

# **General Terms and Conditions**

## **for the sale of goods and supplies of goods and services**

### **for the H. D. Lenzen GmbH & Co. KG**

#### **§ 1**

##### **Scope**

1. The following terms and conditions only apply vis-à-vis entrepreneurs as defined in sections 14, 310 German Civil Code [BGB].
2. The following terms and conditions apply to all our contracts, deliveries and other services, consulting and proposals, unless they are changed or excluded with our express written consent. They shall likewise apply even in the event that we perform the delivery/service without reservation in the knowledge of deviating conditions of our contractual partner. General terms and conditions of our contractual partner shall only apply if we confirm their application in writing.
3. Our terms and conditions also apply to all future contracts, deliveries and services, even if their text is not sent to our contractual partner again with our offer or our order confirmation.

#### **§ 2**

##### **Offers and conclusion of contracts**

1. Our offers are non-binding. Contracts and other agreements only become binding upon our written confirmation or upon our delivery/performance.
2. All agreements between us and our contractual partner must be set out in writing. Agreements made between our employees or representatives and our contractual partner at or after conclusion of the contract require our written confirmation to be valid; the power of representation of our employees and representatives is limited in this respect.
3. Commercial letters of confirmation from our contractual partner do not result in the conclusion of a contract if their contents deviate from our order and our other written declarations even if we do not object to such a letter.

#### **§ 3**

##### **Written form clause**

Insofar as written form is provided for in these terms and conditions, it may also be complied with by sending corresponding declarations by fax or e-mail. A written agreement shall also be deemed to have been concluded if we and our contractual partner make declarations in writing the contents of which correspond.

**§ 4****Prices, price increases and payment**

1. Our prices are stated in euros. Unless otherwise agreed, our contractual partner shall make all payments in euros.
2. All prices indicated are net prices. Value-added tax at the statutory rate on the day of our delivery/service will be added to such prices.
3. Our prices apply to delivery ex works plus packaging, freight, taxes, insurance, transport, letters of credit or other documents required for performance of the contract.
4. We reserve the right to deliver only concurrently in exchange for payment of the agreed prices. Otherwise, our invoices are to be paid within 30 days after delivery/service and invoice date without deduction.
5. We are entitled to interest in the amount of 9% above the respective base interest rate from the due date without further reminder. This is without prejudice to further claims, in particular in the event of default by our contractual partner.
6. The contractual partner may not assert a right of offset with regard to claims that we dispute or that have not been finally determined by a court unless the claim to be offset has a mutual relationship to our claim. The assertion of a right of retention by our contractual partner due to claims which are not based on the same contractual relationship is prohibited if such claims are not recognised by us and have not been finally determined by a court.
7. If one of the events described below occurs, or if such an event had already occurred at the time the contract was concluded, becomes known to us only after the conclusion of the contract, we may demand advance payment in the amount of the agreed price by our contractual partner, furthermore revoke agreed or granted payment terms or return current bills of exchange and demand immediate payment. This applies to the following events:
  - Our contractual partner applies for the opening of judicial or extra-judicial insolvency or composition proceedings or judicial or extra-judicial insolvency or composition proceedings are opened against the assets of our contractual partner or the opening of such proceedings is rejected for lack of assets.
  - A written credit report from a bank or credit agency is available from which the credit unworthiness of our contractual partner (e.g. Creditreform's creditworthiness index > 3.0) or a significant deterioration of their financial circumstances results or a cheque or bill of exchange accepted by us from our contractual partner is not honoured or is protested.

- Our contractual partner is in default of payment within the scope of another transaction with us.
8. If our contractual partner does not comply with our legitimate request for advance payments within a reasonable grace period set by us, although we have declared to them that we will refuse acceptance of further services by them after expiry of the period, we shall be entitled to withdraw from the contract and demand damages in lieu of performance, however only with regard to the part of the contract not yet performed by us.

