

# General Manufacturing and Delivery Terms and Conditions of LPKF Laser & Electronics AG May 2018

## I. General

These terms and conditions form an integral part of all LPKF Laser & Electronics AG's (LPKF) offers and contracts. This applies both to current and to future business relationships. No express reference hereto is required. They take precedence over conflicting contractual documents or the General Business Conditions of the customer.

### II. Conclusion of contract, cancellation of orders

- a) LPKF's offers are without obligation, non-binding and, in terms of time, are limited to four weeks. Contracts are only formed when LPKF confirms the order in writing (if applicable, replaced by the performance of services); additional oral agreements, additions or amendments to the contract also require the written form (signed letter or by fax or an authorised e-mail).
- b) In the event that LPKF agrees to an order being cancelled, the customer is obliged to reimburse LPKF with the costs ensuing from the cancellation of contract. If a detailed statement can only be made at a disproportionate expense, administrative costs are assumed to be at a net flat rate of 10% of the order total and engineering costs are taken as being 30% of the order total. If LPKF has to hand manufactured parts or raw materials that LPKF cannot use for any other purpose, the customer must pay the acquisition costs to LPKF. If the customer does not take delivery of these parts within 4 weeks, LPKF will destroy these parts.

### III. Scope and quality of supplies or services

- a) In the run-up to the placing of an order LPKF will hold technical discussions with the customer in order to clarify points. In this connection, statements made by LPKF are deemed to be non-binding recommendations and do not constitute advice within the meaning of contractual additional services.
- b) The delivery items are the items specified by LPKF in the offer, the quality of which is determined by state-of-the-art technology as well as by the customer's material specifications and drawings/samples. Data contained in brochures and other advertising materials simply serve as illustrations and do not constitute a description of concrete qualities/parameters.
- c) In the run-up to the placing of an order, LPKF will carry out trial productions using materials provided by the customer. As a rule these are considered to be tests to assess LPKF's productivity and not a concrete undertaking with regard to the quality of the delivery item. Those cases where the offer refers to the carrying out of the test in order to prove specific performance parameters of the delivery item are excluded from this. In these cases the undertakings given by LPKF refer exclusively to the material mutually discussed and agreed upon by LPKF and the customer in the run-up and provided by the customer; if the customer uses other material, these undertakings do not apply.
- d) For certain manufacturing processes LPKF allows the customer to use processes that are protected for LPKF (these are defined in the offer). Use is tied to use of the delivery item and cannot be assigned to third parties or applied to equipment other than that delivered by LPKF.
- e) Partial deliveries and services are permissible unless these would be unreasonably disadvantageous for the customer.
- f) The customer has an advance performance obligation as regards information, documents and/or materials that are to be provided by it. This also applies to permits, approvals and other contractual obligations.

## IV. Deliveries

- a) Delivery takes place ex works (EXW Incoterms® 2010). The risk of accidental loss/accidental deterioration passes over to the customer when it is notified that the goods are ready for dispatch (in the event of default in accepting, when default in accepting occurs).
- b) The delivery deadline is deemed to have been adhered to if the object of purchase has left the factory before it expires or if the customer has been informed that it is ready for dispatch.
- c) The delivery deadline is extended to a reasonable extent - even if delay has occurred already - in the event of unforeseeable events that cannot be avoided by LPKF, for example, breakdowns, equipment failure, strikes, lock-outs, lack of power and raw materials, attacks, administrative measures and other events that constitute Acts of God, regardless of whether these circumstances arise for LPKF or one of its suppliers. LPKF must inform the customer immediately if one of these events occurs. LPKF must also inform the customer how long such an event is likely to last.
- d) If the customer wishes to postpone the dispatch date or if it is in default of accepting, it will be charged for the storage costs plus at least 0.5% of the invoice amount for each month, starting one month after notification that the goods are ready for dispatch. LPKF can set a reasonable period of grace for the customer and if this expires with no action having been taken by the customer, LPKF can declare that it is withdrawing from the contract, that it is disposing of the object of purchase in some other way or it will supply the customer with another object of purchase in accordance with the contract over a reasonable extended period.
- e) Premature delivery is permissible unless this would be unreasonably disadvantageous for the customer.

