

# Terms and Conditions of sale

LBN Medical ApS

Company registration no.: 27098290

These terms and conditions of sale apply to all agreements, unless otherwise agreed in writing.

## 1. Company information

- 1.1 LBN Medical ApS, company registration no 27098290, has established itself at the address Gugvej 70, 9210 Aalborg SØ hereinafter referred to as "LBN".
- 1.2 LBN can be contacted as follows:  
Phone: +45 96 886 500  
E-mail: [sales@lbnmedical.com](mailto:sales@lbnmedical.com)
- 1.3 LBN is organized as a limited company (ApS).

## 2 Entire agreement

- 2.1 These terms and conditions along with LBN's offer, sales confirmation, any appendixes attached to the aforementioned documents and any project-specific agreements shall constitute the entire agreement between the parties, hereinafter referred to as "Agreement".  
LBN uses sales confirmations as the document, which confirms in finality the precise terms of the parties' agreement after the exchange of offer and acceptance of the offer.  
LBN's offer, sales confirmation, any appendixes attached to the aforementioned documents and any project-specific agreements made by LBN takes precedence over these terms and conditions if those documents are conflicting.
- 2.2 The customer may, among other methods, accept the Agreement signature or electronic acceptance, including by e-mail.
- 2.3 Modifications or additions to the Agreement are only valid insofar as they have been agreed upon in writing.
- 2.4 LBN hereby expressly rejects any and all different, conflicting, or additional terms of the buyer appearing on any purchase order or any other document, and such terms will have no force of effect, either through acceptance of such purchase order by LBN in writing or by performance.

## 3 Offer and sales confirmation

- 3.1 LBN's written offers lacking a deadline for acceptance, shall be voided unless due acceptance has arrived at LBN within 48 hours from the time of issue.  
LBN's offers regarding demo-, used or goods on sale are only valid for as long as such limited goods are in stock in LBN's storage.
- 3.2 LBN reserves the right to assign any non-binding offers or orders for stocked goods to other customers.
- 3.3 Orders are not binding for LBN until LBN's sales confirmation has been dispatched to the customer and LBN has received written acceptance from the customer.
- 3.4 The customer is not entitled to cancel or modify any binding order, unless LBN by exception has agreed hereto in writing. If LBN accepts a cancellation or modification of the order, the customer must indemnify LBN of all additional costs or losses incurred due to the cancellation or modification, however, such indemnification shall never be less than 10 % of the contracting price excl. VAT.
- 3.5 If LBN has not accepted modification or cancellation of the order in writing, the customer shall put LBN in the same position as if the order had been fulfilled without default, and pay the contracting price to LBN with a deduction of LBN's avoided costs.

3.6 LBN is entitled to annul any offer or order if it is found that the customers has provided LBN with false or misleading information, which has had an impact on LBN's offer to the customer.

## 4 Prices

4.1 All prices are excl. VAT, shipping, customs, taxes and other duties unless LBN states otherwise. Prices are in such currencies as are set forth in LBN's individual offers.

4.2 If the prices of the offered or agreed deliveries change due to changes in purchase costs, the prices of raw materials, currency rates, shipping costs, customs, taxes, other duties etc., LBN shall be entitled to alter the prices offered or agreed to by the customer accordingly.

4.3 Prices agreed on by LBN and the customer do include disposable packaging or reusable packaging unless otherwise agreed in writing. The customer will not be compensated, in full or in part, for the return of such packaging.

4.4 Prices do not include travel expenses unless explicitly stated in writing in the Agreement. The customer must pay separate travel expenses if LBN has to perform work at the customers location. Travel expenses shall be the highest of total time spent at the hourly rates applicable to the delivery, or LBN's actual travel expenses.

## 5 Payment

5.1 LBN is not obligated to ship the goods before the costumer complies with this provision 5 in its entirety.

5.2 Invoices are due no later than 14 days from the LBN's dispatch of notice stating that delivery is ready to be performed. Down payment is due no later than 5 days from the dating of the sales confirmation.

5.3 If LBN is responsible for the delivery of the goods and it is agreed that LBN will do the installation at customers site and site is not ready at the agreed time, then LBN is entitled to:

- Demand and receive full payment of the total delivery within 7 days
- Change the delivery terms to EXW, store the goods at the customers risk and charge a storage fee
- Separate the price of any transport on a new sales order which will be invoiced when executed

5.4 For late payment interests accrue at 2.0% per beginning month.

5.5 Payment by setting off cannot occur if the customer's claim is disputed.

5.6 Default of LBN's terms of payment or any other lack of timely payment of the customer's economic or financial obligations to LBN is considered a fundamental breach of the contract and entitles LBN to terminate the agreement by written notice and:

- Stop all further deliveries
- Demand every receivable, whether payable or not, paid immediately
- Down payment will not be returned to customer
- The goods can be sold to other customers

## 6. Restock Policy Parts

6.1 LBN allows the restocking of parts up to 30 days from original date of shipment unless otherwise specified at the time of sale.

