

# General Terms and Conditions of Business and Delivery of LEAD Deutschland GmbH

## 1. SCOPE AND CONCLUSION OF CONTRACT

1.1 LEAD Deutschland GmbH (hereinafter abbreviated to "LEAD") shall conclude contracts for deliveries and services with companies (hereinafter "Customers") solely on the basis of the present General Terms and Conditions of Business and Delivery. They shall form the basis of each and every offer, each and every acceptance and order confirmation, and each and every delivery effected and service provided in the business relationship with the Customer. They shall furthermore apply to all deliveries effected and services provided by LEAD to the Customer at the stage preceding the conclusion of a potential contract (e.g. demonstrations), as well as to all and any supplementary orders and contract extensions and future deliveries and services by LEAD, even if their inclusion is not explicitly agreed once again.

1.2 Conflicting Terms and Conditions of the Customer shall not apply. All and any exceptions shall require LEAD's written consent.

1.3 Offers from LEAD to the Customer shall be subject to confirmation and shall be non-binding, unless LEAD has expressly provided otherwise in writing. The Customer shall be bound by any proposed orders or purchase offers vis-à-vis LEAD for at least two weeks from the time LEAD receives such order.

1.4 Where the Customer places an order by electronic means and receipt of such order is confirmed by LEAD, such confirmation of receipt shall not constitute binding acceptance of the order.

1.5 A contract shall become effective either through a Customer's timely declaration of acceptance of a written, binding offer by LEAD or through LEAD's written confirmation of a Customer order. The scope of obligations assumed by LEAD shall be set down with binding effect in the written offer by LEAD and/or in LEAD's written order confirmation.

1.6 LEAD's written offer or LEAD's written order confirmation and, in addition to this, the present Terms and Conditions, shall constitute the entire agreement between the Parties relating to the subject matter of the contract (hereinafter referred to as "Agreement"); they shall take priority over all and any other written or oral agreements and declarations of the Parties regarding the subject matter hereof that were concluded previously or are negotiated simultaneously. This shall also apply in particular to any quality or durability guarantees and to information on the properties or on the use of the item delivered arising from brochures, catalogues, Internet presentations, demonstrations, drawings, descriptions, product and price lists and other documents.

## 2. DELIVERY, RISK, SHIPMENT

2.1 Unless expressly agreed otherwise, LEAD shall be entitled to perform partial services and make partial deliveries.

2.2 Delivery and performance dates and deadlines shall only be binding if they are expressly stated to be binding in a written offer or written confirmation by LEAD; otherwise they shall not be binding. After binding delivery and performance dates and deadlines have expired, the Customer shall initially extend LEAD's deadline in writing by a reasonable period of at least 14 days. When this period has expired without result, the Customer may cancel the contract in whole or in part by written notice to LEAD.

2.3 Delivery and performance deadlines shall be extended in cases of unforeseen circumstances or force majeure which have an influence on the goods or services provided by LEAD, but which are beyond LEAD's control, such as acts of war, acts of terrorism, particular weather conditions, strikes, boycotts as well as plant failure, material procurement problems or delivery problems and disruption of suppliers' operations, traffic disturbances, governmental actions, etc., by the duration of such impairment plus a reasonable start-up period. This shall also apply if LEAD's delivery is delayed or if the impediments to performance already existed prior to conclusion of the contract, but LEAD was not aware thereof. If such impairment continues for more than three months, or if such interference permanently prevents delivery or performance from being effected or being effected as specified in the contract, both contracting parties shall be entitled to withdraw from the contract in respect of its as yet unperformed portion.

2.4 All and any claims for damages by the Customer on grounds of delayed performance shall be subject to the liability provisions contained in section 7, particularly clause 7.3, of these Terms and Conditions.

2.5 Designations and specifications of an item delivered may change in the period between conclusion of the contract and delivery. Technical deviations of delivered goods from the offer documentation shall be permissible, provided they are not of a fundamental nature and the contractual purpose is not restricted to more than a negligible degree thereby.

2.6 Unless expressly agreed otherwise, delivery shall be effected by shipment from LEAD's warehouse upon obtaining adequate transport insurance. The type of shipment and transport insurance shall be determined by LEAD at its reasonable discretion. The Customer shall pay the cost of packing, shipping and transport insurance.

2.7 Shipping and transport shall be at the risk of the Customer. The risk shall pass from LEAD to the Customer or the carrier as soon as the item delivered has been handed over to the haulage firm or has left LEAD's warehouse for the purpose of shipment. If shipment is delayed or becomes impossible through no fault of LEAD, the risk shall pass to the Customer upon notification of readiness for dispatch.

