



## **Terms and Conditions of Delivery and Payment**

## **Portugal**

### **1. Scope of validity**

1.1 Our Terms and Conditions of Delivery and Payment (hereinafter known as T&Cs) alone shall apply in commercial transactions with businesses as defined within the meaning of Section 14 of the German Civil Code [BGB], legal entities established under public law or with a public law special fund.

1.2 Unless a contractual agreement is expressly made otherwise, our T&Cs alone shall apply. Other terms and conditions, in particular the Buyer's Terms and Conditions of Business shall not constitute an integral part of the contract, even if we have not expressly objected to them.

1.3 Our T&Cs shall apply for all services rendered in the course of on-going business relationships, including future ones too, even if they have not been expressly agreed and also if we carry out the delivery of the goods in the knowledge of deviating or contradictory conditions

### **2. Offer, acceptance**

2.1 Unless an agreement has been made otherwise in an individual agreement, our offers shall be subject to change without notice, and a contract shall only materialise upon receipt of our written order confirmation. The scope of performance shall be definitively defined by our written order confirmation plus appendices. Side agreements and amendments shall be subject to confirmation in writing by us, unless our employees have been authorised to agree a side agreement or amendment.

2.2 If the order constitutes an offer within the meaning of § 145 of the German Civil Code [BGB], we are entitled to accept it within a period of two weeks.

### **3. Sales aids**

3.1 Sales and presentation aids which the Buyer is provided with free of charge, shall remain our property and we may demand that they are returned at any time.

3.2 While sales and presentation aids are being used by the Buyer all associated risks shall pass over to him. He shall undertake to only fill our sales and presentation aids with our goods and to compensate us if they are lost or damaged.

3.3 The Buyer shall generally be at liberty to set prices for selling Lamy products to end customers as he sees fit.

### **4. Delivery**

4.1 Our supply commitments shall be subject to us being supplied on time with the correct goods unless we are to blame for not being supplied on time with the correct goods.

4.2 For force majeure or other hindrances beyond our sphere of control, e.g., walk-outs, pandemics strikes, lockouts, state-imposed prohibitions, electricity cuts and transport difficulties as well as operational disruptions etc., the terms periods of time set for supply shall be extended as appropriate to take the impact of such events into account.

4.3 Risk shall pass over to the Buyer when the consignment is handed over to the hauler. This shall also apply for consignments delivered carriage free.

4.4 If the Buyer does not take delivery of goods delivered or made available to him as agreed, we may consequently set him a subsequent period of 2 weeks to do so, and if this period also elapses without the Buyer having taken delivery, we shall be entitled to withdraw from the contract and/or to demand compensation for damages. In doing so, we may demand 15% of the purchase price as a lump sum in compensation for damages without having to submit proof of damages, irrespective of our option to assert a claim for greater damages, which we would have to prove.

The following shall apply for Promotion Products:

4.5 We shall reserve the right to supply excess or under deliveries (only for products carrying advertisements) of 10% taking normal production tolerances into account.

## **5. Receipt of goods**

5.1 The Buyer must take delivery of our performance even if it displays minor defects. The Buyer shall have to inspect the goods immediately upon delivery and notify us immediately in writing of defects. Any complaints there may be are to be entered into the delivery note which is to be sent by the Buyer to us immediately by fax message or e-mail. Moreover, the Buyer's duty to inspect the goods and notify us of defects promptly shall be defined by Section 377 of the German Commercial Code [HGB]. If larger quantities of the same type of goods are supplied the entire batch of goods supplied may only be rejected as being faulty in those cases in which the defects have been confirmed by a recognised and representative random sample.

5.2 Partial deliveries are allowed.

5.3 The performance shall be regarded as having been fulfilled if the contractual object item satisfies the terms of the contract or if the performance is delayed or rendered impossible by the Buyer, if we have notified him that the goods are ready for collection / delivery.

