



Standard Terms and Conditions of Purchase of Lechler GmbH EKB 2010/01

§ 1

Area of applicability

- (1) Our Standard Terms and Conditions of Purchase (hereinafter called "STCPs") apply exclusively; we do not recognise conflicting conditions of the supplier or conditions of the supplier deviating from our Standard Terms and Conditions of Purchase unless we have expressly consented to their validity in writing. Our Standard Terms and Conditions of Purchase also apply where, in knowledge of conflicting terms of the supplier or terms of the supplier deviating from our Standard Terms and Conditions of Purchase, we accept the delivery from the supplier without reservation.
- (2) All agreements which are made between us and the supplier for the purpose of the performance of this contract are to be recorded in this contract in writing.
- (3) The following STCPs only apply vis-à-vis businessmen within the meaning of § 14 BGB [*Bürgerliches Gesetzbuch – German Civil Code*], legal entities established under public law provisions or special assets under public law provisions.
- (4) In the case of continuing business relationships between ourselves and the supplier, the following STCPs also apply for future orders without any renewed express reference.

§ 2

Conclusion of Contract - Offer documents

- (1) The preparation of offers and cost quotations by the supplier is for us free of charge and non-binding.
- (2) Supply contracts (order and acceptance) and supply call-offs, as well as any amendments or supplements to the same, must be made in writing; verbal

orders and orders placed by telephone require our written confirmation in order to be legally binding; this also applies in the event of any subsequent change to orders already placed.

- (3) If the order or call-off is not confirmed in writing by the supplier within 5 working days following receipt by it, we shall be entitled to cancel the order without the supplier being able to derive any claims therefrom.
- (4) We may demand from the supplier changes to the objects of the contract in design and workmanship within the scope of what is conscionable. In this respect, the effects, in particular in relation to the increased or reduced costs and also in relation to the delivery dates, are to be agreed on a reasonable basis by mutual consent.
- (5) We reserve rights of ownership and copyright in illustrations, drawings, calculations and other documents; they may not be made accessible to third parties without our express written consent. They are to be used exclusively for the manufacture on the basis of our order; following completion of the order, they are to be returned to us without specific request. They are to be kept secret in relation to third parties; in this respect the provisions of § 11, para. (1), apply by way of amplification.

§ 3

Prices and conditions of payment

- (1) The price stated in the order is binding. In the absence of any written agreement to the contrary, the price includes delivery "carriage free", including packaging. For the return of the packaging, a separate agreement is necessary.
- (2) The statutory value added tax is not included in the price.
- (3) We are only able to process invoices if – in accordance with the specifications in our order – they quote the order number shown there; the supplier shall be responsible for all consequences arising as a result of failure to comply with this obligation unless it proves that it was not responsible for the same.

- (4) Unless otherwise agreed in writing, we shall pay the purchase price within 14 days, calculated from delivery and receipt of a proper invoice, with a 3 % prompt payment discount or within 30 days net following receipt of the invoice.
- (5) The invoice is to be issued in duplicate and addressed to the address printed. It may not be enclosed with a consignment.
- (6) We shall be entitled to rights of set-off and withholding in the statutory scope.
- (7) We reserve the right to select the method of payment. In the case of payment by cheque or bank transfer, the question whether the payment has been properly made shall depend solely upon whether the cheque or the remittance order is received by the recipient or the bank within the period for payment.
- (8) Invoices of the supplier which deviate from the delivery or performance shall only be deemed to have been received by us as from the point in time of their amendment in a correct invoice.
- (9) Payments on our part do not constitute any recognition of the delivery or performance as being in conformity with the contract.

§ 4

Delivery period

- (1) Agreed delivery periods are binding. The relevant date for ascertaining compliance with the delivery date is the date of receipt of the consignment in our works.
- (2) The supplier shall be obliged to notify us without delay in writing if circumstances arise or become recognisable to it from which it can be seen that the agreed delivery period cannot be met.
- (3) In the case of delay in delivery, we shall be entitled to the statutory claims. In particular, we shall be entitled, following the ineffectual expiration of a reasonable period of time, to demand damages in place of performance and cancellation of the contract. If we demand damages, the supplier shall have the right to prove to us that it was not responsible for the breach of duty.