## § 5

### Passage of risk, transport and delivery, packaging, insurance

1. In any case, irrespective of the place of dispatch, the risk shall pass to our customer when the goods are dispatched, even if, in exceptional cases, carriage-paid delivery, delivery free building site or free warehouse have been agreed. This also applies if we have to provide further services (e.g. assembly, installation, commissioning) on the premises of our contractual partner in addition to delivery. However, this does not apply in cases in which we transport goods using our own employees or in which our employees are at fault with regard to the loss of or damage to the goods.
2. If packaging or shipping instructions of our contractual partner are missing or if a deviation from them seems necessary, we will ship to our best discretion, without obligation for the cheapest or fastest shipment.
3. Only at the request and expense of our contractual partner do we insure the delivery item against any risk desired and insurable by our contractual partner, in particular against theft and transport damage.

Cases of transport damage must be reported to us immediately; furthermore, the consignee must ensure on delivery that the corresponding claims and reservations are reported to the carrier in good time.

4. If dispatch is delayed at the request of our contractual partner for reasons for which our contractual partner is responsible, or for reasons for which we are not responsible, the risk shall pass to our contractual partner upon readiness for dispatch and corresponding notification by us. In this case, the goods will be stored at the expense and risk of our contractual partner.
5. We are entitled to make partial deliveries and to invoice them separately, provided that partial deliveries are not unreasonable or unusable for our contractual partner.

## § 6

### Delivery and performance periods, purchase on call

1. Delivery and performance periods, as well as delivery and performance dates, are only binding if confirmed by us in writing. A delivery or performance period begins at the end of the day on which agreement is reached

on all details of the order, at the earliest upon acceptance of the order by us, but not before submission of all technical and design details and provision of all documents, facilities, letters of credit, etc. to be procured by our contractual partner and receipt of any down payments to be made by our contractual partner.

Agreed deadlines and dates, as well as the delivery time/delivery period applicable without such an agreement, shall be postponed accordingly if the above-mentioned requirements are not met. Our contractual partner shall bear the burden of proof that they have fulfilled all necessary conditions, provided the necessary documents, plans and information, etc.

2. Agreed deadlines and dates, as well as the delivery time/delivery period applicable without such an agreement, shall be extended or postponed appropriately - even in the event of an ongoing default - in the event of a force majeure event and unforeseen obstacles occurring after conclusion of the contract for which we are not responsible, insofar as such obstacles are demonstrably of considerable influence on the delivery or performance. In particular, our delivery obligation is subject to the reservation of conforming and timely delivery by our suppliers, unless we are responsible for non-conforming or delayed delivery.

Als von uns nicht zu vertretende höhere Gewalt im Sinne dieses Absatzes gelten auf jeden Fall auch Streiks und Aussperrungen.

Strikes and lock-outs shall in any case also be deemed to comprise force majeure events within the meaning of this paragraph for which we are not responsible.

The foregoing provisions shall also apply if delaying circumstances occur at our suppliers or their sub-suppliers. If delays as referred to above last for more than 3 months, our contractual partner is entitled to withdraw from the contract after setting a further, at least 4-week, period for cure to the exclusion of any further claims. The right of withdrawal is limited to that part of the contract which has not yet been fulfilled unless our contractual partner no longer has an interest in the part of the contract which has been fulfilled.

3. Agreed periods and dates, as well as the delivery time/delivery period applicable without such an agreement, shall be extended or postponed by the period of time by which our contractual partner is in default of their obligations including without the scope of an ongoing business relationship including other contracts.
4. A delivery deadline or delivery date shall be deemed to have been met if the goods are received by our contractual partner or the agreed place of receipt on time or, in cases in which the goods are not to be dispatched or cannot yet be dispatched for reasons for which our contractual partner is responsible, if the goods are ready for dispatch and if we sent our notice that they are ready for dispatch by the date or expiry of the deadline.
5. Unless otherwise agreed for delivery contracts on call, the acceptance period ends 9 months after conclusion of the contract, whereby our contractual partner must call off and accept the goods in approximately equal monthly quantities.

