

## **GENERAL TERMS AND CONDITIONS**

### **§ 1 Scope of Application**

1. Any supplies made by Chamberlain GmbH (hereinafter referred to as "Seller") shall be subject exclusively to these General Terms and Conditions of Sale and Delivery (hereinafter referred to as "General Terms") unless Seller has given its express written approval to other terms and conditions. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of buyer's order does not constitute acceptance of any of buyer's terms and conditions and does not serve to modify or amend these General Terms.. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these General Terms. These General Terms only apply if buyer is an entrepreneur (as defined in § 14 German Civil Code (Bürgerliches Gesetzbuch)), a legal person under public law or a special public fund.
2. These General Terms also apply to all future contracts with buyer on the sale and/or supply of movable items even if Seller does not state this explicitly in each individual case.
3. The Chamberlain GmbH ("Seller") agrees to sell, and the customer ("Buyer") agrees to buy, the products set forth in the proposal, quotation, order acknowledgement or invoice, at the prices quoted therein, and subject to these Terms and Conditions of Sale (the "Terms and Conditions" Chamberlain GmbH ("Seller") is expressly limited to the terms herein and any additional or different terms or conditions on Buyer's purchase order or any other instrument, agreement, or understanding are deemed to be material alterations and are rejected and not binding upon the Seller. The Seller's acceptance of Buyer's purchase order is expressly conditional upon Buyer's assent to the terms and conditions contained herein in their entirety. Buyer's acceptance of delivery from the Seller constitutes Buyer's acceptance of these terms and conditions in their entirety.

### **§ 2 Offer, Conclusion of Contract**

1. Seller's offers are non-binding and subject to confirmation unless otherwise indicated in the order.
2. Any data provided by Seller on the goods, in particular but not limited to colours, dimensions, tolerance and weights as well as visual representations (e.g. as drawings and illustrations) thereof provided by the Seller are only approximate unless the purpose to which the goods are to be put makes exact compliance necessary. They do not constitute guaranteed attributes (garantierte Beschaffenheitsmerkmale) and are merely descriptions or designations of the goods or services to be provided. Differences and discrepancies which are customary in trade which arise as a result of legal requirements or technical improvements are permitted in as far as they do not impair suitability for the designated purpose.
3. Buyer's order is a legally binding invitation to enter into a contract.
4. A contract for the supply of goods has not been concluded until the Seller has confirmed it in writing. The content of such order confirmation is binding for the content of the contract. This content shall form the basis of the contract unless buyer objects without undue delay.
5. Seller's employees are not authorized to make verbal collateral agreements or to give verbal assurances over and above the content of the written contract.
6. Unless otherwise agreed, Buyer will not engage in any sales or distribution through any locations accessible by end-user consumers, including, but not limited to, websites such as those hosted by eBay, Amazon, Facebook Marketplace or similar sites. Seller reserves the right to pursue damages for breach of this provision.
7. Seller's employees are not authorized to make verbal collateral agreements or to give verbal assurances over and above the content of the written contract.
8. Unless otherwise agreed, Buyer will not engage in any sales or distribution through any locations accessible by end-user consumers, including, but not limited to, websites such as those hosted by eBay, Amazon, Facebook Marketplace or similar sites. Seller reserves the right to pursue damages for breach of this provision.

### **§ 3 Prices/Terms of Payment**

1. Unless otherwise agreed between Seller and purchaser, all of Seller's prices shall be deemed to be "FCA Contern, Luxembourg" (Incoterms 2020) plus the statutory VAT rate at the time of the invoice including packaging. The prices do not include the costs of installation and instruction of buyer's operating personnel.
2. In general, the prices applicable at the time of conclusion of the contracts shall apply. Changes in prices are permitted if the period between the date on which the contract is concluded and the agreed date of delivery is

more than 30 days. If wages or material costs increase thereafter but before the date of completion Seller may increase the price by a reasonable amount to match the increases in costs.

