

# **Terms and Conditions Lesyk GmbH**

## **General sales, delivery and payment conditions**

### **§ 1 General/Area of Application**

All deliveries and services of Lesyk are based on these conditions and on any special contractual agreements. Deviating purchasing conditions of the orderer shall not become part of the contract even if the order is accepted, unless Lesyk has separately agreed to this in writing.

Lesyk reserves title and copyright in samples, figures, drawings and similar things – even in electronic form; they must not be made accessible to any third parties. The orderer must not reproduce any documents and objects subject to title and copyright.

Lesyk commits to making any information and documents designated as confidential by the order to third parties only with his consent.

All offers are subject to confirmation regarding process and delivery options; interim sale is reserved.

The current information applies regarding design of the standard tools, but is subject to technical further development. Changes due to further development do not entitle the orderer to complaints.

There are no oral side agreements. Changes shall require written form to be effective.

Prices published in the shop are up to date.

### **§ 2 Conclusion of the Contract**

The goods range presented in the online shop of Lesyk is subject to confirmation and only a noncommittal request to the orderer to order goods. Technical and other changes are reserved in the scope of the reasonable.

The orderer must not be a consumer. The orderer may only place an order for his commercial or freelance activity. No contract is concluded with consumers.

A contract is entered into unless there are any special agreements with the written order confirmation of Lesyk. The orderer is liable for the accuracy of the documents to be provided to him by Lesyk, such as drawings, samples, models, gauges, etc. If no clear design tolerances are indicated in the orderer's drawings or order, Lesyk shall produce according to its experience and standards common in the industry or within the tolerance thresholds due to the respective production procedure.

The minimum calculated net value is EUR 50.00. If the ordered value is below EUR 50.00, Lesyk shall have the right to invoice a small-quantity surcharge of EUR 20.00.

In case of cancellation or return delivery, a lump sum of EUR 40.00 is invoiced.

### **§ 3 Packaging Units**

The shipping packaging units are aligned with amount, size and weight of the ordered items.

If the order contains both package-shipping-capable items and forwarding items, shipping shall take place by forwarder.

Shipping and packaging costs are not indicated in the order.

#### **§ 4 Prices and Payments**

The prices apply ex works, excluding packaging, shipping, insurance, customers and customs secondary costs. Shipping takes place on the account and at the risk of the orderer. VAT at the statutory amount is added to the prices.

Accounting shall take place at delivery. Payments shall be due free of expenses.

The orderer shall only have a right to retain payments or set off against counterclaims where his counterclaims are undisputed, legally validly determined or recognised by Lesyk.

Payment by bill of exchange or cheque shall be excluded.

At non-compliance with the payment conditions by the orderer and at justified concern about the payment capability of the orderer (i.e. even if payments are stopped), Lesyk shall have the right to retain still-outstanding deliveries and services, demand advance payments or securities or to declare rescission of the contract without setting a grace period.

Costs arising from a dunning procedure are invoiced to the orderer.

#### **§ 5 Delivery, acceptance and passing of risk**

The delivery takes place on the account and risk of the orderer. Partial deliveries are possible.

Complaints of transport damage must be documented with a picture by the orderer and reported to the transport company and Lesyk in writing at once after receipt of the goods, and no later than within eight days from receipt of the goods.

Factually justified and appropriate changes to the performance and delivery obligation of Lesyk, in particular appropriate exceeding of the delivery deadline, are deemed approved in advance by the orderer.

Indicated delivery dates shall only be a reference value and therefore are deemed only agreed on as approximates (approximate periods), unless a fixed transaction has been agreed on.

Lesyk shall report any recognisable delays to the orderer as quickly as possible. Lesyk shall indicate delivery times as according to its best discretion but without any liability, they shall result from the agreements of the contracting parties and its compliance shall require of Lesyk that all commercial and technical matters between the contracting parties have been clarified and that the orderer meets all obligations he is subject to, such as provision of approvals or required authority certifications. If this is not the case, the delivery period shall extend accordingly.

Non-compliance with the delivery period due to force majeure, labour dispute or other events outside of the area of influence of Lesyk shall extend the delivery period appropriately. Lesyk shall report the start and end of such circumstances to the orderer as quickly as possible.

If dispatch of the object of the delivery is delayed for reasons due to the fault of the orderer, the costs arising from the delay shall be charged to him – starting one month after readiness for shipment has been reported. If shipping is delayed at the orderer's request, Lesyk shall have the right to dispose of the object of the delivery otherwise upon setting of a grace period and expiration of an appropriate period without success and to supply the orderer with an appropriate grace period. This does not apply in case of special productions. In this case, Lesyk shall have the right to assert full damages due to non-acceptance of the goods.

