

LSS Laser-Sinter-Service GmbH
Standard Terms and Conditions
Effective July 17, 2018

These Standard Terms and Conditions apply to any proposal and agreement and/ or related purchase order relating to equipment ("equipment") or materials ("materials") (collectively "articles of sale") sold by LSS GmbH ("LSS") to a customer ("customer"). These terms and conditions, together with the related proposal and individual agreement and/ or purchase order shall constitute the entire agreement ("agreement") between the parties.

1. General provisions

LSS does not accept any terms and conditions which deviate from these Conditions, except if such terms and conditions have been expressly accepted by LSS. In the event that LSS does accept conditions that deviate from these Conditions, such conditions shall apply only to the transaction at issue, and in particular not to any past or future supplies or services.

The customer acknowledges that the equipment may contain recycled content including components or materials that are used or reconditioned to like new provide the agreed performance and functionality. The existence of recycled content may be disclosed as such in this agreement as well as on an equipment-specific label.

If either party believes that other matters beyond those covered in this document are part of this agreement, the parties will describe and acknowledge them in the individual agreement or staple a copy or description of them to the agreement and initial them before signing; otherwise, they are not included as part of the agreement for the purchase of this equipment and license of software.

2. Governing law and disputes

The contract and these conditions shall be subject to the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply. All disputes arising in connection with the contract are to be settled at the court in Dortmund, Germany. LSS is entitled to sue the client at the client's place of general jurisdiction.

3. Requirement of the written form

All notices given under the agreement will be effective when received in writing. Notices to the customer and LSS will be sent to the address provided in the agreement. Oral statements by LSS staff will only be binding if LSS has confirmed such statements in writing. Changes to this agreement must be in writing and shall be signed by both parties.

4. Confidentiality

The parties mutually agree to keep all confidential technical and commercial information disclosed by the respective other party strictly confidential and to refrain from using any such confidential information except as required consummating the contract for as long as the information is and remains reasonably confidential. Only information which the recipient can show was already published or known to it at the time of disclosure or that was published later without the fault of the recipient shall be exempted from this clause. The recipient shall notify the owner of any confidential information in the event that one of the foregoing exceptions applies and/ or it becomes aware that information which the respective other party regards as confidential has become publicly known, or if notes or media containing such confidential information are lost, or if it deems itself legally obligated to provide confidential information to any third party, including courts of law or government entities. Confidential information may not be disclosed to third parties. The parties guarantee that their personnel are bound by, and shall comply with, a secrecy obligation corresponding to or exceeding the standard set by this clause. This confidentiality clause shall remain in force even after termination of the contract for as long as the information is and remains reasonably confidential.

5. Materials usage

Customer acknowledges and agrees that materials sold by LSS shall not be mixed, blended or repackaged by Customer with any other materials, for use or resale by Customer, or used with any alterations by the customer. Failure to comply with those obligations shall nullify the warranties in respect to defects of materials or equipment provided that the customer does not prove that the non LSS materials used, have not caused the defect, but that such defect already existed at the moment of passing of risk.

The customer further agrees that if they use the materials to create parts, the customer will not promote, advertise, or otherwise represent that such parts are made from any brand of materials other than the materials sold by LSS.

6. Installation and service

LSS will install the equipment and provide any remedial and preventive maintenance which is required to keep the equipment in good operating condition during the warranty period, unless otherwise stated in this agreement. LSS may provide basic installation site information.

Customer will be responsible for having the installation site properly prepared before the Equipment is installed. LSS will consult with customer on a time and materials basis on any additional questions or issues regarding installation site preparation. The respective services will be performed as consulting services within the meaning of Sec. 611 seq. of the German Civil Code (BGB), a success is not owed.

In addition to the installation charge(s), if any, as specified in the agreement, customer will arrange and pay for any special handling charges, including without limitation all costs of preparing the installation site and all storage, drayage, cranes, building modifications or other similar charges.

Installation and any remedial and preventive maintenance will be performed by LSS or its authorized designee during normal business hours. LSS and customer will cooperate to satisfy any customer security requirements and still allow full and free access to the equipment. Customer will provide computer time for any remedial and preventive maintenance or installation at no cost to LSS.

7. Transfer of risk and shipment

The risk of accidental destruction or accidental deterioration passes on to customer as soon as LSS has handed over the articles of sale over to the carrier or any other person specified to carry out the shipment. Delivery occurs on the actual shipping date. LSS will prepay freight and insurance of the articles of sale and will invoice customer unless specified otherwise in this agreement. In the event of delays in shipment for which LSS is not responsible, passing of risk will take place by notice of readiness for shipment.

8. Payment

Unless otherwise agreed, all invoices shall be paid by the customer upon receipt without any deduction. In the event that the customer fails to make the payment within thirty days from the due date and receipt of LSS's invoice, customer shall be deemed to be in default whether or not LSS has reminded the customer of its payment obligation. If customer is in default of payment in part or in full customer shall pay - irrespective of all other rights of LSS - annual interest from that moment on amounting to twelve (12) percentage points over the current prime rate (Basiszinssatz), unless LSS can prove higher damages. The customer shall provide LSS with a copy of tax exemption certificate, direct pay certificate or resale certificate for the "Ship to" location if exemption from sales or use taxes is claimed.

9. Retention of title

Articles of sale remain, if not agreed on otherwise, in the ownership of LSS until payment of all LSS receivables under this agreement with customer have been paid in full.