If and to the extent that our contractual partner does not call off and accept the goods within the aforementioned period of one month, we shall be free to deliver completed deliveries without further notice or to store them at the expense of our contractual partner. In this case, we shall also be entitled to grant our contractual

partner a grace period for acceptance, together with the threat that we will refuse acceptance of the goods in the event that the deadline expires without result. If the grace period then expires without result, we shall be entitled to withdraw from the contract or demand damages in lieu of performance, but only with regard to the part of the contract not yet performed by us, subject to termination of our delivery obligation.

## **§ 7**

### **Election of rights after setting a deadline for cure**

In all cases in which our contractual partner has set a deadline for us to cure a defect due to failure to deliver or an improper delivery and this deadline has expired, we shall be entitled to demand that our contractual partner state within a reasonable period of time whether they will continue to assert their claim for performance/cure despite the expiry of the deadline or whether they will assert other rights which they are entitled to elect. If our contractual partner does not make such a statement within the reasonable period of time set to them, their claim for performance/cure lapses. If our contractual partner notifies us within the reasonable period of time referred to above that they continue to demand performance/cure, they are at liberty to set a new period of time for this and to avail themselves of their rights upon its expiry without results.

## **§ 8**

### **Default, exclusion of the obligation to perform**

If we are in default of delivery or if our obligation to perform is excused according to section 275 BGB, we shall only be liable for damages under the conditions and to the extent provided in Section 13.4 of these terms and conditions, subject however to the following additional provisions:

1. If we and/or our vicarious agents are merely guilty of simple negligence, our contractual partner's claims for damages are excluded.
2. In the event of our default, our contractual partner shall only be entitled to damages in lieu performance if they have previously granted us a reasonable grace period of at least 4 weeks for delivery, whereby they have the right to grant us a reasonable grace period of less than 4 weeks, insofar as in a grace period of at least 4 weeks would be unreasonable for our contractual partner in a specific case.
3. A right of withdrawal to which our contractual partner is entitled, and a claim for damages to which our contractual partner is entitled, are fundamentally limited to that part of the contract which has not yet been fulfilled, unless our contractual partner has no reasonable interest in the part of the contract which has been fulfilled.
4. Claims for damages against us due to delay or exclusion of the obligation to perform in accordance with section 275 BGB shall become statute-barred one year after the beginning of the statutory limitation period.

5. The foregoing provisions shall not apply if the damage relates to injury to the life, limb or health of our contractual partner or if the damage is based on an intentional or grossly negligent breach of duty by us, one of our legal representatives or vicarious agents; furthermore, in the event of default, it shall not apply if a fixed-date purchase has been agreed.

## § 9

### **Default in acceptance by our contractual partner**

1. If our contractual partner is in default of acceptance of our deliveries or services in whole or in part, our claim to payment for the corresponding delivery or service shall become due immediately. Furthermore, in this case we shall have the right, after expiry of a reasonable grace period set by us - including the threat that we will refuse acceptance of our delivery or service by the contractual partner in the event that the grace period expires - without results, either to withdraw from the contract or to demand damages in lieu of performance, but only with regard to the part of the contract not yet performed by us.

Our statutory rights in the event of default in acceptance by our contractual partner shall remain unaffected.

2. Our contractual partner shall reimburse us our storage costs, warehouse rental and insurance costs for goods that are ready for acceptance but that are not accepted. However, we are not obliged to insure stored goods.
3. If delivery is delayed at the request of our contractual partner or if they are in default of acceptance, we may charge storage costs of 0.2% of the invoice amount for each month of delay or part thereof, however, a maximum of 5% of the invoice amount after expiry of one month from dispatch of the notification of our readiness to deliver. However, we reserve the right to claim higher damages actually incurred if our contractual partner is unable to prove that they are not at fault.

