

1. General

- 1.1 All deliveries and services of the Lödige Industries Group (hereinafter referred to as Lödige) are based on these Terms and Conditions as well as any separate contractual agreements if the customer is an entrepreneur (Section 14 German Civil Code (BGB)), a legal entity under public law or a special fund under public law. Deviating or supplementary terms and conditions of purchase of the customer will not become part of the contract, even if the order is accepted, unless Lödige has expressly agreed to their validity. These Terms and Conditions, in the version valid at the time of receipt of Lödige's order confirmation, will also apply to all future contracts with the customer until revoked by Lödige. Agreed deviations only apply to the order for which they were agreed in writing.
- 1.2 Lödige's offers are subject to change. In the absence of a special agreement, a contract is concluded upon Lödige's written order confirmation, at the latest upon delivery of the goods or performance of the service. Lödige may accept the order of the customer – which constitutes a binding offer – within 2 weeks at its own discretion.
- 1.3 The conclusion of the contract is subject to the correct and timely delivery by Lödige's suppliers if Lödige has concluded a congruent covering transaction with its supplier and is not supplied through no fault of Lödige. The customer will be informed immediately about the non-availability of the service. Any payment will be refunded immediately by the original means of payment.
- 1.4 Lödige reserves the property rights and copyrights to samples, cost estimates, drawings, models, calculations, descriptions and similar information of a physical and non-physical nature – including in electronic form; they may not be made accessible to third parties. Lödige undertakes to only make information and documents designated by the customer as confidential available to third parties with the customer's consent.
- 1.5 Unless Lödige expressly agrees otherwise in writing, the deliveries and services will be provided in accordance with the generally recognised state of the art in the Federal Republic of Germany.

2. Cooperation of the customer

- 2.1 If an act of cooperation by the customer is necessary for the performance of the deliveries and services, the customer is obliged to perform such act at its own expense. Lödige will inform the customer in advance and in writing regarding the acts of cooperation the customer is required to perform and within which period of time.
- 2.2 If the customer fails to provide the owed cooperation or fails to do so in due time, Lödige will be entitled to substitute performance at the customer's expense, for which in urgent cases it will not be necessary to set a deadline. Lödige will give notice of the substitute performance to the customer, if possible, before the start of the measure. If Lödige is able to discontinue the substitute performance because the customer resumes co-operation, the customer must reimburse Lödige for the costs incurred up to the discontinuation of the substitute performance.

3. Price, payments and default of payment

- 3.1 In the absence of a special agreement, prices apply in accordance with the INCOTERMS „free carrier (FCA)“ valid at the time of contract conclusion, without packaging. The prices are subject to value added tax at the current statutory rate.
- 3.2 In the absence of a special agreement, payments are due immediately and without deduction upon receipt of the invoice and are to be paid within 10 days of the invoice date at the latest. After expiry of this period, the customer will be in default of payment – even without a separate reminder.
- 3.3 Payments must be made free of costs and expenses for Lödige. Cheques will only be accepted on account of performance.
- 3.4 The customer will only be entitled to withhold payments or to offset them against counterclaims to the extent that its counterclaims are undisputed, have been legally established, are ready for decision or arise from the same contract under which the performance in question was rendered.
- 3.5 The customer will only be entitled to rights of retention in accordance with Section 273 BGB and Section 369 of the German Commercial Code (HGB) insofar as the claim giving rise to these rights is based on the same legal relationship as the claim of Lödige. This restriction does not apply if counterclaims of the customer are undisputed, legally established or ready for decision. The customer will not be entitled to a right of satisfaction in accordance with Section 371 HGB.

