

## GENERAL TERMS & CONDITIONS OF BUSINESS

Trade & Liquidation Service GmbH & Co. KG, Hagenbacher Str. 2, 74177 Bad Friedrichshall, Germany

### PRÄAMBEL

Trade & Liquidation Service GmbH & Co. KG, represented by its personally liable partner TLS Verwaltungs- u. Beteiligungs-GmbH, represented by its managing directors Svetlana and Harald Germann (hereinafter referred to as "TLS") operates a trading platform in the Internet ("online") under [www.konkurse.com](http://www.konkurse.com) upon which registered customers can acquire goods within the context of online auctions or have them auctioned by TLS. Furthermore, TLS also sells goods of its own and for customers "offline", and above and beyond that also arranges various services for customers. TLS mainly buys and sells goods from bankruptcies, business liquidations, production liquidations, auctions, liquidations, insurance settlements, over-capacities and unsold stock (hereinafter referred to as "Items")

### A. GENERAL PROVISIONS

#### § 1 SCOPE

1.) The Internet platform and the offline sales, as well as all services of TLS, are intended only for entrepreneurs. An entrepreneur is a natural or legal entity or an incorporated private company, which upon conclusion of a legal transaction is acting in execution of its commercial or self-employed professional capacity.

2.) These General Terms & Conditions of Business (GTC) apply exclusively to all contracts concluded and to be concluded in the future online and offline between TLS and the respective customer and always in their most recently amended form. Terms and conditions of the customer in conflict with or deviating from these GTCs will not be recognised unless TLS has explicitly agreed to do so in writing in each case.

3.) In the event of conflicting provisions within the contractual relationships between the Parties, the following order of precedence shall apply:

- a. individual agreements
- b. Section B of these General Terms & Conditions of Business
- c. Section A of these General Terms & Conditions of Business
- d. the provisions of law.

4.) German law shall apply exclusively to these GTC and all contracts concluded between the Parties.

5.) The contract language is German.

6.) In the case of contracts concluded in electronic business traffic, the contract text and the General Terms & Conditions of Business will be sent to the customer by e-mail. In addition, any customer that has set up a customer account can call up its respective contracts upon conclusion of contract via its customer account

#### § 2 SECURITIES

TLS shall be entitled before conclusion of contract to demand evidence of security from the customer regarding its ability to pay, for example through furnishing of bank confirmations, bank guarantees or the like.

### § 3 CLOSING PROVISIONS

1.) All prices stated and advertised by TLS in principle involve net prices ex point of shipment excluding value added tax at the statutory rate.

2.) To the extent Parties are fully qualified merchants ("Vollkaufleute" under German law), the city of the principal place of business of TLS shall be deemed agreed as place of jurisdiction for all disputes arising from or in connection with this Contract.

3.) The customer shall have the right to offset only if its counterclaims are enforceable in law, undisputed or acknowledged by TLS.

4.) Should one or more clauses of these General Terms & Conditions of business be ineffective in full or in part, that shall not detract from the effectiveness of the remaining provisions.

### B. SPECIAL CONDITIONS

#### I. TERMS & CONDITIONS FOR USE OF THE INTERNET PLATFORM [WWW.KONKURSE.COM](http://WWW.KONKURSE.COM) (ONLINE)

#### § 1 AMENDMENTS OF THE GTC

TLS reserves the right to amend the GTC at any time without giving reasons. TLS shall notify the customer of the amendment of the GTC at the latest two weeks before that amendment goes into effect and send them to it. If the customer fails to object to the amended terms & conditions within 2 weeks from receipt of the notification of amendment, those amended terms and conditions shall be deemed accepted. If the customer objects to the amended terms and conditions in good time, TLS shall be entitled to terminate the Usage Agreement at the point in time at which the amended GTC should go into effect or to continue it at the terms and conditions previously applicable.

#### § 2 REGISTRATION

1.) To use the trading platform [www.konkurse.com](http://www.konkurse.com) and to take part in the auctions, the customer must register completely and truthfully. That registration is free of charge.

2.) With registration on the Internet platform, the customer affirms that he is an entrepreneur or that he is concluding the Usage Contract as the authorised representative of a company. TLS shall be entitled at any time to demand appropriate evidence of the customer's status as an entrepreneur unless that has already been verified by the system through the VAT ID number given. If the entrepreneur is a natural person, he must be of the age of consent and fully entitled to conduct business.