6.2 All Restocks require a valid RMA number to be requested within 15 days of the original shipment date unless otherwise specified at the time of sale. Please reach out to your contact at LBN to obtain an RMA number valid for restocks only prior to returning product.

6.3 All Restock parts returned without a Restock RMA number will be processed as an Exchange part.

6.4 If the part is returned within 30 days from the original date of shipment, the following Restock credit will apply unless otherwise specified at the time of sale:  
Un-Opened.....Restock Fee 20%  
Opened.....Restock Fee 25%

6.5 Above applies to parts from stock, for parts sourced and sold by LBN other rules may apply, please reach out to your contact at LBN for support.

## 7. Product information and modifications

7.1 Information in product information, catalogues, datasheets, illustrations, pricing lists, commercials and the like are non-binding for LBN, unless LBN explicitly declares otherwise in writing in a document which is part of the Agreement.

7.2 LBN retains the right to modify all product specifications with 7 days notice, if such modifications can be made without significant detriment to the customer.

## 8. Returns

8.1 LBN does not accept returned goods.

## 9. Shipping

9.1 Delivery to places inside the European Union (EU) is done FCA – Free Carrier as set forth in INCOTERMS 2010, unless otherwise explicitly agreed in writing.

9.2 Delivery to places outside the European Union (EU) is done FCA – Free Carrier as set forth in INCOTERMS 2010, unless otherwise explicitly agreed in writing.  
The customer is responsible for any export documents, and shall carry any costs arising out of or in relation hereto.

9.3 The customer accepts sole liability for any loss or damage in the goods after the time of delivery. Hereunder it is important to emphasize that for example any needed storage before installation of the system is the customers responsibility and must be according to conditions specified by the relevant OEM.

9.4 All shipping at LBN's expense is conditioned upon the place of delivery being readily accessible.  
If contractual delivery, installation, or the like is delayed due to the customers circumstances, payment becomes immediately due. Furthermore, the customer shall reimburse LBN's reasonable costs.

9.5 LBN is entitled to used sub-contractors to delivery its performance.

9.6 If it is agreed that LBN shall keep the good ready for pickup, the customer must pick up the good within 14 days after LBN has given notice that the good are ready for pickup. If goods are not picked up within the 14 days, the goods is stored at the customers risk and LBN is entitled to charge a storage fee. This applies regardless of any other terms of delivery.

## 10. Shipping times

10.1 Shipping times are determined individually in LBN's offer or sales confirmation.

10.2 Shipping times are determined by LBN according to our best estimations and considering the circumstances, which were present at the time the offer was made and/or the Agreement entered into.

10.3 Unless otherwise agreed in writing, a postponement of the date of delivery of up to 120 days is always considered timely delivery, meaning that the customer may not raise any claim against LBN on such grounds.

10.4 The customer can never raise a claim against LBN because of a delay caused by things that the customer is responsible for. For example, but not limited to, a delay in having a Site ready for installation.

10.5 LBN informs the customers of changes to the delivery schedule immediately after the changes become known to LBN.

## 11. Delay

11.1 If LBN does not deliver at the agreed time of delivery, as may be extended pursuant to the Agreement, and the delay is not due to circumstances that the costumer is responsible for, the customer may call for delivery in writing and set a final, reasonable delivery date.

11.2 If delivery does not occur before the abovementioned final delivery date, the customer is entitled to avoid the purchase.

11.3 The customer is not entitled to claim compensation for any direct or indirect losses or to raise any other claims for the delayed delivery, including in the event of avoidance due to delayed delivery.

11.4 If LBN is responsible for the delivery of the goods and it is agreed that LBN will do the installation at customers site and site is not ready within 3 months after the agreed time, then LBN is entitled to terminate the Agreement by written notice and/or:

- Stop all further deliveries
- Cancel any given Warranty
- Demand every receivable, whether payable or not, paid immediately
- Down payment will not be returned to customer
- The goods can be sold to other customers

**12. Non-conformity and notice**

12.1 Before delivery commences the customer shall perform such examination of the goods as conforms with professional standards.

LBN shall make the goods available for inspection by the customer at the location, from which the good are shipped for delivery.

The customer shall give notice to LBN of the time that the customer wishes to inspect the good, however, LBN may set the inspection for another time if the customers wishes are not practically possible or would otherwise entail unreasonable costs for LBN.