4. Delivery time, delivery delay

- 4.1 The delivery time is determined by the agreements of the contracting parties. Lödige's compliance with delivery times presupposes that all commercial and technical questions between the contracting parties have been clarified and that the customer has fulfilled all obligations incumbent upon it, e.g. provision of the necessary official certificates or permits or the payment of a deposit. If this is not the case, the delivery time will be extended accordingly. This does not apply if Lödige is responsible for the delay.
- 4.2 Compliance with the delivery period is subject to correct and timely delivery to Lödige, provided that Lödige is not responsible for the incorrect or delayed delivery. Lödige will notify any delays that become apparent as soon as possible.
- 4.3 The delivery period will be deemed to have been complied with if the delivery item has left Lödige's works by the expiry of the delivery period or readiness for dispatch has been notified. Insofar as acceptance is agreed, the acceptance date is decisive – except in the case of justified refusal of acceptance – alternatively the expiry of a reasonable acceptance period.
- 4.4 If dispatch or acceptance of the delivery item is delayed for reasons for which the customer is responsible (default in acceptance), the costs incurred as a result of the delay will be charged to the customer, commencing one month after notification of readiness for dispatch or acceptance.
- 4.5 If non-compliance with the performance obligations of the parties is due to force majeure, industrial disputes or other events beyond the control of the party invoking the event, the performance period will be extended accordingly. This also applies if the party is already in default when these events occur. The party invoking the impeding event must notify the other party of the beginning and end of such circumstances as soon as possible.

5. Transfer of risk, acceptance

- 5.1 The risk of accidental loss and accidental deterioration will pass to the customer when the delivery item has left the factory, even if partial deliveries are made or Lödige has assumed other services, e.g. shipping costs or assembly. Insofar as acceptance is agreed, this will be decisive for the transfer of risk. It must be carried out immediately on the date of acceptance, or alternatively after Lödige has been notified of completion. The customer may only refuse acceptance in the event of a material defect.
- 5.2 If dispatch or acceptance is delayed or does not take place as a result of circumstances for which the customer is responsible or if the customer is in default of acceptance, the risk will pass to the customer on the date of receipt of the notification of readiness for dispatch. In the event that acceptance is required, the risk will pass to the customer upon expiry of a reasonable period after receipt of the notification of completion.
- 5.3 Partial deliveries are permissible insofar as they are reasonable for the customer.
- 5.4 Within the framework of the acceptance Lödige will prove to the customer that Lödige's plant meets the technical specification values agreed between the parties. The same applies to individual parts of the overall performance.
- 5.5 The customer will accept Lödige's performance after it has been rendered in accordance with the contract. At Lödige's request, a written record of the acceptance will be drawn up, which must contain a binding list of complaints and recognisable defects.

6. Software

- 6.1 Unless otherwise agreed, Lödige will grant the customer the non-exclusive, non-transferable but temporally unlimited rights of use to the software which the customer requires for the contractual use of the delivery item, insofar as Lödige may transfer such rights.
- 6.2 Insofar as software is required for the operation of the contractual object, to which Lödige cannot transfer rights to the customer in accordance with Section 6.1, the customer is obliged to procure rights of use to this software itself and at its own expense from the time of acceptance. Lödige will point this out to the customer in advance.
- 6.3 Lödige will grant the customer the same rights of use to modifications and extensions as to the standard programs to which they belong.
- 6.4 Additional programs (independently usable individual programs) may be used by the customer for its own purposes without restriction within the scope of the licence conditions.
- 6.5 The granting of the rights of use in accordance with Section 6.1 is subject to the condition precedent of full payment. Until payment has been made in full, the customer will only be entitled under the law of obligations to use the delivered software, whereby this right of use may be revoked by Lödige at any time in the event of default of payment or in the event of an application for insolvency proceedings or similar proceedings against the assets of the customer.
- 6.6 The customer has no right to access the source code of the software.

7. Retention of title

- 7.1 Lödige will remain the owner of the delivered goods („goods subject to retention of title“) until the customer has fulfilled all claims arising from the contracts concluded with Lödige up to the time of delivery (secured claim). This also applies to Lödige's cheque claims.
- 7.2 The customer may continue to use goods subject to retention of title before settlement of Lödige's secured claims in the ordinary course of business. Pledges or transfers of ownership by way of security require Lödige's prior written consent insofar as Lödige's rights are affected. In the event of seizure or confiscation or other disposal by third parties, the customer must notify Lödige in writing without delay.
- 7.3 In the event that the customer acts in breach of contract, in particular in the event of default of payment, Lödige will be entitled to take back the delivery item after issuing a reminder and the customer is obliged to surrender the delivery item.
- 7.4 The assertion of the retention of title, the demand for the return of the goods subject to retention of title as well as the seizure of the goods subject to retention of title by Lödige will not be deemed to be a withdrawal from an unfulfilled contract. Lödige will be entitled to realise the goods subject to retention of title after taking them back. The proceeds of the realisation will be credited against the liabilities of the customer – less reasonable realisation costs.

