

# Terms and Conditions of Sale LINDE + WIEMANN SE & Co. KG Version June 2017

## 1 Validity of the conditions

- 1.1 The following business conditions shall only apply for companies for the purpose of § 310 clause 1 BGB (German Civil Code).
- 1.2 The sale of our goods and our other services is exclusively based on the following Terms and Conditions of Sale except in case of purchase conditions according to the recommendation of the *Verband der deutschen Automobilindustrie e.V. (VDA)* (Association of the German Automotive Industry) for the general business conditions with respect to the purchase of production material and spare parts to be used for the automobile. The above mentioned conditions prevail these conditions. Other general business conditions of the customer shall not apply unless a separate written agreement has been concluded in individual cases. The Terms and Conditions of Sale shall also apply in the scope of a permanent supply relation, even if they are not constantly referred to in the scope of the permanent supply. It is herewith expressly objected to a confirmation of the customer with reference to his business or purchase conditions. Deviating purchase conditions of the customer are only accepted if we confirm their incorporation in writing.

## 2 Offer and contract conclusion

If not otherwise expressly stated, our offers are subject to confirmation. All supply contract and other agreements are only effective with our written confirmation. Drawings, illustrations, dimensions, weights and other performance data are only binding if they are expressly agreed in writing.

## 3 Orders, deliveries, force majeure, modifications of the delivery item

- 3.1 All orders as well as their amendments and supplements require the written form. Telefax and email fulfil the requirement of the written form. Orders which have been placed are irrevocable. Arrangements or undertakings made verbally or by telephone are without obligation if we have not confirmed them in writing.

Conditions of the purchaser are only binding if we accept them in writing.

- 3.2 If not otherwise agreed, we permit excess or short deliveries of up to 10% of the ordered quantity or number.
- 3.3 We approve partial deliveries and services unless they are economically unreasonable for the customer or a different agreement has been made in writing.
- 3.4 If not otherwise agreed in writing, our deliveries take place ex works or warehouse at our discretion; this may also be the works or warehouse of a third party. The risk is transferred to the customer on delivery to the carrier or another transport person at the latest if the goods are delivered by our own employees. If the customer has not given special instructions, the choice of an appropriate transport person is incumbent on us. The risk is transferred to the customer at the moment of the agreed acceptance, even if we store the goods as requested by the customer.
- 3.5 Our service and delivery obligation is subject to a correct and punctual supply to ourselves.
- 3.6 In default of a deviating agreement of the parties, details about the time of delivery and performance are only given approximately; in case of only approximate delivery and performance dates, the customer may only claim the due date of our supplies and services one month after expiry of the mentioned and possibly renewed period at the earliest. In case of approximate delivery dates, the customer has to accept the goods within a period of two weeks after notification of the readiness for handover or delivery given by us.
- 3.7 The delivery time starts when the order confirmation is forwarded, however not before provision of all documents, approvals, releases to be obtained by the customer and the clarification of all technical questions.
- 3.8 In case of call orders, the customer has to call the goods in lots which are customary in the industry within a period of two weeks after notification of the readiness for handover or dispatch given by us, if not otherwise agreed.
- 3.9 If more than the order quantity is called in case of call orders, we are entitled to deliver only the order quantity or to invoice the additional quantity at the daily rate.
- 3.10 If the customer fails to provide a delivery scheduling in case of calls, we are entitled to make the delivery scheduling ourselves according to § 315 BGB.

- 3.11 If no period of validity is agreed for call orders, a maximum validity of 12 months shall apply. Stock rests may be delivered at the end of the validity period.
- 3.12 If our customer does not accept the goods or does not call the goods in time, we are entitled to demand compensation of our additional expenses and store the goods at the expense and risk of the customer without prejudice of our title to performance and other rights.
- 3.13 The delivery time is reasonably extended in case of measures in the scope of Industrial conflicts, especially strike and lawful lock-out, and if other hindrances occur for which we are not responsible.
- Force majeure and industrial conflicts release the contract parties from their obligations to perform for the duration of this disturbance and in the scope of its effect. The contract parties are committed to immediately provide the necessary information and reasonably adapt their obligation to the changed conditions in good faith. We are partially or completely exempt from the obligation to accept the ordered deliveries/services and insofar entitled to withdraw from contract if the delivery/service cannot be used anymore due to the delay caused by force majeure or industrial conflict - also taking into consideration economic aspects.
- The same shall apply if these circumstances occur at subcontractors. We are neither responsible for the above described circumstances if they occur during a delay that started before. We will communicate to the customer beginning and end of such hindrances as quickly as possible. If circumstances occur after contract conclusion (e.g. due to mobilisation, governmental actions, including foreign trade actions) which we could not foresee and which make it difficult for us to render the service we owe - and not only temporarily - or if a disturbance of the equivalency relation between performance and consideration which is not temporarily occurs to our detriment, we are able to demand a corresponding adaptation of the contract. If a contract adaptation is not possible or unreasonable for a contract party, we may withdraw from contract. Otherwise the legal provisions on the exclusion of the obligation to perform, the right to refuse performance of the debt on the disturbance of the contract basis and the termination right for important reason are not affected.
- 3.14 The customer may only demand a modification of the delivery item in design and construction if such modification is reasonable for us and an unanimous regulation was agreed about their effects, especially with respect to additional costs and reduced costs.

