

# LÖLSBERG - General Terms and Conditions (Conditions of Sale)

## § 1 Areas of Applicability – Contractual Item(s)

Our Terms and Conditions are valid for the delivery of moveable goods as stipulated in the contract between us (LÖLSBERG, Inh. Bernd Lölsberg, Otto-Hahn-Str. 9a, D-97230 Estenfeld) and the customer. This contract is valid for the sale of moveable goods, as well as both the free and payable provision of goods.

Our Terms and Conditions are binding; we do not acknowledge any varying conditions provided by the customer nor those that are not in agreement with our Terms and Conditions. Any exceptions to this regulation shall be made by us in writing. Our Terms and Conditions are also valid regardless of our providing unconditional delivery of goods in spite of the customer's objection or varying terms and conditions.

All supplemental agreements or other agreements that vary from these Terms and Conditions, as well as changes to the order confirmation require written confirmation from us before they can be recognized as binding. This applies especially in the event that the customer includes additional conditions or regulations in the order summary which we do not expressly reject, or that the customer wishes to make his buying conditions the base for the contract. Inasmuch as these do not contradict our Terms and Conditions, still, they are not a part of the contract due to either our silence or to us delivering the goods without restriction. Deliveries are made exclusively to companies, not to consumers.

## § 2 Offer – Conclusions of the Contract – Offer Documents

The customer's order is a binding offer that we receive by sending an offer confirmation or via delivery of the goods. Any previous offers from us are non-binding.

We reserve copyright privileges on all photos, drawing, calculations, instruction manuals, brochures, and other documentation. This also applies to any written documents marked as confidential. The customer must gain written permission from us before passing anything on to a third party.

## § 3 Prices and Terms of Payment

The listed purchase price is binding. The legally required purchase tax is not included in the price. The tax shall be added to the price in the legal amount and individually listed on the bill on the day of the sale. All prices are listed as the net price unless otherwise noted.

In the event that a price at the time of sale rises due to a change in the market price or due to a rise in costs from the third parties involved in the delivery of the goods, then the higher price shall be the valid price. If the rise in price is 20 % or more than the originally agreed price, the customer has the right to rescind the contract. The customer must make use of this right immediately upon receiving confirmation of the rise in price.

The complete amount is payable in advance and within 10 days upon receiving the order confirmation or sales bill without any discount, as long as no other agreements have been made. After this time, the customer is in default.

The right to set-off is available to the customer if his claim is determined to be legally valid, undisputed, or is acknowledged by us. The customer is entitled to the right of retention only if his counterclaim is from the same contractual relationship.

## § 4 Time of Service - Passing of Risk

The delivery times are set by us and used as a basis for the sales order. In times of strike or in unforeseen situations or higher powers, delivery times shall be delayed and for the entire time of the delay. The same is valid in cases where the delay is due to the customer not having fulfilled his obligations. Otherwise and inasmuch as there are no other restrictions, the delivery period shall be as stated in the order confirmation or works.

## § 5 Liability for Defects

The customer is responsible for inspecting all goods delivered by us, even sample products. The delivery is to be considered approved when no defects, difference in quantity, or an obviously wrong delivery are reported in writing to us within 3 business days of delivery, in any case before further processing. Hidden defects are to be reported to us in writing within 8 days of their discovery.

In the case of a warranty product, we shall provide a superior or replacement product at our discretion. If the replacement product proves to be defective as well, or if repairing the product requires an unreasonable amount of effort and is therefore rejected, the customer can decide to receive a credit for the product or may demand cancelling the contract.

We are entitled to receive the payable amount due from the customer despite any outstanding debts. However, the customer is entitled to receive an appropriate amount as compensation in the case of defects in return.

The customer is required to allow us appropriate time and opportunity to compensate outstanding debts, especially in the case of inspecting defective goods.

In the case of a replacement delivery, the customer is legally required to return the defective products to us.

If, upon further inspection of goods reported as defective, it is concluded that the report was falsely made, we are entitled to bill the customer for a commercially appropriate compensation for inspecting the goods, as well as for delivery costs.

We are not responsible for defects incurred by operating the products other than in keeping with their intended use or for inappropriate storage, defective construction, natural wear and tear, or for repairs made on the product without our express permission.

The warranty is valid for 1 year. The statute of limitations in the event of delivery delays is not affected as stipulated by German Civil Codes (BGB) §§478, 479. This is not valid in cases of compensation claims due to defects. See §6 for compensation claims due to defects. We do not provide the customer with guarantees in legal matters.

## § 6 Liability for Damages

With exception of the regulations in the following paragraph, LÖLSBERG's legal liability for damage claims are limited as follows:

LÖLSBERG is liable for the amount limited by the damages typically foreseeable at the conclusion of the contract for negligence while performing significant contractual obligations. LÖLSBERG is not liable for damages incurred from negligence of minor contractual obligations.

Damages foreseeable at the conclusion of the contract shall amount to the maximum amount of the order's value. In the case of liability due to default, the liable amount is limited to 0.5 % for each completed week of default, but shall not exceed 5 % of the amount of the bill not including sales tax and transportation insurance.

The previous mentioned limited liability is not valid in cases of forced legal liability as well as in cases of a transfer of warranty or negligently inflicted personal injury.

