

I. LMP Pyrotechnik GmbH & Co.KG's General Terms and Conditions

N.B.: These General Terms and Conditions are valid as of 1 January 2009. All previously published versions of LMP Pyrotechnik GmbH & Co.KG's General Terms and Conditions are no longer valid as of this date. **In cases of doubt, the original German version of these General Terms and Conditions shall take precedence over any translated version!**

General

The following General Terms and Conditions shall apply for all present and future business relationships. They shall not apply for contracts and business relationships with consumers within the meaning of the German Commercial Code [BGB]. Customers within the meaning of these General Terms and Conditions are natural persons or corporate bodies or incorporated partnerships with whom or which a business relationship is set up, and who or which are dealing within the course of their regular business activities, whether as part of an employment or on a self-employed basis. Should new goods be delivered, they shall be subject to the terms of delivery and guarantee of the manufacturer in question. Should these not have been effectively agreed upon, our General Terms of Delivery and Guarantee shall apply as an alternative. Verbal collateral agreements shall only be effective if we have confirmed them in writing. Even if notice has been taken of them, deviating, conflicting or supplementary general terms and conditions shall not become an integral part of this contract unless they have expressly been consented to in writing. To the extent to which we are in a continuous business relationship with a customer, these General Terms and Conditions shall apply for each individual order even if they have not been specifically attached to each individual order confirmation or reference was made to them. Our price list that is valid at the time an order is placed shall also be an integral part of this contract.

Conclusion of this Contract

1. Our offers are subject to change. To the extent reasonable, we reserve the right to make technical changes as well as changes in form, colour and/or weight. Unless agreed upon otherwise in writing, our prices are calculated ex works, excluding packaging and do not include VAT. If, after an order has been placed, standard wages and general costs increase or other circumstances for which we are not responsible, production and distribution become more expensive, we reserve the right to adjust prices accordingly.
2. When a customer orders goods, he gives a binding statement that he wishes to purchase the goods he has ordered. We shall be entitled to accept the offer to enter into a contract within two weeks of receipt of the order. Such acceptance can be made either in writing or by delivering the goods to the customer.
3. This contract is concluded subject to our receiving correct and timely supply by our supplier. This shall only apply if we are not responsible for default in delivery, especially if we concluded a matching cover transaction with our supplier. The customer shall be informed immediately if we are unable to provide the goods. Consideration shall be reimbursed immediately.

Reservation of Proprietary Rights

1. We reserve the ownership of the goods until all of the claims from an on-going business relationship have been paid in full.
2. The customer shall be obliged to treat the goods with care. Should maintenance or inspection become necessary, the customer shall carry this out regularly at his own expense.

3. The customer shall be obliged to inform us immediately if third parties should seize the goods, such as in case of attachment, or if the goods should be damaged or destroyed in any way. The customer shall inform us immediately of any changes in the ownership of the goods or if he changes his address.
4. Should the customer's conduct be contrary to the terms of this contract, we shall be entitled to withdraw from the contract and reclaim the goods, especially if there is a default in payment or if obligations are violated in accordance with Items 2 and 3 of this provision.
5. The customer shall be entitled to resell the goods within the regular course of business. He shall assign to us at this time in the amount of the invoice all claims which he shall acquire against a third party from a resale. We accept this assignment. After the assignment, the customer shall be authorised to collect the receivable amount. We reserve the right to collect the receivable amount ourselves as soon as the customer does not meet his payment obligations correctly and is in default.
6. Handling and processing of the goods by the customer shall always be carried out in our name and on our behalf. Should the goods be processed with objects that do not belong to us, we shall obtain joint ownership of the new goods in proportion to the value of the goods delivered by us to the other processed objects. The same shall apply if the goods are mixed with other objects that do not belong to us.

Remuneration

1. The sales price offered shall be finding (possibly for a limited time only). The sales price shall include the legal VAT. If the contract involves delivery by carrier, the sales price shall not include a lump sum for packaging. The customer shall not be charged any additional costs if he should order by means of telecommunication. The customer may settle the sales price by paying COD, payment in advance, or an invoice.
2. For the duration of default, the customer shall pay interest in the amount of 8 % above the base rate on the money owed. We reserve the right to prove to the customer that the damages caused by default are higher, and to assert this claim.
3. The customer shall only have the right to set off a counterclaim if his counterclaim has been determined by a legally binding decision in a court of law or if we have acknowledged it. The customer may only execute his right of retention if his counterclaim is based on the same contractual relationship.
4. Assembly and start-up are never included in our prices. Should our service technicians carry out the assembly, we shall charge the hourly rates valid in each case for technicians' wages, the hours of travel and travel expenses as well as the individual daily flat rates for room and board.

