

## GENERAL TERMS AND CONDITIONS OF SALE, DELIVERY, AND PERFORMANCE OF LENZING AG - DIVISION LENZING TECHNIK

### **1. Scope**

These General Terms and Conditions (hereinafter referred to as "GTC") shall apply to any and all deliveries of goods and the provision of services of whatever nature by Lenzing AG – Division Lenzing Technik (Lenzing, Commercial Register Number 96499 k), hereinafter referred to as "LT", even if no explicit reference is made to the said GTC. Any diverging or supplementary terms of the customer shall become part of a contract only subject to the explicit written consent of LT to the specific provisions.

### **2. Offer and conclusion of contract, cost estimates**

- 2.1. The offers of LT are without obligation unless explicitly designated as binding. The order of the customer shall be deemed accepted either upon written acknowledgement of order or tacitly (e.g. by actual delivery or performance), and thus a contract shall be formed. We reserve the right to prior sale. Guideline value estimates, budget value estimates, and any other cost estimates do not constitute offers by LT.
- 2.2. Cost estimates are made by LT to the best of our expert knowledge, however without assuming liability for their accuracy. In the event that costs increase by more than 15% after an order has been placed, LT will inform the customer forthwith. No separate notification shall be required in case of an unavoidable cost overrun of less than 15%, and any such costs can be invoiced to the customer. Unless otherwise agreed upon, any subsequent changes of an order or additional orders may give rise to invoicing at reasonable prices.
- 2.3. Cost estimates are made against payment.

### **3. Prices and terms of payment**

- 3.1. Prices are quoted by LT in Euros.
- 3.2. Generally, goods and services are invoiced according to the materials and working hours required, based on the hourly rates of LT in force at the respective time. In case of services being performed on Saturdays, Sundays, public holidays and outside normal working hours (38-hour week) LT shall be entitled to invoice overtime surcharges as agreed upon in the specific contract, in addition to the regular price agreed upon. If no overtime surcharge has been agreed upon in the specific contract a surcharge as set forth in section 10, sub-section 1, par. 1 of the Austrian Working Hours Act ("Arbeitszeitgesetz") will be invoiced which will be calculated on the basis of the standard hourly rate according to price list. The customer shall acknowledge the hours worked by submitting working hour certificates to the staff of LT, which shall also include any idle hours of the LT staff not to be attributed to LT. If the customer fails to acknowledge the hours worked without proper reason the records of LT shall be used as a basis of invoicing. The prices include the usual hand tools without any special equipment. Any travelling costs and expenses incurred in carrying out an order and any other related costs shall be borne by the customer in addition to the price agreed upon. In case of products, in particular filtration products, product prices will be charged.
- 3.3. If a fixed price is agreed upon in a specific contract it shall be binding no longer than up to the end of delivery of goods or provision of services agreed upon in the contract, and the customer shall pay all additional expenses incurred by LT due to circumstances not to be attributed to it (e.g. any subsequent modifications of the content or scope of performance; waiting times).
- 3.4. The prices and hourly rates are quoted exclusive of statutory turnover tax, taxes, fees, and any other public levies. The prices are based on costs current at the time of the first quotation. In case of an increase of costs up to the date of delivery, LT shall be entitled to adjust the prices accordingly.
- 3.5. The prices are "ex works" or "ex warehouse" of LT or FCA INCOTERMS and do not include the cost of transportation, transport insurance, packing, loading, customs duties, dismantling, return, and proper recycling and disposal, etc. unless otherwise agreed upon.
- 3.6. The risk (concerning price, time, applicable taxes, charges, etc.) of a subsequent change of law (e.g. environmental laws, tax laws, customs regulations) shall be borne by the customer.
- 3.7. In case of an order diverging from the overall offer LT reserves the right to adjust the price accordingly.
- 3.8. The purchase price or remuneration for work will be invoiced by LT and shall be received in the bank account of LT without any discount within 14 days from the date of invoice.
- 3.9. In case of part deliveries, including but not limited to orders to be executed over a period of more than one month, LT shall be entitled to submit invoices for deposits and monthly invoices (part invoices). Invoices for deposits and part invoices shall be due for payment without any discount immediately upon receipt. In case of payment by instalments being agreed upon, even failure to pay a single instalment or failure to pay the full amount thereof shall constitute default of payment. Upon default of payment the entire balance still outstanding shall fall due immediately. In case of default of payment LT shall be entitled to take the goods delivered subject to retention of title in its custody without rescinding the purchase contract until the entire claim has been met in full including any ancillary costs.
- 3.10. Cheques or bills of exchange will be accepted only on account of payment. Any and all expenses and interest incurred in this context shall be borne by the customer.
- 3.11. The customer may offset its claims against the claims of LT only subject to the prior written consent of LT. In particular, the customer shall not be entitled to withhold or offset any payment because of warranty claims or any other counterclaims.
- 3.12. Any discounts or bonuses granted under a specific contract shall be subject to timely receipt of payment in full.
- 3.13. Payment shall be deemed made on the day on which LT is in a position to dispose of the respective amount. If the deadlines for payment agreed upon are exceeded LT shall be entitled to claim default interest at the statutory rate of 9.2 percentage points above the base rate pursuant to section 456 of the Austrian Business Code ("UGB") without prejudice to any further rights to which it may be entitled.
- 3.14. If the customer is in default of payment or any other performance with respect to this transaction or any other transaction, LT shall be entitled without prejudice to any of its other rights.
  - 3.14.1. to defer performance of its own obligations until the said payment or performance has been effected, and to extend the term of delivery by a reasonable period;
  - 3.14.2. to demand immediate payment of any and all outstanding amounts receivable with respect to this transaction or any other transactions;
  - 3.14.3. to invoice pre-trial expenses, including but not limited to dunning charges and lawyers' fees.

