



# LOHBERGER

## GENERAL TERMS AND CONDITIONS OF BUSINESS

Valid from 03/2017

### General:

All legal transactions concluded with us shall be governed by the Terms and Conditions set forth below, unless agreed otherwise in writing with the Customer. Orders shall only be deemed to have been accepted once they have been confirmed in writing by us. Offers and cost proposals are thus subject to confirmation. The nature and scope of the supply shall be determined exclusively in accordance with the written order confirmation. Oral agreements shall only take effect upon confirmation in writing by us.

Any terms and conditions of the Customer that purport to stipulate otherwise shall only apply if they have been accepted in writing by us. If any specific individual terms have been agreed upon with the Customer that depart from these Terms and Conditions, this shall not affect the validity of the Terms and Conditions to which such an agreement does not apply. If we are acting as a customer (buyer), acceptance or execution of the order shall be construed as acknowledgement of our Terms and Conditions of Business. In the event that any individual provisions of our Terms and Conditions of Business should be or become invalid, they shall be replaced on the basis of these Terms and Conditions of Business and the applicable law by such provisions as are consistent with the purpose of the contract. This shall not affect the validity of the remaining terms and conditions. Written notices shall be deemed to have been received by the Customer after the ordinary timescale for delivery by post, provided that they have been sent to the Customer's address most recently reported to us. This shall also be the case if the letter was treated as undeliverable. Correspondence shall be deemed to have been received if we are in possession of a print-out or signed copy of the letter sent, from which it is apparent that the letter was dispatched. The rights of the Customer under any legal transactions concluded with us are non-transferable.

Any exceptions to these Terms and Conditions shall only be valid if they are expressly documented in the written order confirmation. The contract concluded with the Customer may only be terminated, amended or supplemented in writing by way of a document signed by both contractual parties. This shall also apply to any waiver of this requirement of written form.

### 1. Offer, acceptance of orders

Any images and information contained in our business documentation, catalogues, prospectuses, etc. feature only approximate figures. They shall only be binding if expressly agreed in writing. We reserve the right to alter models, designs or the related equipment. All offer documentation, including diagrams, sketches, etc., shall be returned to us without undue delay in the event that no order is placed, and the Customer shall not have any right to make photocopies or any other copies thereof. Liquidated damages of 10% of the order value shall be paid by the Customer in the event of any breach of this obligation.

If any requirements not contained in the original enquiry (basic enquiry) are subsequently made known by the Customer, a new offer will need to be issued by us. We shall only be obliged to comply with the additional requirements if this offer is accepted. This shall also apply in the event that any retrospective changes are made to the original enquiry. In such an eventuality, we reserve the right to draw up a new offer for the entire project including the original order.

In the event of cancellation by the Customer after the order has been placed, we shall be entitled to charge a cancellation fee. The amount of the cancellation fee shall be determined in line with the losses incurred, including administrative costs and lost profit. We shall be entitled under all circumstances to charge a cancellation fee of 20% of the order value.

### 2. Prices:

Our prices are valid ex works. The prices do not include the costs of shipping, transportation, packaging, freight, postage, transport insurance, assembly, connection or commissioning. All prices indicated in our business documentation are net prices. The prices set out in our price list as valid on the respective delivery date shall apply. We shall be entitled to adjust the prices of services in line with our current applicable hourly rates for projects involving an extended execution period.



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## 3. Payment:

Our invoices shall be payable within 10 days of the date of the invoice without any deduction. Default interest of at least 9.2% above the relevant applicable base rate of the Austrian National Bank shall be charged for late payments in addition to a reminder fee of EUR 40.00 per reminder, without prejudice to any other claims. In the event of non-payment or any justified doubts as to the Customer's credit standing, we shall be entitled to withhold performance of any outstanding supply obligations and to demand payment in advance. 1/3 of the order value shall be paid, without any deduction, upon receipt of the order confirmation for supplies with a net value in excess of EUR 10,000.00.

If a bill of exchange is accepted by us, payment shall be deemed to have been made once it has been successfully redeemed. It is expressly stipulated that the same shall apply to cheques. Here too, any costs arising shall be borne by the buyer. If the goods cannot be delivered due to any reasons for which the Customer is at fault, the payment deadline shall not be extended as a result. In such an eventuality, the payment deadline shall start to run at the time the goods are reported by us as being ready for dispatch. Payments made by the Customer shall first be imputed to claims that do not relate to the most recent supply, and only thereafter to claims relating to the most recent supply. In addition, they shall be imputed first of all to costs, interest and default interest, and only thereafter to principal amounts due (this shall also apply in particular in relation to our retention of title).