#### **4 Payment conditions, payment, default of payment, storage**

- 4.1 The price valid on the day of delivery or service performance plus the respective statutory VAT is decisive for the price calculation, if no deviating agreement has been made. If more than six weeks are between order confirmation and delivery of the goods and prices increase for material and/or labour costs or other costs, we are entitled to demand a corresponding reasonable change of prices. The prices are in EURO ex works (packing excluded), if not otherwise stipulated. If a delivery carriage paid is agreed, this condition of carriage paid shall apply for a delivery to the receiving station of the customer excluding cartage. Additional costs due to a special packaging requested by the customer, a special type of packaging and the request for modifications of the packaging are at the expense of the customer.
- 4.2 All payments are executed to LINDE + WIEMANN SE & Co. KG, Dillenburg - if not otherwise agreed in writing. Payments are principally executed without postage and charges to our paying agent. Payment may be executed by bank transfer or cheque after previous agreement. Discount charges or interests are charged to the purchaser. The day on which we may dispose of the amount is the settlement date for payments of any type. We allocate incoming payments at our discretion, in general to the eldest open claim. Our invoice amounts are payable within 30 days after date of invoice net, if no other separate agreement exists. Set-off or delayed payment for any possible counterclaims are excluded. If the payment term is exceeded or if the full amount is not paid in time, the customer is in default without reminder. We reserve the right to charge default interests of 8 percent points above the base lending rate in case of late payment receipt as far as we are not entitled to higher interests for another legal cause. The assertion of another damage or other legal rights for default is reserved.
- 4.3 If the customer does not observe payment terms or if it becomes obvious after contract conclusion for other reasons that our receivables are endangered due to an insolvency of the customer, we are entitled to legal rights, especially the right to refuse performance until achievement of the compensation or until the provision of a corresponding security as well as the right to withdraw from contract.
- 4.4 In case of payment default or if the credit limit is exceeded, we reserve the right to retain the goods deliveries until payment of all claims or until the credit limit is not exceeded anymore taking into consideration the order value.

- 4.5 If the customer does not meet his payment obligations within the fixed deadline despite reminder and despite fixing of a deadline or if insolvency proceedings with respect to his assets or to the assets of his legal representatives are filed, the complete remaining debts plus all additional charges fall immediately due. In these cases we are entitled to declare cancellation of all contracts which are not fulfilled and to get back goods under reservation of ownership which are not paid and to demand the compensation of all costs which accrue with the cancellation in the causal context. The duty to compensate costs does not exist if the customer is not responsible for the payment default.
- 4.6 If we store the goods on request of the customer, the accruing costs are at the expense of the customer.

## **5 Securities**

We are entitled to the usual type and scope of securities for our claims, provided they are conditional and limited.

## **6 Dispatch, duty to notification of defects**

- 6.1 If not otherwise agreed, the dispatch shall always take place at the risk and expense of the customer. More details are specified in clause 3 of these Terms and Conditions of Sale.
- 6.2 The customer is committed to check the goods immediately after receipt for their completeness and identifiable damages and to inform us about losses or damages without undue delay. If loading or transport of the goods is delayed for a reason for which the purchaser is responsible, we are entitled to store the goods at our equitable discretion at the expense and risk of the purchaser, to take the measures that are deemed to be appropriate for the conservation of the goods and to invoice the goods as delivered.

## **7 Provision and use of operating materials**

- 7.1 The costs of operating materials and the portion of costs are principally invoiced separately from the goods value. Modification costs which accrue during manufacturing or after completion of the tool are invoiced additionally. The portion

of costs of the customer for tools which are produced by own or outsourced manufacturing is invoiced respectively net on order placement at 1/3 and another third on delivery of the initial sample. The remaining payment is executed after initial sample approval. If the customer pays 100% of the costs of the operating materials, the property of the tools is transferred to the customer after release and complete payment. From this moment, the customer lends us the operating materials. In case of an amortisation of the operating materials via the part price <part price amortisation>, the property of the tools is transferred to the customer after complete amortisation via the agreed part price. From this moment, the customer lends us the operating materials.

