

**General Terms and Conditions of Sale and Delivery of Losberger GmbH  
for supplies to non-EU states with the exception of Switzerland / Norway / Iceland  
- Date: 01.12.2016 -**

**1. SCOPE OF APPLICATION**

- 1.1 The following General Terms and Conditions of Business shall exclusively apply to all our supplies (including subsequent orders) and services (including consultancies). Contradictory terms and conditions of procurement shall require our written acknowledgement and shall also not be acknowledged by acceptance or performance of the order.
- 1.2 Our General Terms and Conditions of Business shall only apply towards enterprises, public-law entities or public-law funds in the sense of § 310 subsection 1 German Civil Code.
- 1.3 Delivery in the sense of the present terms and conditions shall also be ancillary services such as purchase or works deliveries and other supplementary services or consultancies.
- 1.4 In the event of contradictions between the regulations in the main contract (regularly in the form of an order confirmation) and the present terms and conditions, the regulations in the main contract shall prevail.
- 1.5 We shall notify the customer of changes to the present terms and conditions and the special conditions no later than two months before the proposed time of their effectivity in a textual form, in which context also electronic form shall suffice if the customer has indicated in the business relationships that it agrees to an electronic transmission of declaration of legal significance. The customer's approval shall be deemed granted if it has not indicated its rejection before the proposed time of effectivity of the change. We shall make special reference to this effect of validity in our quotation.

**2. QUOTATION / CONCLUSION OF CONTRACT / COMPLETENESS**

- 2.1 Our quotations shall be subject to change without notice to the extent not expressly agreed to the contrary. Information contained in quotations and in enclosed documents concerning dimensions, weights, capability, load-bearing capacity and other product properties shall not portray guarantees or assured properties. They shall only become properties of the object of delivery and integral parts of the contract if they have been confirmed in the main contract or in other written agreements or result from our product data sheets. The same shall apply to drawings, sketches, plans, illustrations, dimensions, weights and other performance data provided by the customer or its vicarious agents before for the conclusion of the contract.
- 2.2 The contract shall only originate through receipt of our written order confirmation by the customer, but in any case with performance of the delivery. A changing acceptance of our quotation by the customer is here and now contradicted.
- 2.3 To the extent reasonable for the customer, we reserve the right to changes of products or construction if they are technically necessary or appear sensible and the value and usefulness of the goods are not impaired as a result. Inconsiderable changes which can reasonably be expected of the customer shall be admissible at any time. We shall however not be obliged to make such changes to products which have already been supplied.
- 2.4 All agreements made between us and the customer for the purpose of performance of the present contract have been recorded in writing in the main contract.

**3. PRICE / CURRENCY / COSTS AND TAXES / PRICE ADAPTATION / PAYMENT / CANCELLATION OF CONTRACT / OFFSET AND RETENTION**

- 3.1 Our prices shall apply in Euro ex works or ex warehouse exclusive of Value Added Tax and other costs and public dues, in particular packaging and transport costs, taxes, customs, insurance premiums and possible costs of assembly. Payment may only be made in a currency other than Euro if this has been expressly recorded in the main contract. If a service not provided for in the contract is demanded, we shall have a claim to additional remuneration. Place of performance for all payment obligations shall be our company's registered office. Art. 57 subsection 2 CISG shall remain unaffected.
- 3.2 If there is agreement between the customer and us that the customer is to open a documentary letter of credit via its bank (or any [other] bank acceptable for us), the opening of the L/C must be in harmony with the general guidelines and usage for documentary letters of credit, 2007 revision, ICC publication no. 600 (ERA 600).
- 3.3 Payments are only to be made by bank transfer; bill and cheque payments shall not be acknowledged as fulfillment of the payment duty.
- 3.4 If no other agreements have been made and if the sundry preconditions for maturity have been fulfilled, the price shall be paid without deduction within 14 days of the date of invoice. This shall also apply to part deliveries. From maturity, we shall charge 5% default interest. If the customer falls into arrears of payment, we shall be entitled to charge interest to the amount of 9 percentage points above the base rate of interest on the claim to payment from the time of arrears. We may additionally postpone performance of the contract.
- 3.5 In the absence of instructions to the contrary, incoming payments shall firstly be used to settle the lowest secured liability and thereafter the oldest one at our choice. We shall inform the customer about of the kind of offset in such a case. If costs and interest have already been incurred, the payment shall be offset firstly against the costs, then against the interest and finally against the principal claim.
- 3.6 We reserve the right to change our prices accordingly for contracts in which there are more than two months between conclusion and supply/acceptance if decreases or increases in costs occur as a result of changes in material prices following conclusion of the contract. We shall prove them and the foundations of the pricing in question to the customer upon request. If the amount is more than 5%, a right to dissolve the contract shall accrue to the customer. We shall be entitled to demand our list price valid on the date of delivery in question if we are not in arrears of delivery and more than two months have passed since conclusion of the contract without goods having been supplied. In cases of successive supply agreements and call orders, we shall charge our list price valid on the date of delivery in question.
- 3.7 Failure to comply with agreed payment terms for which the customer is answerable, not only inconsiderable arrears in payment and a jeopardy to our claim to consideration only becoming apparent following the conclusion of the contract as a result of the customer's lack of solvency, for example by an application for opening of insolvency proceedings against the customer's assets, shall entitle us to postpone outstanding supplies and only to perform against advance payment or provision of collateral. If the customer fails to comply with our request to effect consideration or to provide collateral at its choice contemporaneously against supply within a suitable period, we can withdraw from the contract following expiry of the period, notwithstanding further statutory rights, apart from this if the statutory preconditions have been fulfilled. The jeopardy of our claim to consideration for which the customer is answerable shall further entitle us to make all our other claims against the customer due for payment immediately to the extent that we have already rendered our service.
- 3.8 Rebates and other benefits granted by us shall be forfeited without replacement if the customer falls into arrears for more than one month with the payments for goods or services for which we have granted rebates or other benefits.

