

CONDITIONS OF SALE AND DELIVERY

1. **General:**
- 1.1 These Conditions of Sale and Delivery apply to all sales and services supplied by the Lenzing Co-Products of Lenzing AG (abbreviated below as "LAG"), whether conditions of sale and delivery are specifically cited in the relevant statement in the LAG contract document or not.
- 1.2 Other general terms and conditions of trade or purchasing will not apply, even if they have not been specifically countermanded by LAG or if a purchaser's offer has been accepted without explicit acknowledgement by LAG of different trading terms.
- 1.3 Variations and amendments to these Conditions of Sale and Delivery can only be made with the explicit written consent of LAG.
2. **Offer and ordering:**
- 2.1 LAG's offer prices are subject to change, until LAG gives explicit written confirmation of them.
- 2.2 All orders to LAG, whether placed directly or by an agent, will only be accepted by LAG as valid when they are explicitly confirmed in writing (Order Confirmation).
- 2.3 A valid contract will only exist from the time at which LAG dispatches the Order Confirmation after receipt of an Order.
- 2.4 If the contents of LAG's Order Confirmation differ from the Order, LAG must be informed in writing as soon as possible, but within 14 days from the date of preparing the Order Confirmation at the latest, otherwise the contract will be deemed to have been made using the contents stated in LAG's Order Confirmation.
3. **Supply:**
- 3.1 Goods will be supplied as stated in LAG's Order Confirmation, LAG reserves the right to delay when goods are in short supply.
- 3.2 The supply date specified in the Order Confirmation and/or in the Contract is the date by which the goods will be ready for dispatch. The supply date is always subject to force majeure and any impediments to supply outside LAG's control, such as industrial problems, official and legal measures, lack of available freight transport space, shortages of raw materials, plant failure etc. If delay due to such circumstances continues for more than 8 weeks, the buyer and LAG are entitled to withdraw from the contract up to and including 14 days after the block to supply is removed, insofar as the consignment is not ready for dispatch at the time the statement of withdrawal from the contract is received.
- 3.3 If the type specification or any other detail(s) relevant to the consignment for supply is missing, it is the duty of the buyer to inform LAG of the respective details without delay. If there is delay in communicating the type specification, LAG has the right to postpone the supply date in accordance with its own terms.
- 3.4 LAG has the right to fulfill the order by separate partial supplies.
- 3.5 A reduction or excess of the order quantity of the contract goods of up to 10% on the grounds of transport conditions / container sizes will be valid in terms of the contract and gives no reason for any rights or claims by the buyer. The price of the supply will apply to the quantity actually supplied.
- 3.6 It is the duty of the buyer to take delivery of the quantity of goods ordered and confirmed. In the cases of delay in acceptance of the goods (even delays for which the buyer is not to blame) the buyer must reimburse LAG for all expenses and loss incurred as a result of the delay.
- 3.7 LAG is entitled to discontinue supplies or to cancel any existing obligations to supply, if the buyer is more than 14 days in arrears of payments for previous supplies without just cause.
4. **Packing:**
- 4.1 Preparation for dispatch and delivery of the goods will in each case be in accordance with LAG's usual packing methods. Pallets supplied by LAG must be returned free of freight charges within one month of delivery at the latest. Charges may be invoiced for damaged, lost or unreturned pallets, which are the property of or were supplied by LAG.
5. **Prices:**
- 5.1 The agreed sales' prices are only valid for the supply dates specified in the Order Confirmation. If any contract quantities are outstanding after expiry of the agreed supply period, LAG reserves the right to cancel the contract for the remaining quantities, as long as LAG bears no fault for the delay.
- 5.2 For invoicing purposes, the quantity of contract goods determined by LAG will always apply.
6. **Payment:**
- 6.1 Unless otherwise agreed, net payment must be made of LAG invoices within 10 days of the invoice date.
- 6.2 If partial deliveries have been made, LAG is entitled to raise partial invoices. They become due and payable in accordance with 6.1.
- 6.3 If LAG accepts bills of exchange or cheques, this is only by way of payment.
- 6.4 The deciding factor for the payment date is the date on which payment or cash is deposited with our banks.
- 6.5 If the agreed payment period is exceeded, LAG is entitled to charge interest at a level of 12% as well as any collection charges incurred, unless other arrangements are made in writing. LAG is also entitled to charge for exchange rate differences, which may arise from late payments.
- 6.6 Additional fees associated with payments, like fees for shipping documents, deposit or discounting fees for cheques or bills of exchange, banking and transfer charges, credit control and debt recovery fees are the responsibility of the buyer and are payable immediately.
- 6.7 LAG reserves the right to restrict or cancel credits or to demand special securities, if there is doubt in LAG's opinion about the creditworthiness of the buyer.
- 6.8 No offset will be permitted of requests from the buyer for payment against LAG's request for payment of the purchase price nor any withholding of goods and services by the buyer, for any reason whatsoever.