LMP Pyrotechnik GmbH & Co.KG's Right of Withdrawal

1. Should the customer's credit worthiness change substantially for the worse, we shall be entitled to request advance payment or a security deposit, or to withdraw from the contract.

Passing of Risk

1. The risk of accidental damage or theft of the goods shall pass over to the customer when the goods are delivered or, in the case of delivery by carrier, when the goods are delivered to the forwarding agent, freight carrier or any other person or establishment that has been determined to carry out the shipment.
2. Delivery shall be deemed to have occurred in the event that customer is in default of acceptance.

Liability (Warranty)

1. Should the goods be defect, we may first decide whether to rectify these defects or replace the goods.
2. Should supplementary performance fail, the customer may always decide whether to lower the amount of remuneration (reduction) or cancel the contract (withdrawal). However, if there is only a minimal infringement of the contract, especially if there are only insignificant defects, the customer shall not have the right to withdraw from the contract.
3. Customers must inform us in writing of obvious defects within two weeks of receipt of the goods. Otherwise, claims for liability cannot be asserted and shall be excluded. To meet this deadline, timely mailing of such a claim shall suffice. The customer shall be completely responsible for providing evidence that his claim is justified, especially for the defect itself, for the time at which the defect was determined and for the timeliness of the notice of defects.
4. Should the customer choose to withdraw from the contract after supplementary performance for a defect of title or quality has failed, he shall have no further claims for damages due to this defect.
Should the customer choose to claim for damages after supplementary performance has failed, the goods shall remain with the customer if this is reasonable. The claim for damages shall be restricted to the difference between the sales price and the value of the damaged goods. This shall not apply if we caused the breach of contract by malicious behaviour.
5. Should goods be complained about, we will provide a chargeable advance replacement upon request, which will only be credited to the customer's account if this complaint is acknowledged by one of our manufacturers or suppliers or if we are the cause of liability.
6. Goods will only be taken back after our Sales Department has previously agreed to this; goods must be returned to us free of charge.
7. Our term of liability is one year from the date of delivery of the goods. This shall not apply if the customer has not informed us in good time of the defect (Item 3 of this provision). Liability shall be excluded for used goods.
8. It is agreed that only the manufacturer's product description shall describe the condition of the goods. Further public statements, targeting or advertising by the manufacturer shall not represent an indication of the condition of the goods in accordance with the contract.
9. Should the customer receive faulty assembly instructions, we shall only be obliged to deliver assembly instructions without faults, and only if the fault in the assembly instructions prevents correct assembly.

10. The customer shall not receive any guarantees from us within the legal meaning. This shall not affect manufacturers' guarantees.

Limitation of Liability

1. In case of a slightly negligent violation of contractual obligations, our liability shall be restricted to the average foreseeable, direct damage typical for this type of contract, depending on the type of goods. This shall also apply for the slightly negligent violation of contractual obligations by our legal representatives or agents. We shall not be liable for the slightly negligible violation of non-essential contractual obligations.
2. The preceding limitations of liability shall not affect customer's claims arising from product liability. Furthermore, these limitations of liability shall not apply to injuries to body or health for which we are responsible or for the customer's loss of life.
3. The customer's claims for damages arising from a defect shall become time-barred one year after delivery of the goods. This shall not apply if we can be accused of malice.

Final Provisions

1. The laws of the Federal Republic of Germany shall be solely applicable. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not be applicable.
2. If the customer is a merchant as defined by German commercial law, a legal entity under public law or a special fund under public law, the sole place of jurisdiction for all disputes arising from this contract shall be our place of business. The same shall apply if the customer does not have a general place of jurisdiction in Germany, or if his address or usual place of residence are unknown at the time an action is filed.
3. Should individual provisions of the contract with the customer, including these General Terms and Conditions, be or become wholly or partly invalid, this shall not affect the validity of the remaining provisions. The wholly or partly invalid provision shall be replaced by a provision which comes as close as possible to achieving the economic success intended by the invalid provision.

II. LMP Pyrotechnik GmbH & Co.KG's Special Terms and Conditions of Rent

1. The following terms and conditions cover the rental of ignition systems, fog machines, confetti throwers, CO₂ machines, flame projectors, wind machines, foam machines, snow machines, water walls as well as their accessories and control units, furthermore stands, retainers, cases, flame trays and firewalls as well as launching tubes for fireworks.
2. The possible transport and assembly and disassembly of objects that are not part of the subject-matter of this rental agreement shall not be affected by the underlying rental agreement. Provided the lessor transports such objects or assembles and disassembles them, this is a favour in business dealings and the lessor does not accept any liability whatsoever for such execution.
3. Rental and delivery are provided on the basis of the following conditions. Deviations and subsidiary agreements must be explicitly confirmed in writing by the lessor.
4. Any provisions to the contrary in the lessee's rental conditions are hereby explicitly superseded in all cases.

