

General Terms of Business and Delivery

Project General Terms of Business and Delivery
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1 Preamble

These General Terms of Business and Delivery shall apply if and insofar as the parties have not agreed otherwise expressly and in writing. The below provisions concerning deliveries of goods as well as services shall apply, mutatis mutandis, also to contracts for work and services.

2 Conclusion of Contract

The Contract shall be deemed concluded upon receipt of a declaration of acceptance in accordance with the corresponding offer. Amendments to, or modifications of, the Contract shall be valid only if confirmed in writing. Our Customers' terms and conditions of purchase shall only be binding on us if they have been expressly and specifically acknowledged by LTW.

3 Delivery time and delivery periods

3.1 Definitions

Delivery times shall, in normal circumstances, be calculated on the basis of the current and confirmed time schedule and/or as stated in the corresponding quotation, and shall be subject to the timely receipt of a written order or of a countersigned order confirmation. The delivery time shall end upon handover of the systems to the Customer, or upon receipt by the Customer of the spare parts to be delivered. Delivery shall be effected, and assembly commence, as agreed in each case and in coordination with other companies involved in the creation of the overall installation, and/or following the completion of any pre-works which may be required from a technical point of view (e.g., construction of base plate prior to erection of shelf structures a.s.o.)

3.2 Delay in delivery

- (1) Delivery periods shall be deemed interrupted for such time as the Customer is in default of its obligations and/or until all technical and contractual details have been clarified and all conditions necessary for the execution of the work are present.
- (2) All events, whether or not foreseeable, that are outside the control of a Party and could hinder the fulfilment of the present Contract are deemed grounds for a release from obligations.
- (3) If delivery is delayed for reasons for which the Customer is responsible, LTW shall be granted a reasonable extension of the delivery period.
- (4) LTW shall not assume any responsibility for delayed delivery
 - a) if payment conditions are not met on time;
 - b) if information required for the execution of the work is not made available in good time or if approval of the design drawings on the part of the building authorities is delayed;

- c) Labour disputes and all circumstances that are independent of the contracting parties' intent, such as, for example, fire, mobilization, confiscation, embargoes, prohibition of currency transfers, general lack of supplies, energy shortages, where the travel safety of employees is at risk (travel warning from the Austrian Foreign Ministry for a region of the destination country of security level 3 or higher), or political and / or legal decisions by state authorities or governments that prevent a Party or prohibit it from continuing to provide their contractual obligations without the risk to be subjected to sanctions;
 - d) In the event of unforeseen delays in transport, including without limitation problems with customs clearance;
 - e) If it is found that the work to be carried out on site has not been sufficiently prepared during the time period stipulated for delivery;
 - f) Bad weather days.
- (5) When calculating the reasonable extension of the delivery period, consideration must be given to the fact that LTW schedules its production, logistics, and assembly process on the basis of the agreed delivery dates. Delays of more than two weeks may therefore result in the scheduled production and assembly capacities being assigned to another project.

3.3 Delay in acceptance

- (1) If the Customer fails to accept goods provided under the Contract at the contractually agreed place or at the contractually agreed time, LTW may either demand fulfilment or terminate the Contract subject to a grace period. In either case the Customer shall be liable to pay full damages.
- (2) LTW may store the goods at the Customer's expense and risk. Furthermore, LTW may, in the event of a delay and to the exclusion of all other claims against the Customer, claim reimbursement of all justified expenses which were necessary for the performance of the Contract and which are not covered by the payments received.

4 Terms of delivery / transfer of risk

Unless otherwise agreed, goods are deemed sold ex works (EXW Incoterms 2010, ready for collection.)

5 Packaging

In the absence of other arrangements

- a) prices given do not include packaging;
- b) packaging shall be at the expense of the Customer and in the customary manner to prevent damage to the goods under normal transport conditions on their way to the specified destination;
- c) the Customer shall be responsible for disposing of all packaging.

