

Terms and conditions of purchase

For purchase of goods and contracts

Status: 01.01.2015



1. General

- 1.1 The following General Business Terms and Conditions shall apply for all – even future – agreements between Lloyd Dynamowerke GmbH (hereinafter referred to as "LDW") as the Customer and the Contractor on the purchase and/or delivery of goods, no matter whether the Contractor produces the goods by itself or buys it from a supplier. General Business Terms and Conditions of the Contractor shall hereby also be expressly rejected even for the future; they shall only then become effective subject to the express written approval of the Customer. The acceptance of deliveries or services and the rendering of payments constitute no approval.
- 1.2 References to legal provisions are only meant as a clarification. Even without such a clarification legal provisions are valid as far as they were not explicitly changed or waived by this general business terms.
- 1.3 The order and acceptance as well as their modifications or supplements must be in writing whereby their submission via fax is also possible. Oral ancillary agreements made upon the contractual conclusion or the amendment of existing agreements shall apply only if they have been confirmed by the Customer in writing.
- 1.4 LDW is bonded to an order for 2 weeks. The time period starts running in the moment LDW mails the order.

2. Delivery timeframe, delivery default damages

- 2.1 The agreed date of delivery or delivery timeframe is always binding. Early or partial deliveries are permitted only upon the approval of the Customer. A delivery timeframe shall begin upon the date which corresponds to the date, on which the Contractor mails the acceptance of the offer from LDW.
- 2.2 The timeliness of the deliveries or subsequent performances (new deliveries) shall be dependent upon when it is received by the receiving centre named by LDW. For the timeliness of deliveries including installation or mounting work as well as other services – including the elimination of defects – the moment of acceptance by LDW shall be relevant.
- 2.3 In the event of a recognisable delay in a delivery or provision of services in accordance with 2.2, LDW must be immediately notified.
- 2.4 If the agreed timeframe or the agreed delivery date is not met, then the Customer shall be entitled to all resulting legal claims. The validity of the regulations in subsection 2.5 will remain unaffected.
- 2.5 In the event that the Contractor is in default LDW is entitled to charge a lump-sum amount of 0.1% for each day of default, but nonetheless a maximum of 5% of the total contractual amount as delivery default damages. LDW reserves the right to claim higher delivery default damages. The contractor reserves the right to prove that the delivery default damages were lesser than the lump-sum. The Contractor shall bear the burden of proof for the lack of liability / negligence upon its part. It is not necessary for the Customer to announce its reservation of the right to assert delivery default damages.
- 2.6 The Contractor shall be obliged to sufficiently insure against the risk of delivery default damages and to document this to the Customer upon request.

3. Place of performance, transfer of risk, reservation of proprietary rights

- 3.1 In the absence of a provision to the contrary in the agreement (e.g., stated shipping address), delivery shall be made DDP (Incoterms 2010). The place of destination is the factory of LDW in Bremen.
- 3.2 The passage of title occurs at the latest in the moment of fully payment of the purchase price. All kinds of advanced or extended reservations of proprietary rights are excluded.

4. Incoming goods inspection

An inspection of incoming goods is done by LDW solely regarding the apparent order and condition of the goods. LDW will without delay make a complaint about any apparent effect. LDW reserves the right to make further inspections of the incoming goods. Furthermore LDW will make a complaint about effects, as soon as they are detected according to the business routine. For this the contractor waives the right to claim for belated complain.

5. Invoices, payments, assignment ban

- 5.1 All agreed purchase prices are fixed prices.
- 5.2 The order no. and the customer no. required for the order must be stated on the invoices. Duplicate copies of invoices must be labeled as such.
- 5.3 If nothing to the contrary is agreed, payments shall become due for payment after 30 days. If LDW makes the payment within 14 days the Contractor grants a 3% discount.
- 5.4 The payment timeframe shall begin upon the complete rendering of deliveries and services and upon the receipt of the invoice which has been properly prepared.
- 5.5 The assignment of claims is possible only with the prior written approval of the Customer.
- 5.6 Payments made by the Customer for deliveries and services do not constitute an acknowledgement of the contractual fulfilment of such deliveries and services.

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6. Liability for defects

- 6.1 For claims and rights of the Customer owing to defects in the deliveries and services of the Contractor, a statute of limitation period of 3 years shall apply if no longer time frames are stipulated by law or in the agreement. The timeframe shall begin upon the transfer of risk according to DDP / Incoterms 2010. The limitation period applies also to claims in connection with defects of title, except claims for claims in rem. Limitation period regarding defects of title never occurs as long as the third party is entitled to claim against LDW.
- 6.2 In the event of the determination of defects before or during the transfer of risk to the Customer, or within the timeframe specified in 6.1, the Contractor must eliminate them at its own expense or render a defect-free new delivery or service. The Customer shall have the choice as to the manner of rectification of the defect. This shall also apply if the expenditures of the Contractor are increased by so doing as the delivery object was relocated to another site than the place of performance. The Contractor shall assume the risk and expense for the return shipment of defective delivery objects.
- 6.3 In the event that the Contractor cannot render the subsequent performance within the timeframe set by the Customer, the Customer may, in whole or in part and without being required to provide compensation, withdraw from the agreement, demand a price reduction, undertake the rectification or new delivery itself or have the rectification or new delivery undertaken at the expense of the Contractor and/or demand damage compensation instead of performance.
- 6.4 In the case that in connection to a special urgency it is impossible to set a timeframe for the Contractor, LDW is legitimated to undertake the rectification or new delivery itself or have the rectification or new delivery undertaken at the expense of the Contractor immediately. The statutory provisions regarding the dispensability of providing a notice period shall remain unaffected.
- 6.5 Any more extensive or other legal claims – especially for damage compensations - shall remain unaffected by this.