- 6.9 If any special liabilities arise for LAG or directives are addressed to LAG as a result of export credit or any other insurance, especially in the case of late payment, LAG has the right to pass on the corresponding liabilities or directives to the buyer.
- 6.10 If the buyer is prevented by any law or directive from remitting invoice payments, wholly or in part, to Austria as they fall due, LAG may postpone further deliveries until such time as all amounts due are remitted. If the obstacle to payment continues for more than 8 weeks, LAG can cancel all contracts not yet supplied.
7. **Reservation of title:**
- 7.1 LAG reserves title of ownership of the contract goods until the purchase price and any additional expenses are paid in full. Where the contract goods have been processed, combined or mixed with other goods, reservation of title continues to apply to a proportion of the value of the resulting new products, corresponding to the relative value of the contract goods.
- 7.2 Whilst the goods remain the property of LAG, it is the duty of the buyer to insure them against the usual risks.
- 7.3 In case of late payment by the buyer, LAG has a claim for the return of the contract goods. Enforcement of this claim in itself does not constitute withdrawal from the contract by LAG. Insofar as LAG takes back the goods under this provision and does not withdraw from the contract, LAG is entitled to realise the value of the repossessed contract goods at the buyer's expense and to meet any outstanding payments owed to LAG from the proceeds.
- 7.4 Until payment is made for the goods in full, the buyer may not pledge these goods or give them to third parties for safekeeping or otherwise encumber them with any rights to third parties. If the contract goods or a product of those goods is resold before expiry of the reservation of title (see 7.1) the buyer shall for safety waive his request for payment of the purchase price in favour of LAG. The buyer must acknowledge this waiver by a clear and unambiguous note on invoices addressed to the third party concerned or in his books with the entry for the relevant invoice.
- 7.5 In the case that a third party has rights of access, including access by state authorities, to the goods under reservation of title, this party must be notified of LAG's rights and LAG informed in writing without delay of the granting of access and its detailed circumstances.
8. **Transport, insurance and performance:**
- 8.1 The appropriate currently valid INCOTERMS will apply.
- 8.2 No liability will be accepted by LAG for delays during transport.
- 8.3 LAG will determine the method and route for transmission of the goods.
9. **Warranties:**
- 9.1 Defects must be notified to LAG, excluding otherwise all other rights and claims arising from them, immediately after delivery of the contract goods in writing and with a precise description of the defect. Latent defects i.e. faults that cannot be immediately established despite careful examination, must be reported to LAG, excluding otherwise all other claims, in writing immediately on discovery, with a precise description of the defect.
- 9.2 Where a defect appears, LAG must be given the opportunity to inspect the goods themselves or through a third party. The buyer must ensure in this process that as little expense as possible is incurred by LAG in thus making the goods available for inspection.
- 9.3 In the case of complaint the buyer must keep damage to a minimum.
- 9.4 Enforcement of claims for defects by the buyer is not in any case admissible from the time of any (even partial) additional processing of the affected goods. The warranty period ends in any case 90 days after receipt of the goods at the latest.
- 9.5 Normal trade variations in the appearance and characteristics of the contract goods, based on unavoidable variations in the quality of the raw materials and/or the production process will be accepted as in accordance with the contract and do not justify any rights and claims however made by the buyer.
- 9.6 The application, use and processing of the goods supplied is the exclusive responsibility of the buyer, as is testing of the goods for their suitability to the processes and objectives intended.
- 9.7 In any warranty claim LAG may choose between a reduction in price, repair or replacement of the contract goods which are the subject of complaint.
10. **Compensation:**
- 10.1 Compensation claims against LAG based on defects in the goods supplied, consequential losses from those defects, delay in supply, incomplete performance or other breaches of contract by LAG are inadmissible, unless the buyer provides evidence that LAG has caused the losses concerned deliberately or by gross negligence. Replacement for lost profits is inadmissible in every case. Product liability claims for damage to property are also inadmissible.
11. **Effectiveness, place of fulfilment, governing legislation and court of jurisdiction:**
- 11.1 If individual provisions of this contract are ineffective, this does not affect the effectiveness of the other provisions. The inapplicable provision is deemed to be replaced by a valid provision, which comes as close as possible in economic import to the inapplicable term.
- 11.2 The place of performance for the buyer is A - 4860 Lenzing.
- 11.3 The contractual relationship and all the rights and claims which are associated with or derived from it are subject to Austrian Law excluding UN Commercial Law (BGBl. No 96/1988).
- 11.4 In any dispute arising out of this contract or any breach, dissolution or voiding of it, the Court in Vienna with material jurisdiction for commercial law has exclusive jurisdiction. LAG however has the right to complain or make a claim to any other court with jurisdiction over the buyer.
- 11.5 Written communications in the meaning of these Conditions of Sale and Delivery mean all communications by post or fax.