## § 10

### **Cancellation of orders, return of goods, damages in lieu of performance**

If, at the request of our contractual partner, we agree to the cancellation of an order placed or if we take back goods delivered by us for reasons for which we are not responsible, releasing the contractual partner from their obligation to accept and pay, or if we are entitled to claim damages in lieu of performance, we can demand 15% of the share of the contractual price corresponding to the affected part of the delivery or service item as compensation without need to submit verification, whereby our contractual partner reserves the right to prove we have incurred no damages or that our damages are lower. This is without prejudice to our right to claim higher actual damages.

## § 11

### Nature of the goods

1. Our supplies and services comply with the applicable laws and regulations of the European Union and the Federal Republic of Germany, e.g. the Reach Regulation (Regulation EC No. 1907/2006), the law on the return and environmentally compatible disposal of electrical and electronic equipment (ElektroG) as national implementation of EC Directives 2002/95 and EC Directive 2002/96, and the End-of-Life Vehicles Act as national implementation of EC Directive 2000/52.

We will immediately inform our contractual partner about relevant changes in the goods, their ability for delivery, possible uses or quality caused by changes in the laws or regulations, in particular by the Reach regulation, and in individual cases we will coordinate suitable measures with our contractual partner.

2. Our information about a product and the purpose of use, dimensions, weights, utility value or other properties, whether contained in brochures, price lists, descriptions, illustrations, drawings, sketches, lists or other files, are only approximate values customary in the industry. They merely describe our products and are only binding if expressly confirmed by us.
3. Weights are determined by us on calibrated scales and then used as the basis for our invoicing. The weight logs will be provided to our contractual partner as verification upon request. The net weight shown includes commercially available packaging materials - such as steel strapping, sheet metal covers and protective wrappings - and not separately calculated intermediate and underlay timber.
4. We reserve the right to make deviations in quality, dimensions, weights and other properties provided that the usability of the delivered goods is not impaired and the deviations are not unreasonable for our contractual partner for other reasons.

## § 12

### Acceptance

If acceptance of our services is required in order for payment to us to fall due, acceptance can take place in any form provided for by law. In addition, our services shall be deemed to have been accepted 12 working days after receipt of our written notification of completion by our contractual partner, unless our contractual partner declares to us in writing that they refuse acceptance within this period.

Furthermore, acceptance shall be deemed to have taken place if our contractual partner has placed our service into use and 12 working days have elapsed since the start of use without our contractual partner having declared to us in writing that they refuse acceptance.

**§ 13****Liability for defects and damages**

1. In the case of purchase contracts and contracts for work and services, claims asserted by our contractual partner on account of defects in goods require that they have properly complied with their obligations to inspect and give notice of defects as provided for section 377 German Commercial Code [HGB], whereby notice of defects must be given in writing. If our contractual partner fails to make a proper and timely complaint, they can no longer assert claims on account of the circumstances that should have been reported unless we have acted maliciously. If we negotiate concerning a notification of defects, or if we carry out tests or inspections in response to a notification of defects, any legitimate objection that the notification of defects was/is late, unsatisfactory or unfounded shall in no case lapse as a result.
2. In the case of purchase contracts and contracts for work and services, our contractual partner must make a sufficient quantity of parts which they consider to be defective available to us or third parties for inspection by us or third parties in a timely manner on request, whereby we shall bear the costs of shipment.
3. The rights of our contractual partner due to defects in delivered items or services rendered shall be determined in accordance with the statutory provisions with the proviso that our contractual partner must grant us a reasonable period for cure of at least 4 weeks, whereby they reserve the right to grant us a shorter period in individual cases if a period of at least 4 weeks for cure would be unreasonable for them to accept.

Our contractual partner's claims for damages related to defects in the supply of goods or services are limited to the extent provided below in paragraph 4.

4. 4.1 Our liability for damages resulting from injury to life, limb or health based on a culpable breach of duty on our part is neither excluded nor limited.