If LBN has not received a written notice of a requested inspection from the customer within 5 days from the time LBN dispatched its sales confirmation, delivery of the good shall commence without further notice.

12.2 Goods are provided in the condition and at the location in which they are found, unless by exception LBN has promised otherwise in writing.

12.3 When the goods, according to the agreement as defined in 2.1 above, are sold "As Is" this means that it is not standard LBN products. It is sold as is, meaning that we only base the sale on the information given to the seller, and customer has accepted to buy the product without any claim or warranty possibilities whatsoever.

12.4 If the customer would claim for non-conformity, the customer must immediately after the non-conformity is or ought to have been discovered give written notice to LBN with a description of the nature of the non-conformity.

The customer must inspect the goods immediately upon delivery and give immediate notice to LBN, if the customer finds any transport damages for which the customer does not believe itself to bear the risk. If notice is not given, the customer shall lose any possible claim in regards to such damages.

The customer must provide LBN with evidence of the claimed non-conformity upon giving first notice, and must supply further evidence as requested by LBN afterwards.

12.5 If the customer has or ought to have discovered non-conformity and the customer has not given notice hereof as set forth above, the customer may not claim for the non-conformity at a later time.

12.6 LBN chooses whether to remedy any non-conformity by replacement or reparation, compensation by proportional partial refund, or redelivery.

12.7 The remedying of non-conformity does not include non-conformity, which is caused by incorrect installation and/or failure to use the goods in strict compliance with LBN's instructions or attached user instructions, faulty or incorrect usage, modifications or technical operations performed without prior written consent by LBN, installation not performed by OEM-certified personnel (Original Equipment Manufacturer), the non-conformity relates to electrical supply, or usage that violates medical or technical standards for such goods.

Furthermore, the customer shall be solely liable and bear the risks of any damage or loss caused by usage in violation of standards set by manufacturer of the goods.

12.8 The customer's right to demand remedying of non-conformity does not cover parts exposed to wear and tear. Costs of installing or removing such parts, including travel expenses, are not included in the right to the remedy of non-conformity.

- 12.9 If the customer is capable of remedying the non-conformities at his location, LBN's obligation to remedy non-conformity may be fulfilled by shipping new, used or repaired parts.
- 12.10 If non-conforming deliveries or parts are returned to LBN for redelivery or repair, and the customer has complained in due time, the customer must bear all costs and risks associated with the shipping.
- 12.11 Deliveries or parts shipped to the customer constituting redeliveries or repaired parts for the remedying of non-conformity are shipped at LBN's cost and risk.

### **13. Warranty**

- 13.1 LBN guarantee that the goods are unencumbered and free of third party monetary claims.
- 13.2 Except for as stipulated in the Agreement, goods are delivered without warranties, guarantees or assurances of any kind from LBN.  
Where third parties have provided LBN with warranties for goods sold to the customer, the customer shall obtain rights to such third party warranties from LBN to the extent that such a transfer of warranties is possible.
- 13.3 If equipment is delivered by LBN and it is agreed that LBN will do the installation of the equipment:
  - The customer is responsible for the equipment after delivery, hereunder storing the equipment appropriate and according to OEM guidelines. The customer is responsible for any damage to or malfunction of the system occurring after delivery
  - If any warranty is agreed in the sales confirmation then the warranty period will start from the date of shipment from LBN
- 13.4 Regardless of the fact the U.S. law does not apply to this Agreement, the following disclaimer is made:  
All warranties of merchantability and fitness of purpose are specifically disclaimed as to U.S. based buyers due to specific regulations of implied warranties.  
Hence, LBN disclaims all warranties of fitness or merchantability. The customer cannot plead the covenants in the Uniform Commercial Code or other U.S. regulation concerning implied warranties of fitness and/or merchantability.  
This section shall not be construed as an acceptance of U.S. law. The applicable governing law shall be solely that which is set forth in section 21 of these terms and conditions.

- 13.5 If it is set forth in the sales confirmation that LBN provides a "Parts Warranty", the customer shall have the following rights:

If:  
The customer in accordance with chapter 12:  
-Gives notice of non-conformity in a system,  
-Documents that the system does not function (as per provision 12.4)

And

LBN accepts such notice of non-conformity

the Parts Warranty for the period set forth in the sales confirmation shall cover delivery of new, used or restored parts (as in provision 12.9), as is necessary for restoring function to the system. Installation of the aforementioned parts must be carried out by an OEM certified technician (as per provision 11.7).

### **14. Retention of title**

- 14.1 LBN retains the title of the goods until the contracting sum, costs of delivery, shipping and handling as well as incurred insurance costs paid out by LBN on behalf of the customer have all been fully paid by the customer.

