

1. General

1.1 All deliveries and services of the Lödige Industries Group (hereinafter referred to as Lödige) shall be subject to these Terms and Conditions as well as to any separate contractual agreements if the orderer is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law. Deviating or supplementary terms and conditions of purchase of the customer shall not become part of the contract, even by acceptance of the order, unless Lödige has expressly agreed to their validity. These terms and conditions, in the version valid at the time of receipt of Lödige's order confirmation, shall also apply to all future contracts with the customer until revoked by Lödige. Agreed deviations shall only apply to the order for which they have been agreed in writing.

1.2 Offers made by Lödige are subject to confirmation. In the absence of a special agreement, a contract shall be concluded upon written confirmation of the order by Lödige, at the latest upon delivery of the goods or performance of the service. Lödige may accept the order of the customer - which constitutes a binding offer - at its discretion within 2 weeks.

1.3 The conclusion of the contract shall be subject to Lödige's suppliers supplying Lödige correctly and in due time if Lödige has concluded a congruent hedging transaction with its supplier and Lödige is not supplied through no fault of Lödige. The customer shall be informed immediately of the non-availability of the service. Any counter-performance shall be refunded immediately by the original means of payment.

1.4 Lödige reserves the right to samples, cost estimates, drawings, models, calculations, descriptions and the like. They may not be made accessible to third parties. Lödige shall be obligated by the orderer to immediately inform the orderer of any changes in the order. Lödige undertakes to make information and documents designated by the customer as confidential available to third parties only with the customer's consent.

1.5 Unless Lödige expressly agrees otherwise in writing, the deliveries and services shall be provided in accordance with the generally accepted state of the art in the Federal Republic of Germany.

2. Cooperation of the Customer

2.1 If an act of cooperation by the orderer is factually necessary for the performance of the deliveries and services, the orderer shall be obliged to do so at its own expense. Lödige shall inform the orderer in advance and in writing which acts of cooperation the orderer has to perform and within which period of time.

2.2 If the orderer does not provide the required cooperation or does not provide it in due time, Lödige shall be entitled to carry out a substitute performance at the expense of the orderer, whereby in urgent cases it shall not be necessary to set a deadline. Lödige shall announce the substitute performance to the orderer as far as possible before the start of the measure. If Lödige is able to discontinue the substitute performance because the orderer again cooperates, the orderer shall reimburse Lödige for the costs incurred up to the discontinuation of the substitute performance.

3. Price, payments and default in payment

3.1 In the absence of any special agreement, the prices shall apply in accordance with the INCOTERMS „free carrier (FCA)“ valid at the time of conclusion of the contract, excluding packaging. Value added tax shall be added to the prices at the statutory rate applicable at the time.

3.2 In the absence of a special agreement, payments shall be due immediately and without deduction upon receipt of the invoice and shall be paid within 10 days of the invoice date at the latest. After expiry of this period, the customer shall be in default of payment - even without a separate reminder.

3.3 Payments shall be made free of costs and expenses for Lödige. Cheques shall only be accepted on account of performance.

3.4 The customer shall only have the right to withhold payments or to offset them against counterclaims to the extent that his counterclaims are undisputed, have been legally established, are ready for decision or arise from the same contract under which the service in question was rendered.

3.5 The Customer shall only be entitled to rights of retention according to the local civil code insofar as the claim giving rise to these rights is based on the same legal relationship as the claim of Lödige. This restriction shall not apply if the counterclaims of the orderer are undisputed, have been legally established or are ready for decision. The orderer shall not be entitled to any right of satisfaction.

4. Delivery time, delay in delivery

4.1 The delivery time shall be determined by the agreements of the contracting parties. Lödige's compliance with the delivery time shall be subject to the condition that all commercial and technical questions between the contracting parties have been clarified and that the customer has fulfilled all obligations incumbent upon him, such as the provision of the necessary official certificates or permits or the payment of a deposit. If this is not the case, the delivery period shall be extended accordingly. This shall not apply if Lödige is responsible for the delay.