5. Should individual provisions of the General Terms and Conditions be invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by a valid one which best achieves the purpose aimed for by the invalid provision.
6. The rental agreement shall be concluded when the lessor sends an order confirmation or delivers the rental object. Changes and amendments to the order shall become legally effective only if they have been confirmed in writing by the lessor. The lessor's offers are subject to change unless they have been explicitly designated as binding.
7. The illustrations, measurements and weights in the lessor's brochures are only approximately relevant. We cannot guarantee that they will be met.
8. The lessee shall be responsible for obtaining any necessary approvals, licences, GEMA registrations [Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte, a musical copyright watchdog body], etc., and shall bear all of the costs involved in doing so. Any fees arising in this connection shall be borne by the organiser/lessee. The same shall apply for fees and other costs in connection with the fulfilment of official licensing requirements.
9. The lessor fulfils the rental agreement by providing the rental object at his business premises, even if the object is brought to another location. Risk shall pass over to the lessee when the lessor segregates the object.
10. If it is not possible for the lessor to procure a certain device, he may replace this device by another device which has the same functions.
11. An invoice shall be made out no later than when the rental object is provided. At the lessor's option, he shall be entitled to request advance payment or a security deposit from the lessee. Payment must be made irrespective of the right to give notice of a defect. The lessee may only set off the lessor's claim with a counterclaim or carry out his right of retention if the counterclaim is undisputed or has been determined by a legally binding decision in a court of law.
12. The lessor shall accept cheques only in payment, pending full discharge of the debt. Money-orders and cheques shall only be valid as payment on the day on which the lessor receives the irrevocable credit note. The lessee shall cover all bank charges.
13. If the lessee is in default, the lessor shall be entitled to charge 8 % above the base rate on the amount owed.
14. The lessee undertakes to inform the lessor immediately of any defects in the rented objects or if performance is impaired. If, through his fault, the lessee does not inform the lessor accordingly, claims for reduction shall be excluded. The lessee is also liable to the lessor for damages caused because the lessee has culpably refrained from reporting any defects or impairments to performance.
15. The lessee shall not be permitted to sublet the objects.
16. If an event is to be held outdoors and the parties agree that the lessor shall supervise the functioning of the rented objects, the lessor shall have the following rights:

He may switch off and, if necessary, disassemble the system if, due to the effects of the weather, there is a danger for the system or for the physical integrity of the people present.

The lessor may switch off or disassemble the system if riots or disturbances endanger the system.

If, in accordance with the preceding requirements, the system is switched off or disassembled, the lessee shall not be entitled to derive from this any claims for damages whatsoever against the lessor.

17. The rented object is not insured. The lessee undertakes to take out at his own expense all of the normal insurances for the rented objects, whereby the insurance benefit shall cover the replacement value of the objects.
18. The lessee shall be liable for all damages (e.g. loss, theft, defects caused, damages in transport, damage by water, faulty power supply, atmospheric conditions, soiling, etc.) to the rented object which he or third parties cause to occur to the rented devices and accessories during the rental period. The lessee shall also bear the risk for accidental damages as well as damages due to force majeure. In case of a total loss, the lessee shall replace the replacement value plus the cost of replacement, irrespective of the current market value of the rented object and irrespective of whether or not he is responsible for the damage. Should the rented object or part of it be stolen, the lessee shall be obliged to file charges with the police and inform the lessor immediately.
19. The rented objects shall remain the inalienable property of the lessor.
20. The organiser/lessee has taken over the devices as listed in good order and condition. Any defects must be noted in writing. Any objections raised later, that damages already existed before the devices were taken over, shall not be acknowledged.
21. Should the rented objects not be returned at the time agreed upon, the lessee shall pay compensation for use for the duration of the period he withholds the rented object in the proportionate amount of the rental fee.
22. Should the lessee withdraw from the rental agreement or refuse to accept the lessor's performance, the lessor may claim compensation for his expenditures and reduced possibilities for renting the object to someone else as cancellation expenses. This shall amount to the total price agreed upon as a rental fee and shall be reduced as follows:

- up to 30 days before the rental period begins	30 % of the total price
- up to 14 days before the rental period begins	40 % of the total price
- up to 7 days before the rental period begins	50 % of the total price
- up to 2 days before the rental period begins	80 % of the total price

The lessee must show proof that the lessor has suffered no damage or only less damage than the amounts listed above.

23. The lessor shall be liable for property damage, personal injury or financial loss which could be caused by the use of the rented object only if there is intent or gross negligence. This applies especially for personal injury or property damage that occurs directly before, during or after an event.
24. The lessee undertakes to indemnify the lessor from all claims made against the lessor by third parties arising from or in connection with the rental of objects. The lessor's right of indemnity against the lessee also includes the costs incurred by the lessor to defend himself against claims.