### **15. Local regulations and intended use**

- 15.1 LBN is not liable for compliance with applicable laws and regulations in countries in which the buyers uses or imports the good. Hence, the buyer is assumed to have obtained all permits, licenses, registrations and other approvals required by every national, local or municipal government or agency, in respect of the buyer's use of the goods, including for resell and marketing.
- 15.2 The customer is responsible for keeping informed about the intended purpose of the goods and ensuring that the goods are not used in violation of relevant legislation.

## **16. Limitations of liability**

- 16.1 LBN is not liable for any non-conformities except as provided mandatory applicable law and separate guarantees by LBN.
- 16.2 LBN's liability is limited to direct losses and can, regardless of cause or the nature of the claim, never exceed 10 % of the amount invoiced for the delivery, which caused the loss or is the direct cause of the claim or directly related hereto. If the above part of this provision is found by a competent court to be void, LBN's liability shall instead be limited to 100 % of the amount invoice for the delivery, which caused the loss or is the direct cause of the claim or directly related hereto.
- 16.3 LBN is not liable for loss of revenue, loss of savings, or other indirect losses or consequential damages caused by usage of the goods or the inability to use the goods, regardless of whether LBN has been informed that such claims may be raised, regardless of whether such damages are inflicted on persons or goods, and regardless of whether this is due to simple or gross negligence.
- 16.4 LBN is not liable for non-conformity in prototypes or other goods, which the customer has been made expressly aware that LBN cannot confirm as suited for use in the manner intended by the customer, including goods which the customer has modified.
- 16.5 LBN cannot be held liable for damages caused by third party products or any defects in third party products.
- 16.6 If the customer has an enforceable claim against LBN, such a claim must be pursued no later than 1 year after the time of delivery, after which the customer cannot pursue the claim against LBN.

## **17. Force majeure**

- 17.1 LBN is not liable for losses caused by extraordinary circumstances and which prevent, hinder or increase the cost of fulfilling the Agreement, if they arise after the offer is made and lie outside LBN's control, including:
- 17.2 Employment disputes, strikes, lockout, fire, war, pandemic, rebellion, internal strife, weather and natural disasters, currency restrictions, seizure by public authorities, import- or export embargos, disruption of transport infrastructure, including energy distribution, significant price- and/or duty increases, currency fluctuations, production and shipping hindrances caused by circumstances, which cannot be ascribed to LBN as well as force majeure and/or hardship suffered by relevant sub-suppliers.
- 17.3 Both parties are entitled to terminate the Agreement by written notice, if the fulfillment of the Agreement proves impossible due to any of the abovementioned circumstances. Such notice must be given within a reasonable period of time after the terminating party discovers or ought to have discovered the impossibility of fulfillment.

## **18. Immaterial rights and data protection**

- 18.1 LBN has no rights, ownership or interest in software or other immaterial rights related to the physical goods, including licensing products related to the goods. The sale of the physical goods include only the physical goods themselves and any compliance with immaterial rights are the sole responsibility of the customer.
- 18.2 The Agreement does not constitute a transfer of immaterial or proprietary rights in any way, shape or form.
- 18.3 The customer is liable for deleting all personal data from goods, which are capable of storing personal data – including when used goods are sold by or facilitated sold through LBN. The customer shall indemnify LBN of all losses caused by the customer's failure to comply with this provision.

**19. Product liability**

- 19.1 LBN is liable for product liabilities in accordance with the regulations set forth in Danish law regarding product liability.
- 19.2 The customer must give immediate notice to LBN if a third party raises a product liability claim against the customer.
- 19.3 To the extent that LBN is made liable to a third party, the customer is obligated to indemnify LBN insofar as such a liability exceeds the boundaries set forth above, including for goods which the customer has modified and for which the customer bears full and sole liability.
- 19.4 The customer is liable to be sued at the same venue, which litigates claims for compensation against LBN based on the alleged defects of LBN's deliveries.

**20. Partial invalidity**

- 20.1 Insofar as one or more provisions of these terms and conditions are found to be invalid, illegal or unenforceable, no other provisions shall have their validity, legality or enforceability be affected or diminished by such partial invalidity.

**21. Disputes, choice of law and choice of venue**

- 21.1 Any dispute between the parties, which cannot be solved amicably, shall be settled solely by the Aalborg District Court under the application of Danish law.
- 21.2 Danish international private law, which points to a chosen law other than Danish law, and the United Nations Convention on Contracts for the International Sale of Goods (CISG) are not, however, applicable.

**Date:**

For [company name]:

**Date:**

For LBN Medical ApS:

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[Name customer's representative]

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[Name LBN Medical ApS representative]