#### **4. Cooperation of the customer**

- 4.1. The customer shall
  - 4.1.1. perform any preparatory work which may be required in an expert manner at its own expense and under its responsibility, and shall provide LT with any and all documents on hand in due time for carrying out the order (e.g. operator's logs and control books);
  - 4.1.2. secure the plant components in or on which work will take place and disconnect upstream and downstream components before LT begins to make deliveries or to perform services;
  - 4.1.3. to draw LT's attention to any possible dangers that may arise in connection with carrying out an order before and during work, provided that such dangers cannot be recognised by LT itself.
  - 4.1.4. LT may reject manpower or materials provided by the customer if there is a proper reason for doing so.
  - 4.1.5. The customer shall dispose properly at its own expense of any components which have been removed unless they become the property of LT under any agreement, as well as of any materials or consumables which are not needed and of any other waste.
- 4.2. If the customer fails to comply with its obligations under 4.1.1. or 4.1.2. or fails to perform the said obligations in due time and/or in an expert manner, LT shall be entitled to suspend or refuse the delivery of goods and/or provision of services, and to rescind the contract without granting a grace period.

#### **5. Periods and deadlines for delivery and performance**

- 5.1. LT shall be entitled to make part deliveries or provide part of services even in advance and to invoice such deliveries/services. In the event that delivery or performance on call has been agreed upon it shall be deemed called 1 year after the date of the order at the latest.
- 5.2. LT will comply with the periods and deadlines for delivery wherever possible. Unless it has been explicitly agreed upon that they shall be binding they are without obligation and shall be deemed to designate the expected date of provision and delivery to the customer. When a binding period of delivery and performance has been explicitly agreed upon in a specific contract it shall begin on the latest of the following dates:
  - a) the date of acknowledgement of order;
  - b) the date on which any and all technical and commercial requirements incumbent on the customer have been met;
  - c) the date on which LT receives a deposit or security to be provided by the customer prior to delivery or performance.
- 5.3. The customer shall obtain any licences or permits from third parties as required for building or installing plants or components. In the event that any such licences or permits are not obtained in due time the period of delivery or performance shall be extended accordingly.
- 5.4. In the event that liquidated damages (a stipulated penalty) for default of delivery have been agreed upon by the parties upon conclusion of a contract, the payment of this penalty shall be subject to the following regulation, and any departure from individual points of the said regulation shall not affect the remaining points thereof: A delay in performance provably due to the exclusive fault of LT shall give the customer the right to claim a stipulated penalty from the beginning of the third week after the default/delay has occurred (thus there is a 2 week period exempt from stipulated penalty). The said penalty shall be a maximum of 0.5 % per full week of delay, however not more than 5 % in total of the value of the part of the subject-matter delivery which cannot be used as a result of the delayed delivery of a relevant component, provided that the customer incurred a loss in this amount. Any further claim under the title of default shall be excluded.
- 5.5. If the customer fails to take delivery of the goods delivered according to contract at the place or on the date agreed upon in the contract, LT may either demand performance of the contract or rescind the contract after having granted a reasonable period for taking delivery of the goods, provided that the delay has not been caused by an act or omission of LT. In the event that the goods have been discarded, LT may store the goods at the cost and risk of the customer. Furthermore, LT may demand reimbursement of any and all justified expenses incurred by it in performance of the contract which are not included in the payments received.