- (4) The supplier shall not be entitled to make over-deliveries, short deliveries or part deliveries.
- (5) The supplier shall be obliged to quote our precise order number on all delivery papers, confirmations of contract, invoices etc; should it fail to do so, we shall not be responsible for the delays in the processing arising therefrom.
- (6) If the agreed delivery date cannot be met for a reason for which the supplier is responsible, we shall, without prejudice to further-reaching statutory provisions, be entitled, at our option, to cancel the contract following the expiration of a reasonable extension of time, to procure substitute products from third parties and/or to demand damages on account of non-performance. We shall have a claim to the reimbursement of all additional costs incurred by us through late deliveries or performances for which the supplier is responsible. The acceptance of a late delivery or performance does not constitute a waiver of claims to damages.
- (7) Should the supplier fail to meet the agreed delivery date, we shall furthermore be entitled to demand a contractual penalty in the amount of 0.5%, at the most, however, 5% of the order value, for each commenced calendar week of delay in delivery. The imposition of the contractual penalty does not preclude the assertion of a claim for further-reaching damage, subject to set off against the contractual penalty. Should we accept the goods or performance notwithstanding the delay, we may demand the contractual penalty without having to reserve this right upon the acceptance. The supplier shall have the right to prove that a lower amount of damage or no damage at all has arisen.
- (8) We reserve the right for operational reasons to change the quantity of deliveries ordered or to order the temporary suspension of planned deliveries.
- (9) In the case of a delivery sooner than agreed, we shall be entitled to refuse the performance or to return the goods to the supplier at its expense and risk. If the goods are not returned, we shall store the goods at our premises at the expense and risk of the supplier. In relation to the payment, the agreed delivery date shall be authoritative.

§ 5

Packaging, transport, passing of risk and documentation

- (1) The transport of goods shall take place at the expense and risk of the supplier, carriage paid to the agreed delivery destination. Should, by way of exception, carriage unprepaid be agreed, we shall only bear the cheapest freight costs unless we have prescribed a specific type of shipment.
- (2) Irrespective of the responsibility for costs, risk shall only pass to us following delivery and acceptance of the goods or performance at the agreed delivery point.

§ 6

Liability for material defects, goods inwards checks and complaints

- (1) The statutory provisions concerning material defects shall apply unless provided to the contrary.
- (2) We shall notify the supplier of any defects in the consignment without delay as soon as the same are discovered under the prevailing conditions of a proper course of business. In this respect, the supplier waives the legal defence of late notification of defects.
- (3) As a basic principle, we shall be entitled to choose the nature of the supplemental performance. The supplier shall have the right to refuse the selected nature of the supplemental performance subject to the conditions of § 439, para. 3, BGB.
- (4) The period of limitation amounts to 36 months, calculated from the passing of risk, except where the mandatory provisions of §§ 478, 479 BGB apply.
- (5) The supplier warrants that the products or performances supplied will be free from defects and, in particular, will be of the contractually agreed quality and quantity, will comply with the specifications demanded by us and comply with the recognised standard of technology at the point in time of the delivery, as well as with the quality and safety standards required by law. Any changes shall require our consent prior to the delivery of the products and performances.