- 7.5 The application for the opening of insolvency proceedings entitles Lödige to withdraw from the contract and to demand the immediate return of the delivery item.

7.6 In order to further secure Lödige's secured claims, the customer hereby assigns to Lödige all claims accruing to it from the resale of the unchanged or changed goods subject to retention of title. Lödige accepts this assignment. This assignment is made in the amount of the invoice value of the goods subject to retention of title, including the respective applicable statutory value added tax.

7.7 The customer remains authorised to collect the claim even after the assignment. Lödige's right to collect the claim itself remains unaffected. Lödige will, however, not collect the claim as long as the customer meets its payment obligations, is not in default of payment and, in particular, no application for the opening of insolvency proceedings has been filed or payments have not been suspended.

7.8 The customer is obliged to treat the goods subject to retention of title with care; in particular, it is obliged to insure them adequately at its own expense against fire, water and theft at replacement value until the secured claim has been settled in full. Insofar as maintenance and inspection work is required, the customer must perform this work in a timely and professional manner at its own expense.

7.9 If the realisable value of the securities ordered for Lödige exceeds Lödige's claims against the customer arising from delivery and performance by more than 10%, Lödige will release excess securities at its own discretion at the request of the customer.

8. Claims for defects

8.1 The statutory provisions (Sections 437 et seq. BGB or Sections 634 et seq. BGB) apply to material defects and defects of title unless otherwise stipulated in these terms and conditions.

8.2 The customer will immediately inspect the delivered items for defects and notify Lödige in writing of obvious defects within a period of 5 banking days from delivery or acceptance, hidden defects within 5 banking days from their detection; otherwise the assertion of warranty claims with regard to a defect that is not notified in good time or in the proper manner will be excluded (Sections 377, 381 HGB). The goods are then deemed to have been approved. If Lödige renders services under a contract for work and services, these obligations of the customer apply accordingly.

8.3 All parts which prove to be defective as a result of circumstances prior to the transfer of risk will, at Lödige's discretion, be repaired or replaced free of defects free of charge. Lödige is entitled to make the subsequent performance owed dependent on the customer paying the owed payment. However, the customer is entitled to retain an appropriate part of the payment corresponding to the reduced value. Replaced parts become the property of Lödige after their removal.

8.4 After consultation with Lödige, the customer will grant Lödige the necessary time and opportunity to carry out all repairs and replacement deliveries that Lödige deems necessary; otherwise Lödige will be released from liability for the consequences arising therefrom. Only in urgent cases of danger to operational safety or to prevent disproportionately large damage, in which case Lödige must be notified immediately, will the customer have the right to remedy the defect itself or have it remedied by third parties and to demand reimbursement of the necessary expenses from Lödige. Lödige is entitled at any time to demand the return of an item reported as defective from the customer for the purpose of investigating the defect.

8.5 In the event of subsequent performance Lödige will be obliged to bear all expenses necessary for the purpose of remedying the defect, in particular transport, travel, labour and material costs (cf. Sections 439(2) and (3), 635 (2) BGB), if there is actually a defect and insofar as these are not increased by the fact that the goods have been transported to a place other than the place of performance, unless the transport corresponds to the intended use of the goods. Lödige will be entitled to demand reimbursement from the customer of the costs incurred as a result of an unjustified request to remedy a defect (in particular inspection and transport costs), unless the lack of defectiveness was not apparent to the customer.

8.6 The customer must effectively support Lödige in the search for defects and will make all findings and observations made by it or its agents available to Lödige.

8.7 No liability is assumed in particular in the following cases: Unsuitable or improper use, faulty assembly or commissioning by the customer or third parties, natural wear and tear, faulty or negligent handling, improper maintenance, unsuitable operating materials, faulty construction work, unsuitable building ground, chemical, electrochemical or electrical influences – insofar as Lödige is not responsible for these circumstances.