2.8 If the Customer refuses acceptance, LEAD shall be entitled to withdraw from the contract and to claim damages in lieu of performance in the amount of 25% of the order value. The Customer shall have the right to prove a smaller amount of damage; LEAD shall have the right to prove a larger amount of damage.

## 3. CUSTOMER'S DUTIES TO COLLABORATE

3.1 The Customer must inspect the goods promptly upon receipt for their completeness and for outwardly apparent as well as not outwardly apparent defects, and shall notify any defects or any missing delivered parts to LEAD promptly in writing. If the Customer acts in breach of this duty, the item delivered shall be deemed to have been fully received and approved unless there is a defect that was not apparent in the

first inspection (section 377 subs. 1 of the Commercial Code (*HGB*)).

3.2 If a defect of the item delivered becomes apparent (not until) later, the Customer shall document the defect in a comprehensible manner, and shall notify LEAD thereof in writing promptly upon its discovery; otherwise, the item delivered shall be deemed to have been approved with regard to this defect (section 377 subs. 2 of the Commercial Code). Likewise, the Customer shall document each problem arising during use of the item delivered as comprehensibly as possible, and shall immediately notify LEAD thereof in writing.

3.3 If LEAD has fraudulently failed to disclose a defect, LEAD cannot invoke the provisions contained in the above clauses 3.1 and 3.2.

3.4 The Customer shall be obliged to collaborate to the extent necessary for proper delivery, performance or removal of defects by LEAD. The Customer shall in particular provide all and any information necessary for proper delivery or performance to LEAD in due time. In the case of a complaint, the Customer shall permit LEAD to inspect and examine the item delivered forming the subject of the complaint.

3.5 Where the Customer makes available to LEAD information, plans, calculations, measurements, drawings or other information necessary for the delivery and/or service, LEAD may trust that such information provided by the Customer is complete and accurate. If this is not the case, the Customer shall pay the additional expenses incurred in this context by LEAD.

3.6 The Customer shall be obliged to take adequate measures to avert and reduce damage. If goods or services provided by LEAD may have a potential influence on the Customer's computer system, the Customer shall be obliged to take the precautions and measures necessary for the security of its own system and data, in particular to make back-up copies of its data at reasonable intervals and to install up-to-date, qualified protection software to safeguard against computer viruses.

## 4. PRICES AND PAYMENTS

4.1 The Customer shall pay to LEAD the contractually agreed prices for the goods and services. If the Parties have not explicitly agreed prices, invoicing shall be based on LEAD's product and price list in the version valid at the time of performance and/or delivery. The product and price list can be reasonably altered by LEAD at its own discretion with effect for the future. The Customer may request the latest product and price list from LEAD at any time.

4.2 All prices are stated as net prices, and do not include the relevant statutory value added tax, expenses incurred for shipment, transport and insurance and any travel costs that may accrue.

4.3 Unless expressly agreed otherwise, payments shall fall due on the payment date specified in the invoice without any deductions. If no payment date is stated on the invoice date, the Customer shall be deemed to be in arrears in the event of non-payment at the latest 30 days after receipt of the invoice.

4.4 During the arrears period, the Customer shall owe to LEAD the statutory default interest in the amount of 8 percent above the respective base rate (section 247 of the Civil Code (*BGB*)). The assertion of further damages shall not be ruled out.

4.5 The Customer may not set off counterclaims against LEAD's due payment claims and claims for reimbursement of expenses, unless the counterclaims in question are undisputed or have been legally established.

4.6 If the Customer fails to pay an outstanding due claim and if, even upon a further written request for payment with a deadline set by LEAD, LEAD does not receive payment within the specified period, LEAD shall be entitled to invoice all and any other goods and services it has already provided, to declare all and any claims – notwithstanding any previously agreed payment terms – immediately due and to suspend processing of any further Customer orders that may exist until the Customer has paid all outstanding claims owed to LEAD.

## 5. RETENTION OF TITLE

5.1 All delivered goods shall remain LEAD's property until full payment of all claims arising from the business relationship with the Customer, including ancillary claims, interest and damages.

5.2 The Customer shall treat the delivered goods with care and diligence during the period of retention free of charge, shall adequately insure them against the perils of fire, water and theft, and shall submit proof of such insurance coverage to LEAD upon request. All and any claims against the insurer, insofar as they relate to the delivered goods, shall be deemed to have been transferred as security from the Customer to LEAD during the period between delivery and final payment.