6 Acceptance tests

6.1 Acceptance test procedure

- (1) Unless otherwise agreed, acceptance of the delivery shall, with the exception of spare parts deliveries and service works, always take place upon completion of the assembly and of the relevant tests at the place of installation. The Customer undertakes to take part in the acceptance test during normal working hours. In the event of an acceptance by the authorities, such acceptance shall be considered equal to acceptance by the Customer.
- (2) The Customer shall be informed of the acceptance test date in good time so that it will be possible for either the Customer or an agent authorised by it to be present. Agents shall be named to LTW in advance.
- (3) In the course of the acceptance test an acceptance protocol shall be drawn up in which all relevant and important details of the acceptance test shall be recorded.
- (4) If despite their having been notified in good time neither the Customer nor its agent are present at the acceptance test, LTW shall draw up and sign the acceptance protocol alone. The Customer shall receive a copy of that protocol. In that case the Customer cannot appeal against the accuracy of such protocol.
- (5) By completing and confirming acceptance, the Customer declares that it as well as its employees have been fully and sufficiently informed by LTW with regard to the handling, operation and product-specific use of the goods delivered.

6.2 Acceptance test costs

- (1) Unless otherwise agreed, all costs for acceptance testing (e.g., electricity, helpers, ballast weights and the like) shall be borne by the Customer.
- (2) The Customer shall, in any event, bear any costs incurred by it or by its agent in connection with the acceptance test, e.g., costs for travelling, board and lodging, or expense allowances.

6.3 Identification of defects

If during acceptance testing minor defects are found (*i.e.*, defects which do not substantially impair the functioning and/or purpose of the delivery), delivery shall in any case be deemed accepted. Should substantial defects be found, such defects shall be remedied by LTW without delay. The Customer shall receive a notification of remedy once the defect has been remedied.

7 Maintenance

7.1 Maintenance and inspections to be carried out

- (1) The definitions for maintenance and inspection refer to the technical terms used in German Industrial Standard DIN 31051.
- (2) In order to guarantee the trouble-free operation of systems such as stacker cranes or conveyor systems such system must be maintained strictly in accordance with the specific instructions. Maintenance shall take place at intervals of approx. 700 operating hours (*i.e.*, hours during which the system moves in a horizontal and/or vertical direction or along the load handling device.)
- (3) If so agreed, the work to be carried out in the course of such maintenance shall be performed by qualified personnel of LTW or by specialist companies which have been authorised or commissioned by LTW. Maintenance work shall essentially comprise the inspection of devices and installation parts, function testing of individual elements (rollers, bearings, motors, load handling devices), lubrication where necessary, as well as various adjusting and readjusting jobs, *e.g.*, tensioning of chains. LTW and the Customer shall determine the maintenance intervals. Should the aforementioned 700 operating hours be reached before the next maintenance interval, the Customer shall inform LTW thereof in good time.

7.2 Maintenance costs

Any and all maintenance works, including maintenance work mandatory under the Contract, if agreed, are chargeable.

Maintenance costs shall always be calculated on the basis of LTW's normal working hours. Additional costs arising from extra hours and/or Saturday and Sunday work shall be charged at cost. The same applies to repairs carried out on the installation or on installation components in the course of a maintenance as well as to exchanged spare and wear parts.

8 Spare parts

- (1) In order to maintain a guaranteed availability of the installation, spare and wear parts which serve to remedy a one-time defect must be stored on site. The spare parts storage must be restocked accordingly immediately after parts have been used. The Customer shall be responsible for monitoring the spare parts stock and for reordering spare parts whenever necessary. Suitable spare parts packages shall be put together in accordance with the Customer's requirements and/or in consultation with the Customer.
- (2) Spare parts shall be charged in accordance with the respective spare parts list prices as amended from time to time. If parts are exchanged by LTW free of charge within the scope of warranty, such parts shall pass into the ownership of LTW at the time of the exchange.
- (3) If spare parts are installed which have not been delivered by LTW, the Customer's warranty claim shall become void.

9 Price

- (1) Unless otherwise agreed, prices shall be ex LTW works, exclusive of packaging and exclusive of loading. If delivery including shipment has been agreed, prices shall be exclusive of unloading and exclusive of carrying.
- (2) If a Contract is concluded but no prices are fixed, the purchase price valid on the day of the delivery shall be charged. Prices shall be subject to statutory value-added tax, if any. Such tax shall be paid by the buyer.