Other regulations principally require a written agreement. The customer does not acquire any title to tools by way of compensation of the portion of costs for the tools. Tools which are made available by the customer must be delivered carriage paid, as far as their are his property. Repairs and replacement of the operating materials which have become necessary during use due to natural wear have to be paid by the customer. We undertake to store the tools for 10 years after the last delivery to the customer at the customer's expense. If the customer informs us before expiry of this period that orders shall be placed within one year, we are committed to keep the tools for this time. Otherwise, we have the right to freely dispose of the tools.

## **8 Documents**

All documents about the products we delivered, especially drawings, remain our property and may only be used for the contractual purpose without special consent. They have to be returned on request.

## **9 Reservation of ownership**

- 9.1 We reserve ownership of the goods ("goods under retention of title") until fulfilment of all our claims, also future claims, arising from the business relation with the customer. This shall apply in case of procurements of operating materials for the purpose of clause 7 as well as for the payment of operating materials and the financing of operating materials by way of a part amortisation. In case of current account, the reservation of ownership is deemed to be a security for our respective balance claims.
- 9.2 Processing or transforming of the goods under retention of title on part of the customer is always carried out without a liability being generated for us. If the goods are processed with other items which are not our property, we acquire a co-

ownership in the new item in the ratio of the value of the goods and the value of the other items treated at the moment of processing. If the goods under retention of title are connected, mixed or admixed with goods and chattels of the customer in a way that the item of the customer is deemed to be the principal item, the customer transfers to us already now his property in the overall item in the ratio of the value of the goods under retention of title and the value of the connected, mixed or admixed item. If the goods under retention of title are connected, mixed or admixed with goods and chattels of a third party in a way that the goods of the third party are deemed to be the main item, the customer transfers already now the title to compensation he has against the third party to the amount which corresponds to the invoice amount of the goods under retention of title.

The item generated by connection or mixture (in the following the "new item") or the (co-) ownership rights in the new item to which we are entitled or which have to be transferred according to clause 9.2 as well as the titles to compensation assigned according to this clause serve in the same way as security of our claim as the goods under retention of title according to clause 1.

- 9.3 The customer is entitled to resell the goods under retention of title or the new item in the proper course of business under reservation of ownership. The customer is committed to ensure that the claim arising from such businesses of resale may be transferred to us in conformity with the above regulations. Other disposals are prohibited.
- 9.4 The claims of the customer from a resale of the goods under retention of title are assigned to us already now. They serve as our security in the same scope as the goods under retention of title. If the customer sells the goods under retention of title with other goods which have not been delivered by us, the assignment of the claim does only apply to the amount of the invoice which results from the resale of the goods under retention of title. In case of a resale of goods which are under our co-ownership by the connection, mixture or admixture of items according to clause 9.2 or according to the legal regulations, the assignment of the claim applies to the amount of our co-ownership.
- 9.5 If the customer includes claims from the resale of goods under retention of title into an existing current account relation with his customers, he assigns to us already now any recognised balance or final balance resulting to his benefit to the amount which corresponds to the total of claims from the resale of goods under retention of title which have been included into the current account relation.
- 9.6 The customer is entitled to collect the claims assigned to us which result from the resale of the goods under retention of title or of the new item. The purchaser is not

entitled to assign the claim from the resale of the goods under retention of title to third parties, also not in the framework of a real factoring contract.

