

GENERAL TERMS AND CONDITIONS OF LINDPOINTNER TORSYSTEME GMBH for B2B Contracts

Current as of 06/2023

1. VALIDITY

1.1. These General Terms and Conditions (hereinafter referred to as “GTC”) are applicable to any contracts concluded with us (LINDPOINTNER Torsysteme Gesellschaft m.b.H.) by business customers as defined in sec. 1 of the Austrian Consumer Protection Act (“KSchG”) (hereinafter referred to as Customer), as well as to all future transactions, even if no reference hereto is made in any individual case, especially in case of supplementary orders or follow-up orders. Any modifications of and/or amendments to our GTC shall be valid only subject to our explicit consent.

1.2. Our GTC are permanently available for the Customer at www.lindpointner.com/agb. The version of our GTC in force at the date of conclusion of a contract shall be deemed agreed upon.

1.3. We conclude contracts exclusively on the basis of our GTC.

1.4. Any general terms and conditions of Customers shall apply only subject to our explicit consent in writing.

Consequently, the general terms and conditions of a Customer shall not become part of the contract if we merely do not object to them upon receipt.

2. QUOTATIONS/FORMATION OF CONTRACTS

2.1. Our quotations and cost estimates are non-binding.

2.2. All quotations are without engagement. The prices quoted therein are valid only on the day of issue of the quotation. We explicitly reserve the right to adjust prices when an order is placed later than on the date of issue of the quotation.

2.3. All cost estimates are without engagement. The prices stated therein are valid only on the day of issue of the cost estimate. We explicitly reserve the right to adjust prices when an order is placed later than on the date of issue of the cost estimate.

2.4. Promises, representations and warranties on our part and any agreements in derogation of these GTC in connection with the formation of a contract shall become binding only by our written acknowledgement.

2.5. If the Customer has based its decision to place an order on any information on our products and services in catalogues, price lists, brochures, advertisements at trade fairs, circulars, advertising mailings, or any other media, the Customer shall disclose such information to us. If the Customer fails to comply with this obligation, any such information shall be non-binding unless explicitly included in the contents of the contract in writing.

2.6. Cost estimates are subject to a fee. If an order is placed for all goods or services covered by a cost estimate, the fee for the cost estimate will be credited toward the amount of the invoice.

3. PRICES

- 3.1.** Prices quoted are not all-in prices. Quotations cover the scope of the original order only.
- 3.2.** We shall be entitled, by our own initiative, and obliged, upon request by the Customer, to adjust the prices agreed upon by contract if changes of at least 3 % have occurred with respect to any of the following since the contract has been formed: (a) wage costs stipulated by law, decree, collective bargaining agreement or shop agreement or (b) any other costs necessarily incurred for the performance of the contract such as materials costs, which changed due to recommendations of the joint committees ("*Paritätische Kommissionen*"), or national and/or world market prices for raw materials, relevant exchange rates, etc. The adjustment shall be proportional to the change in actual manufacturing costs between the date of conclusion of the contract and the date of actual performance, provided that we shall not be in default.
- 3.3** In case of contracts for the performance of continuing obligations, the prices shall be value-guaranteed on the basis of the Consumer Price Index 2020. The basis of calculation of price adjustments shall be the index number for the month in which the contract was concluded.

4. GOODS PROVIDED BY THE CUSTOMER

- 4.1.** If the Customer provides any devices or materials for executing an order, we shall be entitled to invoice a surcharge of 25 % of the value of the devices and/or materials provided.
- 4.2.** Any such devices or materials provided by the Customer shall not be covered by our warranty obligation.

5. PAYMENT

- 5.1.** One third of the price shall be due for payment upon conclusion of the contract, one third upon commencement of performance, and the rest upon completion of performance.
- 5.2.** Any entitlement to a cash discount shall be subject to an explicit written agreement.
- 5.3.** In case of default of payment due to the Customer's fault, we shall be entitled to charge 9.2 % default interest above the base rate.
- 5.4.** If a business customer is in default of payment under any other contracts concluded with us, we shall be entitled to suspend performance of our obligations under all existing contracts until the Customer remedies the default. Furthermore, in any such case we shall be entitled to declare all claims for goods already delivered and/or services already performed in the course of the current business relationship with the Customer due for immediate payment.
- 5.5.** Any setoff against our claims with counterclaims of whatever nature shall be excluded.
- 5.6.** If the period allowed for payment is exceeded, any special benefits (discounts, price reductions, etc.) shall become forfeited and the corresponding amounts will be invoiced.
- 5.7.** The Customer undertakes to pay a reminder fee of € 40.00 per reminder required to collect debts in case of default of payment due to the Customer's fault.