- (6) Should a defect exist, the supplier shall also, without prejudice to other and further-reaching claims, bear the costs of the investigation and the ascertainment of the defect.
- (7) In the case of replacement deliveries, the limitation period for liability for material defects shall commence anew for the part replaced.
- (8) Should the supplier fail to comply with the demand for the rectification of the defect or replacement delivery without delay, at the latest, however, within 7 working days, or should it be unable to carry out the same, we shall be entitled to cancel the contract and/or to demand damages in place of performance and also to return the goods to the supplier at the risk and expense of the latter.
- (9) In urgent cases, where the immediate rectification of a defect is justified on account of special interests on our part or where it is to be feared that the rectification of the defect by the supplier could result in delays which would impede the performance of our obligations towards contract partners, or if the rectification of the defect by the supplier would cause higher costs than the rectification of the defect by ourselves, we shall ourselves be entitled, at the expense of the supplier and without prior notification to it, to carry out the necessary rectification of the defect or the necessary supplemental performance in relation to the defective delivery or performance in the necessary scope, or to have the same carried out by third parties (self-rectification). We shall in such cases also be entitled to procure flawless goods or performances from third parties (replacement procurement). The supplier shall bear the necessary costs for the self-rectification or replacement procurement.
- (10) We may return any goods delivered which are not in conformity with the contract at the expense and risk of the supplier.
- (11) Should a defect in the delivery only be discovered following further processing or onward supply of the goods delivered by the supplier, the supplier shall be obliged to bear all necessary costs associated with the exchange or rectification of the defective goods, in particular examination, transport, travel, labour and material costs.
- (12) If, by reason of a series defect, the exchange of an entire series of objects of delivery or of our products into which the objects of delivery are incorporated becomes necessary, for instance because a fault analysis in the individual case

is uneconomic, not possible or not conscionable, the supplier shall also reimburse us the costs in relation to that part of the series affected which shows no technical defect.

- (13) In the event of the illiquidity or insolvency of the supplier, we shall be entitled to withhold reasonable security, at least, however, 10 % of the agreed price, up until the expiration of the period of limitation for warranty claims.
- (14) The supplier assigns its warranty claims against its own suppliers to us. We shall be entitled to disclose this assignment in the event of the insolvency of the supplier. We shall furthermore be entitled to cancel the orders in respect of the scope of delivery not yet performed by this point in time.
- (15) The supplier shall indemnify us from all claims of third parties which are based on a defect from the sphere of performance of the supplier. The supplier shall assume all costs arising through any defect, including any recall costs.
- (16) Where the goods delivered are assimilated into an end product which is sold to a consumer, we shall, in the case of a claim by its customers, be entitled to a right of recourse against the supplier in accordance with §§ 478, 479 BGB.

§ 7

Product liability, indemnity and liability insurance

- (1) Should a claim for damages be made against us by third parties on the basis of the Produkthaftungsgesetz [*Product Liability Act*] or on the basis of other provisions on account of a product defect, the supplier shall, upon first demand, indemnify us from claims for damages, also in relation to damage arising through any necessary recall, retrofitting, dismantling and assembly, if and to the extent that the damage results from a defect in the goods delivered by the supplier. If the cause of such damage lies with the supplier, it shall also bear the burden of proof in this respect. The supplier shall in such cases also bear all costs and expenses, including the costs of any legal pursuit.
- (2) By way of security to cover its obligations arising from the supply relationship with us, the supplier shall take out business liability insurance and product liability insurance, including the risk of recall, in an adequate amount, and shall maintain the same in force at its expense on a continuous basis and for at least 15 years following the delivery. The supplier shall, upon

request and annually without request by no later than the 31 January of each year, submit written evidence to us of the conclusion and the existence of such insurance. Should we be entitled to further-reaching claims for damages, these shall remain unaffected.

- (3) We and the supplier shall keep each other mutually informed and support each other in the legal defence.

§ 8

Industrial property rights and liability for flaws in legal title

- (1) The supplier gives an assurance that the goods delivered by it do not infringe any domestic or foreign industrial property rights and that they are free from other rights of third parties. It guarantees us the unrestricted proprietary permission for their use and trade inland and abroad.
- (2) The supplier shall, in the case of any claim by third parties on account of an infringement of domestic or foreign industrial property rights in relation to the goods delivered, indemnify us from all claims, and shall bear all costs incurred by us in this connection.
- (3) The period of limitation amounts to 36 months, calculated from the passing of risk.
- (4) Except as agreed to the contrary above, liability for flaws in legal title shall in all other respects be governed by the statutory provisions.

§ 9

Material and manufacturing aids provided

- (1) Documents of all kinds such as designs, drawings, models or manufacturing aids which we provide to the supplier remain our property and are to be returned to us free of charge without specific request as soon as they are no longer required for the performance of the order. They are to be used exclusively for the manufacture on the basis of our order.