7. Manufacturers liability

- 7.1 If the Contractor is liable as a manufacturer for defects in the product he indemnifies LDW from all claims from third parties.
- 7.2 The Contractor is obliged to effect a manufacturers liability insurance with an amount of coverage of €10,000,000.00 per case.

8. Subcontractors

- 8.1 The Contractor shall be allowed to commission third parties only after having received the prior written approval of the Customer. If the Contractor does not fulfil this obligation, then the Customer shall be entitled to, in whole or in part, withdraw from the agreement and/or demand damage compensation.
- 8.2 If the Contractor has received the Customer's approval for the subsequent commissioning of third parties, it shall correspondingly obligate the subcontractors in accordance with the contractually agreed provisions, particularly regarding obligations to instruct, exercise due care and maintain secrecy.

9. Provision (of materials, tools, designs) and processing

- 9.1 Objects of all kinds provided by the Customer to the Contractor shall remain the property of the Customer. The Contractor must store the objects separately from other objects and free of charge. They may be used exclusively for the rendering of deliveries and orders.
- 9.2 The Contractor shall be obliged to conduct any required maintenance and inspection work at its own expense as well as to sufficiently insure the objects which have been provided to it and to document this to the Customer upon its request.
- 9.3 In the event that the Contractor should violate its obligations, then the Customer may demand their return. If the objects are lost or have lost value, the Contractor must provide compensation to the Customer. Any more substantial rights of the Customer shall remain unaffected.
- 9.4 If the objects provided by the Customer are processed or reworked by the Contractor to form a new movable object, then the Customer shall be considered to be the manufacturer. In the event of a combining or inseparable mixing with other objects, the Customer shall acquire ownership to the new object based upon the proportional value which the objects had at the time of the mixing or combining. If the combining or mixing is done in such a manner that the Contractor's objects are regarded as the main product, then it shall be agreed that the Contractor shall assign proportional ownership to the Customer and the Contractor shall safeguard the co-ownership rights for the Customer.

10. Obligations to instruct and show due care

- 10.1 If the Customer has notified the Contractor of the purpose of use of the deliveries or services, or this usage purpose is recognizable for the Contractor even without express instruction, then the Contractor shall be obliged to immediately notify the Customer if the deliveries or services of the Contractor are not suitable for fulfilling this usage purpose.
- 10.2 Notification must be immediately made in writing to the Customer of circumstances which endanger the adherence to agreed delivery timeframes so that the Customer is able to clarify how best to proceed.
- 10.3 The Contractor must immediately notify the Customer of any changes in the type and composition of the processed materials or in the constructive execution from the same or similar deliveries and services rendered for the Customer up to that point in time. The changes shall require the written approval of the Customer.
- 10.4 In the event that the Contractor should carry out work upon the Customer's premises in accordance with its commissioning with its own personnel, or upon prior approval of the Customer, with third parties, then the Contractor shall be obliged to adhere to LDW's domestic authority.

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10.5 The Contractor must ensure that the deliveries and services meet the environmental protection, accident prevention and other occupational safety directives, the safety provisions as well as all legal requirements which are applicable in the Federal Republic of Germany. The Contractor shall be obliged to particularly adhere to the relevant technical regulations regarding the deliveries and services, including DIN standards.

11. Replacement parts and readiness for delivery

11.1 The Contractor shall be obliged to supply replacement parts for the timeframe of customary technical use, but nonetheless at least 10 years after the last supplying of the delivery object at appropriate terms and conditions.

11.2 If, after the expiration of the timeframe specified in 11.1, the Contractor discontinues the delivery of replacement parts, then the Customer must be given the opportunity to make a last order. Furthermore the Contractor has to give LDW the opportunity to make a last order, if the Contractor discontinues the delivery of the delivery object itself, no matter when.

12. Proprietary rights

The Contractor shall guarantee to the Customer that no proprietary rights whatsoever – particularly copyrights, trademarks, patents, etc. – oppose the contractually agreed use. The Contractor shall indemnify the Customer from all third-party claims; it shall carry out any legal defence at its own expense or reimburse the Customer for any costs incurred.

13. Confidentiality

13.1 The Contractor shall be obliged to maintain secrecy regarding any commercial and technical information, documents and standards which it becomes aware of during the business relationship which are not generally known and to use them exclusively for the rendering of the deliveries and services which have been ordered and to not disclose them to third parties without the Customer's consent. LDW keeps the right of property and copyright in all pictures, plans, drawings, calculations and product information.

13.2 When stating references or making announcements, the Contractor may name the Customer by name or use its logo only after having received the Customer's prior written approval.

14. Special right of rescission

In the event that the Contractor files for insolvency or a creditor does so, then the Customer shall be entitled to, in whole or in part, withdraw from the agreement.

15. Supplemental provisions, legal venue and applicable law

15.1 In the event that any provision of these general conditions is or will be unlawful, void or unenforceable, this will not affect the validity of the remaining provisions. The parties are in this case obliged to substitute the unlawful, void or unenforceable condition by a valid one, which gets close to the commercial aim connected to the primer condition. This applies accordingly for gaps in these conditions.

15.2 Bremen shall be the exclusive legal venue as well as the place of fulfilment.

15.3 Exclusively the law of the Federal Republic of Germany shall apply subject to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.