



Translation from the German Language

General Terms and Conditions of Payment and Delivery

**Linhardt GmbH & Co. KG, 94234 Viechtach
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1. General – Area of Application

- 1.1 Our terms and conditions shall apply exclusively; we reject any terms and conditions of the customer to the contrary or deviating from our terms and conditions, unless we have expressly consented to their validity in writing. Our terms and conditions shall apply even if we effect the delivery to the customer without reservation with knowledge of terms and conditions of the customer to the contrary or deviating from our terms and conditions.
- 1.2 All agreements, which are made between the customer and us for the purpose of executing this contract, shall be laid down in writing in this contract. Any amendments or supplements to the contract shall be made in writing. Our sales staff and agents are not vested with commercial power or power to collect. Therefore, any agreements with the aforesaid persons will only become effective after having been confirmed by us in writing. To the extent our terms and conditions call for the written form such requirement will also be satisfied by telefax or e-mail without electronic signature.
- 1.3 Our terms and conditions shall only be applicable vis-à-vis entrepreneurs within the meaning of § 14 section 1 German Civil Code (*BGB*), legal entities according to public law or public special funds. They also apply to all future transactions with the customer within ongoing business relations.

2. Offer – Documents – Orders

- 2.1 Our offer is not binding unless otherwise stated in the confirmation of the order or otherwise expressly declared by us in writing. A contract shall be deemed concluded only if we have confirmed an order in writing, or if we execute the order. We do not accept orders falling below a volume of 10,000 items; such orders will be subject to a special agreement.
- 2.2 We reserve title to and the copyright in illustrations, prospectuses, calculations or any other documents. These documents may not be made available to third parties. This particularly applies to written documents, which are marked "confidential". The customer shall obtain our express written consent prior to passing on such documents to third parties. In all other respects, § 14 of our terms and conditions shall apply.

3. Prices – Terms of Payment

- 3.1 Unless otherwise stated in the confirmation of the order, our prices apply "ex consignment stock" ("ex works", Incoterms 2010), exclusive of packaging, freight, postage and turnover tax as applicable from time to time. Unless otherwise agreed upon in writing, all our prices are quoted and shall be paid in Euro.
- 3.2 Unless otherwise agreed, all invoices shall be payable to the account stated by us free of charges and costs in the currency agreed within 30 days (receipt of payment) following receipt of the invoice. In the event that payment is effected within 14 days, we will allow a cash discount of 2 % unless the customer is in default with other payments owed to us.
- 3.3 In the event of substantial changes of order-related cost after the conclusion of the contract, e.g. cost of materials or auxiliary material, labor costs or other statutory charges, we shall be entitled to adjust the price accordingly provided that a delivery date exceeding four weeks after the conclusion of the contract was agreed on, unless otherwise agreed. In the event of customer's subsequent requests for amendment, we may additionally charge the customer for any extra expenses incurred by us.
- 3.4 The customer shall have a right of set-off only if his counterclaims have been recognized by declaratory judgment, have not been contested or have been recognized by us. The customer shall be entitled to exercise a right of retention or a right to refuse performance only if the conditions according to sentence one have been satisfied and, furthermore, his counterclaim is based on the same contractual relationship. Further, we shall be entitled to set off any of our claims against any claims of the customer vis-à-vis the enterprise referred to in the heading or vis-à-vis us (intercompany pricing).
- 3.5 Drafts and checks shall be accepted – if at all – as conditional payment only. The costs of drafts and checks shall be for the customer's account. The date of payment shall be the date on which we may dispose of the counter value.
- 3.6 We shall be entitled to initially set off payments of the customer against the oldest invoices due, i.e. in the following order: first against cost, then against interest, and, finally, against the principal performance.
- 3.7 If we are obliged to make advance deliveries and, after the conclusion of the contract, circumstances come to our knowledge that indicate a substantial deterioration of the customer's assets, we may demand, at our option, either security within a reasonable period of time or contemporaneous payment on delivery. If the customer does not meet this request, we shall be entitled, subject to further statutory rights, to withdraw from the contract.