6. CREDIT CHECKING

6.1. The Customer explicitly agrees that its data may be transmitted to the officially privileged creditor protection associations AKV EUROPA Alpenländischer Kreditorenverband für Kreditschutz und Betriebswirtschaft, Creditreform Wirtschaftsauskunft Kubicki KG and Kreditschutzverband von 1870 (KSV) for the exclusive purpose of creditor protection.

7. CUSTOMER'S DUTY OF COOPERATION

7.1. We shall be obliged to deliver the goods and/or provide the services agreed upon in the contract only after the Customer has met all structural, technical, and legal requirements for performance as specified in the contract or described in any information provided to the Customer before conclusion of the contract or which the Customer would have to know taking into account its technical knowledge or experience.

7.2. In particular, the Customer shall provide, without being specifically requested to do so, any required information, including but not limited to the position of concealed electrical power lines, gas, and water piping or any similar equipment, escape routes or any other structural obstacles, property boundaries, any possible sources of interference, potential hazards, and required static data, as well as any information on planned changes before we start performing the contract. Upon enquiry, we will provide details as to what information must be submitted for a specific contract.

7.3. The Customer shall obtain any required authorisations by third parties, as well as notices and licences/permits from authorities at its own expense. We will draw attention to any such authorisations, notices or permits upon conclusion of the contract unless the Customer has waived such information or would have to be aware of it due to training or experience.

7.4. The Customer shall provide power and the quantity of water required for performing the contract including trial operation.

7.5. The Customer shall provide lockable (staff) rooms for storing tools and materials free of charge for the duration of the performance of the contract.

8. PERFORMANCE OF WORK AND DEADLINES

8.1. Objectively justified minor changes in our performance of work which the Customer can be reasonably expected to accept shall be deemed authorised in advance.

8.2. Technically justified part deliveries and a partial performance of contract (e.g., in view of the size of the plant or equipment, progress of work) are permitted and may be invoiced separately.

8.3. Any dates of delivery and completion shall only be binding upon us if compliance has been undertaken by us in writing.

8.4. In case of default of performance of the contract by us, the Customer shall be entitled to withdraw from the contract after having granted a reasonable grace period. The declaration of withdrawal by the Customer, by which a grace period is set, shall be made provably in writing by registered letter.

9. ASSUMPTION OF RISK

9.1. The Customer shall bear the risk for all materials and equipment delivered by us to and stored or installed at the site of work. The Customer shall be responsible for any loss or damage attributable to the Customer's fault.

10. DEFAULT OF ACCEPTANCE

10.1. If the Customer is in default of acceptance for more than one week (refusing acceptance, default of advance performance or preparatory work, etc.) and has not removed the circumstances delaying or preventing the performance of work attributable to it despite having been granted a reasonable grace period, we shall be free to use the equipment and materials specified for the performance of work for other purposes while the contract shall remain in force and effect, provided that, in case of continuation of performance, we shall again procure such equipment or materials within a reasonable period taking into account the prevailing circumstances.

10.2. In case of default of acceptance by the Customer, we shall also be entitled to store the goods on our premises while insisting on performance of the contract. In consideration thereof, we shall be entitled to a reasonable storage charge.

10.3. This shall not affect our right to demand immediate payment for all goods delivered and/or services performed and to withdraw from the contract after having granted a reasonable grace period.

10.4. Asserting damages for a higher loss shall be permitted.

11. RETENTION OF TITLE

11.1. The goods delivered, installed, or otherwise submitted shall remain our property until payment has been made in full.

11.2. Any onward sale shall be subject to our consent after having been informed of the name and address of the buyer sufficiently in advance.

11.3. If we give our consent, the claim to the purchase price shall be herewith deemed assigned to us.

11.4. If the Customer is in default of payment, we shall be entitled to request the Customer to surrender the goods subject to retention of title after having granted a reasonable grace period.

11.5. The Customer shall inform us forthwith if bankruptcy proceedings are initiated against it or in case of any attachment of the goods which are subject to retention of title.

