

# General Terms and Conditions of Sale and Delivery (GTCS) – LLT Applikation GmbH

## I. General contractual terms and scope of validity

1. These general terms and conditions of sale, hereinafter referred to as GTCS, shall apply exclusively to all legal relationships between the customer and LLT Applikation GmbH, hereinafter referred to as LLT, even in the absence of an express agreement. Terms of the Buyer that oppose or differ from those herein shall not be recognised. Our GTCS shall also apply if we fulfil our contractual obligations unconditionally with knowledge of any opposing or different terms of the Buyer.
2. Modifications to these GTCS must be approved by us in writing and/or executed in writing in order to be effective.
3. These GTCS are also valid for follow-up orders, replacement deliveries, service contracts, work contracts and mixed contracts without requiring further reference to them.
4. These GTCS shall only apply if the Buyer is a contractor, a legal person under public law or a separate estate under public law. This shall also apply to Buyers who perform commercial activities abroad comparable to those of a domestic contractor, and to foreign institutions comparable to domestic legal entities under public law or domestic special assets under public law. A contractor is a natural or legal person or a legal partnership that concludes a legal transaction in the exercise of a commercial or self-employed activity.
5. The language of this contract is German.

## II. Quotations and order confirmation

1. Our quotations and the drawings, images, dates, measurements, weights and other performance data they contain shall be non-binding unless they are expressly labelled as binding or contain a specific acceptance period. Prices given in quotations that are expressly labelled as binding shall be valid for four weeks starting from the quotation date, unless another acceptance period is specified in the quotation. All relevant agreements require written confirmation from the Seller in order to be legally valid.
2. A contract shall only be final once we have provided confirmation of the order in writing. In specific cases, where there is no order confirmation or a contract is concluded without order confirmation for other reasons, its content shall be solely determined by the quotation.
3. If the Buyer and Seller have both signed a written document pertaining to the delivery and/or service and if this document contains all the contractual terms, this document shall be the equivalent of a written order confirmation.
4. Insofar as an export license is required for the execution of the contract, the conclusion of the contract shall be subject to the suspensive condition of the granting of an export license.
5. We reserve the property rights and copyrights of the texts, images, drawings, blueprints, calculations and other documents – including those in electronic format – in our quotations. They may not be provided to third parties, or reproduced by yourself

or by third parties, without our express consent.

6. All information provided to us by the Buyer shall be considered non-confidential.
7. We shall deliver the goods indicated in the order confirmation, in addition to any services and software, to the extent agreed, with the specifications indicated in the order confirmation.
8. Services are performances carried out by our employees or third parties commissioned by us on the goods we have delivered, such as installations, repairs, service and maintenance work, and the contract processing on our laser machining system of material, parts and components provided by the Customer.
9. Software shall be delivered exclusively in executable form (object code), i.e. the corresponding source code is not covered by the contract.
10. We shall deliver goods, services and software with the documentation prepared and provided by us or by the manufacturer (CD and/or printed manuals).
11. The Buyer shall determine the assembly and use of the goods, services and software delivered by us. We shall only advise him in this regard if it has been expressly agreed.
12. Our obligations shall not include installation, commissioning, configuration or briefing unless we have expressly agreed to provide them.

## III. Prices and terms of payment

1. The prices as specified in the order confirmation shall be considered agreed. Unless otherwise indicated, our prices are quoted in EUROS, plus statutory value added tax, and are Ex Works exclusive of packaging, shipping costs, insurance, customs duties, handling fees and bank charges.
2. Statutory value added tax is not included in our quotes, price information or in the order confirmation. This also applies to the customs duties and other public taxes on export deliveries. The statutory value added tax rates at the time of invoicing usually apply.
3. Unless otherwise agreed, our invoices shall be payable within 14 days from the invoice date without deduction. Compliance with this deadline shall be determined by the date on which we receive the payment. Cash discounts require a special written agreement. Unauthorised cash discounts shall be reclaimed. The Buyer's payments can offset previous debts contrary to any agreed amortisation rules. We shall inform the Buyer immediately of the specific invoicing type applied. Interest and commissions in line with the standard bank rates shall be charged for late payments; we shall nevertheless reserve the right to assert further claims for damages. The withholding of payments and the offsetting of any counterclaims of the Buyer are excluded. Notification of defects and complaints for any reason whatsoever shall not justify the withholding of a payment.
4. If we become aware of any circumstances that significantly reduce the Buyer's creditworthiness and which jeopardise the payment of our open accounts, we shall be entitled, with regard to any outstanding deliveries and services,

