

## 1. Scope

1.1 The present General Terms and Conditions (abbreviated to GTC) apply in the sense of § 343 UGB for legal transactions between LKD GmbH as a contractor and companies acting as clients for the delivery of goods and correspondingly for the provision of services.

1.2. These terms and conditions are recognized as binding by the client by placing the contract (order) and apply in the version valid at the time of order as the exclusive basis for all business between the contractor and the respective client, irrespective of whether the order is given verbally or in writing.

1.3. Conditions deviating from these GTC or client's conditions counter to the aforementioned, in particular any conditions of purchase of the client, are always irrelevant and non-binding for the contractor, even if they are not expressly contradicted by the contractor or if the contract execution or delivery was carried out without raising an objection against opposing conditions. Any deviations and other agreements from these terms and conditions must be expressly agreed with the contractor and must be in writing in order to be valid.

## 2. Quotation

Cost estimates are always non-binding, unless agreed otherwise in writing in individual cases. The preparation of a cost estimate is always chargeable and will be charged to the client as agreed, unless otherwise agreed in individual cases. On the part of the contractor, billing of the fee for the preparation of the cost estimate may be waived in individual cases, provided that a contract with the respective client is subsequently concluded.

## 3. Offer

3.1 Offers by the contractor shall be deemed to be non-binding unless otherwise specified in the offer.

3.2 Verbal statements (such as promises) and agreements, in particular by employees of the contractor, require the written confirmation signed by the contractor in order to be legally binding.

3.3 Quotations for repairs and emergency call-outs can only be made on the basis of empirical values without prior in-depth assessment and analysis of the fault and, accordingly, any information concerning services and spare parts stated therein is only indicative. In the case of the commissioning of repair and debugging services, the billing takes place in accordance with clause 5.4.

3.4 In case of non-commissioning, the contractor reserves the right to invoice the requesting party for the costs actually incurred for the preparation of repair offers or for assessments.

3.5 All offer and project documents may not be duplicated or made accessible to third parties without the consent of the contractor. They can be reclaimed at any time and must be returned to the contractor without delay or irrevocably deleted in the case of electronic documents if the order is placed elsewhere.

## 4. Order, Conclusion Of Contract, Order Confirmation

4.1 The contract shall be deemed concluded, when and as soon as after receipt of the client's order the contractor submits a written order confirmation to the client, but no later than with the actual performance of the order. The client is bound to his order for 2 weeks, within which the contractor can accept the offer through the order confirmation or through the actual execution.

4.2 The information contained in catalogues, brochures, advertisements, price lists and the like, as well as any other written or oral statements about quality features and properties of products and / or services are only relevant and binding if explicitly referred to in the offer and / or in the order confirmation.

4.3 The contractual relationship together with any (additional) oral agreements are finally summarized and recorded in the written order confirmation.

4.4 The client is obliged to immediately check the order confirmation of the contractor and to notify any deviations from the order, otherwise the contents of the contract are exclusively based on the order confirmation.

4.5 The contractor reserves the right to make minor adjustments to the contract, which serve to improve the state of the art or other progress which may have occurred in the meantime, even after the order confirmation has been submitted, provided that this does not result in changes of the price due, the functionality or any other essential contractual obligation (delivery time, warranty claim, liability).

4.6 Any other changes and additions to an already concluded contract require the written confirmation of the contractor to be valid.

## 5. Price

5.1 All prices are variable, quoted net, exclusive of the respective statutory value added tax and are ex works of the manufacturer or ex warehouse of the contractor, exclusive packaging, delivery, loading, assembly, disassembly, return and orderly recycling and disposal of electrical and electronic devices for commercial purposes in accordance with the European WEE Directive or for old batteries in accordance with the Battery Directive as well as any other commissioned additional costs. Customs duties, taxes or other fees and charges levied in connection with the delivery shall be borne by the client.

In individual cases in which delivery with transport has been agreed, transport will be charged separately, as well as any transport insurance desired by the client, but in principle prices do not include unloading, carrying or other additional services. The delivered transport and goods packaging will be taken back only after explicit written agreement with the contractor. The client is responsible for the proper disposal.