10 Payment

10.1 Performance and fulfilment

- (1) Payments are deemed made as soon as LTW can absolutely dispose of the invoiced amount in the currency agreed, *i.e.*, in full and without deductions. The place of performance for all payments shall be Wolfurt, Austria.
- (2) Payments shall be due, and must be made, even if insignificant parts are missing but it is not impossible to use the systems, or if minor rework is still to be carried out which does not impair the contractually agreed use of the installation delivered.
- (3) The Customer shall have the right to offset counterclaims only if such claims have been ascertained by a final and absolute court decision, if they are undisputed or have been recognised by LTW, and if they result from the same contractual relationship. Furthermore, any right of retention or offset on the part of the Customer shall be excluded, including without limitation rights resulting from causes for which LTW is not responsible (*e.g.*, construction delays on site, strike, or force majeure.)
- (4) If the Contract contains special terms of delivery and payment, *e.g.*, terms providing for a guaranteed payment amount in a currency other than in euros, and such guarantee is backed by a forward transaction or similar, the Customer shall bear all costs which may arise in order to compensate LTW for any losses resulting from such transactions.

10.2 Terms of payment

- (1) Unless otherwise agreed, payments shall be made immediately upon receipt of invoice. Due dates of payment shall be binding irrespective of partial or final acceptance procedures.
- (2) Due dates of payment shall be met even if delivery, transport, assembly (as a result of inadequate completion of preworks), and/or start-up or acceptance of the systems is delayed or impossible for reasons for which LTW is not responsible.
- (3) If the Customer is responsible for the delay, any following payments shall become due on the date on which LTW is ready to perform, however, at the latest on the agreed performance date (time schedule.)

10.3 Default on payment

If the Customer defaults on an agreed payment or on any other performance, LTW may

- a) Insist on performance of the Contract and
 - i. defer performance of its own obligations until outstanding payments have been made or other performances effected,
 - ii. demand an extension of the delivery period,
 - iii. demand full payment of the outstanding purchase price,
 - iv. pursuant to Sec. 456 of the (Austrian) *UGB* (Business Enterprise Code) charge interest in the amount of the base rate plus 9.2 percentage points; the base rate in force on the first calendar day of a half-year shall apply for that half-year.
- b) or, after having granted a reasonable grace period, terminate the Contract.

11 Termination of Contract

11.1 Insolvency of the Customer

If it becomes known to LTW after the Contract has been concluded that the Customer is having difficulties to make payments or that an application for the opening of insolvency proceedings regarding the Customer's assets has been filed, or that the opening of insolvency proceedings is dismissed for lack of sufficient assets, LTW may

- a) Raise the plea of uncertainty within the meaning of Sec. 1052 of the (Austrian) *ABGB* (General Civil Code) and withhold performance until such date as counter-performance has either been effected or secured with an abstract bank guarantee or a joint and several guarantee by a major European bank in the amount of the residual claim, or
- b) Terminate the Contract without further performance claiming "*Erfüllungsinteresse*" (i.e., the interest which LTW has in the performance of the obligation) and other damages without granting a grace period. Installation parts which have already been delivered or installed, or which are tailored to the project and have already been manufactured, must be paid for by the Customer.
- c) At its own discretion, refuse to perform services or deliver spare parts and/or change the term of payment for such services or deliveries to advance payment, at least until the residual debt has been paid off; such refusal shall not constitute a breach of Contract.

11.2 Other reasons for termination of Contract

LTW may also terminate the Contract if

- For reasons for which the Customer is responsible performance of delivery and/or commencement or continuation of performance is delayed further despite a grace period having been granted;
- The total of the extension of the delivery period granted is more than half the originally agreed delivery period;

- The Customer directly or indirectly infringes LTW's industrial property rights and/or violates the obligation to secrecy pursuant to these General Terms of Business and Delivery.

11.3 Scope and consequences of a termination of Contract

- (1) The Contract may be terminated for the reasons given above also with regard to a part of the delivery and services which is still outstanding.
- (2) Without prejudice to claims for damages, if any, performances or partial performances rendered shall be invoiced and become due for immediate payment in the event of a termination of the Contract. This shall also apply to the extent that a delivery and performance including preliminary work already rendered has not yet been accepted by the Customer. However, LTW may also demand the return of products and/or product parts which have already been delivered.