- 9.7 We may cancel the authorisation to resell the goods under retention of title or the new item according to clause 9.3 and the authorisation for the collection of the claim assigned to us according clause 9.6 in case of payment default or suspension of payment of the purchaser and in case of an application for the opening of insolvency proceedings or in other cases of impaired credit worthiness and trustworthiness of the purchaser. In case of a cancellation of the authorisation for resale or collection, the customer is obliged to inform his customers immediately about the assignment of claims to us and to provide to us all information and documents necessary for collection. Furthermore, he is committed to provide to us or transfer to us any securities he is entitled to with respect to claims of his customers.
- 9.8 The customer is committed to inform us immediately about a garnishment or another legal or actual impairment or endangerment of the goods under retention of title or of other securities which exist for us.
- 9.9 The customer undertakes to take out an insurance with sufficient coverage for the goods under retention of title against damages caused by fire, water and theft at replacement value. He assigns these claims from these insurance policies to us already now. We accept this assignment.
- 9.10 In case of a payment default or another not only minor contract-violating behaviour of the customer and in case of a cancellation of the contract, the customer agrees already now that we take away the goods under retention of title or - as far as we are the sole proprietors - the new item for the purpose of clause 9.2 or have them taken away. The removal can only be deemed to be a withdrawal from contract with our express corresponding declaration. The customer has to grant access to our agents anytime to carry out this measure and for a general inspection of the goods under retention of title or of the new item.
- 9.11 We are entitled to use the goods under retention of title, which have been taken away, after previous instruction; the proceeds from use - less the reasonable costs of use - have to be set off against the liabilities of the customer.
- 9.12 The customer grants to us a lien to secure all present and future claims from the business relation on the material provided to us for performance of the order and on the titles superseding these claims.

- 9.13 If the reservation of ownership or the assignment of claims is ineffective or unenforceable due to foreign mandatory legal regulations, the securities generated by the reservation of ownership or the assignment of claims in this area are deemed to be agreed. If the participation of the customer is necessary for this purpose, he has to take all measures which are necessary to justify and maintain the security.
- 9.14 We are committed to release the securities we are entitled to on request of the customer insofar as these securities exceed the value of the claims which have to be secured and which are still not settled by more than 20%. It is in our discretion to choose the securities to be released.

## **10 Secrecy**

The business partners undertake to treat as business secret all not obvious commercial and technical details they become aware of by the other business partner. Order specific data, drawings, models, samples and similar items may not be left or made accessible to unauthorised third parties. The reproduction of such items is only permitted as necessary for operation and in the framework of proprietary provisions.

## **11 Property rights**

- 11.1 The customer undertakes to inform us immediately about any claims of property right of third parties regarding the products supplied and to leave the legal defence to us at his expense. We are entitled to carry out the necessary modifications due to the claims of property rights at own expense, also at goods which are already delivered and have already been paid.
- 11.2 If a third party prohibits the manufacture or delivery under reference to any property right it has, we are entitled to discontinue work or delivery until clarification of the legal situation by the customer and the third party - as far as we are not responsible for the violation of the property right. If the continuation of the order is not reasonable for us due to the delay, we are entitled to cancellation.
- 11.3 The customer is liable towards us that the services provided are free from property rights of third parties and indemnifies us from all corresponding claims of third

parties.

## **12 Liability for delay**

- 12.1 We are liable according to the legal regulations as far as the underlying purchase contract is a firm deal for the purpose of § 286, clause 2, no. 4 BGB or of § 376 HGB (German Commercial Code). We are also liable according to the legal regulations as far as the customer is entitled to claim that he has no interest in the further contract performance anymore as a consequence of a delay in delivery for which we are responsible.
- 12.2 We are liable for a delay according to the legal regulations, provided the customer asserts compensation claims which are based on wilful intent or culpable negligence of our representatives or our vicarious agents. As far as we cannot be accused of a deliberate contract violation or a violation of material contract obligations in the framework of the liability for delay, the liability for damages is limited to the foreseeable, typically occurring damages.
- 12.3 The liability for delay due to culpable harm to life, limb and health is not affected.
- 12.4 As far as not otherwise agreed above, the liability for delay is excluded.

## **13 Liability for defects**

- 13.1 Our goods are delivered in commercial quality and design taking into consideration the commercial tolerances due to manufacture for dimensions, weights and quality conditions. The reference to standards, material sheets or shop tests does not represent a guarantee of properties and condition. Public statements which we, our agents or any manufacturers or their agents make regarding properties and condition of our goods, especially in advertising materials, may only justify material defects of the customer if they are made part of a written agreement on properties and condition between the parties. The customer may only rely on the purpose of use which he intends if this one is expressly agreed in writing.