## **6. Terms and Conditions of Payment**

6.1 Our invoices shall be payable net within no later than 60 days from the date of invoice.

6.2 If payment is made within 21 days after date of invoice we shall grant a settlement discount of 2% of the net invoiced sum provided that no other of our invoices payable are outstanding.

6.3 Payments are to be made to us in full, charges and fees paid by the Buyer.

6.4 The day on which the payment is received by us shall be the day that counts for observing the periods set in Number 6.1 and 6.2.

6.5 The statutory regulations shall apply if there is a delay in payment. In addition, all invoices already presented (including those for which payment is to be made at a specified date) shall be payable immediately.

6.6 Payments are only to be made directly to us. Our representatives and field sales staff are not entitled to collect payment.

6.7 The Buyer shall not be entitled to rights of retention, unless the counterclaim upon which the right of retention is based has been adjudicated or has been recognised by us. In this case the right of retention shall only become due after one month has elapsed from the announcement by the Buyer that he is asserting his rights of retention.

6.8 Offsetting is only allowed with an account recognised by us or an adjudicated account.

6.9 If the Buyer falls into arrears with payment, we shall consequently be entitled to make all our accounts payable after 2 weeks have elapsed and payment has still not been made.

6.10 If after the contract has been signed it becomes clear that our claim for payment has been jeopardised as a result of a lack of the Buyer's ability to pay, we shall be entitled to the rights stipulated in Section 321 of the German BGB (Defense of insecurity). In such circumstances we shall be entitled to make all accounts in the current business relationship with the Buyer not barred by statute payable. Moreover, the defense of insecurity covers all other outstanding goods and services in the business relationship with the Buyer.

## **7. Shipping**

The following shall apply for the main order sector:

Our prices apply ex works plus the respective statutory VAT. For consignments with a net goods value from 200.00 € postage and packing for dispatch shall be free of charge. For consignments with goods with a net value of less than 200.00 € there will be a fixed price charge of 12.00 € to cover the cost of postage and packing. No orders will be accepted with a net goods value of less than 100.00 €. Exceptions to this shall be engraving orders which will be delivered for a fixed price of 12.00 € for postage and packing. Additional cartage and delivery charges shall be for the Buyer's account in all cases. For express shipments the surcharge compared to the charge of the standard shipment shall be for the account of the Buyer.

The following shall apply for Promotion Products:

Our prices shall apply ex works plus the respective statutory VAT. We charge 10.00 € per consignment for freight, insurance and packing.

## **8. Reservation of title**

8.1 All goods delivered shall remain our property until the purchase price has been paid in full. In case of breach of contract by the buyer, including default of payment, we are entitled to take back the delivered goods

8.2 The reservation of title shall also apply for all other claims to which we are entitled against the Buyer from the entire business relationship, regardless of whatever legal reason upon which they are based.

8.3 The allocation of individual claims into a running account as well as striking a balance and the recognition thereof shall not affect the reservation of title.

8.4 We shall be entitled to demand the return of all goods subject to reservation of title as soon as there is a delay in payment. The Buyer shall undertake to hand over the goods to us at first call. Taking back the goods shall constitute a withdrawal from the contract by us. At our request at any time the Buyer shall grant us unimpeded access to the items supplied by us by foregoing a claim of unlawful interference with possession as well as his domiciliary rights, to enable us to collect all the items supplied by us. All costs incurred by us in connection with taking back the goods shall be for the Buyer's account.

8.5 After taking back the purchased thing we shall be entitled to sell it. The proceeds of the sale – minus reasonable costs for taking back the goods and selling them – are to be offset against the Buyer's liabilities.

8.6 The Buyer shall undertake to handle the goods subject to reservation of title with care and to take out a reasonable level of insurance cover at his own expense against damage, destruction, loss and accident for replacement with new goods.

8.7 In the event of seizures or other interventions by third parties, the purchaser must notify us immediately in writing.