to demand additional securities or advance payment before delivery. Specifically, in the event of overdue payments, the entire residual debt shall be due immediately.

5. The Buyer may only offset payment if its undisputed counterclaims have been legally established or acknowledged by us in writing. The Buyer shall only be entitled to exercise a right of retention to the extent that the counterclaim, having been legally established or acknowledged by us in writing, is based on the same contractual relationship.
6. LLT reserves the right to require advance payment.

#### **IV. Delivery and services**

1. Unless otherwise agreed, delivery shall be Ex Works our address (INCOTERMS 2012).
2. Unless otherwise agreed, the risk shall pass to the Buyer at the latest upon dispatch of the shipment. This shall also apply to partial deliveries. The Buyer shall always bear the risk and cost of shipping.
3. Unless specifically agreed, the shipping shall be carried out by post, rail, courier service or forwarding service at our discretion. If carriage free delivery has been agreed, only standard carrying costs shall be assumed in all cases. Additional charges for air and sea freight, express and urgent shipments shall be charged to the receiver. The freight shall only be insured if expressly requested by the Buyer and at its expense.
4. The expected delivery dates and deadlines we indicate shall always be considered approximate, unless a fixed deadline or date has been confirmed as binding or agreed. Compliance with a fixed delivery date or a fixed delivery time shall require that the Buyer fulfils its duty of cooperation, i.e. assists in the clarification of all technical details, provides us with the agreed paperwork and documents in full and on time, and provides any agreed deposits or payment securities in full and on time.
5. Unless otherwise indicated on the order confirmation, our business address shall be the place of performance of our services and the Buyer's duty to pay.
6. Partial deliveries shall be permitted to the extent accepted by the Buyer.
7. Within the scope of the contract, overdeliveries of up to 10% or underdeliveries of up to 5% of the order volume on contract work shall be permitted. Unless otherwise specified, any provided material shall be used and expended for the corresponding order. This can result in both over and underdeliveries above and/or below the specified values.
8. The delivery deadline shall be met if the deliverable has left the factory or the notice of readiness for shipment has been communicated by the expiry of this deadline. Compliance with the delivery deadline shall be subject to correct and punctual delivery by our own suppliers. Should there be a delay in the shipping and acceptance of the deliverables due to circumstances for which the Buyer is responsible, the latter shall be charged for the costs arising from the delay beginning one month following the notice of readiness for shipment and/or readiness for acceptance.

9. For deliveries requiring installation or assembly, the deadline shall be determined by the acquisition date or the commissioning date, to the extent agreed.
10. Insofar as acceptance of delivery is expected, the delivery or service shall be considered accepted when the delivery or service, including the agreed acceptance, has been concluded and the Seller has notified the Buyer of this by indicating it on the acceptance agreement and has requested acceptance from the Buyer.

The delivery or service shall also be considered accepted if two weeks have elapsed since the delivery or commissioning or the customer has already begun to use the delivery or service and, in such an event, one week has elapsed since the delivery or commissioning and the Buyer has neglected to notify acceptance within this period for any other reason than a defect, reported to the Seller, that renders impossible or significantly compromises the use of the purchased item.