### V. Prices, safeguarding payment in the event of deliveries abroad

- a) Prices are net Euro prices ex works and include loading but exclude packaging. Packaging material is not taken back, the customer must arrange for its disposal. If components or materials require special packaging or recyclable packaging, this is designed, manufactured and provided at the expense of the customer.
- b) Payments will only be accepted as discharging, if they are made directly by the Customer. Payments made by third persons, cannot be accepted and therefore will have to be rejected.
- c) If there are more than six months between the order and the delivery date, LPKF can adjust the prices to the extent that prices change beyond LPKF's control, for example the price of raw materials, and thus have an effect on LPKF's prices.
- d) When delivering abroad, LPKF is entitled to safeguard payment 100 % without referring to this in the offer, by means of letters of credit, guarantees, sureties and other means of security or to ask for an advance payment. This right also exists if the customer falls into arrears with what has been agreed.

### VI. Payment terms, taking back the goods, retention

- a) Following receipt of the invoice, the customer must pay the invoices with no deduction, even if dispatch is delayed for reasons for which the customer is responsible. A fax/e-mail suffices as proof of receipt of invoice.
- b) Payment is deemed to have been made when the full invoice amount is irrevocably credited and is freely available to LPKF.
- c) In the event of default, LPKF can charge interest on arrears at a rate of 8 % per annum above the base lending rate of the European Central Bank. Further claims for damages caused by default are not affected by this.
- d) After taking back the goods, LPKF is entitled to a sale by private treaty and reasonable costs of the sale can be charged for.
- e) In the event of payment arrears lasting longer than 4 weeks, LPKF can withdraw from the contract and claim compensation for damage equating to at least the purchase price.
- f) The customer may not assert/offset rights of retention unless claims are expressly acknowledged and accepted or legally established.

### VII. Retention of title

- a) The object of sale remains the property of LPKF until all claims ensuing from the business relationship have been met. Pledging or collateral assignment is forbidden before all such claims have been met and resale in the ordinary course of business is only allowed if the customer is not in arrears with payment.
- b) In the event of further processing/combining with other goods, LPKF acquires co-ownership of the new item in the proportion of the value of the item delivered by it to that of the new item.
- c) In the event of resale, LPKF retains title to the goods. The customer hereby assigns the amount owed for the resale to LPKF which hereby accepts the assignment. Until cancelled, the customer remains authorised to collect the amounts owed. LPKF will not collect such amounts as long as the customer pays in accordance with the contract. In the event of payment default, LPKF can demand that the customer informs it of the assigned receivables together with the name of the debtor, provides it with all the information required to collect the receivables, hands over the relevant documents and discloses the assignment to the end-customer.
- d) If the value of all the charging liens exceeds the amounts owed by more than 25 per cent, LPKF will, if requested, release charging liens as it deems fit.
- e) The customer is obliged to handle the reserved goods carefully, to keep them in good order and, at its own expense, insure them against fire, water and theft damages at replacement value. Proof of such insurance may be requested by LPKF. The customer hereby assigns to LPKF claims against the insurer; LPKF hereby accepts the assignment.
- f) The customer must inform LPKF immediately of garnishments, distrains or other third-party dispositions. If the third party is not able to reimburse LPKF with the judicial and extrajudicial costs of a lawsuit pursuant to § 771 Rules of Civil Procedure, the customer will be liable for the ensuing loss.
- g) If the law that applies to the question of ownership precludes the rules agreed here concerning retention of title, the customer undertakes to take any measures required by the law that applies so that LPKF obtains ownership rights or surrogates, such as for example receivables, to the greatest extent possible.

### VIII. Warranty, notice of defect, statutes of limitation

- a) The customer must inspect the goods immediately and, in the event of defects that become evident then or at a later date, the customer must raise a warranty claim in writing immediately, or 8 days at the latest after

discovering a defect, and send this together with a description to LPKF, otherwise the defect is deemed to be approved. In the event of an agreed acceptance test or initial sampling inspection, notice of defects is ruled out if these could have been detected during the acceptance test or initial sampling inspection.