Buyer may only withdraw from the contract if the price increase exceeds the rise in the general costs of living between the date of order and date of despatch by a not mere insubstantial amount.

3. Unless otherwise agreed, invoices shall be payable within 30 days of delivery of the goods and receipt of invoice without any deductions. Notwithstanding the above, Seller is entitled to make delivery dependent on concurrent payment without giving reasons.
4. Buyer is in default on expiry of the term for payment stated in (3). If buyer is in default Seller may demand interests for delay of eight (8) percentage points above the base interest rate. In business with entrepreneurs Seller's entitlement to commercial maturity interest (§ 353 German Commercial Code (Handelsgesetzbuch)) remains unaffected. Seller's right to claim for further loss shall not be excluded. Moreover, in the event that buyer is in default on a payment or partial payment Seller may declare the entire balance owed due for immediate payment.
5. Unless otherwise agreed, Buyer may not exercise any right of set-off unless buyer's counterclaims have been affirmed in a court judgement, are not disputed or are acknowledged by Seller. Buyer may only exercise a right of retention to the extent that its counterclaim arises from the same contractual relationship.
6. All payments must be in Euros, Pound Sterling or US Dollars.

#### **§ 4 Reservation of Title**

1. Seller reserves ownership in the goods supplied until all payments associated with the business relationship have been received.
2. Buyer shall insure the reserved goods adequately against the risk of fire, water damage and theft on a replacement-value basis at its own cost.
3. Buyer shall store reserved goods separately from other goods of the buyer or third parties and shall label and mark them as being the property of Seller.
4. Buyer is entitled to re-sell and/or process the reserved goods in the ordinary course of business.
5. Buyer hereby assigns to Seller as collateral any claims which it may have from resale of reserved goods (including amounts due from insurance claims or claims arising from tortuous acts in the event of loss or destruction). Seller accepts such assignment. Buyer may collect the assigned claims as long as it fulfils its payment obligations. If buyer is in delay on payment Seller may revoke buyer's right to collect. In this case, at Seller's request buyer shall provide whatever information is necessary to permit collection and to permit a person acting on Seller's behalf to verify the validity of the assigned claims against the bookkeeping and inform the debtors of the assignment.
6. If buyer has processed the reserved goods the parties agree that such processing shall be carried out in the name and for the account of the Seller as manufacturer and the Seller shall acquire title or – if the processing involves materials of more than one owner or if the value of the processed product is higher than the value of the goods supplied – co-title in the newly created item pro rata based on the ratio of the value of the goods supplied to the value of the newly created item. If the Seller forfeits its title as a result of combining or processing or if, in the event of processing, it does not acquire title in the goods supplied, buyer hereby transfers to Seller in advance co-title in the new item created corresponding pro-rata to the value of the portion supplied by Seller. Seller hereby accepts this offer. Handing-over shall be replaced by custody free-of-charge.
7. The goods supplied which are subject to reservation of title may not be pledged to third parties or
8. the title of them transferred by way of security until the secured claims have been paid in full. Buyer shall notify Seller without undue delay if third parties exercise claims on Seller's property and shall take suitable legal steps against this at its own initiative and at its own cost after discussing the matter with Seller. If the third party is unable to reimburse Seller for court or out-of-court costs which arise in this connection buyer shall be liable here for.
9. In the event that buyer is in default on payment, an application for institution of insolvency proceedings on buyer's assets, transfer of vested rights (Anwartschaften) to third parties or transfer of buyer's business to third parties, Seller may withdraw from the contract subject to statutory provisions and demand repossession of the goods supplied. If buyer does not pay the purchase price due Seller may only assert these rights if it has previously set buyer a reasonable deadline for payment and such deadline has passed without success or if such a deadline is not required by statutory law. Seller may enter buyer's business premises for the purpose of repossessing the goods supplied. Seller shall be entitled to dispose freely of the reserved goods once they have been repossessed. The proceeds from realization shall be offset against buyer's liabilities (less reasonable realization costs).