8.8 The Buyer shall be entitled to sell on the goods in a proper commercial transaction. He is not allowed to pledge the goods or to assign them by bill of sale as a security. In the event that he does sell on the goods, the Buyer shall assign here and now the account to which he is entitled against his buyer for the amount of our account, without a further or express declaration of assignment being required. We hereby accept the assignment. The Buyer shall continue to be entitled to collect the account even after it has been assigned to us. Our authority to collect the account ourselves shall not be affected by this. We shall, however, undertake not to collect the account ourselves for as long as the Buyer fulfils his payment obligations from the proceeds he receives, does not fall into arrears with payment and an application is not made to open insolvency proceedings or stops making his payments. If this is, however, the case, the Buyer shall, at our request, inform the third party of the assignment and furnish us with the information and hand over documents required to assert our rights. Collected monies shall moreover be kept in safekeeping for us by the Buyer.

8.9 Given this, we shall release the securities held by us to the extent that their value exceeds the value of the accounts to be secured by more than 20% in total. The selection of the securities to be released shall be incumbent upon us.

## **9. Warranty**

9.1 The prerequisite for any warranty rights of the buyer is the proper fulfilment of all inspection and complaint obligations owed pursuant to § 377 German Commercial Code [HGB]. If the statutory preconditions for the warranty have been satisfied, we shall supply new goods or repair the goods supplied.

9.2 The reservation of title (Number 8) shall also apply for the parts replaced with new parts.

9.3 The Buyer must allow us adequate time and opportunity to carry out the cure, otherwise we shall be exempted from the liability and warranty for the resultant consequences.

9.4 If the complaint is justified, we shall bear the direct costs of the cure or supplying a replacement as well as the dispatch costs thereto. If the address to which consignments are to be delivered is outside the Federal Republic of Germany, the maximum costs for which we can be held liable shall be limited to the value of the order.

9.5 In cases in which the Buyer is partly responsible for the defect, in particular as a result of not complying with his obligation to prevent and reduce damage, we shall, after carrying out a cure, be entitled to a compensation claim for damages reflecting the extent to which the Buyer is responsible for the damage.

9.6 The Buyer shall, as he chooses, be entitled to withdraw from the contract if – taking into consideration the statutory exceptions – he has set us a reasonable period of time to carry out a cure and this period of time has expired without a cure having been rendered. If there is no significant defect, the Buyer shall only be entitled to reduce the purchase price.

9.7 Unless agreed otherwise or in case the law mandatorily provides for longer periods of time, the Buyer's claims accruing to him against us - for whatever reason - on the occasion of, and in connection with, this delivery of the goods, shall lapse one (1) year after delivery.

## **10. Liability**

10.1 We shall be liable, also in the event of damages incurred on account of a breach of duties in the contractual negotiations, regardless of whatever their legal basis – in particular also for damages not incurred on the item supplied itself – only on the basis of intent, culpable breach of cardinal contractual duties, gross negligence on the part of the organs, or executive employees, our representatives or our auxiliary persons, culpable death, personal injury or physical harm, malicious non-disclosure of defects, guarantees for the absence of defects, defects insofar as there is liability for this under the German Product Liability.

10.2 In the event of breaches of cardinal contractual duties we shall also be liable for ordinary negligence. Liability shall be limited to damages typical for the contract and reasonably foreseeable. Important contractual duties within the meaning above shall be extant, if the exemption from liability is related to a duty the achievement of which makes it possible for the contract to be carried out in the first place and upon the compliance with which the Buyer may normally rely.

10.3 Another liability – for whatever legal reasons – in particular also for the compensation for damages not incurred by the item supplied itself is excluded.

10.4 We cannot be held liable for the consequences of defects not covered by warranty.

## **11. The return of goods**

11.1 Goods may only be returned without claims having been asserted under warranty with our prior written consent, otherwise we may refuse to take delivery of them.

11.2 If the return of goods is authorised, we shall be entitled to deduct the costs incurred as a result of any repairs and representation, which may be required, plus a handling fee of 10%



from the original price originally invoiced to be credited. Lamy products not listed in the price list in force when goods are returned cannot be exchanged or credited.

