

# General Conditions of Sale

## 1. General Provisions

- 1.1 All supplies and services of Leybold are subject to the conditions hereinafter set forth. Standard-form contract conditions of the orderer (buyer) shall not apply.
- 1.2 In case of any provision not included in these General Conditions of Sale, not the standard-form contract conditions of the orderer or buying contractor shall apply but the statutory provisions.

## 2. Offer / Acknowledgement of Order

- 2.1 Unless a set term is expressly stated, offers from Leybold are without engagement and a contract is only considered as being concluded when the order is acknowledged by Leybold.
- 2.2 Purchase orders without preceding offer according to item 2.1 do not become binding for Leybold unless and to such extent as acknowledged by Leybold. The same applies where the orderer modifies the offer from Leybold.

## 3. Sales References

- 3.1 Data contained in catalogues, brochures and folders, as well as general information in data sheets and drawings accompanying quotations are approximate and without engagement, unless expressly stated as binding.
- 3.2 In particular cases, Leybold reserves the right to alter the design and, where there is a shortage of raw material, to use other materials unless opposed by overriding concerns of the orderer known to Leybold.
- 3.3 Regarding all sales references and other documents made available to the customer, Leybold reserves the right of ownership and copyright; they must neither be used for other purposes nor copied, reproduced or made available to a third party.
- 3.4 All sales references and other documents made available to the customer are to be returned to Leybold immediately upon request; they must be returned without being requested if the order is not placed with Leybold.

## 4. Prices, Packing, Insurance

- 4.1 The prices are quoted ex works or manufacturing plant, respectively, (INCOTERMS 2010) excluding packing, erection and start-up. Packing is charged at cost price.
- 4.2 The sales price does not include any sales, excise, turnover or freight transportation tax etc. nor any export, import or other duties to be additionally charged by Leybold, as the case may be, in accordance with official regulations at the time of fulfillment of the contract.
- 4.3 Unless the orderer (buyer) expressly determines otherwise, Leybold shall insure the ordered goods against the usual transport risks including breakage and charge the cost incurred to the orderer.

## 5. Erection and Start-Up

Provided that erection/assembly, supervision of erection and/or start-up/commissioning have to be carried out by Leybold, the relevant Conditions for assembly and commissioning shall additionally apply; they will be available upon request.

## 6. Passing of Risk

- 6.1 Risk shall pass to the orderer (buyer) pursuant to the INCOTERMS 2010 rules agreed upon. In the absence of such agreement the risk shall pass to buyer on delivery of the goods to the first carrier. This shall also apply to partial shipments or where Leybold has undertaken to assume supplemental services and payments.
- 6.2 If dispatch is delayed by reasons beyond Leybold's control, risks shall pass to buyer upon notice of readiness for dispatch.

## 7. Delivery Dates

- 7.1 The delivery period commences when all commercial and technical requirements for the performance of the contract have been clarified, documents to be supplied by the orderer have been received by Leybold, any official authorization or release that may be required has been issued and (advance) payments provided for in the contract have been credited to Leybold's bank account.  
Adherence to the time of delivery shall be subject to the timely fulfillment of the contractual obligations by buyer. The goods are deemed to have been delivered in time if handed over to the first carrier or declared ready for dispatch to buyer before expiration of the delivery period agreed upon. Partial deliveries are permitted to a reasonable extent. Minor defects do not affect buyer's obligation to take delivery of the goods; in that respect the delivery period shall be deemed to have been observed.
- 7.2 If delivery is delayed by unforeseen events beyond Leybold's control (Acts of God) the delivery period shall be reasonably extended, at the latest by six months, however. Acts of God are considered to be e.g. strikes, lockouts, sabotage, operating breakdown incurred through no fault of Leybold, non-

delayed issuance of official authorizations, as well as any other unforeseen events.

## 8. Terms of Payment

- 8.1 Payments shall be made within 30 days from the date of invoice, unless otherwise stipulated in Leybold offer and/or acknowledgement of order. In case of partial shipments Leybold shall be entitled to issue invoices in part accordingly.
- 8.2 Payments shall be made exclusively to one of Leybold's accounts and shall be effected post-free and exempt of charges at the date due without any deduction. Fees, expenses or sundries incurring to Leybold by accepting bills or cheques upon specific agreement between Leybold and buyer shall be at buyer's expense. Determination when payment becomes due shall be in respect of the date of invoice or notice of readiness for dispatch. The date of fulfillment of all kind of payments shall be that on which the sum paid is actually at Leybold disposal.
- 8.3 Withholding of payment because of counterclaims or setting payments off against any counterclaims is only permissible if such counterclaims are uncontested or legally ascertained.

## 9. Reservation of Property Right

- 9.1 Leybold reserves the property right in the goods supplied until payment in full has been made in respect of any claims whatsoever resulting out of Leybold business transactions with buyer including supplementary claims. If buyer is in default of payments, Leybold shall without formal notice be entitled to taking back the goods as security.  
Claiming the right of property and distraint of delivery items by Leybold shall not be deemed as cancellation of the contract, unless the Customer Loan Act applies. Where special regulations or any other provisions are applicable in the country of buyer or of destination of the goods in respect of the validity of the reservation of property rights, buyer himself shall undertake to carry out the terms of such regulations or provisions to safeguard Leybold's rights.

- 9.2 Buyer is entitled to dispose of delivery items in the course of regular business. Claims arising at buyer during the period of Leybold's property right and resulting from such or unjustified dispositions shall even now be assigned to Leybold. Subject to revocation at any time, buyer shall be authorized to collect the claims.

