

These General Terms and Conditions consisting of sections A General Contract Conditions, B Sales Conditions, and C Loan Conditions (hereinafter collectively referred to as “GTC”) apply to all of business relations of LUMEN GmbH, Nahrungsmittel- und Maschinenfabrik (hereinafter “LUMEN”) with its customers.

## A GENERAL CONTRACT CONDITIONS

### 1. Scope, Form

- (1) The GTC apply only vis-à-vis companies (§ 14 BGB [German Civil Code]), legal entities under public law or special funds under public law.
- (2) Unless otherwise agreed in individual cases, the version of the GTC valid at the time of the commissioning of LUMEN by the Customer, or in any case the version last communicated to it in text form also applies as a framework agreement for similar future contracts without LUMEN having to refer to them again in each individual case.
- (3) These GTC apply exclusively. Any deviating, conflicting or supplementary GTC of the Customer only become part of the contract if and to the extent that LUMEN has expressly agreed to their validity. This consent requirement applies in every case, e.g. even if LUMEN performs the service for the Customer without reservation in full knowledge of the Customer’s GTC.
- (4) Individual agreements made with the Customer in individual cases (including ancillary agreements, supplements and amendments), in any case take precedence over these GTC. Subject to proof to the contrary, the content of such agreements is to be governed by a written contract or a written confirmation by LUMEN.
- (5) Unless otherwise agreed in individual cases, legally relevant declarations and notifications of the Customer with regard to the contract (e.g. setting of a term, notification of defects, withdrawal, reduction or termination) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Legal form requirements and further proof, in particular in cases of doubt as to the competence of the person making the declaration, remain unaffected.
- (6) References to the validity of legal provisions have only clarifying significance. Therefore, the legal provisions also apply without such a clarification insofar as they are not directly amended or expressly excluded in these GTC.

### 2. Conclusion and Subject Matter of the Contract

- (1) LUMEN’s offers are free and non-binding. This also applies if LUMEN has provided the Customer with catalogs, technical documentation, other product descriptions or documents — including in electronic form — for which LUMEN reserves ownership rights and copyrights.
- (2) The terms “**machines and equipment**” or “**LUNA ice cream machine**” are to be understood in the following as those goods of LUMEN that are expressly designated as such in the contract and/or in the respective installation agreement with the Customer and defined as the subject matter of performance therein.
- (3) We expressly reserve the right to make technical changes to machines and equipment as long as they do not adversely affect the agreed scope of services and the agreed service quality. Performance specifications as well as consumption values of machines and equipment are to be understood as guide values.

### 3. Price, Terms of Payment

- (1) Unless otherwise agreed in individual cases, LUMEN’s prices valid at the time of the conclusion of the contract apply, ex works (EXW), plus applicable statutory value-added tax.
- (2) Unless otherwise agreed in individual cases, the price is due and payable within 14 days net of invoicing and delivery or acceptance of the goods.
- (3) Once the aforementioned payment period has expired, the Customer is in default. During the period of default, the price bears interest at the applicable statutory default interest rate. LUMEN reserves the right to assert further claims for damages caused by the default. LUMEN’s claim to commercial default interest against merchants (§ 353 HGB) remains unaffected.
- (4) The Customer is entitled to set-off or retention rights only to the extent that its claim has been legally established or is undisputed. In the event of defects in the delivery, the Customer’s reciprocal rights remain unaffected, in particular pursuant to sect. 11 para. 6 sentence 2 of these GTC.
- (5) If it becomes apparent after the conclusion of the contract that the claim to the price is at risk due to the Customer’s lack of ability to pay (e.g. due to an application for the opening of insolvency proceedings), LUMEN has the right to refuse performance and — if applicable after setting a deadline — to withdraw from the contract in accordance with the legal provisions (§ 321 BGB).