#### **6. Passing of risk and place of performance**

- 6.1. The place of performance shall be the headquarters of Lenzing AG, Werkstrasse 2, 4860 Lenzing, Austria or the applicable place of business of Lenzing Technik. The right of use and the risk shall pass to the customer upon departure of the consignment from the factory or warehouse, irrespective of the pricing agreed upon for the consignment.
- 6.2. In case of services the place of performance shall be where the service is performed. The risk for a service (or part of a service) shall pass to the customer when it is provided.
- 6.3. In case of INCOTERMS being agreed they shall apply in the version current on the day of conclusion of the contract.

#### **7. Acceptance of the delivery or service**

- 7.1. The customer is obliged to accept the deliveries and services provided by LT. The customer shall make sure that the requirements for acceptance are present.
- 7.2. In the event that no acceptance tests are agreed upon, a delivery of goods or a service provided shall be deemed accepted by the customer unless the customer complains about a defect with LT in writing immediately after delivery or performance.
- 7.3. In the event that acceptance of a delivery or service is delayed without any fault on the part of LT, acceptance shall be deemed effected after 1 week from the notice of completion by LT.
- 7.4. Services and scheduled work shall be deemed accepted upon actual performance.
- 7.5. The customer shall be entitled to refuse acceptance only as long as any defects are present which prevent the proper use of goods delivered or services provided by LT.
- 7.6. Deliveries and services by LT are divisible. Part invoices may be issued in case of part deliveries.

#### **8. Retention of title**

- 8.1. Any and all goods delivered, the spare and replacement parts, as well as the accessories used shall remain the property of LT until the customer has made payment in full of any and all debts with LT, irrespective of the origin of any such debts.
- 8.2. Any treatment and processing of the goods supplied on the part of the customer shall take place for and on behalf of LT. In the event that the delivered goods are processed LT shall acquire co-ownership of the new product pro-rata to the value of the goods delivered by LT. The same shall apply if the goods delivered are processed, incorporated into or combined with other objects not owned by LT. In case of seizure or attachment of any goods subject to retention of title, the customer shall inform LT forthwith.
- 8.3. Reselling shall be permitted only subject to the consent of LT after having informed LT duly in advance, stating the name and accurate business address of the buyer. If LT gives its consent, the purchase price claim shall be deemed assigned to LT already at this point and LT shall be authorised at any time to inform the third-party debtor of the said assignment.

## **9. Force Majeure**

- 9.1. an act of God, including but not limited to, war, terrorism, riot, civil commotion, laws and other acts of government, cybercrime attacks and its consequences, malicious damage, breakdown of plant or machinery, natural disasters, extreme adverse weather conditions, default of suppliers or subcontractors, transport and operational disruptions, energy shortage, raw material shortage, delays in transportation and customs clearance, transport damage, strike, labour conflicts, fire, plague, epidemic, quarantine restriction, danger to the life and/or health of persons or perils of the sea and any other events which cannot be prevented by a party to the contract by reasonable means, shall excuse the affected party from performing its obligations under the contract for the duration of any such event of force majeure and for a reasonable period thereafter as required for removing its effects. This shall not apply to any obligation to make payments.
- 9.2. If LT is in a position to perform a specific service only partially due to an event of force majeure, LT shall be released from the respective obligations and the customer shall be released from its corresponding obligations pro-rata to the degree to which LT is prevented from performing its obligations. Any liability of LT for events of force majeure shall be excluded.

