

General Terms of Purchasing
Lebbing engineering & consulting GmbH
Status 11 November 2014

I. General provisions / Scope

1. The present General Terms of Purchasing apply to all business relationships with business partners and suppliers (hereinafter referred to as "Sellers"). They only apply if the Seller is an entrepreneur (Sec. 14 BGB [German Civil Code]), a legal entity of public law or public-law fund assets.
2. The General Terms of Purchasing apply in particular to contracts for the sale and/or delivery of movable objects (hereinafter also referred to as "Goods"), regardless of whether the Seller manufactures the Goods directly or purchases them from suppliers (Sec. 433, 651 BGB).
3. These General Terms of Purchasing apply exclusively. Deviating, contrary or supplementary general terms and conditions of the Seller shall only apply as part of the contract if and insofar as the company Lebbing engineering & consulting GmbH (hereinafter referred to as "LEC") has expressly agreed to their applicability in writing. This requirement of agreement shall apply in all cases, for example also if LEC accepts the deliveries from the Seller without reservations, in awareness of the Seller's general terms and conditions.

II. Acceptance of orders

1. Orders shall only be binding if these are placed or confirmed in writing by LEC. The Seller is obligated to confirm orders from LEC in writing within a period of three days upon receipt or in particular, by shipping the Goods without reservations.
2. The acceptance and fulfilment of LEC's order shall be understood as the Seller's agreement to the General Terms of Purchasing. Should the prices have not been agreed in advance in special cases, these shall be stated bindingly on the order acceptance or order confirmation. LEC reserves the right of revocation and withdrawal for such a case.

III. Prices and terms of payment

1. All agreed prices are understood as fixed prices including packaging, customs and transport, respectively including the statutory value added tax, unless stated differently in the order. Agreements on the place of fulfilment shall not be affected by the kind of the pricing.
2. The agreed price shall become due for payment within 30 calendar days as of the complete delivery and performance (including any possibly agreed acceptance), and following the receipt of a proper invoice and complete shipment papers.
3. Payments from LEC shall not be construed as any acknowledgement that the performance conformed to the contract or that the invoice was issued properly.

4. LEC shall be entitled to the rights of set-off and withholding, and to the defence of lack of performance of the contract to the statutory extent. LEC shall have the right in particular to withhold due payments for as long as LEC still holds claims against the Seller for incomplete or deficient performances.
5. The Seller shall have a right of set-off or withholding only in respect of counterclaims found valid by final and absolute judgment or uncontested counterclaims.

IV. Object of delivery

1. The Seller shall observe all official and legal requirements relating to the Goods, in particular all necessary measures of accident prevention and environmental protection, as well as all measures for compliance with safety regulations. If it is known to the Seller that the Goods are intended for foreign countries, this provision shall also apply to observation of the official and legal requirements applicable in the respective country.
2. The Goods must conform to the present state of the art according to their purpose for use. If the Seller intends to deviate from this standard in an individual case, it must obtain LEC's prior confirmation in the written form for this purpose. The Seller's obligation to deliver Goods free from defects shall not be affected thereby.
3. Applicable safety and health requirements shall be strictly observed in the planning and assembly of components and machinery.
4. The scope of delivery includes all required documentation, declarations, tests, certificates, and labelling. Declarations of conformity shall be included in the delivery of all safety components according to EC Directive 2006/42/EG. Manufacturer declarations must be included in the scope of delivery for machinery.
5. The following applies to the construction of switchgear, components and machinery:
 - 5.1 The Seller shall accept full responsibility for the layout of the object of delivery. LEC shall provide all required information and necessary data to the Seller on its request.
 - 5.2 Any components not manufactured directly by the Seller shall be accepted only if these have been approved by LEC in writing beforehand.
 - 5.3 The colour of the object of delivery shall be supplied according to LEC's request, unless agreed differently.
 - 5.4 The Seller may only grant subcontracts for the complete or major part of the manufacturing scope with the prior written approval from LEC.

V. Delivery

1. The delivery period stated by LEC in the order shall be binding. If the period is stated in calendar weeks, the delivery must be completed