4. Time of Delivery

- 4.1 Commencement of the time of delivery stated by us presupposes that all relevant questions have been clarified, and that the customer has performed any of his obligations. Unless otherwise agreed or provided for in the contract, the time of delivery stated by us is not binding.
- 4.2 We shall not be liable for delays in delivery owing to force majeure or unforeseen circumstances beyond our control such as plant interruptions, strikes, lock-outs, lack of means of transportation, difficulties in procuring raw materials, orders by authorities, or belated delivery by our supplier. Any agreed term for delivery shall be extended by the period of obstruction plus an appropriate start-up period. If the obstruction lasts longer than two months, the customer and we shall be entitled at the end of an additional period of time of reasonable length to be set to rescind the contract with regard to the part not yet performed. In this case, claims for damages are excluded.
- 4.3 If, after our default, the customer grants us a reasonable period of time of at least two weeks and we do not observe this additional period of time, the customer shall be entitled to rescind the contract. In this case, the customer shall be entitled to claim damages instead of performance only if the default was caused intentionally or by gross negligence or by a negligent, material breach of our duties. In the event of negligence, our liability shall be limited to the foreseeable damage in each individual case.
- 4.4 The limitations on liability pursuant to § 4.3 shall not apply insofar as a transaction for delivery by a fixed date where the date is of essence was agreed. The same shall apply if the customer may assert that he is no longer interested in performing the contract because of our default. In these cases, liability shall be limited to the typical, foreseeable damage.
- 4.5 If the customer defaults in taking delivery or infringes other duties to cooperate, we shall be entitled to claim compensation for the damage suffered by us, including any additional expenses. In this case, the risk of accidental loss or accidental deterioration of the object of purchase will pass to the customer at the time when he defaults in taking delivery.