- 3.9 Offset with counterclaims by the customer has been ruled out to the extent that the counterclaims are not legally effective, undisputed or acknowledged by us. A right of retention has also been ruled out to the same scope.

**4. TAXES**

- 4.1 Upon request by us, the customer shall be obliged to provide us with the necessary documentation demanded by the competent tax or customs authorities in question as proof of tax-exempted export. The customer shall reimburse us for each turnover tax duty imposed in the state of dispatch or in the state of destination which result from
- a) the contractually agreed supplies, assembly services or services,
- b) any omission by the customer in the provision of the aforementioned necessary documents or
- c) all other circumstances which can be ascribed to the customer.
- 4.2 All taxes (including land acquisition tax), fees, customs or other costs imposed on us in the performance of the contract in the state of destination of the contractual services shall exclusively be borne by the customer and the customer declares its agreement with paying all these costs or reimbursing us for them if demanded accordingly by us.

**5. SUPPLY / FORCE MAJEURE / DELAY IN DELIVERY / TRANSPORT**

- 5.1 Application for and obtaining of necessary official or other approvals – also taking export control provisions into account – shall not be part of our service duties unless contractually agreed to the contrary. The delivery period shall not start before final clarification of all technical details and not before receipt of the other documents, official permissions/(export) approvals to be obtained by the customer and compliance with the agreed payment terms and other obligations. In particular, all the information and documents necessary for the transportation of the object of supply and its importation into the country of destination are to be provided by the customer. If these duties are not fulfilled by the customer in good time, the period shall be extended suitably to the extent that we are not answerable for the delay. If nothing to the contrary has been agreed, the delivery period shall be complied with if the notification of readiness for dispatch has reached the customer before its expiry, unless dispatch is delayed for reasons for which we are answerable.
- In the event of necessary (export) approvals etc. permanently not being granted, granting of the approvals already lasting for 90 or more days or if it is foreseeable that they will not be granted within a period of 90 days, the contracting parties shall be entitled to terminate the contract as an entirety insofar as abiding by a part of the contract which can be performed cannot be reasonably expected of a party. Possible further-reaching claims shall remain unaffected.
- 5.2 War, unrest, legal industrial disputes, high-handed measures (including embargos and sanctions), lack of energy and raw materials, transport and unavoidable operational disturbances and all other cases of force majeure (also with our suppliers) shall release us (and our customers) from the duty to supply for the duration of the disturbance and to the scope of its effects. The reason for the prevention and its stoppage shall be notified without delay. The above 5.1 sentence 5 shall apply mutatis mutandis. If we are not (co-)culpable, further-reaching claims shall expressly be ruled out.
- 5.3 If nothing to the contrary has been agreed in the contract, a delay in delivery shall not portray a considerable breach of the contract.
- 5.4 If it is not a question of a fixed transaction, the customer can only withdraw from the contract – apart from the cases above in 5.1 sentence 5 and 5.2 sentence 3 – if
- a) we are culpable of the delay in delivery and
- b) the customer threatens us in writing with withdrawal from the contract following the planned delivery time and
- c) sets a suitable period for delivery after the planned delivery time for us, this being no less than four weeks, and the latter has expired fruitlessly or
- d) we seriously and finally reject performance.
- A change of the onus of proof to the customer's detriment has not been connected with the above regulation.
- 5.5 If we are liable in the event of arrears in supply, this liability shall be limited to liquidated damages to the amount of 0.5 % of the supply value per week, albeit no more than 5% if the supply value of the part of the delivery which cannot be used contractually by the customer as a result of the delay to the extent that we, our vicarious agents or representatives have not acted with malice aforethought or gross negligence. The purchaser shall credibly prove that it has incurred damage as a result of the delay. Apart from malice aforethought, our liability for damages shall be limited to the foreseeable damage typically occurring; 7.9. sentence 2 below, shall apply as a supplement.
- 5.6 To the extent that nothing to the contrary results from the main contract, delivery "ex works" has been agreed. If the place of performance is our registered office and if the object of sale is sent there by request of the customer, risk shall pass to the customer as soon as the object of sale has been handed to the transport company in our warehouse; this shall also apply if we bear the costs of transport. If we use our own means of transport in this case, risk shall pass to the customer as soon as the object has been unloaded from the means of transport with the customer or at the address stated by the customer. Risk shall pass to the customer with the report of readiness for dispatch if the place of performance is our registered office and we send the object of supply there by request of the customer, but dispatch is delayed or becomes impossible without our culpability. If no obligation to provide exists, we shall cover the supply – by a matching request by the customer – by transport insurance, the costs of which are borne by the customer. To the extent that no specific kind of transport has been agreed, transport shall be at our best discretion without obligation for the cheapest transport.
- 5.7 Part deliveries shall be admissible to a reasonable extent and shall be charged separately.
- 5.8 If the customer does not commission us with construction following planning of a system, it shall only be entitled to forward the planning services rendered by us to third parties following our prior consent. For the granting of consent, presentation by the customer of the written commissioning by the third party with the construction planning and performance of the system already planned by us shall be necessary. A further precondition shall be that the third party indemnifies us towards the customer for all and any liability as a result of negligently defective planning of the system.

