

## **General terms and conditions Lumitech Lighting Solution GmbH**

### **1. Scope**

1.1 These General Terms and Conditions shall apply to the delivery and purchase of goods and the provision of all kinds of services by LUMITECH Produktion und Entwicklung GmbH.

1.2 We contract exclusively on the basis of the Terms and Conditions under consideration. Derogations from our Terms and Conditions shall become effective only upon our express written approval.

### **2. Quote**

2.1 All our quotes shall remain non-binding until written order confirmation.

2.2 Quotations and project documents remain our property and may neither be reproduced nor made available to third parties without our consent in any form whatsoever. We may reclaim such documents at any time, and these must be returned to us without further request if an order is not placed.

2.3 Our quotes shall be valid for a period of 1 month from the date of their submission. All prices quoted are exclusive of value-added tax.

### **3. Contracting**

3.1 Orders shall be considered accepted by us only upon submission of a written order confirmation or actual shipment of a delivery. Our written order confirmation shall be relevant for the scope of the delivery. Oral side agreements will not be made.

3.2 Any amendment of or modification to the Agreement shall require our written confirmation to be effective.

### **4. Withdrawal**

4.1 Where we are entitled to withdraw from the Agreement, we shall also be able to do so with regard to a part of a delivery.

4.2 If we exercise our right to withdraw for reasons attributable to the Customer, even without the latter's fault, the Customer must reimburse us for those preliminary expenses we incurred for the preparation of the Agreement (materials procurement, work expenditure, and the like). We may determine these preliminary expenses as a flat-rate amounting to 30% of the order value, without the need to furnish any particular evidence in support. Custom-made products will be fully reimbursed without delivery costs.

4.3 If the Customer withdraws from the Agreement, he must in any event (i.e. unless we are anyway entitled to the entire order amount) reimburse us for the preliminary expenses acc. to Section 4.2.

### **5. Prices**

5.1 The prices are exclusive of value-added tax, ex-works or ex-warehouse, and exclusive of packaging, loading, and transport. Where tariffs, taxes, or other duties are levied in connection with the delivery, these shall be borne by the Buyer. If delivery to the final destination has been agreed, it will be invoiced separately. If the order is implemented in derogation from the usual industry practices in accordance with special instructions by the Customer, the handling costs triggered as a result will be charged to the Customer.

Any discounts and rebates on our list prices will only be granted under the proviso of the full payment of the purchase price. If the purchase price is not paid in full, especially in the case of insolvency proceedings, we are entitled to demand our list prices.

5.2 In the case of an order deviating from the overall quotation, we reserve the right to make the corresponding price changes.

5.3 The prices are based on the costs at the time of the first price quotation. Should the costs increase until the time of delivery, we are entitled to adjust the prices accordingly.

## **6. Delivery**

6.1 Only expressly agreed delivery deadlines are binding for us. Any delivery periods indicated outside the Agreement - for example in catalogues or other documents - are purely informative and do not bind us. In the case of expressly agreed delivery deadlines, the delivery period begins on the latest of the following dates:

- a) Date of order confirmation,
- b) Date on which the Buyer meets all technical, commercial, and other requirements within his responsibility.

6.2 We are entitled to carry out and invoice any partial or preliminary deliveries. We are entitled to assign third parties with all or parts of the services under consideration. The choice of the third party is at our sole discretion, and any corresponding requirements by the Customer are irrelevant.

6.3 Compliance with the agreed delivery deadline shall be binding unless unforeseeable circumstances or circumstances independent of the intention of the Parties, such as all cases of force majeure, prevent such compliance; these circumstances also include governmental interferences and prohibitions, delays in transport and customs clearance, transport damage, energy and raw material shortages, wastage of a major or important workpiece, labour conflicts, or the loss of an essential supplier difficult to replace. The aforementioned circumstances will entitle us to extend the delivery deadline, even if they occur with suppliers.

6.4 All goods and services that go beyond those included in the order confirmation and were accepted by the Customer will be invoiced separately according to list prices.

## **7. Performance and Transfer of Risk**

7.1 Utilization and risk are transferred to the Buyer at the latest with the acceptance of the goods ex works or ex warehouse. This shall also apply in case of a delivery by us free at destination with our own or a third-party vehicle. In the case of services that do not represent a goods delivery or part thereof, the place of performance shall be where the service is provided. The risk for a service or an agreed partial service shall be transferred to the Buyer upon the provision of the service.

7.2 In the case of a delayed departure from the supplier factory attributable to circumstances on the Buyer's side, the risk shall be transferred to the Buyer upon the date the order was ready for shipment.