3.) Each customer may register itself resp. its business only once at TLS. Any transfer of the user account to a third party is prohibited.

4.) Upon complete registration at TLS, the customer receives an e-mail with its user name and its password. The customer undertakes

to store its access data in a safe place, to keep them secret and not to make them accessible to third parties.

5.) There is no right to conclusion of a Usage Contract. TLS reserves the right to refuse conclusion of a Usage Contract without giving reasons, in particular because of

- i. also information in the registration;
- ii. doubts as to the legal existence of the entrepreneur
- iii. breaches of the General Terms & Conditions of Business.

6.) The customer undertakes to notify TLS forthwith of all changes of the data given upon registration and to keep its data complete, correct and up to date at all times within the context of its user account.

### § 3 BLOCKING, CANCELLATION

1.) TLS can block a customer's used account if it violates the GTC or applicable law.

2.) In particular, TLS can block a customer if it has given false information on registration, breaches rights of third parties, misuses services of TLS or if another serious reason is given.

3.) The Usage Contract can be cancelled at any time without notice and the user account deleted to the extent the customer has not yet bid in an auction. The Usage Contract then ends upon termination of the auction. Upon receipt or declaration of the cancellation, the customer is no longer entitled to bid in auctions in which he had not yet bid at the point in time of cancellation.

4.) If TLS has blocked or cancelled the user account, the customer is not entitled to register again.

### § 4 DOWNTIMES

1.) TLS undertakes to apply the efforts normal in the Internet segment and to ensure that the system remains available 24 hours per day. Exceptions here are interruptions that are normal for essential maintenance work or for which third parties, being undertakings not affiliated with TLS, are at fault. Should the system nonetheless go down, TLS shall immediately do its utmost to restore the availability.

2.) In the event of a continuous system downtime of more than one hour, the auctions running in that period shall be prolonged by that downtime.

## II. RULINGS CONCERNING PURCHASE CONTRACTS

### § 1 CONCLUSION OF CONTRACT ONLINE AND OFFLINE

1.) Via the Internet platform of TLS, the customer can place enquiries concerning articles placed on the site and submit bids via an enquiry form, by e-mail, fax, telephone or in person. A purchase contract only comes about through acceptance of the bid by TLS. If TLS rejects the customer's bid, TLS can at the same time link same to an offer of its own to the customer. The purchase contract then comes about through the customer's declaration of acceptance.

2.) The customer can also inspect goods at TLS on site and submit a bid to purchase the goods. The purchase contract only comes about

through acceptance of the bid by TLS.

### § 2 CONCLUSION OF CONTRACT IN THE CASE OF AUCTIONS

1.) Within the context of a so-called highest-bid auction, TLS places articles with a so-called lead time. During that lead time, which is stated within the context of the offering, the customer can ask questions about the goods and inspect them on site at TLS or at the location stated in the auction. During that time, TLS shall be entitled to still make changes to the offering.

2.) With the start of the auction, TLS shall no longer be entitled to make changes to the articles placed.

3.) Once registered and logged on, the customer can issue a bid to purchase for the duration of an auction. Submission of a bid is binding and can no longer be revoked or withdrawn by the customer. After issuing its bid, the customer receives an e-mail in which it is once again notified of the submission of its bid and the precise time of the end of the auction. The customer also receives an e-mail if it has been outbid by another customer.

4.) Upon expiry of the duration of an auction, a purchase contract automatically comes about between TLS and the customer with the highest bid at that point in time.

### § 3 FULFILMENT OF THE PURCHASE CONTRACT, ARREARS

1.) Upon conclusion of contract, the customer in the case of an on-line purchase receives an e-mail with confirmation of conclusion of contract by virtue of its winning of the auction. Immediately after the end of the auction, TLS will issue a commercial invoice with the customer's data and send this in advance per e-mail and in parallel as an original to the customer. The customer shall then be obliged to pay the purchase price immediately by bank transfer, or upon collection in cash, and to collect the goods at TLS without undue delay, but at the latest one week after the end of the auction unless agreed otherwise. TLS shall, however, have a right to withhold the goods until full payment by the customer.

2.) Should the customer fail to pay for and collect the goods at TLS by at the latest 30 days from conclusion of contract, TLS shall be entitled to withdraw from the purchase contract and sell the goods elsewhere, and within the context of conclusion of contract by means of an auction to offer the goods to the second-higher bidder in the auction at that bidder's bid. The rights of TLS to claim damages remain unaffected by this ruling.

