

LOEDIGE - General Conditions of Delivery and Service 01/2003

1. General

1.1 Any and all installation works, maintenance and repair services as well as any and all deliveries made by Loedige (in the following services and deliveries) are exclusively subject to the following General Conditions. As far as these General Conditions are not applicable, German statute civil law shall apply. Customer's general conditions of purchase deviating from these General Conditions or the German statute civil law shall not be accepted. Latter ones shall even not be accepted in the case of performance of the contract, especially by unconditional delivery, installations made, maintenance or repair services, nor shall Customer's general conditions deemed valid by the acceptance of payments.

1.2 Unless explicitly stated in writing by Loedige, any and all services and deliveries shall be carried out according to the latest state of technology, as ordinarily published within the Federal Republic of Germany (Germany), and within the permissible tolerances of the applicable German and European Communities (EC) industrial norm standards, in particular DIN, VDE, EN, ISO and similar ones.

1.3 If Customer wishes Loedige to carry out services and deliveries subject to certain special conditions deviating from the above mentioned current German and EC state of technology, Customer has to indicate this item explicitly in writing to Loedige in good time prior to completion of contract.

2. Support / Assistance of Customer

2.1 If the assistance of Customer is required for the accomplishment of services and deliveries, Customer is obliged to fulfil such obligations at own costs and expenses. Loedige may inform Customer in advance in writing as to what supporting items are required within a given period of time.

2.2 If Customer fails or defaults to fulfil such supporting obligations, Loedige is entitled, without setting a final deadline, to commission a substitute as a compensative action at the costs and expenses fully to be worn by Customer. Loedige shall only refrain from setting a final deadline in cases of urgency. Loedige shall, however, give prior notice to Customer about such imminent compensative action as soon and as far as reasonably possible. If Customer is able to assist again, Loedige may stop the compensative action. Customer, however, shall bear all costs and expenses, meanwhile accrued and originated by such compensative action.

2.3 Customer is obliged to assist Loedige in any defect finding or diagnostic work and shall allow Loedige access to and make available all conclusions, findings and observations, made by Customer or its representative.

3. Scope of Delivery - Delivery Period

3.1 Unless agreed differently and confirmed in writing, any deliveries shall be carried out "Ex-Works" according to the actually valid 'Incoterms'. Only the delivery dates stated in Loedige's confirmation of order are binding.

3.2 A delivery period is deemed to commence only if Customer has delivered any and all necessary documents, materials, information and, where applicable, any and all relevant permissions, authorisations and approvals in full and in good time.

3.3 Force Majeure or similar events beyond the control of Loedige, such as but not limited to acts of God or the public enemy, strikes, civil commotion or riots, as well as official or governmental measures of coercion, discharge Loedige from any liability of delivery to the extent of or the duration of said events. Loedige cannot be held responsible for the above mentioned events, even if occurring during a default already existing.

4. Delay

4.1 If a delay is based on minor negligence by Loedige, its legal representatives, assistants or employees, a compensation for the losses and damages by the delay is excluded provided always that Customer is a merchant.

4.2 If a delay is based on delivery of a defective product and Loedige accomplishes proper fulfilment within a appropriate period of time, a compensation of the resulting damages of the delay is excluded.

5. Transfer of Risk - Shipment

5.1 The risk of accidental destruction or deterioration of the ordered delivery shall be transferred to the Customer by handover to the deliverer (f.e. shipping agent). If the delivery should be delayed with the Customer being responsible therefor, said risk is transferred by notification of readiness for shipment to the Customer. Aforementioned rules are also applicable in the case the Customer has to collect the products from Loedige.

5.2 Loedige is liable for damages caused by a faulty election of transport agent, transport route or transport means. If not otherwise agreed Loedige insures the transport in own favour at costs and expenses of the Customer. Customer shall not conclude a transport-, logistic- or storage insurance at costs and expenses of Loedige.

6. Receipt of Goods - Notice of Defects

6.1 Every delivery shall be examined by the Customer with respect to deficiencies, damages and completeness immediately. Failures and deficiencies shall be reported to Loedige in writing immediately.

6.2 If the Customer is a merchant, Customer shall demand a state of facts report in writing from the carrier immediately and, after consulting Loedige, instruct an average surveyor to issue a survey report if necessary.

7. Acceptance

7.1 After all services by Loedige have been finished as agreed by contract, acceptance of the completed works and collection of goods shall be granted to Loedige. Such acceptance or collection may be issued in a written protocol stating all objections and recognisable deficiencies. Hidden deficiencies shall be reproached in detail in writing immediately after discovery.

7.2 In the course of the acceptance procedure Loedige has to prove that contractual works meet the applicable technical specifications agreed upon between both parties. These provisions shall also apply in regard of acceptance of individual stages of the overall performance of works.

8. Payment

8.1 Payments are due upon receipt of Loedige's invoice without any deduction. For any deduction of discount or allowances a written agreement is required.

8.2 All payments shall be effected at not costs and expenses for Loedige. Any acceptance of cheques or bills of exchange by Loedige does not signify a waiver of Loedige's claims arising from the contract. The taking in of bills of exchange requires a written agreement and represents no prolongation of payment.