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- at the latest by 3:00 p.m. on the last working day of the confirmed week.
- Deliveries before the agreed date and partial deliveries may only be made with LEC's approval, which shall be obtained beforehand. The expense incurred for this purpose shall be borne by the Seller, unless LEC has requested the early delivery and is willing to bear the additional costs.
 - The Seller is obligated to inform LEC immediately in writing if – for whichever reasons – it cannot meet the agreed delivery periods. If delivery dates are not observed by the Seller, it shall be liable in accordance with the statutory provisions. If contract penalties have been agreed, LEC shall retain the right to assert damages in excess thereof.
 - The performance of the delivery is subject to the INCOTERMS of the International Chamber of Commerce in the version valid on the conclusion of the contract.
 - The Goods shall be delivered DDP to the place specified in the order. If the place of destination is not defined and if nothing else is agreed, the delivery shall be made to the business site in Bocholt. The respective place of destination shall also be the place of fulfilment.
 - The risk of accidental loss and accidental deterioration of the Goods shall transfer to LEC upon handover at the place of fulfilment. If an acceptance is agreed, it shall be decisive for the transfer of risk, whereas the provisions of the law governing contracts for work and services shall apply accordingly.
- VI. Freight and packaging**
- All shipping documents and waybills shall be prepared by the Seller. The costs for common packaging material shall be borne by the Seller, unless agreed otherwise by contract.
 - The individual weights and the custom tariff codes of the Goods shall be stated on the shipping documents. In case of storage or call-off orders, the Goods shall be stored and insured properly.
 - All papers, certificates and forms, such as invoices or delivery slips, shall be handed over to LEC in proper execution.
 - The complete documentation pursuant to EN ISO 12100 shall be sent to LEC in separate mail.
 - If the preparation of waybills is deficient, the Seller shall be liable for any incurred consequential costs. The Seller is obligated to notify of any shipment by way of a shipment notification.
If important information is missing from the shipment notification, such as the order number, department, subject, comment and place of receipt, the Seller shall be liable.
- VII. Deficient delivery**
- The statutory provisions apply, unless provided otherwise hereinafter, with regard to the rights of LEC in case of material and legal defects on the Goods (including false and short delivery as well as improper installation, deficient installation, operating or handling instructions), and with regard to any other breaches of duty by the Seller.
 - In accordance with the statutory provisions, the Seller shall be liable in particular, for the Goods having the agreed upon characteristics on the transfer of risk to LEC. As agreement on the characteristics, the product descriptions shall apply respectively, which – in particular, through designation or reference in the order from LEC – are the object of the respective contract or which have been made part of this contract in the same way as these General Terms of Purchasing. In this respect, it makes no difference whether the product description is provided by LEC, the Seller or the manufacturer.
 - In deviation from Sec. 442 para. 1, sent. 2 BGB, LEC shall be entitled to claims of defects without limitation, even if LEC has not taken notice of the defect on the conclusion of the contract in consequence of gross negligence.
 - Regarding the obligation of an entrepreneur for inspection and notification of defects, the statutory provisions shall apply according to the following stipulation: LEC's inspection obligation is limited to defects that are visibly noticeable during an incoming goods inspection conducted by LEC, as an inspection of the exterior including the delivery papers, and such that are visibly noticeable during a quality control conducted by LEC as random testing (e.g. transport damages, false and short deliveries). Insofar as an acceptance is agreed, there is no obligation to conduct an inspection. For the rest, the inspection obligation shall be determined by the extent to which an inspection is warranted, in consideration of the circumstances of the individual case according to the proper business practice.
LEC's obligation to notify of defects discovered at a later time shall remain unaffected. In all cases, a claim of defects by LEC (notice of defects) shall be deemed made without undue delay and on time, if it is received by the Seller within ten working days following the receipt of the Goods.
 - The costs expended by the Seller for the purpose of testing and reworking (including any potential deinstallation and installation costs) shall be borne by the Seller, even if it is established that no defect was present in fact. LEC's liability for damage compensation in case of an unjustified claim for the repair of defects shall remain unaffected; to this end, LEC shall be liable only if LEC has recognised or failed to recognise in gross negligence that no defect was present.
 - If the Seller does not fulfil its obligation for subsequent fulfilment – at LEC's discretion to be performed as either the repair of the defect (reworking) or delivery of an object free from defects (replacement delivery) – within an appropriate period set by LEC, LEC may repair the defect on its own and demand compensation from the Seller for any expenses required for this purpose or demand an accordant advance payment. If the subsequent fulfilment by the Seller has failed or if such is unacceptable for

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- LEC (e.g. due to particular urgency, risk to operating safety or impending occurrence of unreasonable damages), setting of a deadline shall not be required; LEC shall inform the Seller immediately and if possible, in advance of such circumstances.
7. For the rest, in case of a material or legal defect, LEC shall be entitled to a reduction of the purchase price or withdrawal from the contract pursuant to the statutory provisions. Furthermore, LEC shall have a right to compensation of damages and expenses pursuant to the statutory provisions.
 8. In addition, the Seller guarantees that the object of delivery complies with the current legal provisions, the regulations and directives of authorities and professional associations, as well as to LEC's drawings and specifications.
 9. For all deliveries and performances – which also include the deliveries and performances of third parties – the Seller shall have to ensure within the scope of its possibilities that it uses environmentally friendly products and processes.
 10. The Seller guarantees the environmental safety of all delivered products, including the packaging material. On request by LEC, the Seller shall provide a certificate of characteristics for all delivered products and their packaging materials.
 11. Should a breach of contract arise due to defects, in particular through non-achievement of required data, these defects shall be repaired by the Seller directly and free of charge, whereas also free of incidental charges. The necessary measures shall be agreed upon with LEC. Statutory claims shall not be affected thereby, in particular not the right to withdrawal from the contract, reduction and/or damage compensation.
 12. If the Seller does not fulfil its warranty obligation within a period agreed beforehand, LEC may have the necessary measures implemented with the aid of third parties on cost and risk of the Seller.
 13. Unless agreed otherwise, the warranty period shall end 30 months after acceptance of the object of delivery by LEC or following the handover to third parties specified by LEC.