- 4.6 We are entitled to effect part deliveries or deliveries prior to the expiry of the time of delivery, unless a noticeable interest of the customer is opposed to this.
- 4.7 The customer shall be obliged, on our request, to declare in writing within a reasonable period of time whether he will rescind the contract owing to a delay in delivery and/or claims damages, or whether he insists on delivery.
- 5. Serial Deliveries, Long-term and Call-off Contracts**
- 5.1 Contracts of unlimited duration may be terminated by either contracting party with a notice period of six months to the end of the month, unless otherwise agreed.
- 5.2 If, in the case of contracts with a term exceeding twelve months or contracts of unlimited duration, a substantial change of the labor costs or the cost of energy or materials occurs after the expiry of the first four weeks of the term of contract, either contracting party shall be entitled to request a reasonable adjustment of the price by taking into account the aforesaid aspects, unless otherwise agreed. § 3.3 shall not thereby be affected.
- 5.3 Our prices are calculated on the basis of the order quantities agreed on. If no binding order quantities were agreed on, our cost estimate will be based on the target quantities agreed on. If the order falls short of the order quantity or target quantity by more than 20 %, we shall be entitled to reasonably increase the price per item. If the customer exceeds the quantity by more than 20 % with our approval, he may request a reasonable price reduction provided that he notifies us in writing at least two months prior to the agreed date of delivery. The price reduction or increase must be determined according to our cost estimate bases.
- 5.4 In the case of call-off supply contracts, we must be notified by call-forward notice of binding quantities at least three months prior to the date of delivery, unless otherwise agreed. In this case, we will be discharged from our supply obligation if the call-forward notice is not received in good time for reasons for which the customer is responsible. If we nevertheless effect delivery, any additional expenses caused by the customer owing to a belated call-forward notice or subsequent changes of the call-forward notice as to time or quantity shall be borne by the customer.
- 5.5 Given the particularities of production engineering, we shall be entitled to deliver the following excess or short quantities for reasons of production without this constituting a defect: in the case of a delivery quantity of at least 50,000 items, +/- 5 %, in the case of 25,000 to 50,000 items, +/- 10 %, in the case of 10,000 to 25,000 items, +/- 15 % and, in the case of less than 10,000 items, +/- 20 %.
- 6. Passing of Risk, Shipment and Packaging**
- 6.1 Unless otherwise agreed in writing, the delivery clause “ex works” (Incoterms 2010) shall apply. This also applies in case we undertook to bear the cost of transport.
- 6.2 Only on the customer’s express request, we shall take out a transport insurance policy for delivery; the costs accruing in this connection shall be borne by the customer.
- 6.3 In the absence of a particular instruction, the choice of the means of transportation and the transport route shall be in our discretion.
- 6.4 Disposable packaging will not be taken back. Exchangeable or lent packaging material (e.g. palletes) shall be returned or exchanged within two months.
- 7. Weights and Measures**
- 7.1 The DIN and EN standards shall be decisive for keeping to measures. In all other respects, the weights and measures contained in our offers and confirmation of offers are stated to the best of our knowledge, however these are approximations only. They do not constitute a quality guarantee. Minor deviations, particularly deviations on technical grounds that are customary in trade, shall not entitle the customer to complaints or warranty claims, unless otherwise agreed.
- 7.2 We only apply to our delivered items state-of-the-art technology, rules and provisions as applicable in Germany, and we do not check applicable rules and provisions applicable in foreign countries, unless otherwise expressly agreed upon. If the customer wishes compliance of the delivered items with foreign rules and provisions, he shall point out such rules and provisions prior to the conclusion of the contract and shall, on our demand, explain these. In any case, customer shall inform us about these rules and provisions in such timely manner that we are able to regard them. In the event of information after conclusion of the contract, Clause 3.3, 2nd Sentence shall apply mutatis mutandis.
- 8. Warranty Claims**
- 8.1 The warranty rights (warranty claims) of a customer acting in his capacity as merchant presuppose that he inspects the delivered items immediately upon receipt and gives written notice of any visible defects without undue delay after carrying out the inspection, or of hidden defects without undue delay after their discovery, specifying the defect discovered in writing (§ 377 German Commercial Code (*HGB*)). All other entrepreneurs shall be obliged to give written notice of any visible defects within two weeks following the passing of risk, or of hidden defects within two weeks after their discovery; otherwise, the warranty claims of the customer will become forfeited. We shall be given the opportunity to inspect the defect notified on the customer’s premises. We shall be obliged to carry out such inspection without undue delay, if the customer has an interest in a prompt arrangement.
- 8.2 Any warranty claims including but not limited to damage claims of the customer shall be excluded if the customer does not observe our or commonly known rules of application, instructions or technical standards when using the delivered items, and the defect is caused thereby. The same shall apply to damages or consequential damage caused by improper usage of the items or non-observance of the conditions imposed by the customer (in particular, intended purpose, inspection procedure, technical performance and delivery instructions handed over to us, construction documents, choice of material) through the customer’s own fault.
- 8.3 Warranty rights do not exist insofar as there are only slight deviations from quality or an insignificant impairment of usability of the delivered items, e.g. in the event of slight color deviations. Tolerances on technical grounds or tolerances that are customary in trade do not constitute defects. We point out that the permanency of paints and lacquers and the durability of plastics and other parts, if necessary, that we use for manufacturing our products may be limited and depend on proper storing.
- 8.4 All our specifications constitute service descriptions and approximations only. They do not constitute guarantees, unless expressly otherwise agreed.
- 8.5 If we are responsible for a defect discovered, we shall be entitled, at our option, to repair or replace the delivered item.
- 8.6 In the event of a notification of defects, payments of the customer may only be withheld within a scope being in a reasonable proportion to the defects occurred. Furthermore, these payments may only be withheld provided that the requirements of § 3.4 sentence two of our terms and conditions are fulfilled.
- 8.7 In case a customer wrongfully notifies defects for which we are not responsible, for reasons that are not attributable to us, we shall be entitled to charge to the customer’s account reasonable expenses incurred by us for remedying the delivered items and/or determining the defects.
- 8.8 We may charge to the customer’s account the additional costs of the expenses necessarily incurred for the purpose of subsequent performance, particularly transport charges, traveling expenses, cost of labor and of materials insofar as the expenses are increased as a result of taking the delivered item to a place other than the delivery address, unless the taking of the delivered item to such other place is in conformity with the contractual purpose and was known to us upon the conclusion of the contract.
- 8.9 Claims of the customer under a right of recourse in connection with a purchase of consumer goods (§ 478 German Civil Code) shall insofar be excluded as the customer’s agreements with his customers exceed the statutory warranty rights of his customers. The customer shall inform us immediately about any warranty rights of his customers so that we may satisfy, at our option, the claims of the customers of our customer instead of our customer’s claims.

