

# GENERAL TERMS AND CONDITIONS OF LAUDA DR. R. WOBSE GMBH & CO. KG As of September 2019

## 1. General conditions

1.1 (Scope) These conditions of sale are only intended for use in business transactions with entrepreneurs.

1.2 (Conflicting conditions, contract amendments) Only these terms and conditions shall apply to the contract. We will not accept any other conditions, whether or not expressly rejected by us. Any agreements made between us and the customer concerning the contract shall be made in writing in the respective contract.

1.3 (Right to make amendments) Our offers are subject to change. We reserve the right to make technical improvements to our products.

1.4 (Set-off, retention) Set-off or retention by the customer shall not be permitted unless the claims are undisputed or legally established or from the right to object if the contract is not fulfilled (§ 320 BGB [German Civil Code])

1.5 (Place of performance, place of jurisdiction, governing law) Place of performance shall be our plant in Lauda-Königshofen. For our commercial transactions with businesses, legal entities under public law or special funds under public law and with customers who do not have a general place of jurisdiction in Germany, the place of jurisdiction shall be the court in Tauberbischofsheim/Mosbach responsible for our registered office. We can also take legal action at the court responsible for the customer's place of business.. The German law applies, excluding the UN law on sales (CISG).

1.6 (Contractual language) The language of the contract is English.

## 2. Delivery, Delivery costs and risk

2.1. We may deliver in instalments as far as reasonably acceptable to the customer.

2.2 The customer shall bear all transport, packing and insurance costs to the place of delivery.

2.3. The risk shall be transferred to the customer when the goods for delivery are packed and ready for pick-up (Incoterms 2010 „ex works“).

## 3. Delivery period, Force majeure, Delay

3.1 Delivery periods are ex works. Delivery periods or delivery dates are subject to the customer providing relevant information and documents such as drawings, permits or approvals, opening letters of credit as agreed, making agreed advanced payments and complying with any obligation on time.

3.2 Delivery shall be subject to us receiving our own supplies punctually and in good. Acts of God or any events for which we are not responsible, in particular strikes, lockouts, operating breakdowns, shortages of raw materials or means of production, shall extend the delivery period by the time during which the aforementioned event or its effects persist. Delivery times will also be extended due to modification of products or services requested by the customer. We shall inform the customer without delay of the non-availability of the delivery products.

3.3 In any case the customer has to send us a reminder setting a reasonable period of grace before claiming default of delivery.

3.4 In the event of compensation for damages caused by late deliveries, our liability for compensation besides performance shall be limited to 5 per cent and for compensation instead of performance to 10 per cent of the value of our delivery. This limitation shall not apply in cases of intent, gross negligence and/or injury to life, body or health. Furthermore our liability for compensation is restricted to typically occurring damage foreseeable by us at the time the contract was signed.

3.5 The foregoing provisions shall also apply for installation times or periods. An installation time or period shall commence only after completion of any preparational works by the customer.

#### **4. Prices, Conditions of Payment, Security Deposit**

4.1 Prices quoted shall be ex-works. If applicable, VAT will be added. Spare parts are charged according to our current Price Conditions or as offered.

4.2. Our invoices are due immediately and shall be paid in full, without deductions, to our account in the Federal Republic of Germany, in EURO (€). We shall accept bills of exchange or checks only on account of performance. Any bank costs shall be borne by the customer.

4.3 In case of any delays in payment or if we have reason to believe that there could be failure of the customer to fulfil his paying obligation we reserve the right to require payment in advance or the provision of security in the amount of the respective invoice sum.

4.4 Installation prices refer to agreed work only. Additional installation work and delays for which we are not responsible shall be charged in addition at our hourly rates.

#### **5. Installation, Assembly**

5.1 The customer shall be responsible for ensuring public safety at the installation site. The customer shall ensure that our installation work can be undertaken without risk of accidents. This shall include compliance with all the relevant occupational safety and accident prevention regulations.

5.2 The customer shall ensure that our installation work can commence as soon as our installation staff arrives and can be continued without delays until completion. In particular the customer shall be – at his own expenses - obliged:

- a) to set up the site so that installation work can proceed without obstruction;
- b) to provide electricity, water, heating, lighting and connections;
- c) to provide the necessary fixtures, heavy tools, commodities and if necessary electronic data processing systems;
- d) to transport the installation parts to the site, to protect the installation parts and materials against harmful influences of every kind; and
- e) to provide every other assistance needed by our installation staff during installation if necessary for technical reasons.

## 6. Reservation of title, Advance assignment

6.1 The goods delivered shall remain our property until unconditional payment has been made for the same in full. Should we also have further claims against the customer arising from the business relationship, the reservation of title shall continue in existence until they have been settled.

6.2 The customer may not pledge or otherwise encumber the goods subject to the reservation of title. The customer may re-sell goods subject to the reservation of title only in the normal course of business and provided that title shall pass to his purchaser only when his purchaser has paid in full. The customer may not combine the goods subject to the reservation of title with other items in relation to which rights of third parties exist.

6.3. Should goods subject to the reservation of title become a component part of a new (complete) object through combination with other items, we shall become a proportionate co-owner of the same directly, even where it is to be regarded as the main object. Our share of co-ownership shall be determined according to the ratio of the invoice value of the goods subject to the reservation of title to the value of the new object at the point in time of the combination.

6.4 By way of security, the customer assigns to us already in advance the claims against its purchasers arising from the sale of goods subject to the reservation of title (Clause 6.2) and/or the newly created objects (Clause 6.3) in the amount of our invoice for the goods subject to the reservation of title. As long as the customer does not fall into default with payment for the goods subject to the reservation of title, he may collect the assigned claims in the normal course of business. The customer may, however, only use the proportional proceeds for the purpose of payment to us of the goods subject to the reservation of title.