11.6. Asserting the retention of title shall only constitute withdrawal from the contract in case of an explicit declaration to this effect on our part.

11.7. We shall be free to sell any goods subject to retention of title returned to us on the free market for the highest possible price.

12. THIRD-PARTY PROPERTY RIGHTS

12.1. If a Customer has contributed any intellectual creations or documents and third-party property rights are asserted with respect to any such creations, the Customer shall indemnify us and hold us harmless against any such claims.

12.2. We shall be entitled to demand reasonable advances on any costs of litigation.

13. OUR INTELLECTUAL PROPERTY

13.1. Plans, sketches, cost estimates, and any other documents provided by us or created by us shall remain our intellectual property. Any such sensitive documents shall be returned to us forthwith if no contract is concluded.

13.2. Even after a contract has been concluded with us, these sensitive documents shall be used exclusively for the intended purpose. Apart from that, they shall be subject to an obligation of secrecy and shall not be disclosed to any third party not involved in performing the contract.

13.3. Furthermore, the Customer undertakes to keep any third-party knowledge acquired in the course of the business relationship secret.

14. WARRANTY

14.1. The warranty period for goods and services provided to business customers shall be one year from the date of delivery.

14.2. The date of delivery shall be the date of completion unless otherwise agreed upon (e.g., formal acceptance), however at the latest the date on which the Customer has taken delivery and assumed power of disposal or has refused to take delivery without stating a reason.

14.3. Any defects in the object of delivery which a business customer detected in the course of examination upon delivery or would have had to detect when engaging in proper business practices shall be reported to us without delay, however no later than 7 days after delivery. Otherwise, the warranty rights shall become forfeited.

14.4. The burden of proof of the actual presence of a defect at the time of delivery shall always be with the Customer.

14.5. The Customer shall assert any warranty claims within 1 year from delivery, at the latest. Otherwise, any such claims shall become forfeited.

14.6. Even if the Customer has alleged a defect in a timely manner, the Customer shall not be entitled to withhold performance of its obligations under the contract.

14.7. The Customer shall grant us at least two attempts to remove a defect.

14.8. To the extent the Customer can be reasonably expected to do so, it shall immediately discontinue any use or processing of a defective object of performance which might cause further damage or make ascertainment of the cause more difficult or impossible.

14.9. Any removal of a defect alleged by the Customer shall not constitute acknowledgement of the defect alleged by the Customer.

14.10. The costs of return transportation of defective goods to us shall be borne entirely by the Customer.

14.11. The Customer shall make it possible for us to ascertain the defect without delay.

15. LIABILITY

15.1. We do not assume liability for any loss or damage due to slight negligence or gross negligence except for personal injury. This exclusion of liability shall not apply if loss or damage occurs as the result of a breach of primary obligations under the contract on our part.

15.2. Furthermore, our liability shall be limited to the maximum coverage of any liability insurance taken out by us.

15.3. This limitation shall also apply to any damage to objects we have accepted for processing.

15.4 The Customer shall assert any claims for damages against us within six months. Otherwise, they shall become forfeited.

15.5. If and to the extent that the Customer is entitled to insurance benefits under an indemnity insurance (e.g., liability insurance, hull or collision damage insurance, transport, fire, or business interruption insurance, etc.) of its own or taken out for its benefit, for any loss or damage for which we are liable, the Customer undertakes to claim such insurance benefits. If these insurance benefits cover the entire loss, our liability shall be limited to the disadvantages suffered by the Customer as a result of the respective claims (e.g., higher premium).

16. SEVERABILITY CLAUSE

16.1. If any provision of these GTC is invalid, this shall not affect the validity of the remaining provisions hereof.

16.2. Both the business customer and ourselves undertake herewith to act in good faith to agree on a substitute provision meeting the commercial purpose of the invalid provision to the greatest extent possible.

17. MISCELLANEOUS

17.1. Austrian law shall apply.

17.2. Any application of the UN Convention on the International Sale of Goods (CISG) is excluded.

17.3. The place of performance shall be the headquarters of our company (4611 Buchkirchen).

17.4. Any disputes arising out of the contract or any future contracts between us and the Customer shall be settled exclusively by the court having territorial jurisdiction for our headquarters in AT-4600 Wels, Austria.

You can download our General Terms and Conditions here: www.lindpointner.com/agb