

## **General Terms of Business and Delivery**

### **1. Scope**

- 1.1 These General Terms shall govern legal transactions between Logicdata Electronic und Software Entwicklungs GmbH („Seller“) and our contractual partners („Buyer“).
- 1.2 Any departure from the terms and conditions mentioned in 1.1 above shall be valid only if expressly accepted in writing by Seller.
- 1.3. Seller hereby contradicts any and all general terms and conditions of Buyer. Any and all terms of conditions of Buyer will only be applicable to any legal transaction in so far, as these general terms and conditions are identical to our general terms.

### **2. Submission of offers**

- 2.1 Seller’s offers shall be deemed offers without engagement.
- 2.2 Unless otherwise agreed upon without doubt, the content of our order confirmation will delineate the content of the agreement.

### **3. Conclusion of contract**

- 3.1 The contract shall be deemed concluded upon written confirmation by Seller of an order received or upon dispatch of a delivery.
- 3.2 Subsequent amendments of, or additions, to the contract shall be subject to written confirmation.

### **4. Prices**

- 4.1 Prices shall be quoted ex works or ex Seller’s warehouse without VAT, packing and packaging, loading. Buyer shall be liable for any and all charges, taxes or other duties levied in respect of delivery. If the terms of delivery include transport to a destination designated by Buyer, transport costs as well as the cost of any transport insurance desired by Buyer shall be borne by the latter. Delivery does not, however, include unloading and subsequent handling.
- 4.2 Prices are based on costs obtaining at the time of the first quotation. In the event that the costs have increased by the time of delivery, Seller shall have the right to adjust prices accordingly. In particular, this right shall apply regarding currency exchange rates fluctuation between the date of the order confirmation on the one hand and the issuing of the invoice on the other. In particular, Seller shall have the right to adjust prices in accordance with its costs (materials, wages, currency exchange rates energy, etc) on annually with effect for subsequent orders of the Buyer, with the annuality computed starting with the first quotation.

### **5. Delivery**

- 5.1 The period allowed for delivery shall commence at the latest of the following dates:
  - a) the date of order confirmation by Seller,
  - b) the date of fulfilment by Buyer of all the conditions, technical, commercial and other, for which he is responsible,
  - c) the date of receipt by Seller of a deposit or security due before delivery of the goods in question.

- 5.2 Buyer shall obtain whatever licences or approvals may be required from authorities or third parties for the construction of plant and equipment.
- 5.3 Seller may carry out, and charge Buyer for partial or advance deliveries. If delivery on call is agreed upon, the commodity shall be deemed called off at the latest one year after the order was placed.
- 5.4 In case of unforeseeable circumstances or circumstances beyond the parties control, such as all cases of force majeure, which impede compliance with the agreed period of delivery, the latter shall be extended in any case for the duration of such circumstances; these include in particular armed conflicts, official interventions and prohibitions, delays in transport or customs clearance, damages in transit, energy shortage and raw materials scarcity, labour disputes, and default on performance by a major component supplier who is difficult to replace. The aforesaid circumstances shall be deemed to prevail irrespective of whether they affect Seller or his subcontractor(s).
- 5.5 If a contractual penalty for default of delivery was agreed upon by contracting parties when the contract was concluded, it only shall be executed as follows, and any deviations concerning individual items shall not affect the remaining provisions: Where delay in performance can be shown to have occurred solely through the fault of Seller, Buyer may claim for each completed week of delay an indemnity of at most 0.5%, a total of no more than 5%, however, of the value of the goods to be delivered late. Assertion of rights of damages exceeding this extent is precluded.
- 5.6 With frame orders with an individual forecast, delivery time is 6 weeks, in case of frame orders without a forecast, it is 14 weeks. Outline agreements are valid for 12 months at the most. If there is no frame order, delivery time is 20 weeks. 8 months after receipt of the order there must be a fixed schedule for the number of remaining quantities. The technical customer release has to be considered as binding for the entire frame order.

## **6. Passage of risk and place of performance**

- 6.1 Unless otherwise agreed, the delivery of goods is considered sold EXW in accordance with INCOTERMS® 2010.
- 6.2 The seat of the Seller, unless any other place has been expressly specified, is the place of performance.