- 8.10 Warranty rights, particularly those regarding defects of quality, will already become statute-barred twelve months after delivery, unless we caused the defect intentionally or by gross negligence. The same shall apply to any guarantees given that are binding on us, unless these provide anything to the contrary. As regards the limitation periods for warranty rights that exceed two years by virtue of the law (e.g. in the event that a defect is fraudulently concealed), the statutory limitation periods shall be applicable. Likewise, the statutory limitation periods shall apply to claims under a right of recourse according to § 478 German Civil Code. These limitation periods shall also apply to consequential damages caused by a defect unless these are claimed under an unlawful act. If, as a result of our defective delivery, subsequent performance is required, the limitation period between the notification of defects and subsequent performance will only be suspended but not set into motion again.
- 8.11 Before the customer may assert further claims or statutory rights (rescission of contract, reduction in the purchase price, damages or reimbursement of expenses, or self-performance in case of contracts for work and services), we shall first be given the opportunity to effect subsequent performance within a reasonable period of time, unless we have given any guarantee to the contrary. Should subsequent performance fail despite two attempts, should it be impossible or unacceptable for the customer, or should we refuse subsequent performance, the customer may rescind the contract or reduce payment. § 9 of our terms and conditions shall apply to the assertion of damage claims or claims for reimbursement of expenses.
- 8.12 Furthermore, the following provisions shall apply to claims from defects of title:
- 8.12.1 Unless otherwise agreed, we shall only be obliged to effect deliveries free of any rights of third parties in Germany. If the deliveries shall be used outside Germany, customer is obliged to check at his own risk prior to use whether the deliveries are free of any rights of third parties in the country of use, or shall inform us prior to the conclusion of contract or at least in such timely manner about such rights that we are able to regard them. Unless otherwise agreed upon, we do not check the existence of third parties' rights outside Germany. In the event of customer's information after conclusion of the contract, Clause 3.3, 2nd Sentence shall apply mutatis mutandis.
- 8.12.2 In the event of a violation of industrial property rights of third parties for which we are responsible, we may, at our option, either obtain an adequate right of use for the agreed or expected use at our expense and assign this to the customer, or transform the delivered items so that the industrial property right is not infringed, or replace the delivered items provided that the agreed or expected use of the delivered items is not thereby impaired. If this is impossible for us, or if we refuse subsequent performance, the customer shall be entitled to assert his statutory rights and claims. § 9 of our terms and conditions shall apply to damage claims and claims for reimbursement of expenses.
- 8.13 We shall only be responsible for consultancy services rendered by us if expressly agreed. The customer shall be responsible for ensuring that our deliveries correspond to the use intended by him.
- 8.14 The customer shall be liable for the correctness of the plates, manufacturing documents and samples delivered by him.
- 9. Damages**
- 9.1 The assertion of damage claims and claims for reimbursement of expenses based on defects in the delivered items shall be excluded insofar as we cannot effect subsequent performance for reasons beyond our control. The customer may only assert damage claims for damage caused by defects if the defect was caused by our own fault. We shall be liable for consequential damage caused by delivery of defective items only if the damage was caused by a negligent violation of substantial duties.
- 9.2 The assertion of damages for violation of a durability guarantee given by us or third parties (§ 443 section 2 German Civil Code) for which we are liable shall be excluded, unless the violation was caused by our own fault.
- 9.3 In all other respects, damage claims and claims for reimbursement of expenses of the customer - irrespective of the legal grounds -, particularly for violation of duties under and in connection with the obligation, from violation of mutual confidence upon or prior to the conclusion of a contract, or unlawful act shall be excluded.