10. Seller shall release the securities to which it is entitled at buyer's request if they exceed the value of the claims which they secure, in as far as these have not been settled, by more than 10%. The securities to be released shall be selected by Seller.

## **§ 5 Shipping**

1. Unless otherwise agreed between purchaser and Seller, shipping of the goods shall be shipped "FCA Contern, Luxembourg" (Incoterms 2020). At the request and expense of buyer Seller shall take out insurance against the usual transport risks.
2. If delivery is delayed at buyer's instigation or if, in an individual case, the parties have agreed that shipment should be made on call and if buyer does not call for delivery within two weeks after being notified that the goods are ready for shipment, the goods will be kept in custody at Seller's premises or put in store, in each case at the risk and cost of buyer.
3. Type of packaging shall be chosen by Seller.

## **§ 6 Deliveries/Delivery Time**

1. The dates of deliveries shall be agreed by the parties. If the parties have agreed to a delivery time, this shall commence on the date of the order confirmation.
2. The observance of agreed delivery and performance dates presupposes timely receipt of all necessary documents to be provided by buyer, provision of all necessary information and fulfilment by buyer of all other obligations. If these conditions are not fulfilled on time, the periods shall be extended by a reasonable amount; this shall not apply if delay is attributable to Seller.
3. If Seller realizes that an agreed date cannot be met, it shall notify buyer without undue delay.
4. Seller is not liable for delays in delivery owing to force majeure or other occurrences which were not foreseeable at the time the contract was concluded (such as strike, disruptions to operations, failure to receive supplies in good time, delays in transport, unfavorable weather conditions, etc.) for which Seller is not responsible. The delivery time shall be extended by the temporary period for which Seller is unable to perform for reasons for which Seller is not responsible. Seller may make partial shipments in as far as (i) buyer can use the partial shipment as for the contractually designated purpose, (ii) shipment of the remaining goods is assured and (iii) buyer does not incur any additional costs here from.
5. Claims for damages on the grounds that it is impossible to deliver or owing to delays in delivery are limited subject to the provisions of § 8 (6) of these General Terms.

## **§ 7 Withdrawal from Contract**

1. Seller may withdraw from contract if force majeure, including, without limitation, strike or natural disaster or failure of Seller's suppliers to supply correctly or in time have a material adverse effect on Seller's ability to supply or prevent Seller from supplying and if this disruption, which is not attributable to Seller, is not only temporary.
2. Seller may also withdraw from contract if the information provided by buyer on its credit-worthiness is incorrect or incomplete

## **§ 8 Warranty/Compensation/Liability**

1. Seller warrants to buyer that for a period of 2 years [from the date of shipment of the goods ("Warranty Period"), that such goods will materially conform to Seller's published specifications in effect as of the date of manufacture and will be free from material defects in material and workmanship.
2. EXCEPT FOR THE PRODUCT WARRANTIES SET FORTH IN Section 8(1), SELLER MAKES NO WARRANTIES WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

