright to the services rendered and in particular to the examination methods used – to the extent these are suitable for that purpose.

## **9. Special Provisions for Services**

- 9.1** The subject and content of an order issued to LMK is the agreed upon service. In particular, the order does not extend to the causation of a specific examination result and relates exclusively to the test objects submitted and examined.
- 9.2** The Client must provide LMK with all materials necessary for execution of the order in a timely manner and in sufficient quantity. The Client must inform LMK of all processes, knowledge and circumstances that could be of importance for the execution of the order.
- 9.3** Non-disclosure  
LMK agrees to use all test objects, documents and information distributed within the scope of the test exclusively for this test and to only make them accessible to third parties with the prior consent of the Client.
- 9.4** For service orders with an order size of more than € 2,000.00, the following terms of payment shall apply:  
50% of the order total upon issuance of the order;  
50% after delivery of the final report or a draft thereof.  
Beyond this, the terms of payment in accordance with Clause 2 of these terms and conditions shall apply.
- 9.5** If an order issued for the performance of services is cancelled or terminated after issuance of the order for reasons that are not the responsibility of LMK, LMK is entitled to invoice a compensation allowance of 15% of the total order volume or 20% of the remaining order volume for projects already commenced. The Client is reserved the right to prove that less damage has been incurred.
- 9.6** If the stipulated start of a commissioned project or the continuation of individual project phases is delayed by more than three months without such delay being the responsibility of LMK, LMK reserves the right to invoice a compensation allowance of 10% of the remaining order volume for the work capacity already maintained. In this case as well, the Client is reserved the right to prove that damages have not been incurred or have not been incurred in this amount.

## **10. Final Provisions**

- 10.1** The assignment of rights and obligations of the Client arising out of this contract with LMK requires the prior consent of LMK.
- 10.2** To the extent the parties do not otherwise expressly agree, the place of performance for both parties to the contract is the registered seat of LMK. If the Client is a merchant who has been entered in the German commercial register, a legal entity under public law or special fund under public law, the exclusive venue is the respective court having jurisdiction over the registered seat of LMK.
- 10.3** The legal ties between LMK and the Client are subject to the law of the Federal Republic of Germany.
- 10.4** If individual provisions of these General Terms and Conditions should be invalid, in whole or in part, the remaining provisions shall remain valid. The invalid provision shall be replaced by a provision that most closely approximates the economic purpose of the contract while reasonably maintaining the mutual interests of the parties.

## **11. Handling of Client Data**

LMK is authorised to save and to process personal or economic data of the Client in compliance with the German Data Protection Act, regardless of whether such data originated from the Client or from third parties.