## **7. Payment**

- 7.1 If Buyer has sufficient credit insurance or provides a bank guarantee, one third of the purchase price shall fall due at the time of receipt by Buyer of the order confirmation of Seller, one third after half the delivery period has elapsed and the balance at the time of delivery. Otherwise advance payment deemed to be agreed. Invoices shall become due within 30 days after the date of issuance. If bankruptcy proceedings are instituted against the assets of Buyer or if an application for bankruptcy proceedings is not granted for insufficiency of assets, or should any doubts arise concerning the Buyer's solvency or his willingness to pay, particularly because he fails to meet his payments resulting from this contract, or from any other contract with Seller or with a company affiliated to Seller, or due to a subsequent deterioration of his economic situation, deliveries shall only be made against cash in advance.

- 7.2 In the case of part settlements the individual part payments shall fall due upon receipt of the respective invoices.
- 7.3 All interest, fees and charges shall be borne by Buyer.
- 7.4 Buyer shall not be entitled to withhold or offset payment on the grounds of any warranty claims or other counterclaims.
- 7.5 Payment shall be deemed to have been effected on the date at which the amount in question is at Seller's disposal.
- 7.6 If Buyer fails to meet the terms of payment or any other obligation arising from this or other legal transactions, Seller may without prejudice to his other rights
  - a) suspend performance of his own obligations until payments have been made or other obligations fulfilled,
  - b) call in debts arisen from this or any other legal transactions and charge default interest amounting to 1.25 % per month plus turnover tax for these amounts beginning with the due dates,
  - c) only perform transactions against cash in advance in the case of two delays in payment.

In any case Seller has the right to invoice all expenses arising prior to or in the course of a lawsuit, especially reminder charges and lawyer's fees.

- 7.7 Discounts or bonuses are subject to complete payment in due time.
- 7.8 Seller retains title to all goods delivered by him until receipt of all amounts invoiced including interests and charges. Buyer herewith assigns his claim out of a resale of conditional commodities, even if they are processed, transformed or combined with other commodities, to Seller to secure the latter's purchase money claim. In the case of resale granting respite Buyer shall have the power of disposal of the product under retention of ownership only with the proviso that upon reselling Buyer notifies the secondary Buyer of the assignment for security or enters the assignment in his account books.

## **8. Warranty and acceptance of obligation to repair defects**

- 8.1 If the agreed terms of payment have been complied by Buyer, Seller shall, subject to the conditions hereunder, remedy any defect existing at the time of acceptance of the article in question that impairs the functioning of said article. From particulars appearing in catalogues, folders, promotional literature as well as written or oral statements which have not been included in the agreement, no warranty obligations may be deduced.
- 8.2 Unless special warranty periods operate for individual items the warranty period shall be 12 months. These conditions shall also apply to any goods supplied, or services rendered in respect of goods supplied, that are firmly attached to buildings or the ground. The warranty period begins at the point of passage of risk acc. to paragraph 6.
- 8.3 For improved or exchanged parts, the warranty period shall start again, but shall end in any case 6 months after the original warranty period has expired.
- 8.4 If delivery or the performance of services is delayed for reasons outside the control of Seller, the warranty period shall begin 2 weeks after Seller is ready to deliver or perform services.
- 8.5 Buyer shall prove within a reasonable period the presence of a defect. Upon receipt of such notice Seller shall have the option to replace the defective goods or defective

- parts thereof or else to repair them on Buyer's premises or have them returned for repair, or to grant a fair and reasonable price reduction.
- 8.6 Any expenses incurred in connection with rectifying defects (e.g. expenses for assembly and disassembly, transport, waste disposal, travel and site-to-quarters time) shall be borne by Buyer. Replaced parts shall become the property of Seller.
- 8.7 If an article is manufactured by Seller on the basis of design data, design drawings, models or other specifications supplied by Buyer, Seller's warranty shall be restricted to non-compliance with Buyer's specifications.
- 8.8 Seller's warranty obligation shall not extend to any defects attributable to material supplied by Buyer. Nor shall Seller be liable for damage due to acts of third parties, atmospheric discharges, excess voltage and chemical influences. The warranty does not cover the replacement of parts subject to natural wear and tear. Seller accepts no warranty for the sale of used goods.
- 8.9 Claims acc. to § 933b ABGB are struck by the statute of limitation with lapse of the period mentioned under point 8.2.
- 8.10 The provisions of sub-paragraphs 8.1 to 8.10 shall apply, mutatis mutandis, to all cases where the obligation to repair defects has to be accepted for other reasons laid down by law.