3.) To the extent it involves a reciprocal trading transaction within the meaning of the German Commercial Code (HGB), the customer shall inspect the goods immediately upon collection. This applies in particular to the completeness of the goods and their respective functionality. Defects determined thereby, or that are not detectable without further ado, must be reported to TLS immediately. A detailed description of the defects must be enclosed. Should the customer fail to report, the goods shall be deemed approved except where it involves a defect that was not apparent during the inspection.

4.) Defects in goods that could not be detected within the context of proper inspection per 3) above, must be reported to TLS immediately upon being discovered to the extent it involves a reciprocal trading transaction; otherwise the goods in this case shall be deemed approved also with regard to that defect.

5.) In principle, sale always takes place ex point of shipment (Incoterm 2010), unless otherwise agreed.

#### § 4 WARRANTY AND LIABILITY

1.) For defects in the goods, TLS shall in principle be liable as provided for by the statutory provisions of purchasing law (§§ 434 ff. German Civil Code - BGB).

2.) In derogation of § 438 (1), no. 3, BGB, the warranty period for rights ensuing from § 437 no. 1 and no. 3 BGB for new articles [ends] one year from the beginning of the statutory period of limitations.

3.) The warranty period of the rights ensuing from § 437 no. 1 and no. 3 BGB for used articles is precluded.

4.) In principle, TLS shall not be liable for losses caused in normal negligence.

5.) The liability limitations pursuant to numbers 2, 3 and 4 above shall not apply to losses from injury to life, limb or health, in the event of malicious concealment of defects, claims ensuing from the [German] Product Liability Act (Produkthaftungsgesetz), in the event of malicious intent and gross negligence or on breaches of duties, fulfilment of which makes proper fulfilment of contract possible in the first place and adherence to which the user may normally rely upon.

#### § 5 RESERVATION OF TITLE, TRANSFER OF RISK

1.) The goods remain the property of TLS until full payment.

2.) If nothing to the contrary has been agreed, the buyer shall in principle be obliged to collect the goods itself. Where such an agreement is in place or the item is shipped at the user's request, the risk then already transfers to the entrepreneur upon handover to the carrier.

### III. BROKERAGE CONTRACTS

#### § 1 OBJECT OF CONTRACT

1.) Within the context of an exclusive brokerage contract, the customer engages TLS to identify and/or broker the contracts and/or contract parties stated therein.

2.) The brokered contract comes about exclusively between the customer and the third party. TLS shall not be a party to contract.

#### § 2 RIGHTS AND DUTIES OF TLS

1.) TLS undertakes to commence work without delay and to execute the assignment with due care and persistence and under exploitation of all opportunities arising to conclude contract.

2.) TLS undertakes to execute the brokerage assignment with the due care of a prudent merchant. TLS shall be liable for malicious

intent and gross negligence.

#### § 3 RIGHTS AND DUTIES OF THE CUSTOMER

1.) For the duration of this Agreement, the customer undertakes not to engage another broker to realise the goals agreed in the exclusive brokerage contract.

2.) The customer undertakes to support the efforts of the broker, in particular by giving and issuing all information and documents available to it that are necessary for the contract to be brokered. It hereby authorises TLS to use such information and documents, including photographs and views, vis-à-vis third parties.

3.) The customer shall inform the broker forthwith of all relevant circumstances and developments concerning the contracts to be brokered, especially concerning disposal elsewhere, injunctions, rental or leasing and of any abandonment of the intention to conclude contract.

4.) The customer undertakes to treat all information received within the context of this brokerage contract as confidential and, in particular, not to pass it on to third parties.

5.) The customer undertakes to inform the broker forthwith of any contract coming about and to send it at first request a complete copy of the contract.

6.) If the broker's opportunity to earn the commission is thwarted by any culpable conduct in breach of contract by the seller, the seller shall pay restitution for expenses pursuant to the provisions of this Agreement. This shall not be deemed to preclude compensation for further losses.

#### § 4 INDEMNIFICATION

1.) The customer undertakes to ensure that the graphics, texts, images, photographs and files it has provided and/or transmitted or otherwise placed at the disposal of TLS do not breach statutory rulings and/or third-party rights.