7.3 Separately agreed quality inspections or test operations are without prejudice to the provisions regarding place of performance and transfer of risk.

7.4 In the event of damage or defects occurring during transport, the Customer must report a transport damage to us within 24 hours, yet not later than within 3 days.

## **8. Payment terms**

8.1 Unless special payment terms have been agreed, our invoices are payable immediately (upon receipt). In the case of development orders, 50% of the purchase price is payable upon order confirmation and the rest upon delivery. In the case of production orders, it is 30 days net from the date of the invoice.

8.2 In the case of partial invoices, the corresponding partial payments shall be due immediately upon receipt of the respective invoice. This also applies to invoices resulting from additional deliveries or other agreements going beyond the original order total, regardless of the payment terms agreed for the main delivery.

8.3 All goods delivered by us shall remain our property until their full payment including interest and costs. In the case of resellers, a resale of the goods prior to the full payment of the invoice is only allowed upon our written consent. In case of our consent, the purchase price debt is already deemed transferred to us, and we are entitled at all times to notify the third-party debtor about this transfer.

For the purpose of inspecting the conditional goods, the Buyer warrants that we may access his premises at any time. If the Buyer is in arrears with his payment obligations, if insolvency proceedings are applied for or initiated over his assets, or the Buyer is in breach of other contractual obligations, we shall be entitled - at our discretion while maintaining the Agreement - to demand surrender of the conditional goods, to recover these, and/or collect transferred receivables as security.

8.4 In case of cancellation of the order by the Customer, a cancellation fee of at least 30% shall be due regardless of fault. If we have already begun processing the order, we are entitled to demand a cancellation fee of at least 50% regardless of fault. We reserve the right to assert expenses in excess thereof in connection with the cancelled order.

## **9. Invoicing and payment**

9.1 We are entitled to issue an invoice as soon as the delivery has been carried out. In the case of a delivery in parts, we may issue partial invoices.

9.2 If no reasoned objection is raised against our invoice within two weeks, it shall in any event be considered approved.

9.3 Should we become aware of circumstances that cause the creditworthiness of the Customer to appear diminished, we are entitled to demand advance payments and withdraw from the supply agreement if these are not made.

9.4 In the event of a default in payment – even in the absence of fault - an interest of 8% above the respective base interest rate of the Austrian National Bank will be charged as from the due date.

## **10. Billing**

Services rendered and completed orders will be billed according to the actual expenditure with regard to material, charges and employee working time. Quotes in connection with repairs, the estimation of expenditure, and any expert opinions will be produced on the basis of their benefit and will be billed accordingly. If the costs incurred exceed a financial framework - agreed with the Counterparty beforehand - it will be necessary to obtain the Counterparty's approval.

## **11. Returns**

11.1 Goods may only be returned upon agreement with the sales office. The latter will issue a return slip and send it to the Buyer. In addition to information on the returned goods, the return slip must also contain the invoice number or the number of the delivery note.

11.2 Goods must be returned to the company address of Lumitech Produktion und Entwicklung GmbH. All costs incurred in connection therewith must be borne by the Buyer.

## **12. Warranty**

The following provisions on warranty shall not apply to consumers within the meaning of the Consumer Protection Act.

12.1 The content of the descriptions used by us shall not become content of the Agreement, unless we or the Customer explicitly refer to it.

12.2 If deficiencies of goods/a work are already obvious at the time of the conclusion of the Agreement or the Customer was already aware of them at this point, if the Customer did not observe all conditions of the Contractor with regard to the subject-matter of the Agreement, if improvement work was carried out without our approval, if material of unknown origin was installed, or the Customer did not comply with his contractual obligations, the warranty will be ruled out.

12.3 In addition, the Customer must, to the extent acceptable for him, inspect the goods/the work immediately after delivery as to their completeness, correctness and absence of any defects, and immediately report to us in writing any shortcomings, including all shortfall quantities and all incorrect deliveries as well as transport damage upon delivery, yet not later than two working days after receipt of the goods or services. If goods are directly shipped to third parties, the time-limits applicable to the inspection and obligation to give notice of defects will commence upon receipt of the goods by the third party.

If a notice of defects is not submitted or submitted late, the goods/the work shall be considered approved. The assertion of warranty or compensation claims, including consequential damage and the right of avoidance on the grounds of error in connection with defects, are ruled out in these cases. The burden of proof that the goods/the work are defective and that the defect was present upon delivery shall always lie with the Customer, even if the defect surfaces within six months after delivery.