## **10. Warranty**

- 10.1. The warranty period shall be 12 months from acceptance according to clause 7 of these GTCs, however not longer than 24 months from the notice of completion by LT. For the purpose of the mere delivery of goods "notice of completion" shall be replaced with the word "delivery". These warranty periods for the delivery of goods and provision of services shall apply only in case of use by the customer in one-shift operation. In case of multi-shift operation the periods shall be reduced by half. This shall also apply to the period mentioned in point 10.2. The customer may assert warranty claims only subject to the condition that it shall complain with LT about any defects which have occurred in detail in writing without delay. In the complaint the defects shall be described in such specific detail that it is possible to assess the nature and cause thereof.
- 10.2. LT warrants that at the time of acceptance the object of delivery and performance of a service has all the characteristics agreed upon in the contract and which it is normally expected to have. This means that it shall be free from design defects, material defects and defects of workmanship. Any defects detected which are to be attributed to LT shall be removed by LT at its discretion either by repair or replacement, or LT shall grant a reasonable price reduction. In case of repair or replacement the warranty period shall be extended by the time between receipt of the complaint and notification of completion of warranty repairs. Any warranty, including but not limited to warranty for repaired and/or replaced components shall end 24 months after initial acceptance or delivery at the latest.
- 10.3. In particular the following defects shall be excluded from warranty: defects due to a specific instruction of the customer OR due to goods delivered or services performed by the customer and/or by third parties upon the customer's orders OR which are the result of normal wear and tear OR due to accidents, fire, force majeure and natural disasters, power surge or power outage, OR due to existing plant components (old plant and equipment) not included in the scope of the order, OR due to using the plant in violation of agreements OR in an inexpert manner for whatever reason (e.g. faulty maintenance, overload, etc.), or due to any intervention contrary to the instructions of LT (e.g. documentation, instructions for operation, etc.) or in violation of any directives of the authorities, OR due to the use of any materials, spare parts, etc. not supplied by LT.
- 10.4. The existence of any defects shall be proven by the customer. Section 924 of the Austrian Civil Code ("ABGB") on the burden of proof shall not apply. When asserting a claim for a defect the customer shall prove that none of the circumstances listed in point 10.3. exist.
- 10.5. Any warranty shall expire immediately if the customer or any third party makes any modifications to or performs any repairs of the goods delivered or plant and equipment which are the object of our services. LT shall be obliged to pay the costs of any removal of defects performed by the customer or by a third party upon the customer's instructions only subject to the prior written consent of LT.
- 10.6. Upon receipt of an agreed stipulated penalty for noncompliance with any guaranteed values, any and all disadvantages and consequential costs incurred by the customer with respect to the said noncompliance shall be deemed covered and compensated for.
- 10.7. Should it be established that LT was under no warranty obligation under these terms of warranty after LT has delivered any goods or performed any services to detect and remove a defect, the customer shall reimburse LT for the said goods or services at the applicable rates for materials and working hours.
- 10.8. If any goods are manufactured by LT on the basis of design instructions, drawings, models or any other specifications of the customer the liability of LT shall be limited to execution according to the said instructions, specifications, etc.
- 10.9. LT does not assume any liability for repairs or modifications or retrofitting of any existing goods or goods from third-party manufacturers, nor for any second hand goods supplied.
- 10.10. In the event that LT removes any defects or performs any other services outside warranty they will be invoiced according to the current price list of LT based on materials and working hours required. In case of provision of personnel the employees of LT shall work exclusively in the framework of the customer's organisation and under the technical and administrative supervision of the officers of the customer. LT warrants only that the personnel provided has the qualification agreed upon in the given case (e.g. completed apprenticeship as a locksmith, electrician, a degree in engineering). Any further liability on the part of LT (e.g. for any specific results of work of the personnel provided) is excluded by mutual agreement.
- 10.11. Section 933 b of the Austrian Civil Code (special recourse) shall not apply.
- 10.12. The claims under the title of warranty have been finally regulated in the present clause to the extent that this is permitted by law.

## **11. Liability**

- 11.1. In any case, liability shall become time-barred 6 months after the customer has obtained knowledge of a loss or damage and of the party that caused it. Any legal action to enforce a claim for damages must be taken within 18 months from delivery or completion of the service concerned.
- 11.2. In the event that a stipulated penalty of whatever nature has been agreed upon, e.g. for default or noncompliance with guaranteed values, this shall constitute liquidated damages, and upon payment thereof any and all claims of the customer (e.g. any claim for damages in excess of the penalty under the respective title) shall be deemed satisfied.
- 11.3. In case of provision of personnel the employees of LT shall work exclusively in the framework of the customer's organisation and under the technical and administrative supervision of the officers of the customer. LT warrants only that the personnel provided has the qualification agreed upon in the given case (e.g. completed apprenticeship as a locksmith, electrician, a degree in engineering). Any further liability on the part of LT (e.g. for any specific results of work of the personnel provided) is excluded by mutual agreement.
- 11.4. Any liability of LT for any indirect loss or damage or consequential loss or damage of whatever nature, such as loss or reduction of production, loss of productivity, loss of interest income, loss of property, loss due to third-party claims, as well as for loss of profit shall be excluded.
- 11.5. The preceding limitation of liability shall not apply to liability for death, bodily injury or damage to health.
- 11.6. In the event of noncompliance with any conditions of erection, assembly, commissioning and use (as contained e.g. in instructions for operation) or with any conditions of approval by the authorities, any claim for damages shall be excluded.