11. In the event of unforeseen circumstances beyond our control, e.g. operational disruptions, strikes, war, riots, lockouts, administrative orders or supply delivery delays, the Seller shall be released from its delivery obligation and the delivery period shall be extended accordingly. If the delivery is rendered impossible by an event of force majeure or an administrative order, LLT shall have the right to withdraw from the contract.

#### **V. Retention of title**

1. We shall retain the title to all delivered goods (reserved goods) until all claims, including any future and/or conditional claims, arising from the deliveries agreed within the scope of these GTCS, as well as the balance due on the open account of the above-mentioned claims, have been settled.
2. The Buyer is authorised to process or resell the reserved goods in its ordinary course of business within the meaning of section 950 of the German Civil Code (BGB), as long as it is not in default. Pledges and chattel mortgages are not permitted. If the value of the securities granted to us exceeds the secured claims, insofar as the latter have not yet been settled, by more than 50%, we shall release on request such securities, in part or in whole, at our discretion.
3. The Buyer shall insure the goods against the usual risks. The Seller has the right to insure the deliverables, at the expense of the Buyer, against theft, breakage and fire, water or other damages, unless the Buyer has verifiably taken out an insurance policy.
4. As the manufacturer, we may process the goods without incurring obligations. We shall acquire co-ownership of the new product at the ratio of the invoice value of the reserved goods to the invoice value of the other processed goods. The Buyer shall safeguard such goods on our behalf at no charge. The conditions applying to the reserved goods shall also apply to the new product resulting from the processing.
5. If the reserved goods become inseparably combined or mixed with other goods not belonging to us, we shall acquire co-ownership of the new product at the ratio of the invoice value of the reserved goods to the value of the other combined or mixed goods. If the combining or mixing takes place in such a way that the product of the Buyer

is to be regarded as the main product, it shall be deemed to have been agreed that the Buyer shall transfer co-ownership to us pro rata. The Buyer shall safeguard it on our behalf at no charge. The conditions applying to the reserved goods shall also apply to the new product resulting from the combining or mixing.

6. All claims related to the reserved goods arising from the resale or further processing, including any current account receivables, are hereby assigned in their entirety to us by the Buyer as security. However, the Buyer shall be entitled to collect such claims in its own name and for our account, as long as we do not revoke this authorization due to overdue payment on the part of the Buyer.
7. If third parties are given access to the reserved goods, particularly in the event of seizures, the Buyer shall indicate our ownership and inform us without delay. The Buyer shall be liable for all costs incurred by us in this regard.
8. If the Buyer acts in breach of contract, particularly if it is in default of payment, we shall be entitled, after setting a reasonable grace period, to reclaim the reserved goods; the Buyer shall be obliged to surrender them.

#### **VI. Warranty against latent defects and defects of title**

The Seller is liable for any latent defects and defects of title of the delivery to the exclusion of further claims – subject to section VII – as follows:

##### Latent defects

1. All parts that prove to be defective within 12 months following the delivery as a result of a circumstance occurring prior to the transfer of risk shall be repaired or redelivered, at the at the discretion of the Seller. The Seller shall be notified in writing without delay upon the discovery of such defects. Any replaced parts shall become the property of the Seller.
2. The information provided in the quotation and in the order confirmation shall not constitute a quality guarantee within the meaning of Section 443 of the German Civil Code (BGB), unless this has been separately agreed.
3. Complaints must be filed before use or further processing of the goods within 10 days of receipt and shall include a precise description of the defect, otherwise the goods shall be deemed accepted without objection.
4. If the purchased item is defective, the Buyer may demand, at its discretion, the remedying of the defect or the delivery of a new item free from any defect, as rectification. However, the Buyer may only demand the delivery of a new item free from any defect if we have attempted twice and failed to remedy the defect, or it is impossible or infeasible to remedy the defect, or we have declined to do so. In the event of failure to repair or replace the item, the Buyer can withdraw from the agreement or reduce the purchase price accordingly.
5. Only in emergencies where there is a risk to operational safety and/or in order to avert disproportionate further damage, in which case the Seller shall be notified without delay, shall the Buyer itself have the right to remedy the defect or have it remedied by third parties and claim reimbursement of the required costs from the Seller.
6. The Seller shall bear – provided the complaint proves justified – the direct costs of

repair or replacement delivery, including shipping costs. It shall also bear the appropriate costs of disassembly and assembly and, in addition, the cost of providing any required fitters and assistants, if this can be justifiably demanded under the circumstances of the individual case.