## **12. Use of the LAMY trademark**

12.1 We are the owner of the LAMY corporate mark. The word LAMY and the logotype LAMY are registered trademarks of LAMY. The product names of the LAMY products are predominantly registered LAMY trademarks. The Buyer is not allowed to use the LAMY trade mark or the LAMY logotype for purposes other than for identifying the original LAMY products supplied to him neither may he register them himself as a trade mark.

12.2 All other use, in particular the use of Lamy or LAMY as a component of his company name as identification for his business operation, for registering a domain as an internet address or as part of an internet address, the use of the identification for his own products or for third party products, for their presentation or packaging, or the use of an identical or similar mark by the Buyer is forbidden.

12.3 We shall not tolerate the breach of identification and trademark rights and we shall reserve the right to terminate our business relationship with the Buyer immediately. Besides which, in such cases we shall instigate all the legal steps necessary and take measures to pursue breaches of our rights or to have them pursued in court. In such cases, we shall be entitled to demand compensation for damages from the Buyer in accordance with statutory regulations. We shall notify the police if the Buyer has broken the law.

## **13. Registered sales associates**

13.1 We shall only supply our product range to our sales associates satisfying the quality specifications listed under Number 14 and 15 (selective distribution).

13.2 The resale of Lamy products by the sales associates within the area of selective distribution to commercial resellers for the purpose of resale is only permissible insofar as these in turn fulfil the requirements in accordance with Sections 14 and 15 and are supplied by us. The sales associate can enquire from us whether a reseller fulfils these requirements. In addition, we reserve the right to inform the sales associate about changes in resellers.

13.3 The active resale and active advertising of Lamy products by the sales associates outside the area of selective distribution in areas or to customer groups which we have reserved for ourselves or exclusively allocated to an individual distributor is not permitted. The sales associate can always ask us which territories or customer groups this concerns. In addition, we reserve the right to inform the sales associate about changes in territories or customer groups. In particular, any sales and advertising efforts of Lamy products on the Internet that are directed at a specific region or customer group outside the area of selective distribution in territories or to customer groups that we have reserved for ourselves or assigned exclusively to a distributor shall also be deemed to be active resale or active advertising within the meaning of these GTC, provided that these efforts do not go beyond the operation of a homepage that exists in the area of selective distribution primarily for customers of this territory and whose access is not limited

## **14. Qualitative requirements to be satisfied by the Sales Associate**

14.1 The sales associate shall procure the Lamy products in his own name and for his own account for commercial purposes.



14.2 If the sales partner has a stationary shop (brick and mortar), the Lamy products are to be presented with a reasonable product mix depth and breadth in compliance with the following stipulations.

14.3 It must be possible to test all the writing utensils on paper of a quality normal within the trade. Depending upon the target group or arrangement of the shop (school supplies, office supplies) a reasonable range of complementary product groups is to be put out on display and to be more precise, regardless of whether the shop is restricted to one or more target groups (Specialist supplies, school supplies or office supplies) or is a specialist department within a department store.

14.4 The range of Lamy products (Signature Writing, Modern Writing, Young Writing etc.), in accordance with the catalogue valid at that time) are to be stocked with quantities normal within the trade (to cover the demand of more or less 14 days normal trading).

14.5 The sales associate is to have experienced and trained specialist staff to sell Lamy products. They are to have an extensive knowledge of the LAMY brand product range as well as on key business and product-related figures. The sales associate shall ensure that at least one of these experienced staff members is in the store throughout opening hours for potential customers to approach for assistance.

14.6 The sales associate must keep his retail premises open throughout the normal local opening hours.

## **15. Internet trade**

15.1 The sales associate is entitled to sell the Lamy products online as well as over the counter.

15.2 In the event that Lamy products are advertised online, the sales associate guarantees that he will comply with all statutory regulations, in particular those concerning E-commerce, those on fair competition, distance sales contracts, consumer credit contracts, data protection and the duty to state the company details as well as those concerning the general terms and conditions of business and on teleservices.