**6. INSPECTION AND EXAMINATION DUTIES IN DEFECTS IN QUALITY**

- 6.1 The customer's rights from defects shall presuppose that it has properly examined the goods supplied following delivery and has transmitted a written notification of defects to us in writing. In any case, the customer shall lose the right to invoke a breach of the contract if it has not made the notification of defects in writing without delay after the time at which it has or ought to have established them and does not designate the defects precisely. Following agreement with us, the customer shall ensure securing of all evidence.
- 6.2 The customer cannot invoke reasons of excuse for an omission of the notification according to 6.1 above. Validity of Art. 44 CISG is expressly ruled out.

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6.3 We shall not be entitled to invoke the regulations in 6.1 and 6.2 above if the defects were or ought to have been known to us at hand-over of the goods to the customer and we did not disclose this to the purchaser by such time.

## **7. LIABILITY FOR DEFECTS IN QUALITY**

- 7.1 The property of the goods supplied by us which is owed results exclusively from the main contract including other written agreements according to 2.1 above, which finally set the owed properties of our contractual products which must exist at the time of passage of risk.
- 7.2 Further-reaching claims to the product properties of our products than in 7.1 above are expressly ruled out. In detail, our products shall not fulfil any specific purpose or certain statutory requirements outside the state of production over and above this.
- 7.3 If the purchaser does not comply with its duties from Art. 60 CISG, we shall be entitled to take the actions stated there on its behalf.
- 7.4 The duty and the proof of correct treatment and proper storage of the goods supplied by us shall be a matter for the customer.
- 7.5 If our operating and maintenance instructions are not obeyed by the customer, changes to the products are made, parts are replaced, consumables not fulfilling the original specifications are used or use of the products other than that intended is carried out, all liability for defects shall be forfeited if the customer fails adequately to refute our substantiated claim that the defect has only been caused by one of these circumstances.
- 7.6 For justified complaints, including short, excessive or aliud supplies, we shall, at our choice, remedy, replace or re-render the individual parts or services affected. We shall not be obliged to remedy inconsiderable defects. For the purpose of remedying of the defects, the customer shall make uninhibited access to the contractual products possible for us. We shall not have to bear the expenditure necessary for the remedying of the defects if they have been increased by the object of purchase having been taken to a place other than the place of performance. If subsequent performance fails within a reasonable period, with two attempts at improvement being granted to us as a matter of principle, the customer can withdraw from the contract or reduce the remuneration pursuant to Art. 49 I a) CISG. Claims to damages and to reimbursement of vain expenditure induced by defects shall accrue to the customer under the preconditions regulated in Section 7.7 to 7.13 below.
- 7.7 We can reject subsequent performance as long as the customer has not fulfilled its due payment duties to us to the scope equivalent to the defect-free part of the service rendered. If the notification of defects is unjustified, we shall be entitled to demand the reimbursement of the expenditure incurred as a result from the customer.
- 7.8 We shall be liable for damages for deliberate or grossly negligent breaches of duty, also for deliberate or grossly negligent breaches of duty by our statutory representatives or vicarious agents and also in the case of impossibility for which we are answerable and in the event of a culpable breach of cardinal contractual duties to the scope described in more detail in Section 7.9 to 7.13 below. Cardinal contractual duties shall be those giving the contract its character and in compliance with which the contracting partner may trust, which create the preconditions for fulfilment of the contract and are indispensable for achievement of the purpose of the contract.