### 4. Liability

- (1) Insofar as nothing to the contrary arises from these GTC, LUMEN is not liable in the event of a breach of contractual and non-contractual obligations.
- (2) LUMEN is liable for damages — for whatever legal reason — in the event of intent and gross negligence. In case of ordinary negligence LUMEN is only liable
  - a) for damages resulting from injury to life, limb or health,
  - b) for damages resulting from the breach of an essential contractual obligation (obligation, the fulfillment of which is essential for the proper performance of the contract and on the observance of which the contractual partner regularly relies and may rely); in this case, however, the liability is limited to compensation for the foreseeable, typically occurring damage.
- (3) The limitations of liability resulting from paras. 1 and 2 also apply in the event of breaches of duty by or for the benefit of persons whose fault LUMEN is responsible for in accordance with legal provisions. They do not apply if LUMEN has fraudulently concealed a defect or assumed a warranty for the quality of the goods. The same applies to claims of the Customer pursuant to the German Product Liability Act (*Produkthaftungsgesetz*).
- (4) Due to a breach of duty which does not consist in a defect, the Customer may only withdraw or terminate the contract if LUMEN is responsible for the breach of duty.

### 5. Data Protection

LUMEN collects and processes personal data of the Customer within the scope of the mutual business relationship in accordance with the EU General Data Protection Regulation. Further information is available under [www.lumen.de/EU-privacy-info-en/](http://www.lumen.de/EU-privacy-info-en/).

## 6. Choice of Law and Jurisdiction

- (1) These GTC and the contractual relationship between LUMEN and the Customer are governed by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- (2) The prerequisites for and the effects of retention of title pursuant to sect. 10 of these GTC are governed by the law in force at the place where the goods are stored, if, under that law, the choice of German law would be inadmissible or invalid.
- (3) If the Customer is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, the exclusive — and also international — place of jurisdiction for all disputes arising directly or indirectly from the respective contractual relationship is LUMEN's place of business in Kulmbach, Germany. Overriding legal provisions, in particular with respect to exclusive competences, remain unaffected.
- (4) Insofar as trade terms (e.g. EXW, FCA) are used, their interpretation is governed by the rules of the International Chamber of Commerce ICC (INCOTERMS), in the latest version valid on the day the contract is concluded.

## B SALES CONDITIONS

Insofar as LUMEN sells and/or delivers goods to customers, irrespective of whether LUMEN manufactures the goods itself or purchases them from suppliers (§§ 433, 650 BGB), the following terms and conditions of sale apply equally and in addition to respective individual contracts with customers, unless otherwise agreed in individual cases.

### 7. Conclusion of the Contract

- (1) The ordering of goods by the Customer is deemed a binding contract offer.
- (2) The acceptance by LUMEN can be declared either in writing (e.g. by an order confirmation) or by delivery of the goods to the Customer.
- (3) In the case of orders placed verbally — in particular by telephone — the Customer shall bear the risk and the costs of any transmission errors as well as any incorrect orders/deliveries resulting from it.

### 8. Delivery Period and Delay in Delivery

- (1) The delivery period will be agreed individually or specified by LUMEN upon acceptance of the order.
- (2) If LUMEN is unable to comply with binding delivery periods for reasons beyond LUMEN's control (non-availability of performance), LUMEN shall inform the Customer about it without delay and at the same time communicate the expected new delivery period. If the performance is not available within the new delivery period, LUMEN has the right to withdraw from the contract in whole or in part. In this case, LUMEN will immediately refund any compensation already rendered by the Customer. In particular, the non-availability of performance within this meaning is a late self-delivery by LUMEN's supplier, if LUMEN has concluded a congruent hedging transaction, if neither LUMEN nor its supplier are at fault, or if LUMEN is under no obligation of procurement in a given case.
- (3) The Customer's rights pursuant to sect. 4 of these GTC and LUMEN's statutory rights, in particular in the event of exclusion of the obligation to

perform (e.g. due to impossibility or unreasonableness of performance and/or cure), remain unaffected.