4.2 Compliance with the delivery time is subject to correct and timely delivery to Lödige, provided that Lödige is not responsible for the incorrect or delayed delivery to Lödige. Lödige shall inform the customer as soon as possible of any foreseeable delays.

4.3 The delivery period shall be deemed to have been complied with if the delivery item has left Lödige's works by the expiry of the delivery period or readiness for dispatch has been notified. Insofar as acceptance is to take place, the acceptance date shall be decisive - except in the case of justified refusal of acceptance - alternatively the expiry of a reasonable acceptance period.

4.4 If dispatch or acceptance of the delivery item is delayed for reasons for which the Purchaser is responsible (default in acceptance), the costs incurred as a result of the delay shall be charged to the Purchaser, starting one month after notification of readiness for dispatch or acceptance.

4.5 If non-compliance with the performance obligations of the parties is due to force majeure, labor disputes or other events beyond the control of the party invoking the event, the performance period shall be extended accordingly. This shall also apply if the party is already in default when these events occur. The party invoking the impeding event shall notify the other party of the beginning and end of such circumstances as soon as possible.

5. Transfer of risk, acceptance

5.1 The risk of accidental loss and accidental deterioration shall pass to the customer when the delivery item has left the factory, even if partial deliveries are made or Lödige has assumed other services, e.g. shipping costs or assembly. Insofar as an acceptance test is to be carried out, this shall be decisive for the transfer of risk. It must be carried out immediately on the date of acceptance, alternatively after Lödige's notification of completion. The Customer may only refuse acceptance in the event of a material defect.

5.2 If the shipment or the acceptance is delayed or does not take place due to circumstances attributable to the customer or if the customer is in default of acceptance, the risk shall pass to the customer on the day of receipt of the notification of readiness for shipment. In the event that acceptance is required, the risk shall pass to the Purchaser upon expiry of a reasonable period after receipt of the notification of completion.

5.3 Partial deliveries shall be permissible insofar as they are reasonable for the Purchaser.

5.4 Within the scope of the acceptance Lödige shall prove to the Customer that the Lödige plant meets the technical specification values agreed between the parties. The same shall apply to individual sections of the overall performance.

5.5 The customer shall accept Lödige's performance after it has been rendered in accordance with the contract. Upon Lödige's request, a written record of the acceptance shall be drawn up which shall contain a binding list of complaints and recognizable defects.

6. Software

6.1 Unless otherwise agreed, Lödige shall grant the Customer the non-exclusive, non-transferable but temporally unlimited rights of use to the software which the Customer requires for the contractual use of the delivery item, insofar as Lödige may transfer such rights.

6.2 Insofar as software is required for the operation of the subject matter of the contract and Lödige is not entitled to transfer any rights to the Ordering Party pursuant to Section 6.1, the Ordering Party shall be obliged to procure rights of use to such software itself and at its own expense as of the time of acceptance. Lödige shall inform the Ordering Party of this beforehand.

6.3 Lödige shall grant the Customer the same rights of use to modifications and extensions as to the standard programs to which they belong.

6.4 Additional programs (individual programs that can be used independently) may be used by the orderer for its own purposes without restriction within the scope of the license conditions.

6.5 The granting of the rights of use pursuant to Section 6.1 shall be subject to the condition precedent of full payment. Until full payment has been made, the orderer shall only be entitled under the law of obligations to use the delivered software, whereby this right of use may be revoked by Lödige at any time in the event of a delay in payment or in the event of an application for insolvency proceedings or similar proceedings against the assets of the orderer.

6.6 The orderer shall not have the right to access the source code of the software.

7. Reservation of title

7.1 Lödige shall remain the owner of the delivered goods („goods subject to retention of title“) until the customer has fulfilled all claims arising from the contracts concluded with Lödige up to the time of delivery (secured claim). This shall also apply to cheque claims of Lödige.

7.2 The orderer may use goods subject to retention of title in the ordinary course of business prior to settlement of Lödige's secured claims. Pledging or transfer of ownership by way of security shall require Lödige's prior written consent insofar as Lödige's rights are affected thereby. In the event of seizure or confiscation or other disposition by third parties, the orderer shall notify Lödige immediately in writing.