In the event that the Customer fails to pay an invoice on time, or only pays one of several invoices due, the Customer shall be deemed to have forfeit the right to deferred payment in respect of all outstanding amounts owed to us, with the result that all amounts outstanding shall become immediately payable, irrespective of the particular payment deadlines granted for individual partial payments by agreement or by the acceptance of bills of exchange. No payments may be withheld on account of warranty claims or for the purpose of offsetting against any counterclaims available to the Customer or against any counterclaims that have not been expressly recognised by us, and under all circumstances any right of retention shall be limited to the claims available to the Customer to the amount required in order to rectify the defect, and must pertain the same contractual relationship.

In the event that the Customer experiences payment difficulties (financial collapse, means of payment not honoured, bill of exchange or cheque protested, pledge, composition, bankruptcy etc.), the full amount of the invoice under the respective supply shall fall due for payment immediately in addition to any other outstanding claims without any requirement for us to issue an official notice of default to the Customer. If our payment terms are not adhered to, including in the event of insolvency, any discounts granted (based on the valid catalogue price) shall lapse and the gross price shall be payable. In such an eventuality, we shall be entitled at any time to recover the goods supplied at the cost of the Customer and to dispose of them as best as we are able, without thereby releasing the Customer from the obligation to comply with the contract or establishing any entitlement for the Customer to claim damages due to non-performance.

We shall be entitled to withdraw from the contract in advance of supply if we have justified reason to doubt the solvency of the Customer. The same shall apply if we receive any adverse information from a reliable source concerning the Customer's credit standing. We reserve the right to demand cash on delivery for new customers.

In the event of non-payment, the Customer further undertakes to pay any costs necessary in relation to the appropriate enforcement or recovery of the claim, including in particular the reminder fees arising for us and all costs, expenses and cash outlays incurred, including in particular also any lawyers' costs incurred as a result of non-payment according to the fee scale for out-of-court payment reminder procedures involving a lawyer, in addition to the self-standing fee scale of the Bar Association for Upper Austria in Linz. Irrespective of any instructions concerning the allocation of incoming funds that specify otherwise, we shall be entitled to allocate incoming amounts at our discretion in the first instance to cover reminder fees, lawyers' costs etc. and only thereafter to interest and principal amounts, even in the event that an enforceable order has been obtained or in the event of debt enforcement.

## 4. Retention of title:

The delivered goods shall remain our property until full payment of the purchase price (remuneration for works and services) including all ancillary costs or encashment of any bills of exchange or cheques given in payment. The acceptance of cheques or bills of exchange shall not affect the agreed retention of title. The retention of title in respect of the contractual goods shall also apply to claims pertaining to other supplies, and shall thus remain in place unless and until all claims available to us against the Customer have been paid in their entirety, irrespective of the supply to which they relate. Claims may be enforced over all goods stored in the warehouse of the Customer, irrespective of the time of supply and of any partial payments made during the intervening period. In the event of a breach of contract by the Customer, including in particular non-payment, we shall be entitled to take back all goods held within internal and external storage locations of the Customer up to the value



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of our outstanding claims at the cost of the Customer and where appropriate to require the assignment of any claims to surrender available to the Customer against third parties.

If the goods subject to retention of title have been processed along with goods of third parties or of the Customer, we shall acquire joint ownership over the newly produced item. The same shall apply in the event that the goods subject to reservation of title have been amalgamated or mixed with goods of third parties or of the Customer. The level of our joint ownership share shall be determined in accordance with the value of the goods subject to reservation of title in relation to the other goods. The new items created as a result of processing, amalgamation or mixing shall constitute goods subject to retention of title, insofar as they are owned or jointly owned by us.

The Customer is obliged to handle goods subject to retention of title with care and to insure them appropriately against all normal risks, including in particular fire, theft and water risks. Proof of insurance shall be presented to us upon request. Upon request by us, the Customer shall store the goods subject to retention of title separately and designate them as our property.

Any claims available to the Customer against third parties on account of the loss of or damage to goods subject to retention of title, including in particular claims against insurers and damages claims, are hereby assigned to us. The Customer shall obtain from the debtors under any such claims any approvals necessary for the assignment.