7. The Buyer shall bear the costs of the rectification, insofar as the rectification is performed at a place other than the place of delivery at the request or instigation of the Buyer.
8. Any assignment of warranty rights against us shall not be permitted without our written consent.
9. In the event of withdrawal from the contract, we shall refund the purchase price, less a reasonable compensatory fee for the benefit derived up to the rescission of the contract.
10. The Buyer is obliged to ensure correct data protection at the level appropriate to the risk.
11. In the event of defects in components provided by other manufacturers that cannot be remedied by the Seller for licensing or practical reasons, the Seller shall, at its discretion, assert its warranty claims against the manufacturers or suppliers for the account of the Buyer or assign them to the Buyer. Warranty claims against the Seller shall only exist for defects of this nature under other the conditions and in accordance with these GTCS if the legal enforcement of the aforementioned claims against the manufacturers and suppliers has failed or is futile, e.g. due to bankruptcy. For the duration of the legal dispute, the statute of limitations of the respective warranty claims asserted by the Buyer against the Seller shall be suspended.
12. Should modifications be carried out on our goods and services without our authorisation, parts changed or materials used that do not correspond to our original specifications, and the defect analysis or the rectification of the defect becomes impossible or unreasonably difficult as a result, all warranty rights shall lapse.
13. The warranty shall also expire in the event of any inappropriate or improper use, incorrect or negligent handling, assembly and/or commissioning, the use of inappropriate production equipment, or due to an inadequate infrastructure (building site, temperature, humidity, chemical or electrical influences) by the Buyer or by third parties.
14. In the above-mentioned cases, we shall be entitled to claim reimbursement of expenses incurred by us for defect analysis and removal of defects. The same shall apply in the event of failure to comply with our operating or maintenance instructions or if our services are not used in accordance with the contract or our product specification or our operating instructions. The same shall apply if our services are used together with third-party services and this usage is incompatible with our product specification or our operating instructions. The above-mentioned provisions shall not apply if the Buyer proves that the defect is not a result of the aforementioned circumstances.
15. Notwithstanding the preceding regulations, the warranty against latent defects of used delivered goods is excluded. This does not apply in the case of a fraudulently concealed defect or the breach of a manufacturer warranty. The contractual claims of the Seller shall otherwise also remain unaffected for the delivery of used goods.

### Defects of title

16. Should the use of the delivered goods result in the infringement of industrial property rights or copyrights in Germany, the Seller shall, at its own expense, either obtain the necessary rights for the Buyer to continue using the goods or modify the goods in a manner acceptable to the buyer, so that the infringement of property rights no longer exists.
17. If this is not economically feasible or not possible within a reasonable period of time, the Buyer shall be entitled to withdraw from the agreement. Under the above conditions, the Seller shall also be entitled to withdraw from the contract. Furthermore, the Seller shall indemnify the Buyer from any undisputed or legally established claims of the respective property rights holder.
18. In the event of infringement of industrial property rights or copyrights, the Seller's obligations as specified in sections VI. 16 and 17 are final, subject to Section VII. 2. Such obligations shall only exist if
  - the Buyer notifies the Seller immediately of any asserted infringements of property rights or copyrights,
  - the Buyer supports the Seller to a reasonable extent in defending against the asserted claims or allows the Seller to implement modification measures in accordance with section VI.16 and 17,
  - the Seller reserves the right to resort to all defence measures, including settlement out of court,
  - the defect of title is not the result of the Buyer's instruction and
  - the infringement of property rights is not the result of modifications made by the Buyer on its own authority or usage in a manner contrary to the terms of the contract.