2.) To the extent third parties assert claims against the provider within the meaning of 1) above, the provider shall inform the customer thereof forthwith. The customer undertakes to indemnify the provider to that extent for any and all liability vis-à-vis third parties, to support it in its legal defence and to assume the costs of appropriate legal defence as long as the provider cannot be partly held culpable.

#### § 5 BROKERAGE COMMISSION

1.) The customer undertakes to pay to TLS a commission in the amount agreed in the contract plus any statutory value-added tax incurred.

2.) The right of TLS to commission falls due upon conclusion of the fully effective contract with the contract partner identified or brokered by TLS. That shall also apply if conclusion of contract comes about only after the end of this sole brokerage assignment, but

comes about based upon the work of TLS.

#### § 6 TERM AND TERMINATION

- 1.) The brokerage contract runs for an indefinite period and can be terminated by either Party with notice of one month for the end of a month. It ends automatically upon conclusion of the contracts brokered by TLS.
- 2.) The right to serve extraordinary notice of termination for good cause as provided for by law remains unaffected. Good cause shall be deemed given in particular if the customer, despite warning, violates the binding status of sole assignment.
- 3.) Notice of termination shall only be deemed effective if in writing.

#### § 7 REIMBURSEMENT OF EXPENSES

- 1.) In the case of § 3 no. 6 of Section B.III. of these GTC, upon abandonment of the customer's intention to conclude contract and in those cases in which TLS was able to terminate this brokerage contract for good cause, TLS may demand reimbursement of its expenses as provided in the paragraphs below.
- 2.) The expenses of TLS shall be deemed to include, above all, the costs for insertions, advertisements, other prospectuses, the placing in the Internet, signs and other specific funds expended for this project.
- 3.) TLS shall be entitled to demand a lump-sum reimbursement of expenses at a rate of 50% of the agreed commission. TLS remains free to demonstrate that its concrete expenses in the case in point were higher. The customer is free to demonstrate that TLS, in the specific case in point, incurred expenses that were lower than the lump sum. In any event, the reimbursement of the expenses as defined here is limited to at most 100% of the commission agreed and forgone by TLS.

### IV. SALES COMMISSION

#### § 1 OBJECT

- 1.) In the event of acceptance by TLS of the exclusive commission sales contract awarded by the customer in writing, TLS undertakes to make its best efforts to sell or auction off the items precisely described in that contract in its own name but for the customer's account by way of a commission sale.
- 2.) The customer undertakes for the duration of the commission contract to refrain from offering the items for sale elsewhere.
- 3.) The customer transfers title to the goods to TLS.
- 4.) TLS shall be entitled to acquire the items itself. In that case, the parties shall conclude a separate purchase contract.

#### § 2 DUTIES OF THE CUSTOMER

- 1.) The customer warrants that it holds unrestricted title to the commission goods forming the object of contract.
- 2.) Upon conclusion of the commission sale contract becoming effective, the customer shall insure the items against fire, theft and

other damage by third parties even if the items are stored in a warehouse of TLS (§3 (2)) unless the parties agree otherwise.

#### § 3 INSPECTION, TRANSPORT COSTS

- 1.) Should the items remain with the customer, the customer shall permit inspection of the items by TLS and by prospective buyers named by TLS at the location of the items, whereby the customer shall observe the safety regulations in force. TLS will inform the customer in advance of the time of the inspections and the other modalities and have those confirmed by the customer. If the customer refuses the time of the inspection, it shall propose two other appointments to TLS within two working days that may be at most two weeks from the date originally proposed by TLS.
- 2.) Should the customer engage TLS to store the items at TLS and to carry out the viewings there, the customer shall deliver the items precisely described in the commission sale contract at its own expense and risk to the warehouse precisely identified by TLS in the case in point.

#### § 4 ADHERENCE TO INSTRUCTION

TLS shall follow the instructions of the customer upon disposal of the items (goods).

#### § 5 PRESCRIBED PRICES

TLS shall adhere to the minimum prices indicated by the customer in the commission sales contract unless the customer has granted its prior permission at a lower price or where subsequent approval of the customer can be presumed by operation of law.

#### § 6 NO GRANTING OF CREDIT

TLS shall not be entitled to grant the buyer credit and especially not deferred payment of the purchase price.