7.3 In the event of a breach of contract by the customer, in particular in the event of default in payment, Lödige shall be entitled to take back the delivery item after issuing a reminder and the customer shall be obliged to surrender the delivery item.

7.4 The assertion of the reservation of title, the demand for the return of the reserved goods as well as the seizure of the reserved goods by Lödige shall not be deemed a withdrawal from an unfulfilled contract. Lödige shall be entitled to realize the reserved goods after taking them back. The proceeds of the realization shall be credited against the liabilities of the customer - less reasonable costs of realization.

7.5 An application for the opening of insolvency proceedings shall entitle Lödige to withdraw from the contract and to demand the immediate return of the delivery item.

7.6 In order to further secure Lödige's secured claims, the customer hereby assigns to Lödige all claims accruing to it from the resale of the unchanged or changed reserved goods. Lödige accepts the assignment. This shall be in the amount of the invoice value of the goods subject to retention of title including the respective legally applicable value added tax.

7.7 The customer shall remain authorized to collect the claim even after the assignment. Lödige's authority to collect the claim itself shall remain unaffected. Lödige shall, however, not collect the claim as long as the orderer meets its payment obligations, is not in default of payment and, in particular, no application for the opening of insolvency proceedings has been filed or payments have not been suspended.

7.8 The Purchaser shall be obliged to treat the Retained Goods with care; in particular, it shall be obliged to insure the Retained Goods at its own expense against fire, water and theft at their replacement value until the secured claim has been settled in full. If maintenance and inspection work is required, it must carry this out professionally and in good time at its own expense.

7.9 If the realizable value of the securities ordered for Lödige exceeds Lödige's claims from deliveries and services against the customer by more than 10%, Lödige shall release excess securities at its own discretion at the request of the customer.

8. Claims for defects

8.1 The statutory provisions of the country of origin shall apply to material defects and defects of title unless otherwise stipulated in these terms and conditions.

8.2 The orderer shall immediately inspect the delivered items for defects and notify Lödige in writing of any obvious defects within a period of 5 banking days from delivery or acceptance, hidden defects within 5 banking days from knowledge thereof; otherwise the assertion of warranty claims with respect to the defect not notified in due time or in due form shall be excluded. The goods shall then be deemed to have been approved. If Lödige renders services under a contract for work and services, these obligations of the customer shall apply accordingly.

8.3 All parts which prove to be defective as a result of a circumstance prior to the passing of risk shall be repaired or replaced free of defects at Lödige's discretion free of charge. Lödige shall be entitled to make the subsequent performance owed dependent on the customer paying the remuneration due. However, the customer shall be entitled to retain a part of the remuneration which is reasonable in relation to the reduced value. Replaced parts shall become the property of Lödige after removal.

8.4 After consultation with Lödige, the orderer shall give Lödige the necessary time and opportunity to carry out all repairs and replacement deliveries that Lödige deems necessary; otherwise Lödige shall be released from liability for the consequences arising therefrom. Only in urgent cases of danger to operational safety or to prevent disproportionately large damage, in which case Lödige must be notified immediately, shall the orderer have the right to remedy the defect itself or have it remedied by third parties and to demand reimbursement of the necessary expenses from Lödige. Lödige shall be entitled at any time to demand the removal of an item reported as defective from the customer for the purpose of investigating the defect.

8.5 In the event of subsequent performance Lödige shall be obliged to bear all expenses necessary for the purpose of remedying the defect, in particular transport, travel, labor and material costs if there is actually a defect and insofar as these are not increased by the fact that the goods have been transported to a place other than the place of performance, unless the transport corresponds to the intended use of the goods. Lödige shall be entitled to demand reimbursement from the orderer of the costs incurred as a result of an unjustified request to remedy a defect (in particular inspection and transport costs), unless the lack of defectiveness was not recognizable by the orderer.

8.6 The customer shall effectively support Lödige in the search for defects and shall make available to Lödige all findings and observations made by him or his representatives.

8.7 No liability shall be assumed in particular in the following cases: Unsuitable or improper use, faulty assembly or commissioning by the orderer or third parties, natural wear and tear, faulty or negligent handling, improper maintenance, unsuitable operating materials, faulty construction work, unsuitable building ground, chemical, electrochemical or electrical influences - insofar as Lödige is not responsible for these circumstances.