We are only liable for other damages incurred by our contractual partner if they are based on an intentional or grossly negligent breach of duty by us, one of our legal representatives or vicarious agents.

If we have caused the damage as a result of simple negligence, we shall only be liable in the event of a breach of material contractual obligations, limited to reasonably foreseeable damage typical for the contract.

- 4.2 In all other cases, claims for damages against us for breach of duty, tort or for other legal reasons are excluded.
- 4.3 The foregoing limitations and exclusions of liability do not apply in the case of failure to provide agreed characteristics and qualities or in the case of guarantees if and to the extent that the agreement or



guarantee had the purpose of protecting our contractual partner from damages that were not incurred directly by the supplied goods and services themselves.

4.4 The foregoing exclusions of liability also apply in any case to consequential damages and to claims by our contractual partner for reimbursement of expenses.

4.5 Insofar as our liability is excluded or limited, this also applies to the personal liability of our employees, workers, staff and vicarious agents.

5. If a complaint by our contractual partner proves unjustified, our contractual partner must reimburse us for all necessary and reasonable expenses incurred by us as a result of the complaint.

6. The warranty period for purchase and work and materials contracts is two years from the date of passage of risk and, for used goods, one year from the date of passage of risk.

In the case of contracts for work and services, the warranty period shall be two years from the date of acceptance, whether formal or implied.

#### **§ 14**

##### **Manufacturer liability**

Our contractual partner shall indemnify us against all claims for damages asserted against us by third parties on the basis of the regulations concerning tortious acts, on product liability or by virtue of other regulations due to defects or deficiencies in the goods manufactured or delivered by us or our contractual partner, insofar as such claims would also be justified against our contractual partner or are no longer justified solely due to the statute of limitations which has since lapsed. Subject to the foregoing conditions, our contractual partner must also indemnify us from the costs of legal disputes that are brought against us due to such claims.

In the event that claims asserted are also justified against us, we have a pro rata claim for indemnification against our contractual partner, the scope and amount of which is governed by section 254 BGB.

Our indemnification obligations and liability for damages pursuant to sections 437 (3), 445a, 478, 634 (4) BGB shall remain unaffected by the above provisions, but shall only apply to the extent provided in Section 13.4 of these Terms and Conditions.

#### **§ 15**

##### **Retention of title**

1. Until all claims to which we are entitled now or in the future against our contractual partner have been satisfied, our contractual partner shall grant us the following securities, which we shall release on request if their nominal

value exceeds our claims by more than 20% on a sustained basis:

Goods that have been delivered remain our property.

Processing or alteration shall always take place for us as the manufacturer, but without any obligation on our part. If the goods delivered by us are processed with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the invoice value of the goods delivered by us to the invoice value of the other goods used at the time of processing.

If our goods are combined or mixed with other movable objects to form a single object, and if the other object is to be regarded as the main object, our contractual partner shall transfer co-ownership to us pro rata to the extent that such main object belongs to them.

Any transfer necessary for the acquisition of ownership or co-ownership by us will be replaced by the agreement already now made that our contractual partner will keep the item in safe custody for us like a borrower or, if they do not own the item themselves, replace the transfer already now by assigning to us the claim for restitution against the owner.

Items to which we are entitled to (co-) ownership in accordance with the above provisions are hereinafter referred to as goods subject retained title.

2. Our contractual partner is entitled to sell goods subject to retained title in the ordinary course of business or to combine, process or mix them with objects of others. The claims arising from the sale, combination, processing or mixing shall already now be assigned to us by our contractual partner in whole or in part in the ratio in which we are entitled to co-ownership of the sold, combined, processed or mixed object. If such claims are included in current invoices, the assignment shall also include all receivables. The assignment takes place with priority over the rest.

Subject to our right of revocation, we authorize our contractual partner to collect the assigned claims. Our contractual partner must transfer amounts collected to us immediately, insofar and as soon as our claims are due. Insofar as our claims are not yet due, the amounts collected are to be recorded separately by our contractual partner.