### **VII. Liability, disclaimer**

1. If, due to the Seller's fault, the delivered goods cannot be used by the Buyer in accordance with the contract as a result of failure to implement suggestions and advice given prior to or after the conclusion of the contract, or the incorrect implementation thereof, or due to the culpable breach of other secondary contractual obligations – in particular with regard to the operating and maintenance manuals of the delivered goods – then the provisions in sections VI and VII.2 shall apply accordingly, subject to the exclusion of all further claims on the part of the Buyer.
2. The Seller shall be liable for damages not caused to the delivered item itself – on whatever legal grounds – only
  - a. in the event of wilful intent,
  - in the event of gross negligence on the part of the owner/agencies or managerial employees,
  - b. in the event of culpable injury to life, body or health,
  - c. in the event of fraudulently concealed damages,
  - d. within the scope of a promise of guarantee,
  - e. in the event of defects or deficiencies in the delivered items to the extent that the Seller is held liable for personal injury or damage to privately used items under the German Product Liability Act.

3. In cases of culpable breach of essential contractual duties, the Seller shall also be held liable where there is gross negligence on the part of non-managerial employees.
4. Liability for data loss due to our fault shall be limited to the costs for duplication of the data from the backup copies to be produced by the Buyer and for the restoration of any lost data for which regular backups have been made according to the appropriate level of risk. Should the Buyer fail to comply with its obligation described in V.8, we shall not be liable for any damages arising therefrom.
5. Insofar as we provide technical information or work in an advisory capacity and such information or advice are not included in the contractually agreed scope of performance, such services shall be deemed as being free of charge and excluded from all liability.
6. Our liability arising under a warranty we have assumed shall not be determined according to the above agreements but rather according to the warranty conditions and the statutory provisions.
7. Unless otherwise agreed in this subparagraph VII, the liability of the Seller shall be excluded.

### **VIII. Liability for contract work**

1. If we perform contract work, and if material parts, semi-finished products or tool equipment are provided or supplied by the Buyer for this or any other contracts, we shall process or handle them with care and diligence.
2. We shall be obliged to inspect the parts, raw materials or other materials provided to us only if this has been expressly agreed and the inspection costs are payable by the Customer.
3. Should the parts, raw materials or other materials provided to us be rendered unusable due to circumstances for which we are not responsible or to force majeure, no claim may be established against us for the free-of-charge replacement of the material or reimbursement of other costs. Should any parts be unusable due to material defects, we shall be reimbursed for any corresponding processing costs incurred.
4. Should parts be rendered unusable due to processing errors, up to 5% shall be charged to the Customer. Furthermore, we shall process new parts free of charge from material to be sent to us carriage paid.

### **IX. Industrial property rights and copyrights**

1. If any claims are brought by third parties for infringement of industrial property rights or copyrights against the Buyer in connection with the Buyer's use of the delivered goods/services, the Buyer shall notify us thereof in writing without delay. In such cases, we reserve the right to defend ourselves legally through any available defence and with out of court measures. The Buyer shall support us in the defence of such claims.
2. We shall be liable for the infringement of industrial property rights or copyrights of third parties only if the respective third party is also entitled to these rights for the territory of the Federal Republic of Germany, or for the federal state in Germany to which the delivery shall take place, or for the states in which the purchased item is to be used in accordance with the purpose of the contract. The latter shall only apply if and when the states covered by the purpose of the contract are expressly named in the order confirmation.