The packaging materials placed on the Austrian market by the contractor are exempted from the Austrian collection and recycling system ARA with license number 3758.

5.2 In case of quantity deviations from the offer, the contractor reserves the right to adjust the price of the partial order.

5.3 All prices are based on the basis that the contractually agreed service can be provided immediately and without interruption by the contractor. The prices are therefore based on the costs at the time of the first offer and are valid only for the duration stated in the offer or if this information is missing, for the duration of max. 3 months from date of offer. If the costs have increased up to the time of the order, the contractor is entitled to adjust the prices accordingly.

5.4 For repair and / or interference suppression orders, the contractor shall provide the necessary, objectively justified (additional) services for the proper execution of the order and may charge the client based on the expenses incurred, even if these are not included in any offer preceding the order or not included to the same extent. This also applies, in particular, to services whose expedience only becomes apparent during the performance of the order, whereby their execution does not require any separate communication from the contractor to the client or any separate commissioning by the client, except the scope of services and thus also the costs would increase significantly. In such a case, the contractor will agree with the client on the execution of the additional services.

**5.5** All hourly rates and flat service rates in continuing obligations (e.g. for maintenance contracts) are subject to at least an annual price adjustment on the basis of the assembly rates published by the Independent Arbitration Commission at the BMDW (formerly BMWFW) for the Electrical and Electronics Industry Association.

## **6. Client's Obligations**

**6.1** The client must vouch that all materials provided by him (including buildings) have been professionally and properly manufactured and each comply with the state of the art, so that the contractor can perform properly, otherwise the contractor is not responsible for any damage to the provided materials or a delay in his provision of services. Insofar as the client violates his hereby-agreed obligations, he is responsible to the contractor for all damages resulting therefrom.

**6.2** The client is solely responsible for the compliance with all public law and regulatory requirements, in particular under the commercial and / or building law, in particular for the attainment of all necessary authorisations, which indemnifies and holds the contractor harmless in this regard.

## **7. Delivery, Performance, Deadlines, Dates, Service Calls**

**7.1** Delivery periods or performance deadlines are, subject to deviating written agreement, always to be regarded as non-binding guidelines and in no case constitute binding or guaranteed fixed dates. The delivery or performance period begins at the earliest with the latest of the following dates:

- a) Date of order confirmation;
- b) Date of fulfilment of the complete clarification of all technical, commercial and other prerequisites required for the order and incumbent upon the client;
- c) Date on which the contractor receives a deposit or security to be paid before delivery of the goods.

**7.2** Compliance with the delivery period or performance deadline requires both the timely provision of all necessary information and documents and the necessary cooperation, in particular timely preparation of the client's side requirements (especially any necessary official or other approvals and clarifications) by the client. If these conditions are not met in full by the client in due time, the delivery period or performance deadline will be extended by the corresponding period, or at least accordingly.

**7.3** The official and other permits of third parties required for the execution and erection of facilities are to be obtained by the client, unless expressly agreed otherwise in writing. Failure to do so or not in time will not entitle the client to withdraw from the contract.

If it is agreed in individual cases that the contractor is responsible for obtaining official and other permits from third parties and if there are delays that the contractor is not responsible for, the delivery time shall be extended until the required approvals have been obtained plus an appropriate lead time.

**7.4** The contractor is entitled to carry out partial or pre-deliveries. The client cannot reject such partial deliveries or partial service performance. In case delivery on call is agreed upon, the goods shall be deemed to be called off no later than 3 months after the date of the order confirmation, in the absence of specifically agreed call-off terms or call-off dates.

**7.5** If any unforeseeable, unavoidable and / or circumstances beyond the control of the party, such as all cases of force majeure occur, which prevent and / or obstruct the observance of a possibly agreed delivery period, this shall be extended by the duration of the effects of these circumstances or, if applicable, by a mutually agreed period.

