



## **General Terms and Conditions of Sale (GTCS) of LEGUNA GmbH,**

**Bahnhofstraße 2 in 5270 Mauerkirchen, Austria**

**(Date: 21.10.2024)**

### **§ 1 General - Scope of application**

1. These General Terms and Conditions of Sale (GTCS) shall apply to all contracts of LEGUNA GmbH, Bahnhofstraße 2, 5270 Mauerkirchen, concerning the delivery of goods and the provision of services, unless the customer and LEGUNA GmbH (hereinafter jointly referred to as the "contracting party") have expressly concluded an individual agreement to the contrary (cf. § 1 item 5 of these Terms and Conditions). The applicability of these GTCS shall also apply to continued business relations without having to be expressly agreed again

2. The validity of the customer's conditions in his general terms and conditions or comparable conditions is hereby expressly rejected. The unconditional execution of the delivery does not imply any recognition of deviating or conflicting terms and conditions on our part, even if we have knowledge of them. Deviating or conflicting terms and conditions of the customer shall not be recognized unless their validity has been expressly agreed to in writing.

3. Depending on the type of service provision, the contractual partners shall finally specify the scope of services or the respective service obligations in text or written form in one or more individual contracts under these GTCS. All individual contracts, supplementary agreements and appendices are contractual components of these GTCS.

4. Our GTCS shall only apply to companies that purchase goods from us and to legal entities under public law.

5. If framework agreements, fixed price agreements or agreements contractually negotiated in writing or in text form have been concluded between the customer and a legal representative of LEGUNA GmbH, these shall take precedence over the GTCS to the extent that they contradict them or there are ambiguities. In all other respects, they shall be supplemented by the GTCS.

6. In particular, in the event of changes in the law, changes in jurisdiction, changes in customary contractual formulas (for example, the Incoterms) or changes in the economic circumstances, we shall be entitled to modify the content of our GTCS. In such a case, we shall inform the customer accordingly. If the customer does not object within six weeks of receipt of the notification of modification, this shall be deemed to be his consent and agreement to the modified GTCS.

### **§ 2 Conclusion of contract - Contract amendments - Contract content - Minimum quantities**

1. Our offers are subject to change, non-binding and against payment. We expressly reserve the right to deviate from the content of the brochures, sales folders, price lists or other brochures made available to us.

2. Contracts shall only be concluded upon our acceptance of the order.



3. Contracts and agreements, in particular if they amend our terms of sale, shall only become binding upon our written confirmation. This also applies to orders placed with our representatives.
4. Performance and quality descriptions on our part do not constitute guarantees of quality or other warranties. A guarantee shall only exist if it is expressly designated as a "guarantee".
5. The customer is obliged to inform us in writing of the countries in which the goods are to be marketed - at the latest when the order is placed. The placing of the goods on the market in these countries is only accepted by LEGUNA GmbH if we expressly agree in writing to the placing on the market in these countries. If the customer does not expressly designate in writing to us countries in which the goods are to be marketed, only the Federal Republic of Austria shall be deemed to have been mutually agreed upon by the contracting parties.
6. The conclusion of the contract is subject to the correct and timely delivery by our suppliers. This shall only apply in the event that we are not responsible for the non-delivery, in particular if a congruent covering transaction has been concluded with our supplier. The customer will be informed immediately about the non-availability of the service. The consideration will be refunded immediately.
7. Minimum quantities: Unless the contracting parties have expressly agreed otherwise in writing, the quantities agreed for the term of the contract shall be binding minimum quantities; partial cancellations or partial reductions of order volumes shall only be possible during the term of the contract if LEGUNA GmbH expressly agrees thereto in writing.