10. Warranty

If articles of sale are defective the warranty rights of the customer are limited to either the rectification of such defect or delivery of a new article of sale free of defects at the sole discretion of LSS. The articles of sale are free from defects if they meet, upon passing of the risk, the specifications provided in the agreement or in manuals, marketing or other information materials of LSS or on the LSS website.

Discovery of all defects must be disclosed to LSS immediately in writing. If the sale is a commercial transaction for both parties in accordance with Section 377 of the German Commercial Code (HGB), customer has the obligation to examine the articles of sale immediately after their reception, provided such examination is feasible within the normal course of business, and to inform LSS immediately about any apparent defect. If customer fails to perform this obligation, the respective articles of sale shall be approved, unless the defect was hidden at the time of examination.

With respect to materials sold by LSS customer shall, in addition to the immediate information of a defect in writing, deliver a sample of such materials to LSS for testing. LSS shall have five (5) business days to complete testing of such materials.

Customer grants LSS the appropriate time and opportunity with reasonable discretion for subsequent performance (Nacherfüllung). In the event customer refuses to do so, LSS is released from its obligation for subsequent performance. In case subsequent performance does not take place within an adequate deadline set by customer of at least 3 weeks - unless such deadline is not required by statutory law - customer has the right at its own choice to reduce the purchase price (Minderung) or rescind the agreement.

All warranty claims will expire within one (1) year after delivery date. This does not apply in the event of malicious non-disclosure of a defect or in the event of a guarantee relating to the quality of a movable thing. In this event, the statutory provisions apply with respect to expiry. Warranty rights do not apply to normal consumable or expendable parts (such as fuses, lamps or lasers) as well as to defects that occurred after passing of the risk to customer due to faulty or abnormal usage, overuse, improper production facilities (Betriebsmittel) or an inappropriate installation site. If customer or third parties make improper modifications or repairs and maintenance works the warranty claims based thereupon are excluded. In the event LSS proves that there was no defect for which LSS is responsible according to this section, LSS is entitled to request reimbursement for the efforts to carry out subsequent performance on a time and material basis based on the standard rates of LSS. Any mandatory statutory product liability and/ or mandatory statutory liability arising from a guarantee of properties shall remain unaffected.

11. Limitation of liability

Unless otherwise stated in this agreement, LSS is liable in accordance with statutory provisions for intentional acts, claims under the German Product Liability Act (Produkthaftungsgesetz), malicious non-disclosure of a defect or a guarantee relating to the quality of a movable thing, other claims under mandatory statutory provisions, as well as claims based on damages to life, body or health.

In cases of gross negligence, LSS is limited to typical foreseeable damages. This limitation does not apply to the extent damages have been caused by the managing employees or legal representatives of LSS.

In cases of slight negligence LSS is liable for the breach of material contractual obligations. In such cases, the liability is limited to typical foreseeable damages. In all other cases of slight negligence the liability of LSS is excluded.

LSS will not be responsible to customer for consequential, exemplary or incidental damages (such as loss of profit or employee's time) regardless of the reason. In no event shall the liability of LSS or damage claims or claims for futile expenses (Ersatz für vergebliche Aufwendungen) against LSS in connection with this Agreement, in particular arising out of the purchase, lease, license and/ or use of the equipment by customer, exceed the purchase price of the equipment. Any claim for damages or expenses resulting from defects will expire within one (1) year after the delivery date. Any other claims for damages or expenses will expire within two (2) years from the date the cause of action arises.

LSS assumes no liability for damages due to materials that were not delivered or approved by LSS. On request, the client can receive a list by LSS with compatible materials for their machine. Beyond that, LSS neither guarantees the full functionality of the machine nor a damage-free building process.

12. Patents

If anyone claims the equipment or software infringes their U.S. or EU patent, copyright, trade secret or other proprietary right, LSS will indemnify and hold customer harmless from any damages, judgments or settlements (including costs and reasonable attorney's fees) resulting from the claim if customer promptly notifies LSS in writing of the claim and permits LSS to elect to take over the defense of the action. If LSS takes over the defense, it may select the counsel and have the sole right to defend or settle the matter.

LSS may substitute comparable non-infringing equipment or software, or modify the equipment or software (which still must meet the specification) to make it non-infringing, or obtain a right for the Customer to continue using the equipment or software (all at LSS' expense), or, if the above are impractical and its continued use is enjoined, buy the equipment or software back from the customer for the original purchase price less a reasonable rental value for its use at LSS' lowest standard lease or rental rate for the equipment when originally delivered to customer. This indemnification does not apply to claims resulting from non-LSS modifications to the equipment or software or use with other devices added by the customer.

13. Force majeure

Neither party will be liable to the other for delays in performing any obligations under the agreement due to circumstances beyond its reasonable control, including but not limited to revolts, insurrections, riots, wars, acts of enemies, national emergency, strikes, floods, earthquake, embargo, inability to secure materials or transportation, other acts of God, and other events beyond reasonable control caused by nature or governmental authorities.

14. Severability

If any provision of the agreement is found to be invalid, illegal or unenforceable, then, notwithstanding such invalidity, illegality or unenforceability, the agreement and the remaining provisions shall continue in full force and effect. In this event, the parties will agree upon a valid, binding and enforceable substitute provision, which shall be as close as possible to the commercial interests of the invalid or unenforceable provision.