These include, in particular, armed conflicts, official interventions and prohibitions, unrest, fire disasters, floods, earthquakes, traffic disruptions, transport and customs clearance, transport damage, shortages of energy and raw materials, but also industrial disputes (strikes) and the loss of an essential and hard-to-replace supplier. These aforementioned circumstances also justify the extension of the delivery time, if they occur at subcontractors of the contractor. If one of the above-mentioned circumstances lasts longer than 4 weeks, the client and the contractor will negotiate a settlement with regard to further procedure. If no mutually agreed solution can be reached, the contractor may rescind the contract either wholly or in part.

**7.6** The client cannot assert any damages, penalties, loss of earnings, loss of profit, consequential damages or indirect damages due to delay or complete non-delivery or non-provision of services due to slight negligence of the contractor or his employees. Nor is there a right of withdrawal in such cases.

**7.7** Provided that the contractor or his employees have caused the delay in the delivery or performance of the service through gross negligence, the client can declare his withdrawal from the contract by setting a four-week period of grace.

**7.8** If a penalty has been agreed in writing, all claims arising from the title of the default are covered and thus the assertion of further claims is explicitly excluded.

**7.9** Default of acceptance by the client entitles the contractor to offset the costs incurred for the temporary storage and any manipulation of the goods ready for delivery.

**7.10** For each service call, the contractor's employees will prepare a service report on all the services provided, containing all relevant order data, in particular the time of arrival and departure, the type and duration of the work carried out, any material and spare parts used, as well as any identified deficiencies and follow-up activities that require a separate offer and / or assignment.

After the work has been completed, the signed report drawn up by the employee of the contractor is handed over to the client or its representative for examination and signing. If at the time of completion of the work the client or his representative is no longer available, the service report will be sent electronically to the client by e-mail for review and confirmation, but shall in any case be deemed accepted if no justified complaint is made within a reasonable time period of 2 business days.

The service report, irrespective of whether a copy signed by the client exists, forms the basis for billing for both sides in all cases where no flat-rate fee has been agreed or where additional or direct services have been charged which can be billed separately.

**7.11** Unless expressly agreed otherwise, a formal acceptance of the services provided by the contractor is not required by the client.

## **8. Special Designs**

**8.1** For custom-made products, acceptance by the client is mandatory; the contractor does not take these back. Insofar as the client does not fulfil his obligation to accept in time, especially after notification of the completion of the special order, the risk immediately reverts to the client who is obliged to pay the contractor indemnity for all resulting damages, including lost profits, consequential damages and indirect damages as well as (storage) costs.

**8.2** Subsequent changes with regard to the quantity, design and design of custom-made items require the written confirmation by the contractor for their validity and are only possible after order placement against full compensation of the resulting additional costs.

## 9. Acceptance Tests

**9.1** Insofar as the client desires an acceptance test, this must be agreed with the contractor in writing upon conclusion of the contract. Unless otherwise agreed, the acceptance test shall be carried out at the place of manufacture (factory acceptance) at the registered office of the contractor or at a place to be determined by the contractor during normal working hours of the contractor.

**9.2** The contractor must inform the client in due time prior to the acceptance test so that he can be present during the test or can be represented by an authorized representative.

**9.3** If the delivery item proves to be contrary to the contract during the acceptance test, the contractor must immediately rectify any defect and produce the contractual condition of the delivery item. The client may request a repetition of the test only in cases of not merely minor defects.

**9.4** A corresponding acceptance report is drawn up on the acceptance test, after which both contracting parties must confirm the contractually compliant execution and perfect functionality of the delivery item. If the client or his authorized representative is not present during the acceptance test despite having been advised in good time by the contractor, the acceptance report will only be signed by the contractor and a copy of the report will be communicated to the client, the accuracy of which the client is not in a position to dispute if he or an authorized representative could not sign due to lack of presence.

**9.5** Unless otherwise agreed, the costs of the acceptance test are included in the price offered. In any case, the client himself bears the costs incurred by him or his authorized representative in connection with the acceptance test, such as travel and subsistence costs and expenses.

## 10. Transfer Of Risk And Place Of Performance

**10.1** Unless otherwise agreed in writing in the individual case, the handover and thus the transfer of risk of the goods to the client shall take place EXW in accordance with INCOTERMS 2010, thus ex works (warehouse) of the contractor. The INCOTERMS shall apply in the version valid on the day of the conclusion of the contract.

