



## **General Terms of Sale for “Contract Processing” of Linde AMT Schluechtern GmbH**

### **1. General**

- (1) Our service conditions stated in the following apply exclusively. We do not accept any opposing or supplementary conditions of our customer, nor any such conditions which deviate from our service conditions. Such conditions shall also not become a contractual component even if we render services for the customer without reservation in the knowledge thereof.
- (2) With the exception of the service conditions in the following, the statutory provisions apply exclusively.
- (3) Notwithstanding the above, our service conditions in the following apply only insofar as our customer is an enterpriser within the meaning of Section 14 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*).

### **2. Offer and offer documents, cost estimates**

- (1) Our offers are non-binding unless otherwise stated in the offer. We are bound to offers that we designate as binding for two weeks from receipt of the offer by the recipient. We reserve the right to make technical changes to the extent reasonable for the customer.
- (2) We may accept transactional proposals (“orders”) of the customer within two weeks of receipt by sending an order confirmation or by executing the order. Any amendments or supplements to an order confirmation sent by us shall only be effective if we have confirmed them in writing.

### **3. Protective rights**

- (1) We reserve all property rights and copyrights to our figures, drawings, calculations and other documents; they may not be made accessible to third parties. This applies in particular to documents that we have marked as confidential.
- (2) It is the responsibility of the customer to check whether patents or other third-party protective rights exist with respect to the materials it supplies, which necessitate the consent of the respective third party for the processing or combination thereof with other products; in this case, the customer shall obtain such consent.

### **4. Right of withdrawal and advance payment, extension of the delivery period**

- (1) The delivery period presupposes the unequivocal creditworthiness of the customer, of which it gives its assurance upon submission of its order. In the event of doubts regarding this assurance or if circumstances become known following contractual conclusion, which endanger our claim to counter-performance in the amount determined by the order, in particular a significant deterioration of the financial situation, the filing of insolvency proceedings, enforcement measures, default on the settlement of due invoices in a significant amount etc, we shall be permitted to demand advance payments or securities or compensation or withdraw from the contract. Agreed delivery periods shall be deemed interrupted from this point in time.

### **5. Prices and payment conditions, payments on account, exclusion of set-off**

- (1) Our prices apply “ex works” and only include the costs of transport to and removal from our registered address if this is expressly agreed. We are permitted to separately charge for the costs of packaging and transport as well as transport insurance, which we consider necessary. Agreed shipping shall take place at our discretion in customary packaging or in packaging provided by the customer.
- (2) We reserve the right to increase our prices appropriately if cost increases beyond our control occur as a result of collective bargaining agreements or material price increases after conclusion of the contract. We shall provide evidence for this at the request of the customer. Should a price increase exceed 5% of the original price, the customer shall be permitted to withdraw from the contract.
- (3) Our offer prices are net prices. The statutory value added tax must be added to the prices in the amount of the value added tax rate that legally applies on the day of invoicing. The deduction of an early payment discount requires our written consent.



- (4) Our claims are due immediately. Without the need for a reminder, the customer shall enter default on payment if it does not settle our claim within 14 days of maturity and receipt of our invoice. Moreover, we are permitted to place the customer in default by way of a reminder.
- (5) We are permitted to request payments on account on our remuneration. These payments must be settled in the amount of the performance demonstrated by us plus the applicable value added tax on the basis of a partial invoice issued by us. We hereby point out that we shall obtain a statutory right of lien to the customer good as a result of the processing or adaptation of the customer good (Section 647 BGB). We shall exercise this right if payments on account are not paid punctually or in full.
- (6) We shall only accept cheques and bills of exchange on account of performance. Collection fees shall be borne by the customer.
- (7) Against our claims, the customer may only offset with legally determined, established, undisputed or recognised counter-claims. The exercise of a right of retention or a right to withhold performance shall likewise only be possible according to the aforementioned requirements and only if this relates to the same contractual relationship.

## **6. Performance deadlines and performance periods**

- (1) We shall have a suitable performance deadline for the execution of a performance incumbent upon us.
- (2) The start of a performance period incumbent upon us requires (i) the provision of the moveable objects of the customer for processing in a condition that directly enables service provision, (ii) the clarification of all technical questions and (iii) the fulfilment of all other duties of cooperation on the part of the customer, in particular the inspection of a sample of our performance provided to the customer. If a performance deadline is agreed, this shall be postponed by the period during which performance could not be rendered as a result of the non-cooperation of the customer.
- (3) We shall only be liable for compliance with performance deadlines incumbent upon us depending on culpability and only in the case of the prompt and contractually compliant delivery by our suppliers, insofar as we have agreed sufficient cover transactions with these suppliers and can demonstrate such to the customer.
- (4) On the grounds of non-compliance with a performance deadline or performance period, the customer may only withdraw from the contract concluded with us if it has previously given us a suitable grace period for service provision and we are responsible for the exceedance of the performance period and/or performance deadline. The above provision shall not affect statutory rights of withdrawal if these relate to a serious and final refusal of performance for which we are responsible. The same applies if a fixed transaction was agreed in writing and the customer has bound the continuation of its interest in performance to compliance with the fixed date.