11.7. Unless a lower limit of liability has been agreed upon in a specific contract, the liability of LT shall be limited to the net contract value of a complete delivery (total order value) per customer even if the said delivery consists of several part deliveries, but in any case it shall not exceed a maximum of 0.5 million euros. The rights to claim damages have been finally regulated in this point to the extent that this is permitted by law.

## 12. Rescission of contract

- 12.1. The customer may rescind the contract in case of relevant default of delivery to be attributed at least to gross negligence on the part of LT after having granted a reasonable grace period. Notice of rescission shall be given by registered letter.
- 12.2. In the event that insolvency proceedings are initiated against a party to a contract or if a petition in bankruptcy is dismissed for lack of estate the other party may rescind the contract "to the extent that this is permitted by law" without granting a grace period. If the customer fails to comply with any material contractual obligations, e.g. failing to make payment in due time, LT may at its election either rescind the contract with immediate effect and without granting a grace period or suspend delivery/performance until any and all outstanding payments have been made in full.
- 12.3. Without prejudice to the claims for damages of LT including the claim for reimbursement of pre-trial expenses, any deliveries already made and any services already performed upon rescission of contract shall be invoiced according to contract and paid for by the customer. This shall also apply to deliveries and services not yet accepted by the customer, and to any preparatory work performed by LT.
- 12.4. Any other consequences of rescission shall be excluded to the extent permitted by law.

## 13. Asserting claims

- 13.1. Unless a shorter period is provided in the law or in these GTCs, all claims of the customer shall become time-barred 18 months after completion of delivery or provision of services at the latest.
- 13.2. If the customer is an entrepreneur it hereby explicitly waives the right to demand rescission of the contract on the ground that it has received consideration of less than half the value of what it has given and further waives avoiding the contract on the ground of error.

## 14. Secrecy, prohibition of imitation

- 14.1. The customer hereby irrevocably undertakes to observe secrecy with respect to any and all data and information becoming known to it in the course of execution of an order and any trade or business secrets becoming known to it otherwise on the basis of or in connection with its business relations or contacts with LT, and undertakes to refrain from disclosing any of the aforesaid to any third party in any way whatsoever without the written consent of LT.
- 14.2. The offers or project documents of LT including but not limited to plans, sketches, and technical documentation shall not be copied or disclosed to third parties without the consent of LT. LT may demand the return of any such documents at any time and they shall be returned to LT without delay when placing an order with another company.
- 14.3. The obligation of secrecy shall survive termination of the business relation with LT for a period of 5 years, or independently of any business relation it shall survive for a period of 5 years after LT has submitted an offer.
- 14.4. The customer undertakes to refrain from reproducing or having reproduced any goods or services provided by LT in their entirety or in part, and from supporting any third party in reproducing the products and from acquiring reproductions of the products from any third party and using any such reproductions.

## 15. Place of jurisdiction and choice of law

- 15.1. Any dispute arising out of a contract including any dispute on its existence or non-existence shall be settled exclusively by the court in Linz having subject matter jurisdiction. However, LT shall also be entitled to have recourse to the competent court having jurisdiction for the headquarters of the customer or to the Vienna International Arbitral Centre (Vienna Rules, maximum 3 arbitrators, language of arbitration: German).
- 15.2. The parties agree that any contract shall be subject to Austrian law. Application of the UN Convention on Contracts for the International Sale of Goods (also known as the Vienna Convention) shall be excluded.

## 16. Final provisions

- 16.1. Unless otherwise agreed upon, the customer shall not offset any of its counterclaims of whatever nature against the claims of LT.
- 16.2. LT may rely on subcontractors in performing contracts.
- 16.3. The export of goods under the respective contracts may be subject to an export licence e.g. due to their nature or intended use. If any products are intended to be exported, the customer shall obtain any and all permits and licences required under the Austrian Foreign Trade Act ("Aussenhandelsgesetz") and/or under the US Export Administration Regulation or under the law of any other country affected by or regulating any such export.
- 16.4. Should any provisions of these GTCs be or become invalid or unenforceable as a whole or in part for whatever reason this shall not affect the validity of the remaining provisions hereof. Both parties undertake to agree on a valid and enforceable provision coming as close as possible to the intended purpose of the invalid or unenforceable provision concerned.
- 16.5. Any minutes of negotiations shall be signed by the parties in order to become part of the respective contract. Any and all collateral agreements, modifications or amendments to a contract shall be valid only when executed in writing and signed by the parties. This shall also apply to any departure from the requirement of writing.