6.5 At the demand of the customer, we shall release securities of our choice if and to the extent the nominal value of the total securities exceeds 20 per cent of the nominal value of our open claims against the customer.

6.6 In case the customer is in culpable breach of material duties of the contract, namely default in payment, we shall be entitled to demand the return of any goods subject to the reservation of title which are still in the customer's possession after an unsuccessful warning. The demand of return shall not constitute a withdrawal from the contract unless we expressly declare so.

6.7 For the purpose of establishing our rights, we may have all documents/books of the customer relating to the goods subject to our reservation of title inspected by a person bound by a duty of professional secrecy.

## 7. Liability for defects, Period of limitation

7.1 We are liable that our products are free of defects at the transfer of risk. Immaterial deviations from the agreed quality or non-essential restrictions in usability are, however, of no significance.

Qualities, performance or other features shall only be binding if we have expressly agreed on them in writing to the customer. Details in advertisements, instructions for use or reference to industrial standards shall also only be binding if we have expressly agreed on them in writing.

Should the customer wish to use the goods delivered for purposes other than those agreed, the customer shall carefully examine upon its own responsibility the suitability or the admissibility of the goods for such purposes. We exclude all liability for any use not expressly confirmed by us.

7.2 The customer shall, without delay following receipt, carefully inspect the goods delivered - also in relation to product safety - and notify any evident defects in writing without delay. Hidden defects are to be notified without delay following their discovery. The customer shall report any transport damage immediately to the carrier. In the case of failure to observe these obligations of inspection and notification, warranty claims of the customer shall be excluded.

7.3 If a notice of defect is justified, we shall be required to provide cure (subsequent performance). Any such subsequent performance shall be, at our discretion, either rectification of the defect or delivery of goods free of defects. In the event of rejection, impossibility or failure of subsequent performance, the customer has the right to demand a reduction of the purchase price or to withdraw from the contract.

7.4 We are not liable for any damages following improper use, handling, maintenance, operation or processing or on normal wear.

7.5 Our liability for slight negligence is restricted to claims based on injury to life, body or health, to claims arising from the Product Liability Law (Produkthaftungsgesetz) and to claims arising from the culpable infringement of essential contractual obligations. Our liability for the slightly negligent infringement of essential contractual obligations is restricted to typically occurring damage foreseeable by us at the time the contract was signed.

7.6 Should the customer use the delivered goods in conjunction with environmentally harmful, toxic, radioactive or otherwise hazardous materials, he shall be obliged to inform us and to clean the goods before returning them to us. If applicable, we may charge any necessary costs for de-contamination/cleaning and disposal to the customer's account.

7.7 Claims against us based on defects are subject to a statute of limitations of one year as of the delivery of the goods to the customer.

This shall not apply in cases in which the delivered goods have been used for a building in accordance with the customary way of being used and have caused the defect.

The warranty period for any rights of recourse pursuant to Section 445a German Civil Code (BGB) shall be one year and start from the date of delivery of the goods to the customer. The suspension of expiry pursuant to Section 445b German Civil Code (BGB) shall end no later than three years after we have delivered the goods to the customer.

The restrictions of the limitation period shall not apply for claims under the Product Liability Act (Produkthaftungsgesetz) or for damage arising from injury to life, body or health or for other damage resulting from intent or gross negligence or for claims based on fraudulent concealment of a defect.

7.8 Should it prove that the customer lodged a complaint without justification through gross negligence, we may demand reasonable remuneration for the examination and/or repair works originating from such a complaint.

## **8. Product liability**

8.1 The customer is obliged to observe the products. This particularly includes congruity of the manual and other technical documentations with the applicable safety regulations at the intended location of delivery.

8.2 The customer shall transfer to the final customer all warnings and general information with regards to the use of the goods or new products, that originate from alterations or modifications of the delivered goods or from combination of the delivered goods with goods or items not supplied by us.

8.3 The customer is obliged to inform us without undue delay about any findings or experiences regarding the product safety of the delivered goods and particularly about any occurrence of damage or filed complaints in this respect.

## **9. Disposal**

The customer is obliged - at his own expense - to dispose of the goods in accordance with the statutory provisions (i.e. Elektrogesezt) and shall indemnify us from any manufacturer's take-back obligation and related claims of third parties.

## **10. Industrial proprietary rights, Secrecy**

10.1 We reserve ownership as well as all industrial property rights and copyrights in relation to all our designs, samples, illustrations, technical documents, quotations and offers, even where the customer has assumed the costs for the designs etc. The customer may only use the designs etc. in the manner agreed with us. Without our written consent, the customer may not manufacture the goods delivered or have the same manufactured by third parties.

10.2 Where we deliver goods in accordance with designs etc. prescribed by the customer, the customer shall be liable towards us that no industrial property rights or other rights of third parties are infringed through the manufacture and delivery of the same. If the customer is at fault he shall reimburse us all damage resulting from any such infringement of rights.

10.3 The customer may not change the delivered goods, nor connect them to or combine them with other objects or use them in any other way, if this would involve the infringement of industrial property rights of third parties. If the



customer is at fault he shall indemnify us for all and any claims by third parties due to the infringement of industrial property rights through customer use in the sense of sentence 1, and shall reimburse any costs incurred to us as a result thereof.

10.4 The customer shall maintain secrecy as towards third parties in relation to all knowledge acquired through the business relationship with ourselves which is not in the public domain.