- b) Within the context of its obligation to minimise damage and loss, the customer is obliged to refrain from using the delivery item further if it suspects a defect and the defect could have an effect on the products to be manufactured with the delivery item.
- c) If the goods are not of the contractually prescribed quality (defect), the customer must allow supplementary performance twice (remedying the defect or replacement delivery, whichever LPKF opts for) unless supplementary performance is unacceptable to it.
- d) If supplementary performance fails or is unacceptable to the customer, the customer can reduce the purchase price. In this connection, the opinion of an expert appointed by the Chamber of Commerce that is responsible for LPKF, that either party can have recourse to, is decisive for the reduction. In the event of a delivery abroad, it is the opinion of an expert appointed by DEKRA with its registered office in Stuttgart that is decisive. Withdrawal from the contract is only possible if the defects are substantial; defects that completely render the delivery item as unfit for use, give rise to a rework cost of at least 30 % of the purchase price and are attributable to constructive defects are deemed to be substantial. In the event of withdrawal, LPKF is entitled to invoice the customer for a user fee that is calculated by means of the annual, usual loss of value for comparable delivery items and the time from the acceptance test (if no acceptance test takes place, from the time of delivery) to the time that the delivery item is returned is calculated as the period in question. This fee does not accrue for periods during which the customer could not use the delivery item from an objective point of view.
- e) The transport company responsible is to be notified of transport damage immediately.
- f) It is for LPKF to decide whether defective goods are to be sent back so that defects can be remedied or goods can be replaced or whether the required work should be carried out on site. Unless the customer is disproportionately burdened as a result of removal and dispatch of the goods, it will carry out this work; the customer can arrange for LPKF to carry out this work against a refund of costs.
- g) If no defect can be detected for which LPKF is liable, LPKF will be reimbursed with the cost that may ensue from the notice of defect.
- h) Warranty claims are not transferable and become statute-barred within 12 months following delivery. They continue to exist on condition that the broken-down parts - if required - were serviced within the context of maintenance work in accordance with LPKF's instructions or within the context of maintenance work carried out by LPKF during the prescribed periods.

### K. Claims for damages

- a) Compensation for proven damage caused by default is limited to 0.5 % per week, in total however to not more than 10 % of the value of the order regarding which LPKF is in default.
- b) Liability on account of slight negligence in the event of breaches of contractual accessory obligations (including confidentiality obligations) is ruled out unless the breach of obligation results in physical injury. Furthermore, liability is limited to 2.5 million Euro. LPKF is not liable for any infringements of intellectual property rights which may result from the delivery of goods or performance of services by LPKF except and insofar a liability is expressly stipulated within the contract.
- c) If LPKF is held liable by third parties, the customer must indemnify LPKF if it has caused the claim.
- d) If LPKF's liability for compensatory damages is ruled out or limited, this also applies with regard to the personal liability for compensatory damages of its employees, representatives and vicarious agents.
- e) In the event that a foreign law applies, LPKF's liability is ruled out or limited if this is permissible according to this law.

### X. Observance of secrecy, confidentiality, industrial property rights

- a) LPKF retains sole ownership of and copyright to all cost estimates, technical/contractual documents or other technical information and drawings, which LPKF makes available. If the order is not placed, all documents must be returned to LPKF immediately if requested.
- b) The customer is prohibited from reproducing LPKF's products or product parts. The customer is also prohibited from taking part in the reproduction of products or the sale of reproduced products, directly or indirectly.
- c) If the customer requires that the products concerned be fitted with test and quality marks, it shall bear the risk of ensuring that it is authorised to use such marks.

### XI. Place of jurisdiction, place of performance, applicable law

- a) If there are any disputes between LPKF and the customer with an amount involved exceeding 100,000 Euro, the final decision will be made by a court of arbitration that is to be formed in accordance with the rules of the German Institution for Arbitration (DIS). It will consist of three arbitrators and will sit in Frankfurt/Main. The arbitration proceedings will be conducted in English if the customer's registered office is outside Germany. The place of jurisdiction and performance is Garbsen in the event of any disputes involving an amount that is less than 100,000 Euro. LPKF also has the right to take legal proceedings against the customer in its general statutory place of jurisdiction.
- b) In the event that the customer has its registered office abroad, the legal relationship between LPKF and the customer shall be governed by the United Nations Convention on Contracts for the International Sale of Goods and the law of the Federal Republic of Germany. With regard to the validity of the aforementioned clauses, this shall be determined by the law that applies at the customer's registered office.

### XII. Final provisions

- a) The customer hereby acknowledges and takes note that LPKF saves data relating to the customer. In this regard, a special notice pursuant to the German Federal Data Protection Act is left out of consideration.
- b) These terms and conditions also apply for the benefit of LPKF's associate companies.
- c) If present or future provisions contained in these terms and conditions or in the contract between LPKF and the customer are legally invalid, in whole or in part, or are impracticable or if they lose their legal validity or practicability at a later date, this will not affect the validity of the remaining provisions; the same applies if there are incomplete regulations. Instead of the invalid or impracticable provision or in order to close a loophole, a fair and reasonable provision shall apply that the parties would have agreed to if they had considered this point and such a provision shall come closest to what the parties wanted. If the validity of a regulation within the meaning referred to above can only be achieved by an agreement in compliance with special formal requirements, the parties shall be obliged to take the necessary actions and to issue declarations.