If at the time goods are taken back our prices have been discounted below the prices on the delivery date, the return value shall be the prices at the time of return. Until such authorisation is revoked, the Customer may sell the goods within the ambit of its normal business operations. Approval to sell the goods within the ambit of normal business operations shall lapse upon the cessation of payment by the Customer or any application to launch bankruptcy, composition or debt restructuring procedures in respect of the assets. Should this occur, the Customer shall be obliged to return the goods supplied (goods subject to retention of title) upon request by us. Revocation in accordance with the above or a request by us for the return of goods subject to retention of title shall not imply withdrawal from the contract. The Customer hereby assigns to us its claims in relation to any onward sale of goods subject to retention of title. We shall refrain from enforcing the claims assigned for as long as the Customer complies with its payment obligations. However, the Customer is obliged to provide us upon request with the details of the third party debtor and to notify the third party debtor concerning the assignment. It is also obliged to record the assignment in its accounts. It shall be entitled to collect amounts due from third party debtors for as long as it complies with its payment obligations, unless and until instructed otherwise by us. Goods subject to retention of title or assigned claims may not be pledged or subjected to a chattel mortgage. The retention of title shall also remain valid in the event that individual claims have been consolidated into a single debt item against which payments are offset, unless the balance has been settled. The Customer shall give notice concerning any cessation of payments by it without undue delay and at the same time send a list of goods subject to retention of title that are still available as well as a list of claims against third party debtors in respect of the onward sale of goods subject to retention of title. The Customer shall only be entitled to dispose of the goods subject to retention of title in the event of their onward sale subject to deferred payment of the purchase price on condition that, at the same time as the onward sale, it informs the subsequent buyer concerning the assignment as collateral and records the assignment in its own accounts.

## 5. Delivery time:

The specified delivery time is not binding. If a binding delivery time (delivery period) has been agreed, we shall only be in default if the customer has set a grace period of at least 8 weeks in writing. The customer shall only be entitled to withdraw from the contract in the event of a delay in delivery if we are unable to make a binding delivery promise within the period of grace. No claims for damages can be derived from delays in delivery. Force majeure of any kind, shortage of raw materials, unforeseen difficulties, including those caused by the nature of the manufacturing process, delays in delivery by sub-suppliers, operational restrictions, official measures or other unforeseen obstacles to manufacture or delivery, including strikes or lock-outs at our premises or those of our sub-suppliers, shall entitle us to exceed delivery times or to withdraw from the contract, in whole or in part, without the customer being entitled to subsequent delivery or compensation. We reserve the right to make partial deliveries without the customer being entitled to subsequent delivery or compensation, save in the event of wilful wrongdoing or gross negligence.

In the event of any delay in acceptance on the part of the customer, we shall be entitled to withdraw from the contract or to claim damages after granting a grace period of not more than 30 days.

If the preconditions required for supply are not met by the Customer as required under contract, any delivery deadlines shall not start to run and all agreements concerning liquidated damages or other contractual penalties shall lapse. In the event of any delay in the execution of a product or order



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for which we are not at fault, we must be informed of it by the Customer in writing without undue delay. The delivery deadlines shall not apply in such an eventuality. It will only be possible to take account of structural modifications or subsequent change requests from the Buyer made after the order confirmation was issued if we have not yet started production. This shall result under all circumstances in a surcharge and an extension of the delivery deadline.

If the order cannot be completed within the foreseeable future due to technical or other reasons beyond our control, we shall be entitled to claim payment for all costs incurred until that time in accordance with the contract concluded with the Customer. In such an eventuality, we shall also be entitled to withdraw from the contract if the problems that have arisen cannot be resolved within a reasonable period.

## 6. Shipping and packaging:

Unless agreed otherwise, shipping shall be at the cost of the Customer. If so requested by us, the Customer shall pay directly or advance the transport costs.

Any shipping instructions issued by the Customer shall only be binding for us if we have confirmed them in writing. We shall only be obliged to take out transport insurance at the written request of the Customer and only at its cost. Unless agreed otherwise, the Customer shall be charged for packaging at cost price. Packaging will not be taken back. We shall decide concerning appropriate packaging as well as the mode of shipping at our best discretion. Partial deliveries are permitted.