## **9. Withdrawal from contract, Termination of the contract**

- 9.1 Buyer may withdraw from the contract only in the event of delays caused by gross negligence on the part of Seller and only after a period of grace of at least one month has elapsed.
- 9.2 Irrespective of his other rights Seller shall be entitled to withdraw from the contract
- a) if the execution of delivery or the inception or continuation of services to be rendered under the contract is made impossible for reasons within the responsibility of Buyer and if the delay is extended beyond a reasonable period of grace allowed;.
  - b) if doubts have arisen as to Buyer's creditworthiness and if same fails, on Seller's request, to make an advance payment or to provide adequate security prior to delivery,
  - c) if, for reasons mentioned in 5.4, the period allowed for delivery is extended by more than half of the period originally agreed or by at least 6 months, or
  - d) if Buyer does not or does not properly meet the obligations imposed as per paragraph 13.
- 9.3 For the reasons given above withdrawal from the contract shall also be possible in respect of any outstanding part of the delivery or service contracted for.
- 9.4 If bankruptcy proceedings are instituted against Buyer or an application for bankruptcy proceedings is not granted for insufficiency of assets, Seller may withdraw from the contract without allowing a period of grace. If this withdrawal is taken, it shall take effect immediately upon the decision that the business will not be continued. If the business will be continued, a withdrawal shall not take effect until 6 months after the institution of bankruptcy proceedings or after an application for bankruptcy proceedings has not been granted for insufficiency of assets. In any case, the contract shall be terminated immediately unless the bankruptcy law to which Buyer is subject

conflicts with this or if termination of the contract is necessary to prevent significant damages to Seller.

- 9.5 Without prejudice to Seller's claim for damages including expenses arising prior to a lawsuit and legal expenses, upon withdrawal from contract any open accounts in respect of deliveries made or services rendered in whole or in part shall be settled according to contract. This provision also covers deliveries or services not yet accepted by Buyer as well as any preparatory acts performed by Seller. Seller shall, however, have the option alternatively to require the restitution of articles already delivered.
- 9.6 If Seller is required to purchase buyer-specific third party products in order to fulfill frame orders and forecasts, Buyer is obliged to buy these products, which have been purchased by Seller in reliance on the validity of the contract and the fulfillment of the forecast, at cost price in the case of the termination of the contract. This purchase obligation in particular applies to ordered products, even if these products have not yet been delivered, that may following a termination of the contract not be used for the manufacture of the contractual products.
- 9.7 Orders already confirmed remain untouched by a termination of the agreement (unless the termination is due to an insolvency reason or a default in payment by Buyer) and both parties must fulfill the respective obligations.
- 9.8 Withdrawal from contract shall have no consequences other than those stipulated above.
- 9.9 The assertion of claims on the ground of laesio enormis, error, or lapse of purpose by the Buyer is excluded.

#### **10. Disposal of waste electrical and electronic equipment, consumer protection**

- 10.1 The Buyer of electrical/electronic equipment for commercial purposes, incorporated in Austria, is responsible for the financing of the collection and treatment of waste electrical and electronic equipment as defined by the Ordinance Regulating the Handling of Waste Electrical Equipment, if he is himself the user of the electrical/electronic equipment. If the Buyer is not the end user, he shall transfer the full financial commitment to his customer by agreement and furnish proof thereof to the Seller.
- 10.2 The Buyer incorporated in Austria shall ensure that the Seller is provided with all information necessary to meet the Seller's obligations as manufacturer/importer, particularly according to §§ 11 and 24 of the Ordinance Regulating the Handling of Waste Electrical Equipment and the Waste Management Act.
- 10.3 The Buyer incorporated in Austria is liable vis-à-vis the Seller for any damage and other financial disadvantages incurred by Seller due to Buyer's failure to meet or fully meet his financing commitment or any other obligations according to Article 10. The Buyer shall bear the burden of proof of performance of this obligation.
- 10.4 The Buyer is obliged to provide the end-consumer with all security relevant information contained in data-sheets and/or manuals, be it by means of specific manuals or by way of passing on LOGICDATA-documents, in particular by publishing such documents publicly available on its website.