## **7. Interruption of delivery, extension of the delivery period**

- (1) In the event of disruptions to our business operations or at suppliers which are beyond our responsibility, in particular labour walkouts and legal lockouts as well as cases of force majeure, current delivery or subsequent fulfilment periods shall automatically be extended by the duration of the impediment, yet by no more than five weeks. In such cases, the customer is only permitted to withdraw from the contract if it has given a reminder for the agreed performances upon expiry of the delivery period, has set a suitable grace period and the suitable grace period has fruitlessly expired. Prior to expiry of the subsequent fulfilment period, claims of the customer due to delayed delivery are excluded.

## **8. Transfer of risk – acceptance**

- (1) If our performance relates to the processing or adaptation of moveable objects not in our ownership (customer goods), the customer undertakes to deliver the customer good to our registered address at its risk in a condition that enables us to engage in direct service provision.



- (2) Unless otherwise agreed, we shall owe our performance "ex works". Our performance obligation shall be deemed fulfilled if we provide the performance stated in the customer order prepared by us, in a condition suitable for acceptance, for collection at our registered address.
- (3) We shall be entitled to acceptance of the performance rendered by us. Merely insignificant defects in our performance shall not permit the customer to refuse acceptance.
- (4) If no formal acceptance is required by us, our performance shall be deemed accepted upon expiry of 12 workdays following written notification of completion. In the event that the customer has used our performance or further processed the customer good processed by us or combined it with other moveable objects or modified the object processed by us (operationalisation), acceptance is deemed to have been provided upon expiry of six days after operationalisation. Section 614a BGB remains unaffected.
- (5) The risk shall be transferred to the customer upon acceptance, provided it does not already bear the risk for other reasons.

**9. Quality specifications – no guarantees**

- (1) Specifications in prospectuses, product descriptions or information material related to certain qualities of our product shall in no case establish a guarantee. As a rule, we do not provide any declaration of guarantee unless this is agreed by us in writing in individual cases.

**10. Owed quality – inspection of the customer good**

- (1) The quality of our performance owed by us shall be determined exclusively by the agreement concluded with the customer.
- (2) Conventions shall also not establish any owed quality if the purpose of use of the customer good to be processed by us is disclosed, without the customer specifying its required qualities of our performance.
- (3) In the event that we have not concluded an explicit quality agreement with the customer, we are permitted to produce a performance sample first and request that the customer inspects whether the sample is contractually compliant within seven workdays of handover of the sample (inspection period). If the customer does not object to the qualities of the sample within the inspection period, the qualities of the sample shall be deemed agreed.
- (4) The duration of the inspection period shall extend a performance period incumbent upon us.
- (5) We shall conduct a visual inspection of the customer good provided to us for processing or adaptation prior to rendering our contractually agreed performance. We shall only be obliged to conduct a more thorough inspection if this has been agreed explicitly in writing.
- (6) The customer shall guarantee and check that the customer good provided to us for processing or adaptation corresponds to the contractual agreements and does not deviate negatively from the quality of a sample piece provided to us.

**11. Defect-dependent claims of our customer**

- (1) Insofar as a defect in our performance is attributable to the service description or the other technical requirements of the customer or relates to the quality of the customer good to be processed by us, we shall be released from the liability for defects.
- (2) We shall also be released from the liability for defects if the customer insists on service provision despite concerns raised by us.
- (3) Any defects in our performance clearly recognisable upon acceptance must be reported in a complaint promptly, yet no later than within six workdays. Other clear defects must be reported to us in a complaint promptly upon occurrence of the defect. Should the customer fail to comply with the obligations pursuant to clause 1, our liability due to a defect shall be excluded. The customer must prove the time of discovering the defect.
- (4) Should the customer complain about a defect in our performance, it shall provide us with the opportunity to review its



complaint. We are permitted to demand the reimbursement of costs incurred to us as a result of the infringement of the above obligation. The above provision shall not prevent the customer from determining the defect by other means.