### **§ 3 Prices - Terms of payment**

1. Unless otherwise stated in the order confirmation, our prices shall apply "ex works / ex warehouse". The valid prices result from the respective price information, price agreement or order confirmations valid at the time of conclusion of the contract. The prices contained in the offer are to be understood as a non-binding cost estimate. We reserve the right to pass on price changes, even if they occur before conclusion of the contract, to the contractual partner in accordance with the principles set out below. Events and circumstances that make the contractual execution of the service objectively impossible and/or that were not foreseeable at the time of the conclusion of the contract are assigned to the sphere of the client/contractual partner. This includes, but is not limited to, general price increases of individual capital goods, raw materials, wages, customs duties, etc., as well as changes in the legal framework conditions and time delays that cannot be attributed to the sphere of the contractor (Leguna GmbH). In any case, we shall be entitled to reasonable compensation (cf. § 1168 ABGB). Additional costs due to additional expenses attributable to circumstances within the sphere of the Customer shall be compensated for.
2. We reserve the right to change our prices accordingly if, after conclusion of the contract, cost reductions or cost increases occur, in particular due to collective wage agreements, material and/or raw material price changes or price adjustments for transport costs and/or customs duties, etc.. We shall provide evidence of these to the customer upon request.
3. The statutory value added tax is not included in our prices; it will be shown separately in the invoice at the statutory rate on the day of invoicing. Invoices shall be sent by us exclusively in paper form or by e-mail.
4. Unless otherwise stated in the order confirmation, the net purchase price (without deductions) shall be due for payment within 8 days of the invoice date.



5. The customer shall only be entitled to set-off rights if his counterclaims have been legally established, are undisputed or have been acknowledged by us. He/She shall only be entitled to exercise a right of retention in respect of claims arising from the same contract.

6. If the customer is in default of payment of a claim, all other claims against him/her may be made due.

7. The customer shall bear all fees, costs and expenses incurred in connection with any legally successful legal action against him outside Austria.

8. We are entitled to assign and transfer claims against the order to third parties for general financing purposes.

#### **§ 4 Delivery - Delivery time - Delay**

1. We shall be entitled to partial performance or partial deliveries. The customer may not reject such partial deliveries.

2. The start of the delivery period stated by us shall be subject to clarification of all technical questions.

3. Compliance with our delivery obligation shall be subject to the timely and proper fulfilment of the purchaser's obligation. The time of provision of the goods ex works shall be decisive for the timeliness of the delivery obligation.

4. If the customer is in default of acceptance or culpably violates other obligations to cooperate, we shall be entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses. We reserve the right to assert further claims.

5. If the conditions of paragraph (4) are met, the risk of accidental loss or accidental deterioration of the object of sale shall pass to the customer at the point in time at which the customer is in default of acceptance or debtor's delay.

6. Events of force majeure, including strikes and pandemics, shall interrupt our delivery obligation for the duration and to the extent of their effect. We shall be obliged to notify the Purchaser without delay if such an event occurs and to provide information on how long such an event is expected to last. If such an event lasts longer than two months, we may withdraw from the contract in whole or in part. The consideration shall be refunded without delay.

7. The limitations of liability under § 8 shall also apply to any claims of the purchaser arising from delay in delivery.

8. The Purchaser shall provide us without delay with all documents and information concerning the goods to be delivered, including their packaging, insofar as this is required for the specific performance of the service.

#### **§ 5 Transfer of risk - transport insurance**

1. Unless otherwise stated in the order confirmation, delivery shall be agreed "EXW (current INCOTERM) factory/warehouse" during LEGUNA GmbH's usual business hours at the place of destination.



2. In the case of sale by delivery to a place other than the place of performance, we shall be entitled to ship the goods to be delivered.

3. Delivery shall not be insured as a matter of principle. If the customer so desires, we shall cover the delivery by transport insurance; the costs incurred in this respect shall be borne by the customer.

## **§ 6 Food law**

Our goods comply with the relevant food law provisions of the Republic of Austria and the corresponding legislation of the European Union.

## **§ 7 Notification of defects - Warranty**

1. Notices of defects shall be given in writing within 7 working days after delivery. The purchaser is obliged to store the goods complained about properly; we are entitled to demand corresponding proof from the purchaser.

2. In the event of a defect in the purchased goods and if we are demonstrably responsible for such defect, we shall be entitled, at our discretion, to either remedy the defect or replace the defective goods with new, defect-free goods.

3. If the subsequent performance fails, the customer shall be entitled at his discretion to demand withdrawal from the contract or a reduction in the purchase price.

4. The limitation period for warranty claims is 6 (six) months from the transfer of risk.

## **§ 8 Limitation of liability - contributory negligence - indemnification**

1. Claims for damages in cases of slight negligence are excluded; this does not apply to personal injury. Claims for compensation shall become statute-barred 6 months after knowledge of the damage and the damaging party, in any case 5 years after performance of the service or delivery.

Any claims for recourse against us by contractual partners or third parties under the title of "product liability" within the meaning of the Product Liability Act shall be excluded, unless the party entitled to recourse proves that the defect was caused in our sphere or was at least due to gross negligence.