Our liability for breach of contractually duties, as well as delict, is limited to intent and gross negligence. This does not apply in the event of injury to the customer's person or health, claims of negligence of cardinal obligations, i.e. obligations that arise due to the nature of the contract and their injury further endangers contractual aims, as well as recompense for delay damages (§ 286 BGB). Insofar as we are responsible for every degree of fault.

The aforementioned disclaimer is also valid for injury caused by our vicarious agents through minor negligence.

As long as liability does not rule out injury to the customer's life, body, or health incurred due to negligence, the statute of limitation for such claims expires within one year calculated from the day such claims occurred or in the case of compensation for damages due to defects, the statute of limitations starts with the handover of the object.

Inasmuch as the liability for damages excludes us or is limited, then this is also valid for liability for personal damages with regards to our employees, representatives and vicarious agents.

## § 7 Special Conditions for the Cost-free Surrender of Goods

Machines left to use for free or for a fee are subject to the aforementioned conditions and additionally to the conditions in this paragraph.

Machines left to the customer for use are to be operated exclusively with parts provided solely by LÖLSBERG. Otherwise, we can not assume responsibility.

LÖLSBERG remains the owner of the machinery. Popcake brand machines are to be operated only with the batter mix specially designed for these machines.

It is not allowed to further lease or otherwise transfer use to a third party as well as for operation contrary to the intended design/purpose.

Machines are to be operated according to the instruction manual as well as according to legal regulations regarding the machine— this includes the prescribed batter mix and accessories.

The machines should be kept inaccessible to unauthorized persons.

The machines shall be returned immediately upon the conclusion of the agreed upon lease period or upon LÖLSBERG's request.

In case of damage, the customer is responsible to ensure that all required measures have been taken – after having completed any and all necessary safety measures - to minimize the damage and to secure traces of evidence. In the case of theft, the customer is required to immediately file a police report.

The customer is required to personally make a full and honest report of any damage immediately to LÖLSBERG.

The customer is liable for any damages to the machines, damage caused by the machines, or the loss of a machine (including parts and

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accessories) for the duration that the machines are his possession. The customer is not liable if he is not responsible for the damage or loss caused. This exemption does not apply with regards to entering into an insurance contract.

The customer is not liable for deterioration caused to the machine by its intended use, inasmuch as this is normal use.

The customer is responsible for keeping in line with the regulations of this contract if he allows a third party access to the machine and the third party is also responsible for their own actions.

Potential liability for known defects prior to this contract is excluded in accordance to § 536a, sec. 1, part 1 of the German Civil Code (BGB).

The customer is required to handle the products with care; he is especially responsible for protecting them from damage at his expense and in the appropriate amount to ensure their market value. All required maintenance and repairs are to be conducted in a timely matter and at the customer's expense.

LÖLSBERG reserves the right to transfer rights and obligations resulting from this contract to a legal successor. This legal successor shall be the still to be established LÖLSBERG GmbH & Co. KG, Otto-Hahn-Str. 9a, D-97230 Estenfeld. The customer shall be immediately informed of such changes.

## § 8 Retention of Title

We retain ownership of all goods for sale up until fulfilment of all the customer's stipulations, even if the material goods have already been paid for.

The customer is required to immediately notify us of any third party's foreclosure measures of the retained goods and provide all documentation required for an intervention; this is also applies to all other infringements of any kind. Independent of that, the customer is required to instruct any third party upfront of the entitlements on the goods. The customer is required to bear the expense of an intervention as long as the third party is not in a position to remunerate them.

In the case of resale/re-leasing the retained goods, the customer assigns us all his duties resulting from the aforementioned business deals for safety reasons until all our claims have been fulfilled.

We have already accepted this transfer. We acquire immediate ownership of any further goods that result from processing the retained goods, of their alteration or their connection to a different product. They are considered retained goods.

In the event that the value of the assurance exceeds our claims on the buyer by more than 20 %, then we are entitled to release securities in an appropriately corresponding scale upon request of the buyer and at our discretion.

The customer is required to handle the items with care; he is especially responsible for protecting them against damage caused by fire, water, and theft at his own expense and in the appropriate amount to ensure their market value. All required maintenance and repairs are to be done in a timely manner and at the customer's expense.

## § 9 Limitations of Own Claims

Our claims for payment expire in 5 years notwithstanding § 195 of the German Civil Code (BGB). With regards to the start of the limitations, §199 of the German Civil Code applies.

## § 10 Form of Declarations

All legal declarations and notifications from the customer addressed to us or a third party must be in writing.

## § 11 Data Protection, Terms of Privacy

The customer agrees to allowing LÖLSBERG keep, process and use his personal information required for business purposes in accordance with the German Federal Data Protection Act. All personal information is handled with the strictest confidence. Passing on this information to a third party occurs only within the company, as well as for debt collection and credit checking purposes.

The customer further agrees to allowing his personal information to be retained for commercial informational purposes about LÖLSBERG's services.

The customer is required to handle all information resulting from contractual implementation regarding LÖLSBERG as confidential.

## § 12 Place of Fulfilment – Choice of Law – Place of Jurisdiction – Change of Legal Form

Inasmuch as nothing else is listed in the contract, the place of fulfilment and payment is our place of business. The legal regulations determining the place of jurisdiction are unaltered, as far as there are no special regulations in paragraph 3 regarding such.

This contract is subject to the laws of the Federal Republic of German; The United Nation's CISG does not apply.

The exclusive place of jurisdiction is the same court as for our place of business. However, LÖLSBERG is entitled to call upon any other applicable court.