- 9.4 The above limitations of liability shall not apply to claims according to §§ 1, 4 Product Liability Act (*Produkthaftungsgesetz*), in case of intent or gross negligence, with regard to any violation of life or in the event of personal injury or injury to health, in case of a guarantee for the existence of a certain quality (quality guarantee), or in the event of a negligent breach of material obligations. Our liability shall not exceed the statutory claims at any rate. In the event of negligence our liability shall be limited to the typical, foreseeable damage. These provisions (§ 9.1 – 9.3) do not involve any amendments of the burden of proof.
- 9.5 Insofar as our liability is excluded or limited this shall also apply to the liability of our staff and agents.
- 10. Reservation of Title**
- 10.1 We shall retain title to the delivered items until receipt of all payments owed by the customer under the contract. In the event that the customer acts in breach of contract, in particular defaults in payment despite a reasonable extension of the original term, we shall be entitled to take back the items delivered. This shall not apply if the customer has already filed a petition for the institution of insolvency proceedings or insolvency proceedings have been instituted, owing to which we are not permitted to immediately take back the items delivered. After taking back the delivered items, we shall be entitled to realize the same; the realization proceeds shall be set off against the customer's liabilities, less reasonable costs of the realization. The provisions relating to realization of the Insolvency Code (*Insolvenzordnung*) shall not thereby be affected.
- 10.2 The customer is obliged to handle the delivery item carefully. In particular, he is obliged to insure the same sufficiently at the reinstatement value at his expense against damage caused by fire, water and theft. If maintenance and inspection work is necessary, the customer shall carry out such work at his expense in good time.
- 10.3 The customer shall inform us in writing without undue delay of attachments and any other interference by third parties. The customer shall be liable to us for any court and out of court costs of any action which may be necessary pursuant to § 771 German Code of Civil Procedure (*ZPO*) (action in opposition to execution of a judgment, brought by a third party who claims title to the attached property), provided that we cannot obtain reimbursement for such costs from the defendant (third party).
- 10.4 The customer shall be entitled to resell the delivery item in the ordinary course of business; however, he herewith already assigns to us all claims to the amount of the invoice sum total (including value-added tax) accruing to him from the resale against his customers or third parties, irrespective of whether the delivery item has been resold without or after having been processed. The customer shall be authorized to collect this claim even after assignment. However, we shall be authorized to collect the claim ourselves if the customer does not perform his obligations to pay from the collected proceeds, defaults in payment or has filed a petition for the institution of insolvency proceedings or such a petition has been filed or payments have ceased. In such cases, we may demand that the customer immediately states which claims have been assigned and their debtors, furnishes all the information necessary for the collection, hands over the appurtenant documents and notifies the debtor (third party) of the assignment. However, it will not be possible for us to collect the claim if the Insolvency Code precludes this.
- 10.5 Any processing or transformation of the delivered item by the customer shall always be carried out on our behalf. If the delivered item is processed with other items not belonging to us, we shall acquire joint title to the new thing in the proportion of the value of the delivered thing to the other processed items at the time of the processing. In all other respects, the provisions applicable to the items delivered with a reservation shall also apply to the thing resulting from the processing.
- 10.6 If the items delivered by us are mixed with other items not belonging to us to form an integral part, we shall acquire joint title to the new thing in the proportion of the value of the goods delivered by us to the other mixed items at the time of the mixing. If the mixing is done in such a way that the customer's thing must be deemed to be the main thing, it is agreed that the customer will have transferred joint title to us proportionally. The customer shall hold the sole or joint title in safekeeping for us.
- 10.7 We undertake to release the securities to which we are entitled at the customer's request also to the extent that the value of our securities exceeds the claims to be secured by more than 20 %. Selection of the securities to be released shall be incumbent on us.
- 10.8 In the event that the delivered item is situated outside Germany, the following shall apply in derogation of Clause 10.1. - 10.7: If the delivery item was delivered prior to payment