The delivery period is deemed complied with if the object of the delivery has left the factory of Lesyk by its expiration or if readiness for shipping has been reported. Lesyk shall have the right to make partial deliveries.

The orderer must not refuse acceptance of the goods if there is an inessential defect. If shipping is delayed or not performed due to circumstances that are not the fault of Lesyk, the risk shall pass to the orderer from the day of notification of readiness for shipment. Lesyk commits to taking out the required insurances demanded by orderer at his express wish and expense.

Any liability of Lesyk due to delayed delivery shall be excluded.

Lesyk is free to select the type of dispatch of the goods and the transport equipment. Place of performance for delivery and payment shall be the business seat of Lesyk.

If the delivery is performed with packaging material, this material shall not be taken back by Lesyk. The orderer commits to proper disposal.

## **§ 6 Reservation of Title**

Lesyk reserves title in the object of the delivery until all claims of Lesyk against the orderer from the business relationship, including any claims arising in future, also from contracts entered into at the same time or later, have been paid. This applies even if individual or all claims of Lesyk have been included in a current invoice and the balance has been formed and recognised. In case of conduct of the orderer contrary to the contract, in particular in case of default of payment, Lesyk shall be authorised to take back the object of the delivery after dunning and the orderer shall be obliged to release it. Lesyk must only demand release of the object of the delivery due to the retention of title if it has declared rescission of the contract. The orderer must inform Lesyk without delay in case of seizure or other third-party interventions.

The orderer shall have the right to sell on the object of the delivery in the proper course of business. However, it already assigns all claims to Lesyk that arise for him against the purchaser or third parties from this further sale. The orderer shall be authorised to collect this claim even after the assignment. The authorisation of Lesyk to collect the claim directly shall not be affected by this.

However, Lesyk commits to not collecting the claim while the orderer does not meet his payment obligations, has not revoked the collection authorisation or has not filed any application for opening of insolvency proceedings. Lesyk may otherwise demand that the orderer informs it of any assigned claims and their debtors and makes any information required for collection, submits the associated documents and informs the debtors of the assignment if this has not been done by Lesyk already. If the object of the delivery is sold on together with other goods that do not belong to Lesyk, the claim of the orderer against the purchaser is deemed assigned at the amount of the delivery price agreed on between Lesyk and the orderer. Any processing or conversion of the delivered goods by the orderer is deemed performed for Lesyk. If goods are processed with any other objects that do not belong to Lesyk, Lesyk shall acquire joint property in the new object at the ratio of the value

of the delivered goods to the other processed objects at the time of processing. The objects created by processing shall be subject to the same provisions as the goods delivered subject to retention of title.

The orderer must not pledge the object of the delivery or transfer it as collateral.

The application for opening of the insolvency proceedings shall authorise Lesyk to rescission of the contract and to demand immediate return of the object of the delivery.

## **§ 7 Claims for Defects**

Lesyk shall assume warranty for defects of material and title under exclusion of any further claims – under reservation of liability pursuant to § 8 – as follows:

### **Defects of Material**

All parts that turn out to be defective due to a circumstance arising before passing of the risk must be improved free of charge or replaced without defects at the digression of Lesyk. Determination of such defects shall be reported to Lesyk in writing with a picture without delay. Replaced parts always become the property of Lesyk.

The orderer shall provide Lesyk with the time and opportunity required to perform any improvements and replacement deliveries that appear necessary to Lesyk upon coordination with Lesyk; otherwise, Lesyk shall be released from liability for any resulting consequences. Only in urgent cases of danger to operational safety or defence against disproportional damage, with Lesyk be informed in writing immediately and shall the orderer have the right to have the defect removed directly or by third parties and to demand replacement for the required expenses from Lesyk.

Lesyk shall assume the costs for the replacement, including shipping out of the direct costs arising from improvement or replacement delivery if the complaints turn out to be justified.

In the scope of the statutory requirements, the orderer shall have the right to rescission from the contract if Lesyk permits an appropriate grace period set to it for improvement or replacement delivery due to a defect of material to expire without success under consideration of the statutory exceptions. If there is only an inessential defect, the orderer shall only have a right to reduction of the contractual price. The right to reduction of the contractual price shall be excluded otherwise.

The orderer shall review the object of delivery for functionality for proper use before its use. When using revised tools, settings that result from geometrical deviations are required. Lesyk shall not assume any liability for any consequential damage resulting from non-observance.