8.8 If the customer or a third party commissioned by the customer carries out improper repairs, Lödige will not be liable for the resulting consequences. The same applies to any changes made to the delivery item without Lödige's prior consent.

8.9 The deliveries and services provided by Lödige are free of defects if they have the quality which Lödige has agreed with the customer in writing in a specification or delivery instruction. In the absence of such a written agreement, the deliveries and services are free of defects if they have the quality which Lödige has conclusively described in its technical data sheets, specifications or drawings.

8.10 Customer's specifications of intended use will only be authoritative if Lödige has expressly confirmed their validity to the customer in writing. General specifications of intended use reproduced by Lödige in advertising material or on the internet will not release the customer from carefully checking whether the deliveries and services are suitable for the customer's specific intended use.

8.11 A guarantee or assurance in the sense of an intensification of liability or from the assumption of a special obligation to indemnify will only be deemed to have been given if the terms „guarantee“ or „assurance“ are expressly stated by Lödige.

9. Liability, exclusion of liability

9.1 Lödige will be liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions, unless otherwise stipulated in these General Terms and Conditions of Delivery and Service, including the following provisions.

9.2 Lödige will be liable for damages – irrespective of the legal grounds – within the scope of fault-based liability in the event of intent and gross negligence. In the event of simple negligence Lödige will only be liable, subject to a more lenient statutory standard of liability, for damages resulting from injury to life, limb or health, for damages resulting from a not insignificant breach of a material contractual obligation (obligation the fulfillment of which is a prerequisite for the proper performance of the contract and the observance of which the contractual partner regularly relies on and may rely on); in this case, however, Lödige's liability will be limited to the compensation of the foreseeable, typically occurring damage. Indirect damage and consequential damage resulting from defects in the goods are also only eligible for compensation insofar as such damage is typically to be expected when the goods are used as intended.

9.3 The limitation of liability resulting from Section 9.2 of these Terms and Conditions also applies insofar as the customer demands reimbursement of useless expenses instead of a claim for damages in lieu of performance.

9.4 The limitations of liability resulting from Sections 9.2 and 9.3 of these Terms and Conditions also apply in the event of breaches of duty by or in favour of persons for whose fault Lödige is liable in accordance with statutory provisions, such as employees, workers, representatives, organs and vicarious agents. They do not apply insofar as Lödige has fraudulently concealed a defect or has assumed a guarantee for the quality of the goods or services, for claims of the customer under the Product Liability Act as well as for liability for claims based on defects of the goods (cf. Section 8 of these Terms and Conditions).

9.5 To the extent that Lödige provides general technical information, advice or recommendations without being contractually obliged to do so, Lödige will not be liable to pay compensation for any loss or damage arising from following the advice or recommendation, without prejudice to any liability arising from a separate contractual relationship, an unlawful act or any other legal provision.

9.6 The customer may only withdraw from or terminate the contract due to a breach of duty that does not consist of a defect if Lödige is responsible for the breach of duty. A free right of termination of the customer (in particular according to Sections 648a, 649 BGB) is excluded. In all other respects, the statutory requirements and legal consequences apply.

10. Limitation

All claims of the customer – irrespective of the legal grounds – are subject to a limitation period of 12 months from delivery of the goods or acceptance. The statutory limitation periods apply to claims for damages under Section 9 and to claims arising from supplier recourse under Sections 445a and 445b BGB and to claims arising from supplier recourse under Sections 478 and 479 BGB. The statutory limitation periods also apply to claims based on defects in a building or for delivery items that were used for a building in accordance with their customary use and caused its defectiveness.

11. Applicable law, place of jurisdiction

11.1 The law of the Federal Republic of Germany applies to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11/04/1980 (UN Sales Convention) and the German conflict of laws provisions. Any reference to another legal system is irrelevant.

11.2 The exclusive place of jurisdiction is Paderborn. Lödige will, however, also be entitled to seek legal protection before any other court which is competent for the dispute in question under the law of the Federal Republic of Germany or of the state in which the customer has its registered office.