**10.2** The risk for a service or an agreed partial service passes to the client with its provision.

**10.3** If acceptance is delayed due to circumstances beyond the control of the contractor, the goods shall be deemed to have been taken over with the notification of readiness for delivery or dispatch and the risk shall thereby pass to the client.

**10.4** Place of performance for all contracts with regard to delivery and payment is the registered office of the contractor in Salzburg.

## 11. Terms Of Payment, Offsetting And Withholding Ban

**11.1** Unless otherwise agreed in writing, the invoice amount in euro has to be paid without deduction by bank transfer into the account of the contractor within 14 days from the invoice date (due date), whereby the invoice amount must be credited in full, irrevocably and to the unrestricted disposal to the account of the contractor on the due date.

**11.2** The contractor shall be entitled to demand a proportionate part of the compensation and the reimbursement of expenses incurred prior to the completion of the work or delivery and to make his (further) provision of services conditional upon timely payment, thus in the event of late payment to refuse or withhold (further) service provision.

**11.3** For partial invoices, the corresponding partial payments are due upon receipt of the respective billing document. This also applies to amounts, which arise through subsequent deliveries or other agreements beyond the original final settlement amount, irrespective of the terms of payment agreed for the main delivery.

**11.4** Discount rates, discount periods and the granting of any discounts requires a written agreement.

**11.5** If the client is in arrears with a payment or other service from this or other transactions, the contractor may, irrespective of his other rights,

- a) Postpone fulfilment of his own obligations until such payment or other performance has been effected and extend the delivery period accordingly;
- b) Call for immediate payment of the total outstanding purchase price and charge default interest in the amount of the statutory interest rate of 9.2 percentage points above the respectively applicable base interest rate for these amounts from the corresponding due date. In any case, the contractor is entitled to charge the client for pre-trial costs, in particular reminder fees, collection costs and attorney's fees;
- c) Fulfil other legal transactions with the client only against prepayment, provided that the client has already defaulted on payment for the second time.

This shall not affect the entitlement of the contractor to assert any further damage as well as any additional costs incurred and other necessary costs for appropriate extrajudicial debt collection or contribution measures within the meaning of Section 1333 (2) ABGB.

**11.6** Granted price reductions, bonuses or discounts are subject to the timely settlement of the full payment.

**11.7** The client is not entitled to offset his own claims against the claims of the contractor or to withhold his services, unless his claims have been legally established by judiciary or unconditionally acknowledged by the contractor in writing.

## 12. Retention Of Title

**12.1** The contractor expressly retains the title to all goods delivered by him until full payment of the respective total invoice amount including any additional fees from the contract (reminder fees, interest, costs).

**12.2** In the event of late payment, even if only in part, the contractor is entitled to collect the goods without the client's consent.

**12.3** In the event of an upright retention of title, the client is expressly prohibited from reselling, pledging, transferring goods or otherwise disposing of the goods and services covered by the retention of title and shall remain without legal effect.

Insofar as the client resells the conditional goods against the existing agreement, the latter hereby assigns any claims arising from the resale with all ancillary rights arising from the resale of reserved goods, even if they have been processed, remodelled or mixed, to the contractor and is obliged to apply a corresponding entry in his books or on his invoices. Upon request, the client must notify the contractor of the assigned claim together with his debtors and provide the contractor with all information and documents required for his debt collection and to notify the third party debtor of the assignment. In case of pledging or any other claim the client is obliged to point out the right of title of the contractor and to inform him immediately.

## 13. Guarantees, Inspection And Complaint Obligation

**13.1** Warranty claims can not be derived from information contained in catalogues, brochures, advertisements, advertising leaflets, price lists and the like nor from other written or verbal statements about quality features and properties of products and / or services; These are not binding.

**13.2** In the case of insignificant, minor deviation from the contractually agreed subject of performance, including minor colour deviations or deviations in execution, warranty claims are excluded.