15.3 To generate a comparison between the online sales and OTC sales as well as to secure the interests of the end customers, the sales associate shall undertake to continue to offer the following with online sales:

15.3.1 To design the layout of the sales page so that it corresponds to the sale over a stationary shop and the brand image of Lamy. This includes:

15.3.1.1 Have a high-quality telephone product advice service on call, plus to which a reply must be sent immediately by no later than the 1 working day from receipt; as well as respond to email correspondence which must be sent within one working day from receipt;

15.3.1.2 Ensure that goods offered for sale online can be supplied straight away, so that the delivery times of the products sold online are not more than the than those for the products sold in the stores;



15.3.1.3 The contractual products must not be shown on the same website besides other goods, besides No-Name-Products or lower quality products (i.e. with test results less than "satisfactory" when tested by the Warentest foundation). In the interests of ensuring well-defined brand management when displaying LAMY products on the website of a sales associate, there must be distinct separation between them and the products of other brand manufacturers (Competitive products). The photographs or at least the equivalent thereof already made available by Lamy online in the LAMY Mediabase must be used to illustrate the products;

15.3.1.4 Not to register and/or use any internet domains, including part or all of the LAMY trademark or variations thereof. This shall also apply for names, which are similar to LAMY and/or are in breach of our trademark rights, unless we have granted our prior consent thereto;

15.3.1.5 To ensure that domain and shop name the display of the contractual products on the web site, the frames and the overall web site image are high quality and compatible with the design of the shop. The online product range – the equivalent of the over-the-counter trade, must show the entire range of Lamy products offered for sale over the counter contiguously. As a minimum requirement, the products must have at least the information contained in the official Lamy catalogue for these products. Besides which, the LAMY trademark logo (DE trademark 302010005441) is to be incorporated and linked to the URL [www.lamy.com](http://www.lamy.com);

15.3.1.6 The web site must work well so that pages load quickly.

15.4 The sales associate is allowed to sell Lamy products via third party websites, provided that they satisfy the requirements of online sales in accordance with the above list of criteria. Sales via auction-based web sites (e.g. E-Bay) in particular in auctions or other individual offers (buy now) do not meet the criteria above at present, given the current status of such formats. In particular, the offers are not displayed in the context of the whole product range.

## **16. General Provisions**

16.1 The contractual distributor, in response to a request to do so by us, undertakes to inform us of his over-the-counter sales (Number 15.3) and prove this by submitting suitable proof (order documents etc.)

16.2 We may stop delivering a customer if we have an important reason for doing so. An important reason will be extant, in particular if

16.2.1 One of the Parties submits an application to open insolvency proceedings and/or the insolvency proceedings are not carried out due to insufficient assets;

16.2.2 Third parties are supplied contrary to the provisions of this contract;

16.2.3 Contractual obligations, in particular those in Numbers 14 and 15 continue to be breached and/or are repeatedly breached in spite of a warning having been given in advance, setting a reasonable period of time to cease and desist;

16.2.4 The minimum acceptance quantities laid down in Number 15.3 are not achieved.

16.3 If we stop supplying, this shall not affect the validity of all other legal transactions, in particular the validity of confirmed orders for goods.





16.4 Personal data shall be saved by us in compliance with the statutory regulations.

16.5 Should one or more provisions of these GTC be or become invalid or void in whole or in part, or should these GTC contain a loophole, this shall not affect the validity of the remaining provisions. The Buyer and we are obliged to agree on a valid provision in place of the invalid or void provision which comes as close as possible to the economic purpose of the invalid or void provision.

16.6 The place of jurisdiction for all disputes arising from the contractual relationship shall be the courts having jurisdiction where LAMY is based. LAMY shall reserve the right to sue the customer at the customer's place of jurisdiction. Overriding statutory provisions, in particular on exclusive jurisdiction, shall remain unaffected.

16.7 The law of the Federal Republic of Germany shall apply to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods. The prerequisites and effects of the retention of title shall be subject to the law at the respective place of storage of the item, insofar as the choice of law made in favor of German law is inadmissible or ineffective thereafter.

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