## 7. Transfer of risk and acceptance:

In the event of delivery or installation, risk shall pass to the Customer once the finished goods have been shipped from our premises, even in the event that delivery carriage paid has been agreed upon. The same shall also apply where transportation has been arranged by us or occurs on one of our vehicles and we have paid the shipping costs. Goods shall be packaged with the utmost care. Shipping shall be arranged at our discretion. All liability for damage occurring during transit is declined, save in the event of wilful wrongdoing or gross negligence. In addition, the General Austrian Forwarders' Terms and Conditions shall apply in respect of damage occurring during transit.

Goods supplied by us may be installed, assembled and subjected to a test run if specifically so agreed. Risk shall transfer in accordance with the above.

If dispatch or delivery is delayed at the written request of the Customer, in both instances risk shall pass to the Customer from the day on which the goods were ready to be shipped for the duration of the delay, although we shall be obliged if so requested by the Customer to insure the shipment at its cost against damage caused during transit and/or by fire.

Should any works require acceptance, no formal requirements shall apply to the acceptance procedure. The works shall be deemed to have been accepted at the latest at the time of commissioning.

If dispatch or delivery is delayed at the request of the Customer, we shall be entitled to charge the Customer for costs arising due to storage, starting one month after notice that the goods were ready for dispatch was given, subject however to a minimum storage fee of 1% of the invoice amount for each month or part thereof. The foregoing shall be without prejudice to any other claims available to us.

## 8. Installation and commissioning:

At the request of the Customer, we shall attend to the installation and commissioning of the goods and equipment supplied by us, subject to the reimbursement of travel and accommodation costs as well as the costs of labour and materials at the relevant applicable prices. Travelling and waiting time shall be charged for as working time. In the event that a lump-sum is applied for assembly costs, at least 6% of the net amount for the overall order to which the supply relates shall be charged.

Assembly by us shall comprise the setting of the device on one occasion on-site at the agreed time after the floor, plinth or supporting walls have been ready for assembly in accordance with our specifications. The Buyer shall be responsible for establishing technical connections with devices. Any alterations or supplementary work requested by the Buyer will be charged for under all circumstances in line with the actual costs incurred for materials and labour at the relevant hourly rates. Any necessary administrative approvals for the installation and operation of equipment shall be obtained by the Customer. Specialists of the Customer must be present in order to oversee all work.



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## 9. Warranty:

The contractual object comprises goods that are usable as stated in our prospectuses and in accordance with the descriptions contained in other business documentation.

The customer is obliged to inspect the goods immediately after delivery and to notify us immediately in writing of any visible defects. We shall only be liable for defects of which we have been notified in due time and form. \*

Unless expressly agreed otherwise, we shall not have the status of general contractor for an overall project and shall thus not bear any liability for the proper operation of the overall project (works) or for overall coordination, but shall rather only incur liability for ensuring that the part of the works supplied by us is consistent with the state of the art and properly functions in accordance with paragraph 1 of this clause. In signing a diagram, sketch, etc. relating to goods that are to be supplied by us, the Customer shall be deemed to have approved both the type and quantity of the goods. The Customer shall bear exclusive responsibility for ensuring that chimneys, clay pipes or smoke extraction flues etc. work properly and comply with fire regulations.

The place of performance for the purposes of the warranty shall be our registered office or operating site. Any expenses and travel costs relating to the fulfilment of warranty obligations shall therefore be borne by the Customer. \*

We provide a warranty against evident and latent defects or the absence of warranted characteristics. We shall be entitled to choose pursuant to Section 932(1) of the Austrian Civil Code [ABGB] whether to address a defect by rectifying or exchanging the defective item. No further claims with any basis in law whatsoever shall be available, including in particular to the rescission of the contract or a reduction of the price. \*

The statutory warranty period for movable items is limited to 6 months. It starts to run in respect of quality defects from the day of delivery or partial delivery. \*

If any production parts or materials not produced by us feature defects, our warranty obligation shall be limited to the rights available to us against the manufacturer or supplier on the basis of the respective agreements concluded with it. The Customer shall not have any other claims in such an eventuality. \*

We shall only be obliged to rectify or replace any items falling under the warranty provided if the Customer has complied with its own contractual obligations. \*

The warranty claims of the Customer shall lapse under all circumstances in the event that the Customer has interfered with the goods without having previously discussed the matter with us and without having obtained our written approval. This shall also apply in the event that the Customer has altered, mishandled or processed the goods. No warranty is provided for used items. \* The presumption of defectiveness pursuant to Section 924 of the Austrian Civil Code [ABGB] is waived.