**13.3** The warranty period is limited to one year. However, if used parts are used, to which the contractor expressly informs the client, then a shortened warranty period of 6 months applies. The respective warranty period begins with the time of the transfer of risk in accordance with clause 10. Longer warranty periods requested by the client must be explicitly negotiated and agreed in writing.

**13.4** Any defects must be reported in writing without delay, at the latest within 3 days (inspection and notification of defects) to the contractor. The report must be in detail and with the description of the alleged deficiencies, including photos. If the client does not fulfil this obligation or fails to do so in due time, there is no entitlement to warranty, damages due to the defect itself or contestation of the contract due to an error concerning the freedom from defects of the goods.

**13.5** After a written notification of the defect and the receipt of the same by the contractor, the contractor shall check that they are justified. Insofar as the claimed defect is recognized in principle, the client shall be informed in writing and notified at the same time as to whether the defect has been remedied by replacement or improvement at the choice of the contractor or in the case of minor defects which can not be remedied or only with disproportionately high costs, a reasonable price reduction is made.

**13.6** In the case of timely notice of defects, the client may withhold payments only to the extent that corresponds to the extent or relationship with the defects occurred / alleged.

**13.7** All ancillary costs incurred in connection with the remedying of defects (such as for installation and removal, transport, disposal, travel and travel time) are at the expense of the contractor only to the extent that they were included in the scope of the original contract. Expenses of the client within the framework of warranty work, such as for staffing, are at his expense. All services not covered by the warranty obligation in accordance with these provisions will be invoiced to the client by the contractor depending on expenditure. Parts replaced as part of the warranty shall become the property of the contractor, insofar as the ownership has already been transferred to the client in compliance with clause 12..

**13.8** If a product is manufactured by the contractor on the basis of design specifications, drawings, models or other specifications of the client, the liability of the contractor shall only extend to specified execution.

**13.9** The warranty is excluded for such defects, which arise out of instructions and assembly not effected by the contractor, insufficient equipment, non-observance of the installation requirements and conditions of use, overuse, negligent or incorrect handling or use (especially of unsuitable operating materials), wear, unauthorized modifications without the written consent of the contractor, third-party influence, improper use or maintenance, overvoltage, atmospheric discharges or chemical influences. This also applies to defects attributed to material provided by the client.

#### **14. Liability, Product Liability**

**14.1** Contractual or non-contractual liability of the contractor shall only be unlimited if the contractor or one of its vicarious agents has caused the damage deliberately or grossly negligent and is therefore excluded in case of slightly or merely grossly negligent conduct. This exclusion of liability also applies to such damages which represent loss of profit, indirect or consequential damages or which were caused by the delay in delivery for which the contractor is responsible. This does not affect the liability of the contractor for personal injury; in this case, the aforementioned limitation of liability does not apply and the contractor is liable for any culpable causation. The burden of proof for the existence of gross negligence lies with the client.

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If a penalty has been agreed in writing, all claims arising from the title of the damage compensation are covered and thus the assertion of further claims is explicitly excluded.

**14.2** The period for claiming damages is limited to one year.

**14.3** In the event of non-compliance with any conditions for installation, commissioning and use (as contained in operating instructions, for example) or the official conditions of admission, any compensation for damages shall be excluded. The client is obliged to ensure that all users comply with operating instructions for the delivered goods or works. In particular, the client must ensure that his personnel and other persons in contact with the delivered goods or work are trained and instructed.

**14.4** The contractor's liability for breaches of contractual obligations due to events of force majeure or other circumstances beyond its control (e.g. strike) shall be excluded.

**14.5** Since the client uses the contractor's goods predominantly in his company, liability under the Product Liability Act against the contractor is excluded.

**14.6** Insofar as liability is excluded or limited, this also applies to employees and vicarious agents employed by the contractor.

#### **15. Resignation From The Contract**

**15.1** Regardless of his other rights, the contractor is entitled to withdraw from the contract with the client,

- a) if the execution of the delivery or the commencement or continuation of the service is impossible or further delayed despite the granting of a reasonable period of grace for reasons for which the client is responsible,
- b) if justified concerns have arisen with regard to the solvency of the client and the latter does not make any advance payment at the request of the contractor or provides suitable security before delivery, or
- c) if, due to the circumstances set out in point 7.5, the extension of the delivery time amounts to more than half of the originally agreed delivery period, but at least 6 months.