Any - justified - claims for damages shall be limited in amount to the damages foreseeable at the time of conclusion of the contract and typical for the contract; essential contractual obligations are those whose performance characterizes the contract and on which the customer may rely.

2. In cases of justified claims for damages, we and our vicarious agents shall be liable for all property damage and financial loss in the performance of their obligations up to a maximum of the following maximum liability amounts for damage events per calendar year:

a. for property damage: € 500.000

b. Consequential damage resulting from personal injury or damage to property: € 500.000

c. no liability shall be assumed for pure financial loss and immaterial damage, damage to image (this includes in particular damage resulting from breaches of confidentiality and data protection obligations, damage relating to the corporate value of the purchaser and damage to reputation).



3. In all other cases, claims for damages on whatever legal grounds (including claims in tort) against us shall be excluded, unless there has been an intentional breach of duty by us, our legal representatives or our vicarious agents.

4. The above limitations shall also apply insofar as the purchaser demands compensation for useless expenditure instead of performance in lieu of a claim for compensation for damage.

5. Liability for culpable injury to life, limb or health and liability under the Product Liability Act shall remain unaffected insofar as mandatory provisions are concerned.

6. Our liability is excluded for damages which were or will be caused by the customer or his legal representatives or other vicarious agents or assistants, by an act or omission.

7. Third parties are not included in the scope of protection of the contractual relationship between the contracting parties, unless the contracting parties have expressly agreed otherwise in writing.

8. If it becomes apparent that there is a risk of unusually high damage, each contracting party is obliged to inform the other immediately. The contractual partners agree that each contractual partner is obliged to keep any damage as low as possible. In the event of a breach of this obligation, the obligation to compensate for any damage caused by this breach of obligation shall be waived or reduced.

9. To the extent that our liability is excluded or limited pursuant to the foregoing, this shall also apply to the personal liability of our partners, directors, employees, representatives and vicarious agents. The customer shall indemnify LEGUNA GmbH and the aforementioned persons upon first request against all claims and damages resulting from the fact that the customer places the goods on the market in countries other than those specified in accordance with § 2 item 5 of these GTCS or tolerates the placing on the market in such countries. Furthermore, the customer shall indemnify LEGUNA GmbH upon first request against all claims of third parties and damages asserted against LEGUNA GmbH or suffered by LEGUNA GmbH as a result of claims being asserted against LEGUNA GmbH by third parties - in particular end customers and authorities - on account of a defect in the delivered product, even though LEGUNA GmbH is not or not exclusively responsible for the relevant defect and the defect is attributable to conduct or omission on the part of the customer and/or its vicarious agents.

### **§ 9 Retention of title - ownership of documents**

1. We shall retain title to the object of sale until receipt of all payments arising from the business relationship with the customer. In the event of conduct in breach of contract on the part of the customer, in particular in the event of default in payment, we shall be entitled, after setting a reasonable deadline, to reclaim the object of sale. Our taking back of the object of sale shall constitute a withdrawal from the contract. After taking back the object of sale, we shall be entitled to dispose of it; the proceeds of such disposal shall be set off against the customer's liabilities - less reasonable costs of disposal.

2. The customer shall be obliged to treat the object of sale with care; in particular, he shall be obliged to insure it adequately at his own expense against damage by fire, water and theft at its replacement value. The Purchaser shall be obliged to provide evidence of the insurance to the Seller upon first request. If maintenance and inspection work is required, the Purchaser must carry this out in good time at its own expense.

3. In the event of seizure or other interventions by third parties, the Purchaser must notify us immediately in writing so that we can take legal action. Insofar as the third party is not in a position to



reimburse us for the judicial and extrajudicial costs of a lawsuit, the purchaser shall be liable for the loss incurred by us.

4. The customer shall be entitled to resell the object of sale in the ordinary course of business; however, he hereby assigns to us all claims in the amount of the final invoice amount (including VAT) of our claim accruing to him from the resale against his customers or third parties, irrespective of whether the object of sale has been resold without or after processing. The customer shall remain authorized to collect this claim in addition to us even after the assignment. Our authority to collect the claim ourselves shall remain unaffected. However, we undertake not to collect the claim as long as the customer meets his payment obligations from the proceeds collected, is not in default of payment and, in particular, no petition in bankruptcy or insolvency proceedings has been filed or payments have not been suspended. However, if this is the case, we may demand that the customer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.