12.4 If there are warranty claims due to a defect, we may at our discretion choose to improve or replace the goods/the work, reduce the remuneration accordingly, or cancel the Agreement. If warranty claims exist, this shall not entitle the Customer to withhold the remuneration until the time of the improvement or the replacement of the goods.

12.5 Claims from defects in connection with any kind of supply and service, regardless of the legal grounds they are based on (in particular warranty, damages, error, special right of recourse) must be in any event asserted in court within six months after delivery. The above period begins on the day of the delivery of the goods/the work.

12.6 Costs incurred as a result of the removal of defects, such as installation or dismantlement or transport and material shall be borne by the Customer.

12.7 In the case of custom-made products on the basis of information, drawings, etc. of the Customer, the Seller only guarantees their proper execution or manufacturing.

12.8 Expenses incurring as a result of repairs will only be accepted if the Customer notifies the Seller thereof beforehand and the latter confirms the reimbursement of these expenses in writing. If the Seller is not informed about a repair by third parties or the goods are modified accordingly without notification, the Seller does not grant any warranty for such work.

12.9 Where these are defects or damages verifiably caused by a manufacturing or material error, the Seller may offer a replacement or a removal of the defects free of charge.

### **13. Sample deliveries**

13.1 If the Customer wishes to, goods may be provided for appraisal for a period of 4 weeks. This delivery must be expressly indicated as a "sample delivery" on the delivery note and on the invoice. Goods that may show signs of wear and tear may not be delivered to the Customer for inspection.

13.2 Upon delivery of the samples, the Seller shall issue an invoice with the standard conditions and ship it together with the samples. If the goods are returned in their original packaging within the period, the Customer will receive a credit corresponding to the invoiced amount.

13.3 If the delivered samples are not returned in time, or the goods are damaged or incomplete, the delivered samples shall be considered purchased by the buyer. This shall also apply if the goods in the sample delivery show traces of installation.

### **14. Surcharges for deliveries of small quantities**

14. In the case of orders not exceeding a value of 250 euros (excl. VAT, charges, and costs), a surcharge of 25 euros will be invoiced for each delivery. In the case of orders at a value between 250 euros (excl. VAT, charges, and costs) and 1,000 euros, a surcharge of 15 euros will be invoiced for each order. In case the order is delivered in several partial deliveries through the fault of the Seller, no surcharge will be invoiced.

### **15. Damages**

In the case of damages outside the scope of the Product Liability Act for any reason whatsoever, in particular due to delay, impossibility of service, positive breach of Agreement, fault upon conclusion of the Agreement, consequential damage caused by defects, defects, or unlawful acts, the Seller will only be liable if the Purchaser furnishes proof of intent or gross negligence. Liability for slight negligence, for compensation for consequential and third-party damage, as well as damage to property, non-realisation of savings, loss of profit, and loss of interest is ruled out.

If the Buyer is entitled to compensation for damages, we may choose to grant compensation in kind or financial compensation. If the Buyer is entitled to compensation, our liability is in any event limited to the double amount of the agreed remuneration.

After expiry of ten years following the delivery of the goods/the work, there shall be no entitlement to compensation for damages.

Recourse claims within the meaning of Section 12 Product Liability Act are ruled out, unless the recourse claimant can prove that the error originated within our sphere of responsibility and caused by our intent or gross negligence. Compliance with the instructions for assembly, commissioning, and operation (operating instructions) of the delivered goods or rendered services is mandatory. We disclaim any liability in case of non-compliance with these instructions or conditions for government approvals.

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

16.1 In case of the manufacturing of goods on the basis of design specifications, drawings, models, or other specifications by the Buyer, the latter must hold harmless and indemnify us in case of a violation of third-party property rights .

16.2 Execution documents such as, e.g. plans, drawings, or other technical documents, as well as samples, catalogues, leaflets, illustrations, and the like shall always remain our intellectual property and shall enjoy the protection of the relevant statutory provisions with regard to reproductions, counterfeiting, competition, and the like. Section 2.2 also applies to execution documents.

**17. Severability clause**

Should individual provisions of this Agreement be invalid, this shall not affect the validity of the remaining provisions. The invalid term shall be replaced by a term that closest reflects the envisaged purpose of the Agreement.

**18. Place of jurisdiction, applicable law**

18.1 The legal relationships with the Buyer/Customer shall exclusively be governed by Austrian law, to the exclusion of the UN Sales Convention. Place of performance for all obligations arising from this Contract shall be Jennersdorf.

The place of fulfilment and jurisdiction for all disputes arising in connection with the present agreement - including those relating to its existence or non-existence - shall be the court having subject-matter jurisdiction for Jennersdorf.