## 10. Industrial property rights:

We warrant that our supplies and services as well as the usage thereof does not infringe any third party patent rights (patent applications) or other industrial property rights. In the event that a third party alleges an infringement of a patent or industrial property right, the Customer shall be obliged:

- a) to inform us without undue delay concerning the claims either in writing or remotely;
- b) to authorise us to arrange the defence against those claims and to conduct litigation;
- c) to grant us the necessary powers of attorney and to provide us with any support requested to the best of its abilities;
- d) to authorise us to make any changes to the supplies and services at any time that we consider necessary and appropriate.

The Customer warrants that the plans, diagrams templates and other documentation procured by it as well as the usage thereof does not infringe any third party patent rights (patent applications) or other industrial property rights. The Customer shall indemnify us in respect of any such claims.

## 11. Return of goods:

We do not generally accept returns for goods that we have delivered properly. If a return is accepted in exchange for a credit note, then the shipment must be accompanied with a return consignment note containing the following information: part number, part description, and the invoice number and invoice date relating to the original delivery.

Return deliveries must be free of charge for us. A return does not entitle the customer to a refund of the invoice amount. They should instead expect to receive a credit note from us. In the event of a



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return in accordance with the contract, we charge an administration fee amounting to 25% of the product value for inspecting the returned goods. Returns are only accepted on the condition that the goods are undamaged and free from defects. The customer must bear the cost for any necessary repair work.

## 12. Product liability and damages:

Except insofar as the claim falls within the scope of the Austrian Product Liability Act [*Produkthaftungsgesetz*], no damages claims of any type whatsoever (losses caused by non-performance or delays, consequential losses in relation to defects as well as losses arising in respect of liability under contract or tort) and no recourse claims of any type whatsoever may be brought, including in particular those provided for under Section 933b of the Austrian Civil Code [*ABGB*], unless the circumstances that caused the loss did not arise as a result of wilful action or gross negligence on our part (this exception does not apply to personal injury within the ambit of consumer transactions).

If any damage comes to light upon the commissioning of any project to which other enterprises have contributed alongside us, such damage shall only be attributable to us if it is unequivocally established that we were responsible for us. The same shall apply, *mutatis mutandis*, in the event that we are the only professional operator involved, and in particular if the Customer has not taken all possible precautions to prevent damage.

## 13. Copyright and protection of secrets:

If we have made any developments on behalf of the Customer, we shall be entitled to allow other persons to benefit from these developments, even if the Customer covered the development costs. Unless agreed otherwise, know-how relating to developments shall only be made available to the Customer under licence. We reserve all rights over our developments, including in particular copyright.

The offers drawn up by us and all related documentation (diagrams, sketches etc.) shall remain our property and shall be treated by the Customer in confidence as our business secrets. It is not permitted to share them with third parties. Liquidated damages of 10% of the order value shall be paid by the Customer in the event of any breach.

## 14. Applicability of sectoral terms and conditions, Austrian ÖNORM standards and order of priority in the event of discrepancies:

This contractual relationship shall be governed by the following (in the order of priority in which they appear, in the event of any discrepancies):

the written agreement by which the contract was concluded, including any service description and any specifications;

these Terms and Conditions;

the terms and conditions of business of our professional association that are relevant for our sector; any ÖNORM standards setting out pre-prescribed contractual terms for individual areas;

the relevant ÖNORM standards setting out pre-prescribed general contractual terms, including in particular ÖNORM standards A 2060 and B 2210.

## 15. Applicable law, place of performance and jurisdiction:

Austrian substantive law shall apply. The applicability of the UN Convention on Contracts for the International Sale of Goods is excluded. The contractual language is German. Place of performance is the registered office of our company. In the event of any dispute, the German versions of the operating, assembly and installation manuals shall prevail under all circumstances. The same shall also apply to all other technical documentation in circulation.

The court with jurisdiction at the registered office of our company shall have exclusive jurisdiction *ratione loci* to decide on all disputes arising out of or in conjunction with this contract. However, we shall be entitled to launch court action against the Customer before the courts at its place of domicile.

## 16. End consumer transactions:

If the Customer is a consumer (end consumer), the above provisions shall not apply insofar as inconsistent with the mandatory provisions of the Austrian Consumer Protection Act [*Konsumentenschutzgesetz*]. This shall apply in particular for the provisions of these Terms and Conditions marked with \*.

Consumers are advised that, notwithstanding any shorter guarantee period, the statutory 2-year warranty period is applicable under all circumstances to consumer contracts, unless the period was lawfully reduced in the specific individual case.