VIII. Confidentiality and proprietary rights of third parties

1. LEC reserves its property and copyrights to illustrations, plans, drawings, calculations, implementation instructions, product descriptions and other documents. Documents of this kind shall be used exclusively for the contractual performance and be returned to LEC upon completion of the contract. The documents shall be kept secret from third parties, specifically also beyond the end of the contract. The confidentiality obligation shall expire only if and insofar as the knowledge contained in the provided documents has become generally known.

2. The foregoing provision shall apply accordingly to substances and materials (e.g. software, finished and semi-finished products) as well as tools, samples, models and other objects that LEC makes available to the Seller for manufacturing. Objects of this kind – for as long as they are not processed – shall be retained separately and be insured for destruction and loss to appropriate extent at the Seller's expense.
3. Any processing, mixing or combination (further processing) of the provided objects, which is conducted by the Seller, shall be on behalf of LEC. The same applies to further processing of the delivered Goods, which is conducted by LEC, so that LEC shall be deemed the manufacturer and obtain ownership of the product at the latest upon the further processing in accordance with the statutory provisions.
4. The ownership of the Goods shall transfer mandatorily to LEC and irrespective of the payment of the price. If, in individual cases, LEC accepts an offer by the Seller for the transfer of ownership, however, which is conditional on the purchase price payment, the Seller's retention of title shall expire at the latest upon the payment of the purchase price for the delivered Goods. LEC shall also be authorised to resell the Goods in the ordinary course of business, also before the purchase price payment, subject to an advance assignment of the claim arising thereof (in alternative, applicability of simple retention of title and the retention of title extended to the resale). All other forms of retentions of title shall be excluded thereby in any case.
5. The Seller guarantees that the delivery and use of the object of delivery does not infringe on proprietary rights of third parties, in particular not on patents, utility models, copyrights and competition regulations, and the Seller shall indemnify LEC from all claims of third parties.

IX. Supplier regress

1. The legally defined regress claims within a supply chain (supplier regress pursuant to Sec. 478, 479 BGB) shall be in LEC's unrestricted entitlement besides the claims of defects. LEC shall be entitled in particular to demand the exact kind of subsequent fulfilment (reworking or replacement delivery) from the Seller, which LEC owes to its buyer in the specific case. LEC's statutory option right (Sec. 439 para. 1 BGB) shall not be limited thereby.
2. Before LEC acknowledges or fulfils a claim of defects asserted by its buyer (including compensation of costs according to Sec. 478 para. 3, 439 para. 2 BGB), LEC shall inform the Seller thereof and request its written statements with a brief explanation of the facts. If the statements are not provided within an appropriate period and if no mutually agreed solution is found, the claim of defects shall apply as being owed to LEC's buyer, in the form it has

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in fact been granted by LEC. In that case, the Seller shall have the burden of proof to the contrary.

3. LEC's claims arising from supplier regress shall also apply if the Goods have been processed further before their sale by LEC to a consumer or a buyer of LEC, e.g. through installation in another product.

X. Producer liability

1. If the Seller is responsible for a product defect, it shall indemnify LEC from the claims of third parties to the extent as the cause is found within its sphere of control and organisation and to the extent as it is directly liable in external relations.
2. Within the scope of its indemnification obligation, the Seller shall compensate expenses according to Sec. 683, 670 BGB, which arise from or in connection with claims being brought by third parties, including any recall campaigns conducted by LEC. LEC shall inform the Seller about the content and scope of the recall measures – to the reasonable and acceptable extent – and provide it opportunity to make statements. Further statutory claims remain unaffected.

XI. Place of jurisdiction and choice of law

1. If the Seller is an entrepreneur in the definition of the Commercial Code, a legal entity of public law or public-law fund assets, the exclusive – also international – place of jurisdiction for all disputes arising from the contractual relationship is Bocholt. LEC, however, also has the right to file suit at the place of the Seller's registered office as well as at the place of fulfilment of the supply obligation.
2. The contractual relations with the Seller are governed exclusively and solely by the law of the Federal Republic of Germany in exclusion of the Convention of the United Nations on Contracts for the International Sale of Goods (UN CISG).