**15.2** The withdrawal may also be declared in respect of an outstanding part of the delivery or service for the above reasons.

**15.3** If insolvency proceedings are instituted over the assets of a contracting party or if an application for insolvency proceedings is rejected for lack of sufficient assets, the other contracting party shall be entitled to withdraw from the contract without granting a grace period.

**15.4** In the case of withdrawal, already performed services or partial services shall be invoiced and paid according to contract without prejudice of the claims for damages of the contractor, including pre-litigation costs. This also applies insofar as the delivery or service has not yet been taken on by the client and for advance services made by the contractor. Instead, the Contractor is entitled to demand the return of items already delivered.

#### **16. Industrial Property Rights And Copyright**

**16.1** If a product is manufactured by the contractor on the basis of design specifications, drawings, models or other specifications of the client, the client shall indemnify and hold the contractor harmless in the event of any infringement of property rights.

**16.2** Execution documents such as plans, sketches, drawings, visualizations and other technical documents as well as samples, catalogues, brochures, illustrations and the like remain in the exclusive property of the contractor and are fully protected by copyright. The contractor shall be entitled to all rights of exploitation exclusively after the assignment to the client. A transfer of the documents to third parties without the prior written consent of the contractor is inadmissible. If no order is made, the client must return all documents provided in the original and all copies must be irrevocably destroyed.

#### **17. Right of retention**

The right of retention according to § 1052 ABGB remains unaffected. If the contractor makes use of this right, any claims for compensation or rights of the client shall be excluded therefrom, but in any case claims for damages and claims for compensation of costs of the client shall be excluded.

#### **18. Data Protection and Confidentiality**

**18.1** The data processing at the client takes place in accordance with the legal data protection regulations. In particular, the contractor has taken technical and organizational precautions to protect the data of the client or its employees against loss, destruction, access, modification or dissemination by unauthorized third parties.

**18.2** Personal data are those details, which are suitable for determining the identity of the client. These include, for example, the (company) name, the address, the telephone number or the e-mail address. By submitting the order, the client accepts that the contractor collects, stores, processes and uses the personal data provided in the course of the order in order to perform the order correctly. For this purpose, the contractor is also permitted to pass on the data necessary for the order processing to the companies involved in the execution of the order and payment. A transfer of the data to other third parties does not take place. After expiry of the statutory retention obligations, this data will be deleted, unless the client has expressly consented to the further use of the data.

**18.3** Both the contractor and the client mutually undertake to treat confidential information that becomes known to them as a result of the business relationship as confidential and to keep it secret from third parties and to transfer this obligation to their employees. Any transfer of data is subject to data protection regulations.

#### **19. General And Severability Clause**

**19.1** Contract, order and business language is without exception German.

**19.2** If any provision of these terms and conditions or in the contract is or becomes invalid or unenforceable, the remaining provisions remain unaffected. Any resulting or already existing gaps in the contract shall be understood in accordance with the meaning and presumed intention of the contracting parties.

**19.3** Verbal ancillary agreements do not exist. Amendments, side agreements or changes are only effective if they have been made in writing. This also applies to the cancellation of the written form requirement.

#### **20. Applicable Law, Place Of Jurisdiction, Place Of Performance**

**20.1** These GTC and all contracts concluded in accordance with these terms and conditions are exclusively subject to Austrian substantive law, with the exclusion of the Austrian reference norms and the exclusion of the UN sales convention (CISG).

**20.2** For all disputes arising out of or in connection with these terms and conditions and the contracts concluded in accordance with these terms and conditions, the court of jurisdiction shall exclusively be the court of competent jurisdiction for the City of Salzburg. The contractor reserves the right to bring an action also before the court responsible for the client.

**20.3** The place of performance for all contracts with regard to delivery and payment is the registered head office in Salzburg.

Salzburg, July 2018