- 9.3 Leybold undertakes to release on buyer's request securities it is lawfully entitled to in as much as their sum will exceed the unsettled claims to be secured by more than 20 %.

- 9.4 Any working on the goods and any processing of the goods supplied shall be undertaken by buyer for Leybold without Leybold's engagement. In case the goods supplied are used for, connected, mixed or mingled with another equipment not owned by Leybold (§§ 947 and following BGB), Leybold shall be entitled to a co-ownership in the new equipment pro rata the value of the goods supplied to the remaining equipment which existed before the date of working, processing, connecting, mixing or mingling. If buyer acquires sole title by operation of law, he shall grant to Leybold a corresponding co-ownership share and thus hold the equipment in trust for Leybold.

The provisions in Paragraph 9 shall equally apply to the co-ownership share.

- 9.5 Distraints or any other such measures imposed by third parties must be reported by buyer without delay to Leybold.

- 9.6 During the period of reservation of property rights buyer undertakes to fully insure the goods supplied at his own expense against risks and damages, such as robbery, breakage, fire and water and, upon request, to furnish proof thereof to Leybold. In case that buyer fails to furnish such proof requested within a reasonable period of time, Leybold shall be entitled to take out such insurance at buyer's expense.

## 10. Warranties

- 10.1 Leybold undertakes at its discretion to repair or to replace any goods supplied or parts thereof resulting defective prior to passing of the risk (e.g. owing to faulty design, defect in material or workmanship, failure to reach the performance figures quoted).
- 10.2 In case of failure of repair or replacement buyer shall be entitled to claim redhibition or abatement.
- 10.3 Notice of defects must be given within three weeks from the date of delivery. As exception from this rule, defects which are not perceptible even on inspection of the goods supplied must be notified immediately after their detection. The complaint must specify the nature of the found defects or faults and whether they have been discovered at once or only after subsequent treatment or processing of the supplied goods or parts. Leybold shall be entitled to have the defectiveness checked by its own staff.
- 10.4 After mutual consent buyer shall grant to Leybold reasonable time and opportunity to proceed with the repairs or replacements as Leybold may deem necessary at its discretion. If buyer fails to do so Leybold shall be relieved of any warranty or liability. Only in the event of extraordinary cases such as

jeopardizing safety of operation or risking excessive damages – whereupon Leybold shall immediately be notified – or if Leybold should be in delay of remedying the damage, buyer shall be entitled to remedy the defect himself or to have it remedied by a third party and to recover the cost necessarily incurred from Leybold.

- 10.5 Leybold shall bear the direct cost arising from repair or replacement for warranty claims provided they have proven justified and defect has been correctly notified in due course, i.e. the cost for the replacement part including carriage as well as reasonable cost for dismantling and assembly of the part, provided it can in so far be equitably claimed in the individual case. Any further costs shall be borne by the buyer.
- 10.6 The limitation period for warranty claims on goods supplied amounts to 12 months from the date of start-up or initial use, but not exceeding 15 months from the date of delivery.
- 10.7 Warranty claims in respect of parts replaced and repairs shall expire after three months, but not before the warranty period for the goods originally supplied.
- 10.8 Concerning any further claims Paragraph 12.2 shall apply.

## 11. Liability for Patent Infringement

- 11.1 Unless otherwise indicated by Leybold, the goods supplied are to the best of Leybold's knowledge of the published prior art free from any third party rights in the Federal Republic of Germany. Should despite this the goods supplied hereunder or part thereof, at the moment of conclusion of contract, infringe a third party patent already granted and published in the Federal Republic of Germany or – if the goods supplied expressly comprise a specific process right – infringe on patented a process rights for which infringement buyer is sued in legal proceedings, Leybold shall at its own expense and at its discretion within reasonable time procure for buyer the right to continue to use the goods or part thereof or to modify or replace them with non-infringing goods or process or to withdraw from the contract. Leybold assumes no additional liability, e.g. for processes, applications, products, etc.
- 11.2 If third-party patents are infringed by a design or specification furnished by buyer, the latter shall conduct the defense of Leybold against any claim and relieve Leybold in case of implementation.

## 12. Further Liability of Leybold; Buyer's Right to Cancellation

- 12.1 In case buyer suffers loss or damage owing to a delay imputable to Leybold buyer shall be entitled to claim indemnification for delay, amounting to 0.5 % for every full week of delay, but not exceeding 5 % in total, of the value of that part of the whole consignment delivery of which has been delayed and that could not be used in due times as stipulated in the contract.
- 12.2 Any further claims other than expressly stated in these conditions, on legal grounds whatsoever, mainly such as for loss of profit and consequential damages from defects, are excluded, unless based on Leybold liability for deliberate action or gross negligence, violation of fundamental duties stipulated in the contract or on statutory provisions regarding liability for personal injury, material damage to private property or failure to perform characteristics expressly quoted where this provision is just intended to protect buyer on account of damages other than to the supplied goods themselves.
- 12.3 The statutory buyer's right to cancellation in case of delay or impossibility shall not be affected.

## 13. Place of Fulfillment, Jurisdiction, Applicable Law

- 13.1 Place of fulfillment and jurisdiction shall be Cologne. Leybold shall also be entitled to sue buyer before the Court having jurisdiction over buyers' place of business.
- 13.2 Supplementary to all contractual provisions contracts shall be governed by the law of the Federal Republic of Germany. The uniform UN Law on Sales (CISG) is not applicable. To contracts with relations to foreign countries the International and German Conflict Rules shall also not apply.

### Note

Pursuant to the German Federal Law for Protection of Data it is indicated that Leybold has stored buyer's data and this data is processed.