5.3 Pledges or assignments of the item delivered by the Customer as security shall not be permissible. In the event of seizures or other interventions by third parties, the Customer shall promptly inform the third party of the property rights of LEAD, and shall notify LEAD thereof.

5.4 If a delivery item is combined or mixed with other items by the Customer, LEAD shall become the co-owner of the new item in proportion to the value of the delivery item to the value of the third-party items processed with the item. The co-owned portion shall be held in safe custody by the Customer free of charge.

5.5 In case of a risk of the Customer being unable to pay or breaching its duties, especially in case of payment arrears, LEAD shall be entitled, even without having set a deadline, to demand surrender of the item delivered and/or to withdraw from the contract; the Customer shall be obliged to surrender the goods. A demand for surrender shall not constitute a declaration of withdrawal on the part of LEAD; withdrawal must on principle be stated explicitly.

5.6 If the realizable value of all security interests to which LEAD is entitled exceeds the amount of all secured claims by more than 20%, LEAD shall release a corresponding part of the security interests at the request of the Customer. The securities to be released shall be selected by LEAD.

## 6. RIGHTS OF THE CUSTOMER ARISING FROM PRODUCT DEFECTS

6.1 A material defect shall be deemed to exist when the item delivered is not of the contractually agreed quality or is not suited for the contractually agreed use. Unless the Parties have agreed otherwise, the contractually agreed quality shall emerge from the product information of the item delivered in the version valid at the time the contract is concluded, or the scope of services that may be specified in LEAD's offer and/or LEAD's order confirmation. If there are only minor deviations from the agreed quality or only minor impairments in respect of the product's usability, no rights arising from product defects shall be deemed to exist. The provision of a guarantee (of quality and/or of durability) shall always require an express agreement or a written confirmation by LEAD.

6.2 Any liability for defects to be assumed by LEAD shall be contingent on the Customer having met its inspection and notification obligation in accordance with clauses 3.1 and 3.2 and the defect not being due to natural wear and tear or negligent handling by the Customer or a third party, for instance through incorrect commissioning and handling, failure to comply with the system, installation and other technical requirements defined in the operating manual, non-compliance with the operating and maintenance instructions, misuse, improper repairs, use of unsuitable accessories or spare parts, excessive stress as well as external causes such as fire, water, heat, electrical impact, as far as these circumstances were caused through no fault of LEAD. Liability for defects shall furthermore be ruled out where the defect is caused by the hardware or software of third parties or by any other influence of third parties (e.g. computer viruses).

6.3 Claims for product defects shall lapse if the Customer makes own changes or commissions third parties to make changes to delivered goods, unless the Customer proves that the defect that occurred was not caused by such changes. The Customer shall permit LEAD, at its request, to investigate the cause of the defect and any changes that may have been made.

6.4 LEAD shall be entitled to effect subsequent performance by rectification or optionally by replacement. Where appropriate, defects may also be remedied by giving the Customer instructions via telephone or in writing. Any expenses incurred by moving the item delivered to a different place than the original place of delivery shall be paid by the Customer. Replaced parts shall be returned to LEAD's property.

6.5 The Customer shall grant to LEAD a reasonable period of time for the subsequent performance, permitting least two rectification attempts. If the attempts are unsuccessful, the Customer shall be entitled to set LEAD a final reasonable period of grace. If the attempts at rectification continue to be unsuccessful during this grace period, the Customer shall be entitled, at its option, to reduce payment by an appropriate amount or to withdraw from the contract. The statutory provisions under which it is not necessary to set a deadline shall remain unaffected thereby.

6.6 The Customer shall only have a right to withdraw, to demand damages and reimbursement of expenses in lieu of full performance in case of substantial defects. Such rights shall not be deemed to exist if the Customer has made modifications to the delivered goods.

6.7 In case of fraudulent intent and where LEAD has accepted a guarantee, the statutory provisions for material defects shall remain unaffected thereby.

6.8 Customer claims based on defects - for whatever legal reason - shall lapse as specified in clause 7.6 below, supplemented by the statutory provisions, unless the Parties have agreed otherwise.

## 7. LIABILITY, STATUTE OF LIMITATIONS

7.1 LEAD shall be liable for damage and expenses incurred by the Customer

- (a) in case of intent or gross negligence, including that of its legal representatives and vicarious agents,
- (b) in case of culpably-caused injury to life, limb or health,
- (c) in case of defects of the delivered goods which give rise to mandatory liability for personal injury or property damage inflicted on privately used objects under the Product Liability Act (*Produkthaftungsgesetz*) or under other laws,
- (d) in case of defects that were fraudulently concealed by LEAD's legal representatives or vicarious agents;
- (e) in case of quality defects whose absence was guaranteed by LEAD and which cannot be remedied by rectification.