**X. Rights to software**

1. Provided that the scope of delivery includes software, a non-exclusive right shall be granted to the Buyer to use the delivered software, including its documentation. It shall be ceded for use on the purchased item intended for this purpose. The use of the software on more than one system is prohibited.
2. If the software we have delivered is installed on hardware and expressly labelled as OEM software, the acquired software may only be ceded to a third party in conjunction with the hardware. Data carriers supplied by us with copies of the OEM software are only backup or recovery data carriers; they are not independently transferrable.
3. The Buyer may only duplicate, edit or translate the software or convert it from object code into source code within the legally permitted scope (sections 69a et seq. of the German Copyright Act [UrhG]). The Buyer agrees not to remove or modify manufacturer information – in particular copyright notices – without the prior express consent of the Seller.
4. All other rights to the software and the documentation, including copies thereof, shall remain with the Seller and the software supplier. The granting of sublicenses is prohibited.

**XI. Delivery constraints**

1. In the event of delivery constraints due to force majeure or unforeseen events for which we are not responsible, in particular administrative measures such as import and export restrictions, we shall only assume our duty to carry out the delivery once the constraint has been removed. This shall also apply in the event of unforeseen problems, for which we are not responsible, with the delivery of any raw materials, energy or primary and intermediate products that are required in order to manufacture the goods. We shall inform the Buyer of such delivery constraints when they begin and end.
2. In the event of delivery constraints as specified in clause 1, we shall have the right to withdraw from the contract without the Buyer being entitled to damages. In such a case, any payments made by the Buyer shall be refunded without delay.

**XII. Withdrawal and termination clause**

1. Each of the contracting parties can terminate the contract, in whole or in part, for good cause. Good cause shall be deemed to exist, in particular, if the other contracting party has applied to open insolvency proceedings or similar proceedings or has suspended payments not only temporarily, or insolvency proceedings or similar proceedings have been opened over its assets or the opening of proceedings was denied due to insufficient assets.
2. The same shall apply if a third party has applied to open insolvency proceedings or similar proceedings over the assets of the Buyer and the insolvency court has ordered protective measures according to section 21 German Insolvency Code (InsO).
3. The rights of withdrawal provided in these GTCS shall also apply.

**XIII. Environmental clause/packaging**

1. The Buyer shall comply with the information we have included with the goods when disposing of the latter and ensure that the goods specified in the delivery note are correctly disposed of in accordance with the statutory regulations.
2. It shall be the Buyer's obligation to dispose of the goods at its own expense. Should the Buyer resell the goods or its components, it shall pass this obligation on to the next Buyer.

**XIV. Limitation periods for latent defects and defects of title**

1. The limitation period for all claims on the part of the Buyer – on whatever legal grounds – shall be 12 months. The statutory limitation periods shall apply to claims for damages under section VII. 2 a-d et seq. They shall also apply to defects in a structure or delivered items that, in keeping with their customary mode of use, were used in a structure and caused its defectiveness.

**XV. Anti-corruption/compliance/export control**

1. The Buyer agrees to comply with all legal provisions of competition and antitrust laws, particularly those aimed at fighting corruption. Specifically, it shall ensure it does not offer, promise or grant any undue advantages to our employees or to any persons close to them. The Customer shall pass this obligation on to any third parties acting on its behalf.
2. The same obligations shall apply to the Buyer's employees, its vicarious agents and other third parties acting under the instruction of the Buyer and shall be imposed upon them accordingly by the Buyer.
3. The Customer agrees to provide LLT with access to information related to export control, e.g. information about the tariff classification of goods, embargo checks and the country of ultimate destination.
4. The Customer agrees to complete an entry certificate, where applicable, and to provide LLT with access to this upon request.

**XVI. Place of performance and jurisdiction**

1. Unless otherwise agreed, the place of performance for our deliveries shall be the company headquarters of the Seller.
2. The place of jurisdiction for all disputes shall be the competent court for the Seller's headquarters. The latter also has the right, however, to bring an action in the Buyer's place of jurisdiction.

**XVII. Governing law**

1. All contractual relationships between us and the Buyer shall be governed exclusively by German law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

**XVIII. Partial invalidity**

1. Should any individual provisions of these GTCS be wholly or partially invalid, the remaining provisions shall retain their full validity.