- 7.9 In the aforementioned cases in 7.8 and also if a claim to reimbursement of damages in lieu of performance accrues to the customer, our liability shall be limited to the foreseeable damage typically occurring, to the extent that we are not guilty of malice aforethought. In any case, our liability shall be limited to the amount of the total purchase price agreed in the main contract, in the event of a breach of subsidiary duties to 10% of said purchase price. Loss of profits shall not be reimbursed by us in any case, unless we are guilty of malice aforethought.
- 7.10 In the event of injury to life, limb and health by us, our statutory representatives or vicarious agents, we shall be liable according to the statutory directives provided the injury was caused by an object of purchase. The same shall apply if we have assumed the guarantee for the property of our goods or the existence of a success of service or a procurement risk. Liability for loss of profits has been ruled out if we have not acted with malice aforethought.
- 7.11 To the extent not regulated to the contrary in 7.1 to 7.10 above, our liability has been ruled out. Further-reaching claims or others than those in this Section VII. for the customer against us, our statutory representatives and our vicarious agents on account of a defect in quality have been ruled out.
- 7.12 Claims and rights from defects in quality shall be barred after 12 months starting from passage of risk. This shall not apply to the extent that it is a question of sale of an object customarily used for a building which has caused the defect in question. The barring period of 12 months shall not apply in the cases of injury to life, limb or health pursuant to 7.10 sentence 1 above for which we or our statutory representatives or vicarious agents are answerable, deceitful failure to disclose a defect, deliberate or grossly negligent breach of a duty and in a breach of cardinal contractual duties.
- 7.13 A reversal of the onus of proof has not been connected with the above regulations in Section 7.

## **8. NOTIFICATION DUTIES FOR DEFECTS IN TITLE / LIABILITY FOR DEFECTS IN TITLE**

- 8.1 In the event of Art. 42 subsection 2 b) CISG, the customer shall hold us harmless against any claims made by third parties.
- 8.2 If the use of the contractual products pursuant to Art. 42 (1) CISG impinges third parties' protective rights and no case of Art. 42 (2) CISG exists, we shall be obliged, by request of the customer and at our choice and expense, either
- to procure the necessary rights to the contractual product for the customer or
  - to supply the customer with new contractual products or modified contractual products free of protective rights which fulfil the same essential specifications as the contractual products or
  - to reimburse the customer for the purchase price paid by it for the contractual products against return of the latter.
- 8.3 If we do not take the measures described in more detail above in 8.2 within a suitable period following receipt of a notification of defects by the customer, the latter shall be free to withdraw from the contract or to demand damages on the basis of the agreements made in the present contract.
- 8.4 Validity of Art. 44 CISG is expressly ruled out.

## **9. TOTAL LIABILITY**

- 9.1 Further-reaching liability for damages than provided for in the above Sections 7 and 8 has been ruled out - without regard for the legal nature of the claim being made. This shall in particular apply to claims to damages from culpa in contrahendo, on account of other breaches of duties or on account of claims from tort for indemnification of property damage according to § 823 German Civil Code.
- 9.2 The limitation according to subsection 1 shall also apply if the customer demands reimbursement of vain expenditure from us instead of a claim for reimbursement of the damage in lieu of performance.

- 9.3 Limitation for all claims not subject to limitation due to a defect in the object shall have a period of 18 months unless a case according to Section 7.12 sentence 3 above exists. It shall commence from knowledge of the damage and the identity of the damager.
- 9.4 If liability for damages has been ruled out or limited towards us, this shall also apply to the personal liability for damages of our employees, workers, fellow-workers, representatives and vicarious agents.
- 9.5 Section 7.13 shall apply accordingly.

## **10. BAN ON ASSIGNMENT**

Assignment of claims to service, claims to payment, warranty claims or other secondary claims existing against us and of claims to damages to third parties shall only be admissible with our consent. § 354 a German Commercial Code shall remain unaffected.