5. The processing or transformation of the object of sale by the purchaser shall always be carried out on our behalf as manufacturer. If the object of sale is processed with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the value of the object of sale (final invoice amount including VAT) to the other processed objects at the time of processing. In all other respects, the same shall apply to the object created by processing as to the object of sale delivered under reservation of title.

6. If the object of sale is inseparably mixed with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the value of the object of sale (final invoice amount including VAT) to the other mixed objects at the time of mixing. If the mixing is carried out in such a way that the customer's item is to be regarded as the main item, it shall be deemed to be agreed that the customer transfers co-ownership to us on a pro rata basis. The customer shall hold the sole ownership or co-ownership thus created in safe custody for us. The basis of valuation for the new items shall be the manufacturing costs, which must be disclosed to us upon request.

7. The customer shall also assign to us the claims to secure our claims against him which arise against a third party as a result of the connection of the object of sale with a plot of land.

8. If the retention of title or the assignment is not effective according to the law in whose area the goods are located, the security corresponding to this law shall be deemed to have been agreed. If the purchaser's cooperation is required for the creation of such rights, he shall be obliged, at our request, to take all measures at his own expense which are required for the creation and preservation of such rights.

9. We undertake to release the securities to which we are entitled at the request of the customer to the extent that the realizable value of our securities exceeds the claims to be secured by more than 10%; we shall be responsible for selecting the securities to be released.

10. We reserve title and copyright to illustrations, drawings, calculations and other documents. This shall also apply to such written documents which are designated as "confidential". The purchaser must obtain our express written consent before passing them on to third parties.



#### **§ 10 Incoming goods inspection - complaints - measures in case of product defects**

1. Complaints of any kind relating to the performance of the service must be notified to us in text form immediately after discovery so that we have the opportunity to remedy the situation.
2. The Purchaser shall carry out a proper inspection of incoming goods with regard to obvious defects in particular also potential shortages.
3. If the order recognizes or has reason to believe that foodstuffs ordered from us or received from a delivery from us do not comply with the food safety requirements from the time they are placed on the market, the order shall inform us of this immediately by telephone and in writing by e-mail and, in consultation with us or, in the case of imminent danger, without consultation, shall immediately initiate procedures to remove the foodstuff in question from the market and support us in complying with all legal requirements. The question of whether a food is safe shall be determined in accordance with Regulation (EC) No. 178/2002 of the European Union (Basic Food Regulation).
4. Placing on the market according to these GTCS is the holding of food or feed for the purpose of sale, including offering for sale or any other form of transfer, whether free of charge or not, as well as the sale, distribution or other forms of transfer itself.

#### **§ 11 Pallet exchange - packaging material**

1. If the pallet exchange has been agreed in writing, exchange pallets shall be exchanged step by step. Additional costs incurred by us due to the fact that a step-by-step pallet exchange is not possible (e.g. due to the involvement of pallet service providers) shall be charged to the customer.
2. We shall be economically compensated for all packaging material related to the customer as well as raw materials and supplies held in stock, which have been purchased or produced against the background that the customer will trigger orders in the announced amount and which have remained unused because the customer has not triggered orders in the corresponding amount or will not trigger them (for a longer period), insofar as these remaining stocks of packaging material as well as raw materials and supplies cannot be used otherwise.

#### **§ 12 Print execution - Intellectual property**

In the event of printing of packaging material according to the documents provided by the customer and use of packaging and/or recipes according to the customer's specifications, the customer shall assume the warranty and liability for any infringement of third-party rights, in particular third-party patents, industrial property rights and copyrights in form, design and text, and shall release us from all such third-party claims. Any costs incurred by us in this connection, in particular those of legal defence, shall be borne by the customer.

#### **§ 13 Confidentiality and secrecy of information**





1. Any fact in connection with the operation of LEGUNA GmbH that is not public knowledge but is known only to a limited group of persons and is not readily accessible (hereinafter: information) shall be treated confidentially and kept secret by the customer, irrespective of whether this fact is based on information received directly or indirectly, i.e. shall not be made accessible to third parties either directly or indirectly orally or in writing or in any other way.

2. The Customer may not use the information for its own commercial purposes, unless otherwise expressly agreed in writing..

3. According to the will of the owners of LEGUNA GmbH, information to be kept secret, is in particular

- the contents of the existing contract and its annexes
- Prices and conditions
- safety and technical aspects relating to plant and production operations
- insurance conditions
- Results of audits and inspections of LEGUNA GmbH's operations and business processes
- Information on the earnings situation and key business figures of LEGUNA GmbH that are not published by LEGUNA GmbH itself
- Information on the risk management of LEGUNA GmbH
- Information about the IT security of LEGUNA GmbH
- Communicated analysis results
- Plans for new services, products or product changes

4. The interest in secrecy in respect of the above-mentioned information lies primarily in the fact that this information is of great relevance to the economic success and competitiveness of LEGUNA GmbH and is of high economic value overall.