8.8 If the orderer or a third party commissioned by him carries out improper repairs, Lödige shall not be liable for the resulting consequences. The same shall apply to any modification of the delivery item carried out without Lödige's prior consent.

8.9 Deliveries and services rendered by Lödige shall be free of defects if they have the quality which Lödige has agreed with the Customer in writing in a specification or delivery instruction. In the absence of such a written agreement, the deliveries and services shall be free of defects if they have the quality which Lödige has conclusively described in its technical data sheets, specifications or drawings.

8.10 Details of use provided by the customer shall only be authoritative if Lödige has expressly confirmed their validity in writing to the customer.

8.11 A guarantee or assurance in the sense of an intensification of liability or from the assumption of a special obligation to indemnify shall only be deemed to have been given if the terms „guarantee“ or „assurance“ are expressly mentioned by Lödige.

8.12 The customer shall effectively support Lödige in the search for defects and shall make available to Lödige all findings and observations made by him or his representatives.

9. Liability, exclusion of liability

9.1 Lödige shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions, unless otherwise stipulated in these General Terms and Conditions of Delivery and Service, including the following provisions.

9.2 Lödige shall be liable for damages - irrespective of the legal grounds - within the framework of fault-based liability in the event of intent and gross negligence. In the case of simple negligence Lödige shall only be liable, subject to a more lenient legal standard of liability, for damages resulting from injury to life, body or health, for damages resulting from a not insignificant breach of a material contractual obligation (obligation the fulfillment of which is a prerequisite for the proper performance of the contract and the observance of which the contractual partner regularly relies on and may rely on); in this case, however, Lödige's liability shall be limited to compensation for the foreseeable, typically occurring damage. Indirect damage and consequential damage resulting from defects in the goods shall also only be compensable insofar as such damage is typically to be expected when the goods are used for their intended purpose.

9.3 The limitation of liability resulting from clause 9.2 of these terms and conditions shall also apply insofar as the Purchaser demands compensation for useless expenses instead of a claim for damages in lieu of performance.

9.4 The limitations of liability resulting from clauses 9.2 and 9.3 of these terms and conditions shall also apply in the event of breaches of duty by or for the benefit of persons for whose fault Lödige is responsible according to statutory provisions, such as employees, workers, representatives, organs and vicarious agents. They shall not apply insofar as Lödige has fraudulently concealed a defect or has assumed a guarantee for the quality of the goods or services, for claims of the customer under the Product Liability Act as well as for liability for claims based on defects of the goods (cf. clause 8 of these terms and conditions).

9.5 Insofar as Lödige provides general technical information, advice or recommendations without being contractually obligated to do so, Lödige shall not be obligated to compensate for damages resulting from compliance with the advice or recommendation, irrespective of the responsibility resulting from a separate contractual relationship, a tortious act or any other legal provision.

9.6 The orderer shall only be entitled to withdraw from the contract or terminate the contract due to a breach of duty that does not consist of a defect if Lödige is responsible for the breach of duty. A free right of termination on the part of the orderer shall be excluded. In all other respects, the statutory requirements and legal consequences shall apply.

10. Limitation

10.1 All claims of the purchaser - for whatever legal reasons - shall become statute-barred within 12 months from delivery of the goods or acceptance. The statutory periods shall apply to claims for damages pursuant to Clause 9 as well as to claims arising from supplier recourse pursuant to and to claims arising from supplier recourse. The statutory periods shall also apply to claims based on defects in a building or for delivery items which have been used for a building in accordance with their customary use and have caused its defectiveness.

11. Applicable Law, Place of Jurisdiction

11.1 The law of the United Kingdom shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN Sales Convention) and the British conflict of laws provisions. Any reference to another legal system shall be irrelevant.

11.2 The exclusive place of jurisdiction shall be London. Lödige shall, however, also be entitled to seek legal protection at any other court which is competent for the dispute in question according to the law of the United Kingdom or of the state in which the customer has its registered office.