- (2) The same applies for documents or manufacturing aids which the supplier has produced or developed in accordance with our specifications and/or with our participation.
- (3) Material and manufacturing aids provided may not be passed on, sold, pledged or made accessible to third parties or used in similar manner without our approval.
- (4) Any processing or refashioning by the supplier of material supplied is carried out on our behalf. If our goods which are subject to a reservation of title are processed together with other items not belonging to us, we shall acquire co-ownership in the new item in the ratio of the value of our item (purchase price plus VAT) to the value of the other items processed at the time of the processing.
- (5) If the item provided by us is inseparably intermingled with other objects not belonging to us, we shall acquire co-ownership in the new item in the ratio of the value of the item to which we have reserved title (purchase price plus VAT) to the value of the other objects intermingled at the point of time of the intermingling. Should the intermingling occur in such manner that the item of the supplier is to be regarded as the main item, it shall be deemed as agreed that the supplier transfers proportional co-ownership to us; the supplier shall keep the item of sole ownership or co-ownership in safe custody on our behalf.
- (6) Should the rights of security to which we are entitled in accordance with para. (4) and/or para. (5) exceed by more than 10 % the purchase price of all our reserved goods still unpaid, we shall, at the demand of the supplier, be obliged to release such rights of security of our choice.

§ 10

Tools

We reserve ownership of tools; the supplier is further obliged to use the tools exclusively for the manufacture of the goods ordered by us. The supplier shall be obliged at its own expense to insure the tools belonging to us at replacement value against damage by fire, water and theft. At the same time, the supplier assigns to us already now all claims to compensation under this insurance; we hereby accept the assignment. The supplier shall be obliged at its own expense to carry out any

necessary servicing and inspection works and also all maintenance and repair works on our tools in due time. It shall notify us immediately of any disruption of operations; should it culpably fail to do so, claims for damages remain unaffected.

§ 11

Secrecy

- (1) The supplier shall be obliged to treat all information which comes to its knowledge within the scope of the business relationship confidentially. In particular, it shall be obliged to keep all drawings, design sketches, CAD files, calculations, specimens and comparable documents and information which it has received secret. The contents of the documents and data may neither be made accessible to third parties nor used for other own purposes of the supplier without our express written consent. They are to be protected by the supplier against unauthorised perusal or use.
- (2) This obligation of secrecy shall also continue, unrestricted in time, following the ending of the supply or business relationship. It shall also apply for documents mentioned under para. (1) received within the scope of pre-contractual negotiations if no contract comes into being. The obligation of secrecy shall lapse if and to the extent that the manufacturing knowledge contained in the illustrations, drawings, calculations and other documents provided has become general knowledge.
- (3) Documents received are to be returned to the respective contract partner in proper condition without specific request following the end of the supply and business relationship.

§ 12

Transfer of rights

The supply contract concluded with us may not be transferred to third parties, either in whole or in part, without our written consent. Claims against us may only be assigned with our written consent.

§ 13

References

The supplier may only make reference to business relations with us in its advertising if we have previously consented to this in advance in writing.

§ 14

Place of performance, court venue and applicable law

- (1) The place of performance for all deliveries and performances shall be our official place of business.
- (2) If the supplier is businessman, our official place of business shall be the exclusive court venue; we shall, however, also be entitled to sue the supplier at its own court of domicile.
- (3) Exclusively German law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and international private law, shall apply for all legal relationships between the parties.

§ 15

Code of Conduct

- (1) The supplier undertakes to comply with the standards laid down in our Code of Conduct (see here: [Lechler Code of Conduct](#)), and he guarantees that these standards are also complied with by all his employees, representatives, agents and subcontractors whom he employs or commissions to perform the contract vis-à-vis us.
- (2) In case of a violation of subsection (1) above by the supplier, we shall be entitled to set a reasonable period of time for the supplier to remedy the violation and – in case of an unsuccessful expiration of this period – to withdraw from the Contract or to terminate it for good cause without having to observe a period of notice.

§ 16

Saving clause

Should individual provisions of these Standard Terms and Conditions of Purchase be or become legally ineffective, the effectiveness of the remaining provisions shall not be thereby impaired.

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Status: June, 19th 2020

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