This is without prejudice to our right to collect such claims ourselves. However, we undertake not to collect the claims as long as our contractual partner meets their payment obligations from the proceeds collected, is not in default of payment and, in particular, no application for the opening of insolvency or composition proceedings has been filed or payments have not been suspended.

At our request, our contractual partner is obliged to inform us of the assigned claims and their debtors, to hand over the associated documents and to provide us with all information required for collection. If we are entitled to collect the claims, our contractual partner is also obliged to notify the debtors of the assignment, whereby we are also entitled to do so ourselves.

Upon cessation of payments, application for or opening of insolvency proceedings, judicial or extra-judicial composition proceedings, the rights of our contractual partner to resell, process, combine, mix and authorize collection of the assigned claims shall expire even without our revocation.

3. Our contractual partner must inform us immediately of any third party claims asserted against goods subject to retained title and to the assigned claims. Any costs of interventions or their defence shall be borne by our contractual partner.
4. Our contractual partner is obliged to treat goods subject to retained title with care, in particular to insure them sufficiently at replacement value at their own expense against fire, water and theft.
5. In the event of breach of contract by our contractual partner - in particular default in payment - we shall be entitled to take back goods subject to retained title at the expense of our contractual partner or to demand assignment of our contractual partner's claims for restitution against third parties without having to declare our withdrawal from the contract beforehand or at the same time. In particular, taking back or seizure of the reserved goods by us does not constitute a withdrawal from the contract, unless we have expressly declared this in writing.
6. Should our retention of title lose its validity upon delivery abroad or for other reasons, or should we lose ownership of the goods subject to retained title for reasons of any kind, our contractual partner is obliged to immediately provide us with other security for the goods subject to retained title, or other security for our claims, that is effective under the law applicable to the place where the goods are to remain as intended and comes as close as possible to the retention of title under German law.

## § 16

### **Ownership of documents, confidentiality**

1. We are entitled to unrestricted property rights and copyrights in cost estimates, calculations, drawings, drafts, forms, samples, models, copies, tools, simulations and other documents or data which the customer has received directly from us or from third parties at our request.  
A right of retention of such items by our contractual partner is excluded.
2. The contracting parties mutually undertake to treat all commercial or technical details which have become known to them within the scope of their cooperation that are not public knowledge as their own business secrets and to maintain absolute confidentiality vis-à-vis third parties. The contracting parties may only advertise their business relationship with the prior written consent of the other party. For each case of culpable infringement of the aforementioned obligations, the contracting parties mutually agree to payment of a contractual penalty in the amount of € 6,000.00 for each individual case.

**§ 17****Industrial property rights**

1. If the goods are to be manufactured according to drawings, samples or other information provided by our contractual partner, our contractual partner shall be responsible for ensuring that any rights of third parties, in particular patents, utility models, other industrial property rights and copyrights are not infringed by such activities. Our contractual partner shall indemnify us against claims by third parties arising from any infringement of such rights. In addition, our contractual partner shall bear all costs incurred by us as a result of third parties asserting the infringement of such rights and our defence against such claims.
2. Should results, solutions or techniques arise in the course of our development work which are patentable in any way, we are the sole owners of the resulting property rights, copyrights and rights of use and we reserve the right to file the corresponding property right applications in our own name and for our own name.

**§ 18****Place of performance, place of jurisdiction, applicable law**

1. The place of performance and exclusive place of jurisdiction for deliveries, services and payments including actions on cheques and bills of exchange as well as all disputes arising between the parties is Hagen/Westphalia. However, we have the right to sue our contractual partner before any other court with jurisdiction in accordance with sections 12 et seq. German Code of Civil Procedure [ZPO].
2. The business relationship between us and our contractual partner shall be governed exclusively by the law applicable in the Federal Republic of Germany to the exclusion of international sales law, in particular the UN Convention on Contracts for the International Sale of Goods, and other international agreements for the standardization of the sales law..