No warranty shall be assumed particularly in the following cases: unsuitable or improper use, defective commissioning or use by the orderer or third parties, usage-related or other natural wear, defective or negligent treatment, improper maintenance, use of unsuitable operating equipment and chemical, electrochemical or electrical influences. At production according to the orderer's drawing, Lesyk shall only be liable for designs according to the drawing.

If the orderer or a third party performs improper improvement, Lesyk shall not be liable for any consequences resulting from this. The same shall apply for any changes to the object of the delivery performed without the previous consent of Lesyk.

If use of the object of the delivery leads to violation of commercial property rights or copyright in the country, Lesyk shall generally procure the orderer the right to further use at its account or to modify the object of the delivery in a manner reasonable for the orderer so that there is no longer any violation of property rights. If this is not possible at economically appropriate

conditions or within an appropriate period, the orderer shall be entitled to rescission of the contract. Under the prerequisites named, Lesyk shall also have a right to rescission from the contract. Additionally, Lesyk shall release the orderer from any undisputed or legally validly determined claims of the respective property rights holder.

The obligations of Lesyk named in § 7 are finally subject to § 8 in case of violation of property or copyright. They shall only be present when

- a) the orderer informs Lesyk of asserted property or copyright violations without delay,
- b) the orderer supports Lesyk at the appropriate scope in the defence against the asserted claims or permits Lesyk to perform the modification measures pursuant to § 7,
- c) Lesyk reserves all defence measures including out of court provisions,
- d) the defect of title is not due to an instruction of the orderer and
- e) the violation of laws has not been caused by the orderer having changed the object of the delivery independently or used it in any non-contractual manner.

The orderer shall assume the sole responsibility for the documents to be provided by him, such as drawings, gauges, samples and similar documents. The orderer shall be responsible for the execution drawings submitted to him not affecting any third-party property rights. Lesyk shall not be obliged towards the orderer to review whether issuing offers based on the documents or samples submitted by it will violate any third-party property rights. The orderer shall keep Lesyk harmless if any liability of Lesyk arises from claim-related facts nevertheless.

## **§ 8 Damages and Limitation of Liability**

If the object of the delivery cannot be used contractually by the orderer due to the fault of Lesyk due to omitted or defective performance of suggestions and consulting performed before entering into the contract or due to violation of any other contractual secondary obligations – specifically instructions for operation and use of the object – the provisions of § 7 and § 8 shall apply under exclusion of any further claims of the orderer.

Lesyk excludes any liability for damage that has not arisen at the object of the delivery as such.

Lesyk shall not be liable for damages except in case of wilful intent or gross negligence. Lesyk shall only be liable for simple negligence in case of violation of obligations the performance of which is required for proper performance of the contract and the compliance with which the orderer may regularly trust in. Apart from this, liability for damage of any kind, no matter the basis of the claim, including liability due to fault at entering into the contract, is excluded.

If Lesyk is liable for simple negligence, liability shall be limited to the damage that Lesyk had to typically expect according to the circumstances known when entering into the contract.

The above exclusions and limitations of liability shall not apply if Lesyk has issued any warranty for damage due to violation of life, body or health or due to claims under the product liability act.

The above exclusions and limitations of liability apply for the benefit of the employees, servants and other third parties that Lesyk makes use of for performance of the contract as well.

## **§ 9 Expiration**

The warranty claims shall expire within two years of handover of the goods.

## **§ 10 Applicable Law/Place of Jurisdiction/Miscellaneous**

Any legal relationships between Lesyk and the order shall be subject to the law of the Federal Republic of Germany that is essential for the legal relationships between national parties.

Place of jurisdiction shall be the court relevant for the registered seat of Lesyk. Lesyk shall, however, have the right to raise a claim at the registered seat of the orderer. If deliveries and services are to be rendered by Lesyk outside of the territory of the Federal Republic of Germany, German law shall apply as well. Application of UN purchasing law (convention of the united nations on contracts on the international sale of goods -CISG-) shall be excluded.

## **§ 11 Data Privacy and Change of Addresses**

The orderer shall grant his consent that the personal data contained in the purchasing contract may be saved and processed automation-supportedly by Lesyk in performance of the contract.

The orderer is obliged to inform Lesyk of any changes to its delivery and billing addresses until the legal transaction subject to the contract has been met by both parties. If this notification is not given, notifications shall also be deemed received if they are sent to the last address indicated.

As of: January 2016

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