of all amounts owed by customer under the contract, we shall retain title to the item until payment in full insofar as this is admissible under the law in the area of application of which the object of purchase is located. If this law does not permit the reservation of title, but allows us to reserve other rights to the delivery item, we may exercise all rights of this kind. The customer is obliged to assist us in any action to protect our title or the right to the object of purchase which replaces such title.

11. Order-related Manufacturing Facilities – Items to be poured – Items provided by the Customer – Execution Documents

- 11.1 Order-related manufacturing facilities such as designs, samples and master plates provided by the customer shall be forwarded to us without charge at the customer's risk. We shall only be obliged to check the conformity between the manufacturing facilities provided by the customer and the contractual specifications, or the drawings or samples provided to us, if expressly agreed on. We shall be entitled to modify manufacturing facilities provided by the customer if such modification is required on technical grounds or facilitates manufacturing without modifying the items to be manufactured.
- 11.2 The customer shall bear the costs required for necessary modifications of and maintenance work to be performed with regard to his manufacturing facilities. This shall also apply to the replacement of his manufacturing facilities, insofar as such replacement is due to the usual wear and tear, or if we are not responsible for the unsuitability of his manufacturing facilities (see § 11.3).
- 11.3 We will treat and store the manufacturing facilities with the same care that we usually employ in our own affairs. Therefore, we shall not be liable for the incidental loss or deterioration of the manufacturing facilities. We may return manufacturing facilities of the customer that we do not need any longer at the customer's expense and risk, or, if the customer does not meet our request for collection within a reasonable period of time, to keep the same at the customer's expense and destroy them after the expiry of a period of time of reasonable length and a corresponding warning.
- 11.4 Insofar as we manufacture or procure manufacturing facilities or designs at the customer's request, the customer shall reimburse us for any cost thereby incurred. If cost are not charged in full, the customer shall also bear the residual cost if he does not take delivery of such number of items as promised to him upon the conclusion of the contract. We reserve title to any designs or manufacturing facilities manufactured or procured by us; they will be used exclusively for goods delivered to the customer during the term of the contract. In the event that three years have passed since the last delivery, we shall not be obliged to keep said manufacturing facilities or designs any longer. If, in derogation of the above, the contracting parties agreed that the customer would become the owner of the facilities or designs, title shall pass to him upon payment of the purchase price. Delivery of the facilities and designs shall be replaced by our obligation to keep these items. The customer may terminate the deposit relationship two years following the passing of title at the earliest, unless otherwise agreed.
- 11.5 The materials to be provided by the customer shall be delivered in an excellent quality, including a reasonable quantity surcharge.
- 11.6 The customer undertakes to check any printed or execution documents submitted to him. The customer shall countersign and return the documents in case of approval. Any corrections must be clearly marked. The customer shall be responsible for any defects that are visible for the customer but were overlooked by him.

12. Industrial Property Rights

- 12.1 If deliveries violating industrial property rights of third parties are effected according to drawings or other information or manufacturing facilities of the customer, the customer shall release us from any claims of such third parties. The same shall apply to documents provided by the customer.
- 12.2 License claims of the customer, which are based on industrial property rights in designs submitted, or manufactured or procured on his behalf, as well as in manufacturing facilities shall be excluded insofar as we use these in conformity with the contract.
- 12.3 We reserve title to and the copyright in any outlines, drafts, drawings, etc. prepared by us unless otherwise agreed. These documents must be returned to us upon request, and copies of the same must be destroyed. A right of retention shall not insofar exist.
- 12.4 In the event of a violation of rights of third parties caused by the customer, the customer shall release us from any claims on first demand by third parties.

13. Release from Liability

- 13.1 The customer shall release us from any claims, particularly damage claims – including claims requiring the application of penal sanction (especially in the US and Canada) – based on goods packaged in our products including tobacco goods which are asserted against us by third parties including consumers (and their legal successors), irrespective of the legal basis. The same shall apply in the light of the fact that the consumption of tobacco goods is, in principle, injurious to health and/or has led (or could lead) to health impairment in the individual case, or that the use of goods contained in our packaging – including the use contrary to regulations – leads or has led to personal injury, property or other damage. The same shall apply to claims to execution based on goods contained in our packaging, on the basis of a ruling given in the US or Canada, or a country belonging neither to the EU nor to the European Economic Area, which are asserted against us in Germany, the US or another country... Our right to release shall cover reasonable attorney's fees and expenses incurred in connection with appeals filed by us against claims of the above kind.

14. Confidentiality

- 14.1 Either contracting party undertakes to use any of the documents made available to it (including designs, samples and data) as well as the knowledge obtained within the framework of business relations for the jointly pursued objectives only, and not to disclose the same to third parties. This shall particularly apply if the respective other contracting party has marked such documents or knowledge "confidential", or has an obvious interest in their not being disclosed.

15. Jurisdiction – Place of Performance

- 15.1 If the customer is a merchant, the place of jurisdiction shall be our registered office. However, we are entitled to sue the customer also at the court having jurisdiction over his registered office.
- 15.2 Unless otherwise follows from the confirmation of the order, the place of performance for our services shall be the place of our supplying factory. For financial obligations, the place of performance shall be our registered office.

16. Applicable Law – Severability

- 16.1 The legal relations between the contracting parties shall be exclusively governed by German law, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (UNCITRAL/CISG).
- 16.2 Should individual provisions of this contract or these general terms and conditions be invalid, the validity of the other provisions shall not thereby be affected.