## **11. Seller's liability**

- 11.1 Seller shall be liable only if the damage in question is proved to be due to intentional acts or acts of gross negligence. Any liability, including liability for consequential damages (including recall of products) is limited with compensation in the amount of 10% of the net turn-over of Buyer paid in the calendar year, in which the objected shipment was delivered to Buyer. This limitation does not apply, if the respective claims are satisfied by Seller's third party liability insurance, in which case any liability is limited with the limit of indemnity granted by the insurance company.
- 11.2 Seller shall neither be liable for damage due to acts of ordinary negligence nor for consequential damages or damages for pure economic loss, indirect damages, loss of production, financing costs, costs for replacement energy, loss of energy, data or information, loss of profits, loss of savings or interest, or damage resulting from third-party claims against Buyer.
- 11.3 If contractual penalties have been agreed upon, Buyer is precluded from claim any compensation exceeding such contractual penalties.
- 11.4 The provisions of paragraph 11 apply exclusively for all claims of Buyer against Seller, regardless of the legal basis or entitlement, and also apply to all employees, subcontractors and subsuppliers of Seller.
- 11.5 Unless contradictory to mandatory provisions, Seller shall not be liable to Buyer, be it on the ground of tort or warranty provisions for its subcontractors (servicetakers, suppliers etc).
- 11.6 Any and all claims arising from tort must be enforced by legal action before the competent court within 6 months.

## **12. Industrial property rights and copyrights**

- 12.1 Buyer shall regardless of fault indemnify Seller and hold him harmless against any claims for any infringement of industrial property rights raised against him if Seller manufactures an article pursuant to any design data, design drawings, models or other specifications made available to him by Buyer.
- 12.2 Design documents such as plans and drawings and other technical specifications as well as samples, catalogues, prospectuses, pictures and the like shall remain the intellectual property of Seller and are subject to the relevant statutory provisions governing reproduction, imitation, competition etc.
- 12.3 Without Sellers' previous consent in writing, they may neither be copied nor published, or be disclosed to another person or be used for any other purpose than agreed. A violation entitles Seller to claim a penalty in the amount of 100% of the total order sum of the order in question, regardless of whether or not the Buyer has acted negligently.
- 12.4 If the above defined provisions are violated, the buyer shall pay the seller (a) compensation for any loss attributable to unlawful copying/transferral/disclosure and (b) all costs incurred in connection with the legal and non-legal pursuit of the seller's rights.
- 12.5 In case of development projects the buyer is obligated to indemnify the seller from and against any claim or cause of action arising out any third party claim relating to intellectual property rights such as patents, design patents, copyrights, trademarks and similar rights against seller and including all costs incurred in connection with the legal

and non-legal pursuit of the seller's rights provided that the claim is a result of the purchaser's specifications and requirements.

### **13. Compliance with export provisions**

- 13.1 When passing on goods delivered by Seller to third parties (as well as any related documentation, regardless of the method of provision or the services performed by Seller [including technical support of any kind]), Buyer must comply with the applicable regulations of national and international (re-)export provisions. In any case, Buyer must observe the (re-)export provisions of Seller's country of residence, the European Union and the United States of America.
- 13.2 If necessary for export controls, Buyer must provide Seller with all necessary information immediately after being requested to do so, for example, information about the final recipient, final destination and purpose of the goods or services.

### **14. General**

Should individual provisions of the contract or of these provisions be invalid the validity of the other provisions shall not be affected. The invalid provision shall be replaced by a valid one, which comes as close to the target goal as possible.

### **15. Jurisdiction and applicable law**

Any disputes concerning this Agreement including the issue of its valid conclusion and its pre- and post-contractual effects are exclusively decided by the competent court, in whose district Seller has its registered seat, at the discretion of Seller also by the competent court, in whose district the Buyer has his registered seat, an establishment or assets. This Agreement including the issue of its valid conclusion and its pre- and post-contractual effects is governed by the laws of Austria. Application of the UN Convention on Contracts for the International Sale of Goods is renounced.

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