## **11. RETENTION OF TITLE**

- 11.1 Goods supplied shall remain our property until complete payment of the purchase price and fulfilment of all other claims, including all balance claims from current account and all subsidiary claims (bill costs, costs of financing, interest etc.) and of all future claims originating in connection with the supply. Placement of individual claims into a current account or balancing and its acknowledgement shall not affect the retention of title.
- 11.2 Until complete payment of the purchase price, the customer shall keep the objects of purchase properly and in a complete and contractual condition and insure them against all risks with a renowned insurance company at the complete re-procurement value. The customer may not sell, pledge, transfer by way of security, lease or otherwise dispose of the objects of purchase without our written consent.
- 11.3 Insofar as the ownership rights applicable in the states in question do not recognise the retention of title agreed in Section 11.1 above or require additional preconditions, for example a requirement of registration etc., the customer shall support us and cooperate in fulfilment of these requirements by our request or provide us with a comparable collateral. Costs incurred as a result shall be borne by the customer.
- 11.4 The regulations in Section 5.6 above on the passage of risk shall remain unaffected by the regulations in Section 11.1 to 11.3 above.

## **12. PROTECTIVE RIGHTS / DRAWINGS / DOCUMENTS / TOOLS / COMPLIANCE WITH LAWS AND TECHNICAL STANDARDS**

- 12.1 We reserve ownership and copyrights to all the drawings, drafts and documents produced by us. They shall be treated confidentially, shall enjoy protection of intellectual property according to the statutory directives and may not be notified to third parties, in particular competitive companies, or used by the customer itself outside contractual agreements.
- 12.2 Drawings, drafts and documents which are an integral part of our quotation must be returned if no contract is concluded.
- 12.3 Tools, models and other devices ("operating equipment") shall remain our property even if the customer has partly or totally taken over the costs. We shall however be obliged not to use said objects for other customers without the customer's consent.
- 12.4 Any other kind of use of operating equipment provided by us or forwarding of such operating equipment to third parties shall require our prior written consent. The same shall apply accordingly to use of our brand and business names. Following consent according to sentence 1, but before transport or storage of operating equipment with third parties, the supplier shall provide this operating equipment with - as far as possible unchangeable - identification as our property.
- 12.5 We shall be responsible for compliance with the decisive German product and safety provisions and also technical standards. Observation and performance of the relevant foreign trade provisions and other laws of the state of its registered office and the country into which delivery is to be made shall be part of the customer's sphere of responsibility. The customer shall notify us in writing of peculiarities which result from these provisions at the conclusion of the contract.

## **13. MISCELLANEOUS**

- 13.1 Trade representatives, trade brokers, travelling salesmen and other persons are only entitled to accept payments if they show written powers of collection from us.
- 13.2 For the handling of the business relations and for in-house processing of the business affairs, we make use of electronic data processing. In accordance with the provisions of the Federal Data Protection Act, the customer is informed that we process the personal data necessary hereof and exclusively use them within the company.
- 13.3 The customer may only use our trademarks, trade names and other marks with our prior written consent and only in our interest for advertising purposes.

## **14. PLACE OF PERFORMANCE / ARBITRATION AGREEMENT / APPLICABLE LAW**

- 14.1 To the extent that nothing to the contrary results from the main contract, our registered office shall be place of performance.
- 14.2 All disputes arising from or in connection with the present contract - including its validity - shall be finally decided in accordance with the arbitration Regulations of the German Institution for Arbitration (DIS) ruling out access to ordinary courts of law. The location of the arbitration proceedings shall be Heilbronn. The number of arbitrators shall be one. The language of the arbitration proceedings shall be German. The applicable substantive law shall be based on 14.5 below.
- 14.3 As long as we have not yet acceded to arbitration proceedings running in the same matter without a complaint, we shall at our choice be entitled to appeal to the competent state courts in the customer's country. If such a claim is submitted, the competence according to 14.2 above shall no longer apply.
- 14.4 We shall further be entitled to appeal to the competent state courts in the customer's country if an arbitration court basically competent and appealed to according to 14.2 above has not been constituted within three months from the time of the first appeal to it. 14.3 sentence 2 above shall apply accordingly in such a case.
- 14.5 The present contract and the present General Terms and Conditions on Business shall be governed by the law of the United Nations Convention of the International Sale of Goods (CISG) of 11.04.1980. As a subsidiary, substantive law in force at our registered office according to the statutes shall apply.
- 14.6 In the event of deviations of the German version of our "General Terms and Conditions for Sale, Works Delivery and Works Service" from the English version, the contents of the German version shall be decisive.

**Company's registered office: Bad Rappenau, Germany**  
**Register Court: Stuttgart County Court HRB 103676**