- 13.2 Obvious defects have to be notified and claimed immediately. If a defect occurs for which we are responsible, a rectification or replacement delivery takes place at our discretion. In case of a rectification, we are obliged according to the legal regulations to bear all expenses necessary for removal of the defect, especially transport costs, road maintenance costs, labour costs and material costs, provided these costs are not increased by the fact that the purchased item has not been brought to another place than the place of fulfilment.
- 13.3 If supplementary performance fails, the customer is entitled to claim cancellation or reduction at his discretion.
- 13.4 We are liable for defects according to the legal regulations, provided we have fraudulently concealed the defect or assumed guarantee for the condition of an item. However, in case of a guarantee of properties and condition, this shall only apply with respect to a lack of the guaranteed properties and condition.
- 13.5 We are liable for defects according to the legal regulations, provided the customer asserts compensation claims which are based on wilful intent or culpable negligence of our representatives or our vicarious agents. As far as we cannot be accused of a deliberate contract violation or a violation of material contract obligations in the framework of the liability for defects, the liability for damages is limited to the foreseeable, typically occurring damages.
- 13.6 The liability for defects due to culpable harm to life, limb and health is not affected. The same shall apply for the liability according to the Product Liability Act.
- 13.7 As far as not otherwise agreed above, the liability for defects is excluded.
- 13.8 Claims according to § 437 BGB become time-barred twelve months after transfer of risk except items which have been used for a building according to their usual purpose of use and which have caused the defectiveness of the building.

13.9 The period of limitation in case of a delivery recourse according to §§ 478, 479 BGB is not affected; it amounts to five years from delivery of the defective item.

#### **14 Joint liability**

14.1 We are liable for further compensation claims - regardless of the legal nature of the claim asserted, especially for such claims caused by default at the moment of contract conclusion, for other breaches of duty or for tort claims to compensation of property damages according to § 823 BGB - corresponding to clause 13, par. 5, 6 and 7. Any further liability is excluded.

14.2 As far as we exclude or limit compensation liability based on this clause, the same applies with respect to the personal compensation liability of our officers, employees, representatives, agents and vicarious agents.

14.3 A preclusion period of 18 months shall apply for the limitation of all claims which are not subject to limitation for a defect of the item. It shall start from knowledge or from the moment from which the customer would have known the damage or the person of the author of damage without culpable negligence.

#### **15 Counterclaims, transferability**

15.1 The customer is only entitled to set off if his counterclaims have been legally determined, are not disputed and if we have accepted them. Furthermore, the customer is only authorised to execute a right of retention insofar as his counterclaim is based on the same contract relation.

15.2 The customer may only assign rights from the contracts which he concluded with us with our approval. § 354 a of the German Commercial Code is not affected.

## **16 Right of withdrawal**

- 16.1 In case of an unforeseeable event for which we are not responsible and which significantly changes the economic importance or the content of the performance or has a material influence on our operation and in case of an impossibility which turns out later and for which we are not responsible, we are entitled to withdraw from contract partially or completely, unless a partial withdrawal is unreasonable for the customer. Further legal rights of withdrawal are not affected by this regulation.
- 16.2 Compensation claims of the customer for such withdrawal do not exist. If we execute our right of withdrawal, we have to inform the customer correspondingly, even if an extension of the delivery time was first agreed with the customer.

## **17. Place of fulfilment, place of jurisdiction, applicable law**

- 17.1 Place of fulfilment for our supplies is the works or the warehouse from which the goods are made available for collection or from which dispatch takes place - as far as not otherwise agreed in writing; this may also be the works or warehouse of a third party. Place of fulfilment for payments is Dillenburg, as far as not otherwise agreed in writing.
- 17.2 As far as the customer is a businessman, a legal person of public law or special assets under public law, Dillenburg is the exclusive place of jurisdiction for all disputes which arise directly or indirectly from the business relation. We are entitled to appeal any other legally competent court instead of the court of the above agreed place of jurisdiction.
- 17.3 The law of the Federal Republic of Germany shall apply.

## **18 Insolvency, changes of the legal form and/or of the ownership structure of the customer**

- 18.1 If the customer suspends payment or if insolvency proceedings on the assets of the customer are filed, we are entitled to withdraw from contract completely or partially. If the withdrawal from contract is announced for a contract violation for which the customer is responsible, the services performed until that date are only

invoiced at contract prices provided we can and could use them according to the intended purpose of use. The damage from which we suffered will be taken into consideration for settlement.

- 18.2 If a material change of the legal form, the management, the ownership structure or the financial situation of the customer occurs which may impair the results significantly which we could expect from performance of the contract, we are entitled to cancel our order - without any costs.
- 18.3 If the ownership structure of the customer changes, we are entitled to terminate contracts within 3 months after knowledge of the change with a period of notice of 6 months.

## **19 General provisions**

- 19.1 The legal ineffectiveness of individual provisions of these Terms and Conditions of Purchase does not affect the effectiveness of the remaining conditions.
- 19.2 We save and process data of the customers or involved third parties by EDP as far as this is necessary for the proper handling of the contractual relations. In the framework of this processing purpose, a transfer of the above mentioned data to affiliate companies of our group is possible.