7.2 LEAD shall furthermore be liable for damage which results from an at least negligent breach of a material contractual obligation (cardinal obligation) for which LEAD is responsible, provided that such breach places the achievement of the intent of the contract at risk. With regard to defects, such risk shall only exist in case of substantial defects.

7.3 In case of breaches of a material contractual obligation and of a delay in the provision of goods or services, LEAD's liability shall be limited to the foreseeable damage typical of this type of contract – this shall not exceed the amount paid for the relevant goods or services; this shall also apply in the event of gross negligence, unless one of the cases designated in clause 7.1 (b) or (c) applies. Moreover, liability for a delay in the provision of goods or services shall be limited to 5% of the amount paid for the relevant goods or services; extended liability within the meaning of section 287 of the Civil Code (*BGB*) shall be ruled out. Liability for damages in lieu of performance and compensation for futile expenditure shall be limited to a total of 15% of the amount paid for the relevant goods or services.

7.4 LEAD shall not be liable for any consequential damages, such as damages for loss of profits, interruption of business, loss of data or other indirect damage resulting from the use of the item delivered or from its non-usability, unless liability for such damage is mandatory by law.

7.5 Moreover, liability for damages or any other liability - for whatever legal reason, for instance on grounds of defects, because of a breach of duties arising from the contractual obligation or on grounds of tort - shall be ruled out.

7.6 Unless expressly agreed otherwise in writing, the limitation period for claims by the Customer vis-à-vis LEAD – for whatever legal reason – shall be one year. Where a manufacturer grants a longer term of guarantee or warranty period, LEAD shall pass this on to the Customer as a matter of principle. In derogation from the foregoing, the relevant statutory periods of limitation shall apply in cases falling under clause 7.1 (a), (b), (c) and (d). The limitation period shall begin on the date of shipment from LEAD or at the time the Customer receives the declaration of readiness for shipment and, in case of the provision of services, at the time of their approval or at the time when the Customer receives the declaration of readiness for approval.

7.7 LEAD shall not be liable vis-à-vis third parties. The above provisions on limitation of liability and statute of limitation shall apply mutatis mutandis should LEAD be liable vis-à-vis third parties in individual cases due to special agreements or mandatory statutory provisions.

7.8 Insofar as liability of LEAD is ruled out, limited or time-barred, this shall also apply to the personal liability of its legal representatives, employees, workers and other assistants and agents.

## 8. SOFTWARE CLAUSE

The provision of standard software, which is provided as part of or in connection with hardware delivered to the Customer, shall be subject to the software clause for the provision of standard software as part of goods supplied ("*Softwareklausel zur Überlassung von Standard-Software als Teil von Lieferungen*") recommended by the Central Association of the Electrical and Electronics Industry (ZVEI e.V.) in conjunction with the general terms and conditions of delivery for goods and services of the electronics industry ("*Allgemeine Lieferbedingungen für Erzeugnisse und Leistungen der Elektroindustrie (GL)*") designated therein in the version most recently published.

## 9. DISPOSAL

Unless expressly agreed otherwise in writing, the Customer shall assume the obligation to properly dispose of the subject of performance delivered by LEAD at its own expense in compliance with the relevant statutory provisions after termination of use. The Customer shall release LEAD from any obligation applicable under section 10 subs. 2 of the Electrical and Electronic Equipment Act (*ElektroG*) (manufacturers' take-back obligation) and from any third-party claims related thereto.

## 10. MISCELLANEOUS PROVISIONS

10.1 Addenda, supplements or amendments to contracts shall require written form in order to be effective. This shall also apply to any waiver of the written form requirement.

10.2 The data required for processing the contract shall be stored by LEAD. Disclosure to third parties shall only take place with the consent of the Customer.

10.3 This Agreement shall be governed exclusively by the laws of the Federal Republic of Germany. The UN Sales Convention shall be deemed not to apply.

10.4 The legal venue for all and any disputes arising from or in connection with this Agreement shall be LEAD's registered office. The Customer can however also be sued in any other legal venue.

10.5 Should any provision or portion of this Agreement be ineffective or unenforceable, the remaining provisions of this Agreement shall remain in full force. The Parties herewith undertake to replace the ineffective or unenforceable provision with an effective or enforceable provision reflecting as closely as possible the economic intent of the ineffective or unenforceable provision. The same shall apply where this Agreement contains any gaps.