#### § 7 COLLABORATION, INDEMNIFICATION

- 1.) The customer undertakes to support the efforts of TLS, in particular by giving and issuing all information and documents available to it that are necessary for the contract to be brokered. It hereby authorises TLS to use such information and documents, including photographs and views, vis-à-vis third parties.
- 2.) The customer undertakes to ensure that the graphics, texts, images, photographs and files it has provided and/or transmitted or otherwise placed at the disposal of TLS do not breach statutory rulings and/or third-party rights.
- 3.) To the extent third parties assert claims against the provider within the meaning of 2) above, the provider shall inform the customer thereof forthwith. The customer undertakes to indemnify the provider to that extent for any and all liability vis-à-vis third parties, to support it in its legal defence and to assume the costs of appropriate legal defence as long as the provider cannot be partly held culpable.

## § 8 EXECUTION OF SALES

- 1.) TLS shall fulfil the sales concluded itself in its own name but for the account of the customer.
- 2.) TLS shall agree with the buyer that the latter will collect and, where applicable, dismantle the items at its own expense and own risk at the location of the items, or that they will be shipped to it at its expense and risk. If the items are located at the customer, TLS will notify the customer in advance of the time for collection and dismantling by the buyer and have it confirmed by the customer. If the customer refuses the appointment, it shall propose two other appointments to TLS within two working days that may be at most two weeks from the date originally proposed by TLS.

- 3.) In all cases where payment does not take place step by step in return for delivery, TLS shall agree with the buyer a reservation of title until full payment.

## § 9 NOTICE OF EXECUTION, INFORMATION

- 1.) TLS shall notify the customer forthwith of conclusion of the transaction and shall give it all information necessary during execution of the transaction.
- 2.) The ruling of § 384 (3) HGB is hereby waived.

## § 10 SELF-ACCESSION

- 1.) TLS shall be entitled to take over the goods itself as buyer.
- 2.) TLS shall notify the customer thereof forthwith and shall furnish evidence to justify the price.

## § 11 COLLECTION, COMMISSION, PAYMENT

- 1.) TLS shall be entitled to collect the purchase price from the buyer and to offset it against its own claims against the customer.
- 2.) For every transaction executed, TLS shall be entitled to the commission agreed in the commission sale contract; TLS may also demand that commission if completion of the transaction has been prevented for reasons to do with the person of the customer. The basis for calculation of the commission is the net purchase price, thus the purchase price without accounting for dismantling, transport, insurance and other expenditure and without value-added tax. The statutory rate of value-added tax shall be charged on the commission itself.
- 3.) For every transaction and within one month from receipt of payment from the buyer, TLS shall prepare a separate statement and pay out the purchase price received less commission and less reimbursement for expenses, to the extent the latter was agreed, to the customer.

## § 12 NO DEL CREDERE

TLS assumes no liability for the customer's creditworthiness and fulfilment.

## § 13 LIABILITY FOR GOODS UNDER COMMISSION

TLS shall be liable for loss and damage to goods under commission in its safekeeping except where that loss or damage was due to cir-

cumstances that could not have been prevented with the due care of a prudent merchant. TLS shall be responsible for failure to insure the items per § 2 only when TLS was explicitly instructed by the customer in the commission sale contract to conclude an insurance policy in its own name for the account of the customer.

## § 14 EXPENSES

The customer shall reimburse TLS for those expenses that TLS may under the circumstance regard necessary, especially the costs of storing the items at TLS. TLS shall be entitled to demand a reasonable advance from the customer.

## § 15 BUYER'S CLAIMS TO COMPENSATION

- 1.) TLS shall grant the buyer no rights extending beyond the statutory warranty rights unless the customer has agreed to a more extensive ruling in the commission sale contract.
- 2.) Should the buyer assert warranty claims to TLS, TLS shall notify the customer thereof forthwith.
- 3.) The customer undertakes to indemnify TLS to that extent for any and all liability vis-à-vis third parties, to support it in its legal defence and to assume the costs of appropriate legal defence as long as TLS cannot be partly held culpable.

## § 16 TERM AND TERMINATION

- 1.) The contract shall be concluded for a term of at least one (1) year for unsold stock and for plant/machinery for at least two (2) years from signature of the contract. It shall end prematurely upon sale or destruction of the goods. Ordinary termination shall be precluded during that time. Before expiry of the contract term, the Parties shall negotiate concerning a prolongation of the contract.
- 2.) The right to terminate for good cause remains unaffected thereby.

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