- (5) If we are denied the opportunity of subsequent fulfilment without justification or are unreasonably impeded to this end, we shall be released from all further defect-dependent obligations. In this case, the right of withdrawal and right to reduce the remuneration are excluded. The same applies with respect to any defect-dependent compensation claims of the customer.
- (6) A period set for subsequent fulfilment is only reasonable if we are given at least 30 workdays from the date at which we were first granted the possibility of subsequent fulfilment. The period shall be extended if we are impeded from rendering the subsequent fulfilment incumbent upon us due to circumstances beyond our responsibility. The customer may request for important reasons that we render subsequent fulfilment in a shorter period. We are permitted to request the written justification of the important reason.
- (7) A subsequent fulfilment incumbent upon us shall only be deemed to have failed if we could not rectify the defect despite two independent attempts at subsequent fulfilment or within the reasonable grace period. The customer may not invoke the failure of subsequent fulfilment if we were not previously granted sufficient opportunity for subsequent fulfilment.

## **12. Damage of the customer good**

- (1) For damages incurred to the customer good in connection with our performance (consequential defect damages), we shall only be liable depending on culpability.
- (2) We shall be released from the liability for consequential defect damages if the damage is due to the quality of the customer good or a technical specification of the customer.
- (3) If we are able to demonstrate in the claim that we have rendered our performance obligations in a contractually compliant manner, it shall be assumed that the consequential defect damage is due to a defect in the quality of the customer good for which we are not responsible.

## **13. Liability**

- (1) For damages not due to the injury of life, limb or health of the customer (other damages), we shall only be liable in the amount of the contractually typical, foreseeable damage insofar as we are able to demonstrate that our breach of duty was merely slightly negligent.
- (2) The liability limitations according to clause 1 exclude claims of the customer according to the German Product Liability Act (*Produkthaftungsgesetz*) and claims due to damages against which the customer should have been protected by a guarantee assumed by us. Moreover, it shall not apply if we are liable due to the concealment of a defect in bad faith.
- (3) Insofar as we are liable for other damages due to the merely negligent breach of a duty incumbent upon us, our liability shall be limited to the compensation of our liability insurance. We are prepared to grant the customer the opportunity to inspect our insurance policy upon request.
- (4) We shall only be liable for accidents insofar as we have assumed a guarantee or the procurement risk by written declaration.
- (5) The liability limitation according to clause 1 shall also apply to the personal liability of our employees, representatives and vicarious agents.
- (6) Due to a breach of duty which does not relate to a defect in an object supplied by us or a performance rendered by us, the customer may only withdraw from the contract if we are responsible for the breach of duty.

## **14. Limitation of claims against us**

- (1) The limitation period for claims against us, which are not due to wilful conduct attributable to us, amounts to one year. This period shall also apply to the limitation of defect-dependent claims on the part of our customer. The limitation period shall apply accordingly to the exclusion of the right of withdrawal from the



contract and the right to reduce the purchase price. The above limitation periods shall not apply if we are liable due to the injury of life, limb or health.

**15. Assignment prohibition**

- (1) The customer may not assign its claim to the provision of the performances owed by us.
- (2) Payment claims against us may only be assigned with our consent.

**16. Termination provisions**

- (1) We are permitted to terminate the contract concluded with the customer for important reasons. An important reason exists in particular if insolvency proceedings are opened with respect to the assets of our customer or an application to open such proceedings is filed and the customer is unable to demonstrate the unequivocal illegitimacy of this application within a reasonable period despite a request to that effect. An important reason within the meaning of the above also exists if one of our direct competitors acquires a controlling majority in our customer.

**17. Compliance with import/export laws**

- (1) The customer undertakes to comply with all applicable laws or provisions on import and export control for the relevant countries. The customer shall provide us with all information about compliance with the trade regulations, which we require in order to comply with the import and export laws, and shall obtain all necessary import and export licences. We reserve the right to suspend our performances in connection with this contract or to terminate the contract if deliveries would violate an import or export law. The payment obligation of the customer for the performances rendered remains unaffected. The customer must assume all costs in connection with imports and exports including customs processing and transport.

**18. Final provisions**

- (1) The place of fulfilment for all performance obligations arising from the business relationship is Schlüchtern.
- (2) The German courts are exclusively responsible for deciding on all legal disputes.
- (3) The place of jurisdiction is Hanau. We are also permitted to assert claims against the customer at another court responsible for the customer.
- (4) The law of the Federal Republic of Germany applies exclusively. The application of the UN Convention on the International Sale of Goods (CISG) is excluded.
- (5) We hereby point out that we shall electronically store and process the data of the customer.

**19. Data protection**

- (1) Linde AMT Schluechtern GmbH processes the contract data of the customer and its contact partners by automated means. Insofar as personal data is processed, data processing shall occur according to the provisions of the General Data Protection Regulation and all applicable provisions on data protection, in particular the German Federal Data Protection Act (*Bundesdatenschutzgesetz*). In this context, we refer to our privacy policy which can be accessed online at the following address: <https://coatec.de/Datenschutz.141.0.html>