When selecting the rented object, claims for damages shall be limited to the rental fee. Any further claims made by the lessee shall be excluded.
25. As far as this is admissible, the place of jurisdiction shall be the County Court/District Court responsible for the place where LMP Pyrotechnik GmbH & Co.KG has its headquarters.

III. LMP Pyrotechnik GmbH & Co.KG's Special Terms and Conditions for Assembly/Fixed Installation

1. At his own expense, the customer shall take over and provide in good time:
 - a. all of the construction work, earthworks and other extra work outside this industrial field,
 - b. the implements and materials required for assembly and start-up, such as scaffolding, hoisting devices, machines and other equipment as well as the fuels and lubricants required for operation,
 - c. power and water at the assembly site, including connections, heating and lighting,
 - d. suitable rooms that can be locked for storing machines and parts, equipment, materials and tools, including the surveillance of these rooms,
 - e. suitable and appropriate workrooms and common rooms for the service technicians, including sanitary facilities,
 - f. protective clothing and devices, as far as these are required by the special circumstances at the place of assembly,
 - g. all technical information necessary for completing assembly or fixed installation.
2. Before beginning assembly / fixed installation, the supplies and objects/materials required to begin assembly work must be at the assembly site. All necessary preliminary work must be completed to such a degree that the assembly and installation work can begin as agreed upon and be carried out without any delays.
3. Access routes must be kept clear. LMP Pyrotechnik GmbH & Co.KG shall be provided with any approvals for transit that may be required.
4. Should assembly, fixed installation or start-up be delayed by circumstances for which LMP Pyrotechnik GmbH & Co.KG is not responsible, the customer shall bear all of the costs that arise in connection with this delay.

IV. LMP Pyrotechnik GmbH & Co.KG's Special Terms and Conditions for Carrying Out Fireworks Both Indoors and Outdoors

1. In order to hold fireworks, the approval of the responsible authorities is required. LMP Pyrotechnik GmbH & Co.KG shall obtain all of the required approvals in the name and on behalf of the customer. All of the costs arising in this connection shall be borne by the customer, as well as all of the costs arising in connection with the fulfilment of licensing requirements.
2. The customer shall obtain all necessary approvals from the affected adjacent owners at his own expense.
3. The customer shall ensure that all of the licensing requirements as well as all legal regulations can be met by LMP Pyrotechnik GmbH & Co.KG's pyrotechnists.
4. For reasons of fire protection or other safety-related reasons, LMP Pyrotechnik GmbH & Co.KG reserves the right to change effects or to dispense entirely with effects if on-site conditions should make this necessary.

5. Should the relevant public office refuse to issue an approval to carry out the fireworks for reasons for which LMP Pyrotechnik GmbH & Co.KG is not responsible, LMP Pyrotechnik GmbH & Co.KG shall not be obliged to provide its services. The customer shall reimburse LMP Pyrotechnik GmbH & Co.KG for its expenses in connection with obtaining official approval.
6. Should it become clear before beginning to set up the fireworks that they will not be carried out for reasons for which the customer is responsible, LMP Pyrotechnik GmbH & Co.KG shall be entitled to claim 50 % (fifty per cent) of the order value as compensation. The customer is free to show proof that no damage has occurred or, if it has, then it is less than this amount. This shall not affect any claims for higher damages.
7. Should it become clear after beginning to set up the fireworks that they will not be carried out for reasons for which the customer is responsible, LMP Pyrotechnik GmbH & Co.KG shall be entitled to claim the full amount of the order value agreed upon as compensation. The customer is free to show proof that no damage has occurred or, if it has, then it is less than this amount.
8. The same shall apply if the fireworks cannot be set off due to atmospheric conditions or if unauthorised persons invade the cordoned off safety area and cannot be removed before the fireworks begin. Only the responsible pyrotechnist from LMP Pyrotechnik GmbH & Co.KG shall decide whether or not to set off the fireworks.
9. If the fireworks are set off while it is raining, LMP Pyrotechnik GmbH & Co.KG does not guarantee that the fireworks can be held without any impairments.
10. The customer shall ensure that all access routes are accessible and passable. Should it take several days to set up the fireworks, the customer shall, at his expense, bear the responsibility of ensuring that the place where the fireworks will be set off and any possible storage areas are sufficiently guarded.
11. The place where the fireworks will be set off and any objects that may possibly have been brought in may only be changed with the permission of LMP Pyrotechnik GmbH & Co. KG's responsible pyrotechnist.
12. The customer shall be responsible for cleaning up the place where the fireworks were set off as well as the surrounding area.

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