9. Claims resulting from Defects

9.1 For defects in delivery and services Loedige renders on own choice subsequent fulfillment either by removal of the defect or by substitute delivery of faultless property sold, regardless whether a contract of sale or a contract of work and services is affected. Customer is not entitled to remove a defect on its own with Loedige bearing costs and expenses. If Loedige fails to fulfil its obligations afterwards for the second time, then Customer shall be entitled to assert the ordinary claims resulting from defects provided by statutory civil law. Loedige may demand a reproved defective sample or issue for defective-investigation from Customer anytime.

9.2 The delivery and services by Loedige are deemed free of defects, if they meet the conditions of a specification or shipping instruction agreed upon between both parties in writing. If no agreement in writing has been made, the delivery and services by Loedige are deemed free of defects, if they meet the conditions of the technical data sheets, specifications or drawings finally stated by Loedige.

9.3 Usability indications of the Customer are only decisive, if Loedige has accepted the validity of such indications explicitly in writing. General usability indications, reproduced by Loedige in advertising materials or the internet, do not release Customer from careful examination whether the deliveries and services are fit for the concrete purpose provided by Customer.

10. Damages - Compensation

10.1 Loedige is liable to the extent set forth by statutory civil law for damages caused by violation of rights and legal interests according to Par. 823 I BGB (=German Civil Code) as far as such violation is based upon culpable behaviour by Loedige. Loedige is furthermore liable for all damages up to an amount regarding to the ordinary course of affairs, as far as such damages base on a culpable violation of an essential contractual duty of Loedige and such violation jeopardizes the purpose of the contract. Loedige shall compensate other damages only if based either on intentional default or on gross negligence by Loedige.

10.2 Loedige is neither liable for lost profits nor for other economic losses of the Customer, as far as such are based on minor negligence by Loedige. Loedige is also not liable for contractual penalties set forth against the Customer by third parties, unless Loedige should have agreed upon in writing in advance. Loedige is liable in the above mentioned extent for its legal representatives, assistants or employees.

10.3 Further claims for damages against Loedige are excluded. The above mentioned liability clauses are final. A change of burden of proof in disadvantage to the Customer is not intended. These provisions shall apply for contractual and tortious liability except for liability according to the German Product Liability Act (Produkthaftungsgesetz).

11. Reservation of Ownership

11.1 All goods supplied remain the property of Loedige until all contractual liabilities and requirements upon delivery have been settled properly by the Customer. These provisions are also applicable for all of Customer's cheque-, bill of exchange- and current account debts. Loedige's reservation of ownership does not expire, unless any liability of Loedige based on bills of exchange is excluded.

11.2 Customer is entitled to use, process or combine the delivered goods in the ordinary way of business before compensating open debts requested by Loedige. Pledges or transfers of ownership by way of security require a preceding written agreement signed by Loedige as far as Loedige's rights are concerned in any way.

11.3 For the purpose of further security for any debts requested by Loedige and covered by the reservation of ownership, Customer assigns all his contractual claims resulting from resale of the original or modified goods delivered by Loedige to third parties. Loedige hereby accepts this assignment. The amount for the assignment results of the value as per invoice of the resale of the goods including Value Added Tax (VAT) if any.

11.4 Customer is entitled, in the ordinary course of business, to collect all claims assigned to Loedige in advance in relation to the respective third party. Customer guarantees to transfer proceeds from such assigned claims to Loedige immediately. Customer's right to collect such assigned claims expires immediately, if Customer defaults to transfer such proceeds to Loedige. In this case Loedige is entitled to disclose the assignment and to request all and any details and information necessary from the Customer to collect the assigned claims.

11.5 If the total value of such collateral securities exceeds Loedige's claims by more than 10%, then Loedige shall release a choice of collateral securities at Customer's request.

12. Set-Off - Retention

12.1 Customer can only set-off against own claims being either undisputed or legally res judicata.

12.2 Rights of retention according to Par. 273 BGB (= German Civil Code) and Par. 369 HGB (= German Commercial Code) apply to the Customer only, if such Customer's rights are legally founded on the same contractual relationship as Loedige's rights are. This restriction shall not apply, if the claims of the Customer against Loedige are undisputed or legally res judicata. A right of satisfying a creditor according to Par. 371 HGB (=German Commercial Code) shall not apply to the Customer.

13. Place of Venue

13.1 If the Customer is a merchant or has no place of venue in Germany, then place of venue shall be on Loedige's choice either the city of Paderborn or the city of Warburg. This provision is also applicable in case of legal proceedings resulting from claims out of cheques or bills of exchange (Scheck- oder Wechselprozesse).

13.2 Loedige is entitled to claim legal defence in every other court in charge for the dispute according to the German Law or the law of the country the Customer has its registered office in.

14. Miscellaneous

14.1 The place of fulfilment of all payment obligations on the part of the Customer is the registered place of business of Loedige.

14.2 If one or more regulations of these General Conditions should be found partly or fully inoperative, this shall not concern the effectiveness or validity of the remaining ones.

14.3 German Law is deemed the prevailing law with exclusion of the United Nations Convention on Contracts for the International Sale of Goods dated 11/04/1980 (CISG). German statutory provisions concerning the conflict of laws are excluded, too. A reference to another legal system is not binding.