### 9. Delivery, Passing of Risk, Acceptance, Delay in Acceptance

- (1) Delivery is ex works (EXW), where the place of performance for the delivery and any potential cure is also located. At the Customer's request and expense, the goods can be shipped to another destination (hereinafter "**Sale by Dispatch**"). Unless otherwise agreed in individual cases, LUMEN has the right to establish the type of dispatch (in particular, the transport company, the dispatch route, the packaging) on its own.
- (2) In the case of a Sale by Dispatch, the Customer bears the transport costs ex works and the costs of any transport insurance requested by the Customer. Any customs duties, fees, taxes and other public charges are borne by the Customer. LUMEN does not take back transport packaging and all other packaging in accordance with the German Packaging Ordinance (*Verpackungsverordnung*). They become the property of the Customer; pallets are excluded.
- (3) The risk of accidental loss and accidental deterioration of the goods is passed to the Customer at the latest when the goods are transferred. In the case of a Sale by Dispatch, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay passes to the freight forwarder, carrier or other person or institution designated to perform the shipment once the goods have been transferred to it. If an acceptance is agreed, its date is decisive for the passing of risk. The legal provisions of the law governing contracts for work and services also apply mutatis mutandis to an agreed acceptance. If the Customer is in default of acceptance, the transfer or collection are deemed equivalent.

### 10. Reservation of Title

- (1) LUMEN reserves title to the goods sold until full payment of all its current and future claims from the respective single contract and the ongoing business relationship (hereinafter "**Secured Claims**").
- (2) The goods subject to retention of title may not be pledged to third parties nor transferred by way of security until the Secured Claims have been paid in full. The Customer must inform LUMEN immediately in writing if and to which extent third parties obtain access to the goods belonging to LUMEN.
- (3) In the event of a breach of the contract by the Customer, in particular of a non-payment of the price due, LUMEN has the right to withdraw from the contract in accordance with the legal provisions or/and demand the return of the goods on the basis of the retention of title. If the Customer does not pay the price due, LUMEN may only assert these rights if LUMEN has previously unsuccessfully set a reasonable payment deadline for the Customer, or if such a deadline is superfluous under the legal provisions.
- (4) Until revoked, the Customer has the right to resell and/or process the goods subject to retention of title in the ordinary course of business according to lit. c below. In this case, the following additional provisions apply:
  - a) The retention of title extends to the full value of the products resulting from the processing, mixing or combining of LUMEN's goods, whereby LUMEN will be deemed the manufacturer. If the ownership rights of third parties remain in force in the event of processing, mixing or combining with goods of third parties, LUMEN will acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. Furthermore, the same applies for the resulting product as for the delivered goods subject to retention of title.