5. The aforementioned categories of information are subject to special technical, organizational and legal protection at LEGUNA GmbH. The customer undertakes to maintain a level of protection appropriate to the need for protection.

6. This confidentiality and secrecy obligation shall continue to apply after termination of the contractual relationship. However, it shall not apply to information which is demonstrably in the public domain. Obviousness shall be assumed in particular if the information is

- was already known to the public or is publicly accessible at the time of its disclosure or disclosure by LEGUNA GmbH,
- becomes public knowledge after receipt without any action on the part of the customer,
- is already in the possession of the ordering party at the time of receipt,
- has been received by the ordering party from a third party without a corresponding obligation to maintain secrecy on the part of the third party,
- has been developed by the Purchaser independently without the use of information received hereunder.

7. The customer undertakes to treat as confidential any information and documents inadvertently or erroneously received by it from LEGUNA GmbH, to delete or destroy such information and documents and to return them immediately to the sender.

8. The customer further gives his consent to LEGUNA GmbH to disclose his data to authorities, if and to the extent authorities request the data for official purposes.





9. The customer shall oblige its employees and other vicarious agents to maintain confidentiality accordingly.

#### **§ 14 Data protection**

1. The Customer shall observe the relevant statutory data protection provisions, in particular the provisions of the EU General Data Protection Regulation (DSGVO). The Purchaser shall oblige its employees and other vicarious agents to observe data protection accordingly.

2. The customer warrants that, in the event that personal data is disclosed to LEGUNA GmbH, it will comply with all necessary legal requirements, in particular that it will obtain any necessary consents in advance.

3. To the extent that LEGUNA GmbH is a processor within the meaning of the German Data Protection Regulation (DSGVO) and thus processes personal data on behalf of the Customer, the Customer, as the party responsible under data protection law, shall be obligated to notify LEGUNA GmbH of this fact and to conclude a separate data protection agreement with LEGUNA GmbH pursuant to Art. 28 DSGVO.

4. In the event of commissioned processing, the Customer shall immediately provide LEGUNA GmbH with all information required in the context of commissioned data processing (including the purpose and type of personal data to be processed).

5. The customer warrants that LEGUNA GmbH is entitled to process personal data from the sphere of the customer which LEGUNA GmbH collects for the purpose of providing the service and undertakes that it has ensured that the transfer of the personal data to LEGUNA GmbH is lawful.

#### **§ 15 Code of Conduct**

The customer undertakes to comply with the current Code of Conduct, which may be requested from LEGUNA GmbH at any time.

#### **§ 16 Cancellation of previous agreements - Place of jurisdiction - Place of performance - Applicable law**

1. These GTCS shall supersede all prior oral or written understandings, warranties, undertakings, agreements or representations between the parties with respect to the subject matter of the contractual relationship, except for individual written agreements between the parties.

2. Should any provision of these Terms and Conditions or of our other contractual agreements be or become invalid, ineffective or unenforceable, the validity of the remaining provisions of these Terms and Conditions or agreements shall not be affected thereby.

3. If the customer is an entrepreneur, has its place of business in the Republic of Austria and another place of jurisdiction is not provided by law, our place of business shall be the place of jurisdiction. However, we shall also be entitled to sue the customer at the court having jurisdiction over his place of business.



4. The place of performance for the services to be rendered under the contract shall be our registered office, unless otherwise stipulated by law.

5. The contractual relations shall be governed exclusively by Austrian law, to the exclusion of the UN Convention on Contracts for the International Sale of Goods and the conflict-of-law rules.

6. In the event that the Purchaser's place of business is abroad, the contracting parties agree to the following arbitration clause:

All disputes or claims arising out of or in connection with this Contract, including disputes as to its validity, breach, termination or nullity, shall be finally settled under the Rules of Arbitration (Vienna Rules) of the International Arbitral Institution of the Austrian Federal Economic Chamber (VIAC) by three arbitrators appointed in accordance with such Rules. The provisions on expedited proceedings shall not apply. The language of the proceedings shall be German, and only Austrian substantive law shall apply. See also: <https://www.viac.eu/de/>