3. Buyer shall inspect the goods received without undue delay upon arrival for defects. Buyer shall report any obvious defects to Seller without undue delay but no more than ten (10) working days (Monday to Friday) after receipt of the shipment; latent defects shall be reported in writing without undue delay no more than seven (7) working days after discovery. Otherwise the shipment shall be deemed to have been approved.
4. Buyer should pursue recovery from their freight carrier prior to approaching the Seller for damage claims.
5. Buyer shall provide Seller with an opportunity to investigate the complaint; in particular it shall make damaged goods and the packaging available for inspection by Seller. The goods in question shall be returned to Seller carriage paid at Seller's request within 14 days. If the complaint is justified, Seller shall reimburse the costs based on the most favorable means of delivery; this shall not apply if the merchandise is at a location other than that of its designated use.
6. If there is a defect in the merchandise Seller may choose to remedy the defect or to supply perfect goods (Nacherfüllung).
7. The warranty does not apply if buyer alters the merchandise or has it altered by third parties and if this makes it impossible or unreasonably difficult to remedy the defect. In any event buyer shall bear the costs of any additional costs of remedying the defect generated by the alteration.
8. If repair or supply of perfect goods is not possible, refused, does not take place or fails for other reasons within Seller's sphere of responsibility before buyer's reasonable deadline expires, buyer may at its own discretion withdraw from contract or reduce the purchase price. A deadline is not necessary unless prescribed by statute.
9. Seller shall not accept any further claims, in particular but not limited to buyer's claims for compensation in lieu of performance or other direct or indirect loss including concomitant or consequential loss, irrespective of legal grounds. This shall not apply if:
  - a. Seller fails with malicious intent to disclose a legal or quality defect or has warranted that the merchandise does not contain any such legal or quality defect or that it has specific attributes;
  - b. The loss is attributable to intent or gross negligence or a negligent breach of material contractual duties on the part of Seller, one of its legal representatives or vicarious agents; material contractual duties shall be understood as obligations whose fulfilment is material to due and proper implementation of the contract and on which the contractual partner usually relies and can rely;
  - c. Culpable breach of duty by Seller or its legal representatives or vicarious agents has led to personal injury or damage to health.
  - d. Seller is liable under the German Product Liability Act (Produkthaftungsgesetz).
  - e. However, in the event of simple negligence the scope of Seller's duty to replace is restricted to foreseeable loss typical for this type of contract.
10. The provisions of the previous paragraph shall apply accordingly to direct claims of buyer vis-à-vis Seller's legal representatives or vicarious agents.
11. If buyer faces contractual penalties (contractual penalties, liquidated damages etc.) from a third party it may – irrespective of the other prerequisites – only assert claims for compensation against Seller if this has been expressly agreed upon between buyer and Seller or if Seller was informed in writing of the provision for contractual penalty agreed upon between buyer and a third party before the contract was concluded.
12. Statutory provisions covering shipment to a final consumer who is a private individual (Supplier's recourse pursuant to §§ 478, 479 German Civil Code (Bürgerliches Gesetzbuch)).

## **§ 9 Limitation**

1. Any claims of buyer – for whatever legal reasons – shall become statute-barred twelve (12) months after delivery of the merchandise. If the goods have to be accepted, the limitation begins on acceptance.
2. This shall have no effect on the limitation period in the event of supplier's recourse pursuant to §§ 478, 479 German Civil Code.

## **§ 10 Copyright/Confidentiality**

Seller shall retain any ownership rights and copyright in documents such as pricing, offers, estimates, illustrations, drawings, calculations, brochures and other documents which it makes available. Buyer may not disclose these items or the content thereof to third parties or make them known or disseminate them without Seller's express consent.

## **§ 11 Data Protection**

Seller shall treat any data which it receives about buyer in connection with the business relationship in accordance with Federal Data Protection Act (Bundesdatenschutzgesetz) irrespective of whether this information has been provided by buyer or a third party.

## **§ 12 Place of Performance/Jurisdiction/ Language/Applicable Law/Miscellaneous**

1. Unless otherwise expressly agreed, the place of performance shall be Seller's registered place of business.
2. Exclusive place of jurisdiction for all disputes arising from this supply relationship shall be Frankfurt am Main. Seller may also sue buyer at the court which has jurisdiction for buyer.
3. The laws of the Federal Republic of Germany shall apply. The application of the CISG shall be ruled out.
4. If the contract or these General Terms contain omissions such omissions shall be deemed to be filled by whatever valid provisions the contractual partners would have agreed to had they been aware of the omission, such valid provisions reflecting the commercial aims of the contract and the purpose of these General Terms.
5. The General Terms are drafted in German and in English. The English version serves only for information and is not part of the General Terms. Therefore, in the event of any inconsistency between the German and English version, only the German version shall apply.

## **How to Contact Us**

Please forward any comments or complaints about the Services to: Chamberlin GmbH, Saar-Lor-Lux-Str. 19, D-66115 Saarbrücken, Germany

Email: [sales-europe@liftmaster.com](mailto:sales-europe@liftmaster.com)

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