- b) The Customer hereby assigns to LUMEN as security all claims against third parties arising from the resale of the goods or the product, either in full amount or in the amount of LUMEN's possible co-ownership share pursuant to lit. a above. LUMEN accepts the assignment. The obligations of the Customer stated in para. 2 also apply with regard to the assigned claims.
- c) The Customer remains authorized to collect the claims alongside LUMEN. LUMEN undertakes not to collect the claims as long as the Customer meets its payment obligations towards LUMEN, there is no lack of its financial capacity, and LUMEN does not assert the retention of title by exercising a right pursuant to para. 3. However, if one of such circumstances occurs, LUMEN may demand that the Customer inform LUMEN of the assigned claims and name its debtors, provide all information necessary for collection, submit the relevant documents and inform the debtors (third parties) of the assignment. In this case LUMEN is also entitled to revoke the Customer's authorities to further sell and process the goods subject to retention of title.
- d) If the realizable value of the securities exceeds LUMEN's claims by more than 10%, LUMEN will release securities of its choice at the Customer's request.
- 11. Warranty for Defects**
- (1) The legal provisions apply to the Customer's rights in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly or defective assembly instructions), unless otherwise stipulated below. In all cases, the special legal provisions remain unaffected upon final delivery of the goods to a consumer (supplier recourse pursuant to § 478 BGB). Claims from supplier recourse are excluded if the defective goods have been further processed by the Customer or another operator, e.g. by installation in another product.
- (2) The primary basis for LUMEN's liability for defects is the agreement made concerning the quality of the goods. All product descriptions which are the subject of the respective contract are regarded as an agreement on the quality of the goods.
- (3) If a quality has not been agreed upon, it is to be assessed according to the legal regulation on whether a defect is present or not (§ 434 para. 1 sentences 2 and 3 BGB). However, LUMEN assumes no liability for public statements made by the manufacturer or other third parties (e.g. advertising statements).
- (4) The Customer's claims based on defects presuppose that it has fulfilled its statutory obligations to inspect and give notice of defects (§§ 377, 381 HGB), if necessary by sample processing, even if components are added which are not supplied by LUMEN. If a defect becomes apparent upon delivery, inspection, or at any later point in time, LUMEN must be notified of in writing without delay. If any defects are only discovered during processing, the work must be stopped immediately, and the unopened original containers not yet processed must be secured. They must be made available to LUMEN for inspection upon request. In any case, obvious defects must be reported in writing within seven (7) working days of delivery, and defects not recognizable during inspection within the same period of time from the discovery. If the Customer fails to properly inspect the goods and/or to notify LUMEN of any defects, LUMEN's liability for the defect not reported, or not reported in a timely manner, or not properly reported will be excluded in accordance with the legal provisions.
- (5) If the delivered goods are defective, LUMEN may initially choose on its own whether it provides cure by remedying the defect ("Subsequent Improvement") or by delivering a defect-free item (hereinafter "**Replacement Delivery**"). LUMEN's right to refuse the chosen type of cure under the statutory conditions remains unaffected.
- (6) LUMEN is entitled to make the cure owed dependent on the Customer paying the price due. However, the Customer is entitled to retain a reasonable part of the price in proportion to the defect.
- (7) The Customer must allow LUMEN the time and opportunity necessary for the owed cure, in particular hand over the rejected goods for inspection purposes. In the event of a Replacement Delivery, the Customer must return the defective item to LUMEN in accordance with the legal provisions. The cure does not include the removal of the defective item or its re-installation if LUMEN was not originally obligated to install it.
- (8) If a defect is indeed present, LUMEN will bear or reimburse the expenses required for the purpose of the inspection and cure, in particular transport, travel, labor and material costs as well as any dismantling and installation costs pursuant to the legal provisions. Otherwise, LUMEN has the right to demand reimbursement from the Customer for the costs incurred as a result of the unjustified request to remedy the defect (in particular, inspection and transportation costs), unless it was impossible for the Customer to recognize the lack of a defect.
- (9) In emergency cases, e.g. if operational safety is endangered or in order to avert disproportionate damages, the Customer has the right to remedy the defect on its own and to request that LUMEN reimburse the objectively necessary expenses. LUMEN must be notified immediately, if possible in advance, of any such self-help. The right of self-help remedy does not apply, if LUMEN would be entitled to refuse a corresponding cure pursuant to the legal provisions.
- (10) If the cure has failed, or a reasonable period set by the Customer for the cure has expired without success, or is dispensable pursuant to the legal provisions, the Customer may withdraw from the contract or reduce the purchase price. There is no right to withdraw in the case when a defect is insignificant.
- (11) Claims of the Customer for damages or reimbursement of futile expenses shall only exist in accordance with sect. 4 of these GTC, even in the case of defects, and are otherwise excluded.
- 12. Statute of Limitations**
- (1) Notwithstanding § 438 para. 1 no. 3 BGB, the general limitation period for claims arising from material defects and defects of title with respect to newly manufactured items is one year from the date of delivery. If an acceptance has been agreed, the limitation period shall commence on the date of acceptance. Unless otherwise agreed in individual cases, defect claims are excluded in the sale of used items.
- (2) Special legal regulations regarding the limitation, in particular § 438 para. 1 no. 1, no. 2 and para. 3 as well as §§ 444, 445b BGB, remain unaffected.
- (3) The aforementioned limitation periods of the sale of goods law also apply to contractual and non-contractual claims for damages of the Customer that are based on a defect of the goods (damages caused by defects and consequential damages caused by defects), unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. Claims for damages of the Customer according to sect. 4 para. 2 sentences 1 and 2 lit. a of these GTC as well as according to the German Product Liability Act become time-barred exclusively in accordance with the statutory limitation periods.

### 13. Acceptance of Returned Goods

- (1) LUMEN is not obligated to take back goods that have been delivered to customers free of defects.
- (2) If, as a gesture of goodwill, LUMEN agrees to take back goods in exchange for a credit note for the purchase price paid, a flat-rate deduction of 20% of the respective net purchase price will be made in these cases as compensation for the costs incurred in connection with the delivery of the goods, unless otherwise agreed in individual cases.

## C LOAN CONDITIONS

Insofar as LUMEN concludes contracts with customers for loaning of machines and equipment, the following loan terms and conditions apply equally and in addition to respective individual contracts with customers, unless otherwise agreed in individual cases.

### 14. Scope of Services

- (1) LUMEN undertakes to loan the contractually agreed machines and equipment along with their manuals.
- (2) The services owed by LUMEN further include maintenance services with respect to the LUNA ice cream machine covered by the contract, including cleaning, labor costs incurred, and original parts of the manufacturer required for the performance (hereinafter referred to as "**Maintenance**"). The type and scope of maintenance are determined by the manufacturer's maintenance instructions applicable to the type of machine in question. LUMEN performs the maintenance at its own discretion, exercising all due care and diligence.
- (3) LUMEN has the right to entrust a third party with the performance of the maintenance without notifying the Customer. LUMEN warrants to the Customer that the third party will perform the maintenance in accordance with the agreement.

### 15. Obligations of the Customer

- (1) The Customer is obligated to fulfill all legal and regulatory requirements for the operation of the machines and equipment as well as for the sale of the associated goods. The Customer must provide the resources (in particular electricity and water) required for the operation of the machines and equipment at its own expense and on its responsibility.
- (2) The Customer undertakes to observe the instructions in the manual and to operate and maintain the machines and equipment according to them.
- (3) Furthermore, the Customer is obligated to inform LUMEN without delay of any malfunction, defect, damage by third parties or any other defect in the machines and equipment and, in this case, to immediately cease any further use of the machines and equipment unless additional subsequent malfunctions or damage can be excluded.
- (4) The Customer must notify LUMEN immediately of any change of address at which the machines and equipment covered by the contract are operated by the Customer in accordance with the installation agreement (hereinafter referred to as "**Installation Address**") as well as of any significant change in the operating conditions of the machines and equipment (e.g. change from operation in closed rooms to operation outdoors).
- (5) The Customer is obligated to make all necessary and reasonable preparations for performing the maintenance with the due diligence of a prudent business person. This includes in particular that the Customer allows for the maintenance to be performed without interruption or delay

(e.g. unrestricted access during regular business hours of the Customer) and provides suitable premises, aids (e.g. electricity and water) and, if necessary, auxiliary personnel free of charge.

### 16. Termination

- (1) The Customer and LUMEN both have the right to terminate the contract for good cause without notice. Good cause for LUMEN includes in particular the following:
  - a) if the Customer processes or sells goods that are not LUMEN's goods or that have not been ordered from LUMEN with the aid of the machines and equipment provided by LUMEN;
  - b) if the Customer repeatedly breaches its obligations under sect. 15 para. 5 of these GTC despite a prior warning by LUMEN due to a similar breach of duty;
  - c) if the Customer violates essential rules set out in the manual provided by LUMEN (e.g. with respect to hygiene, handling and maintenance of the machines and equipment);
  - d) if the Customer defaults on the payment of LUMEN's claims under the respective contract more than once within three months;
  - e) if the Customer refuses to fulfill the contractual agreement for the agreed contractual period without a justifiable reason;
  - f) if a minimum purchase of 70 bag-in-box ice cream mix per LUNA ice cream machine per month is not achieved;
  - g) if the Customer makes technical modifications to the machines and equipment or has them made by third parties;
  - h) if the Customer operates the machines and equipment at an address other than the Installation Address originally stipulated in the installation agreement or under substantially changed operating conditions without LUMEN's prior consent.
- (2) In the event of a termination by LUMEN pursuant to para. 1, LUMEN has the right to assert claims for damages against the Customer due to a premature termination of the contract.

### 17. Consequences of the Termination of the Contract

- (1) Upon termination of the contract, the Customer shall hand over the machines and equipment to LUMEN or to a third party commissioned by LUMEN in the condition stipulated in the contract (in particular, undamaged, clean and hygienically immaculate) at the Installation Address at the time agreed in advance and against proof of the handover.
- (2) If after the acceptance and inspection by LUMEN the machines and equipment show damages attributable to improper operation by the Customer and for which the Customer is responsible, the Customer will be held liable without limitation for the damages incurred. The same applies if and to the extent that LUMEN's machines and equipment have to be cleaned in order to restore them to a clean and hygienically immaculate condition.