12 Retention of title

- (1) The goods delivered shall remain the property of LTW until the order value along with any ancillary claims has been paid in full. The Customer shall take all necessary steps to safeguard the retention of title.
- (2) LTW is entitled to indicate its ownership on the outside of the delivery item.
- (3) Pledging or transfer by way of security shall be prohibited. In the event of seizure by a third party, the Customer shall assert LTW's title to the goods and inform LTW of the seizure without delay. If the delivery item or parts thereof become connected to the ground or to building parts by foundation or similar, or if they become connected to objects in any other way, it is hereby agreed that such connection shall be of a temporary nature only.

13 Warranty

- (1) LTW warrants defects in design, workmanship, and material supplied and fitted by it, if such defects occur within two (2) years as from the date of acceptance and not later than six (6) months as from delivery and/or readiness to ship, or, where assembly by LTW has been agreed, three (3) months as from completion of assembly. If merely parts or components form the subject matter of a Contract, the warranty period shall be twelve (12) months as from delivery and/or readiness to ship, or as from completion of assembly, if assembled by LTW. The so-called *Vermutungsregel* (presumption rule) of Sec. 924 of the *ABGB* is excluded.
- (2) The warranty obligation does not apply to defects which arise due to non-compliance with applicable operating conditions and/or operation and service manuals, inexpert handling, improper maintenance, improper use, or normal wear. Warranty does not extend to defects resulting from force majeure, excessive soiling, fire, and other external influences.
- (3) If an installation is produced according to design specifications, survey reports, drawings, or other information provided by the Customer, LTW does not warrant the accuracy of such information, but merely that the work has been executed in accordance with such information. Nor is LTW obligated to check the accuracy of the Customer's instructions or of the information provided by it. However, LTW's duty to warn with regard to instructions/documentation which evidently are/is incorrect shall apply nevertheless.
- (4) If LTW has fitted parts provided by the Customer, LTW's warranty obligation shall be limited to the fitting work but shall not cover the part/the material. LTW is under no obligation to examine whether a part or material provided by the Customer Purchaser is fit for use. However, LTW's duty to warn with regard to parts/materials which evidently are unfit for use shall apply nevertheless.
- (5) LTW assumes no warranty if used parts and installations are delivered.
- (6) In order to maintain its warranty claim, the Customer shall inform LTW without delay and in writing of any defects which have occurred. For defects which occur within the time period stipulated under Item (1) and of which LTW is informed without delay, the Customer may assert its warranty claim in court still one year after the time period stipulated under Item (1) has expired.
- (7) If LTW is required to assume liability for defects in accordance with the above provisions, it shall, at its discretion, comply with its warranty obligation by repairing or replacing the item in question. Other warranty remedies shall be excluded for remediable defects. Rescission shall be excluded for non-remediable defects. Parts or installations which have been replaced shall become the property of LTW.
- (8) If parts must be disassembled and re-assembled for improvement pursuant to Item (7), the costs thereof shall be borne by the Customer if the assembly was not covered by the Contract.
- (9) An improvement pursuant to Item (7) shall not lead to an extension of the warranty period for the overall installation. Without prejudice to the provisions of Item (1), the warranty period for repaired or replaced parts or for improvements carried out shall, in any event, be twelve (12) months as from the date when the improvement or replacement takes place. Items (2), (4) and (5) shall apply *mutatis mutandis*. The presumption rule of Sec. 924 of the *ABGB* is excluded.

14 Damages

14.1 Breach of Contract

The appearance of a defect within the period indicated in Article 13 Item (1) does not in itself give rise to a breach of Contract.

14.2 Defectiveness

Besides its warranty obligation, LTW shall not be liable to pay damages with regard to defective deliveries or services.

14.3 Consequential damage

- (1) LTW shall not be liable for any damage that was impossible to anticipate as a possible consequence of a breach of Contract at the time of entering into the Contract.
- (2) Outside the scope of the (Austrian) “*Produkthaftungsgesetz*” (Product Liability Act), LTW shall be liable in accordance with the statutory provisions only where intention or gross negligence of LTW is proved. In cases of gross negligence, LTW’s total liability shall be limited to the net contract value or to an amount of EUR 500,000.00, whichever is lower. LTW’s liability for each claim shall be limited to 25% of the net contract value or to a maximum amount of EUR 125,000.00, whichever is lower.
- (3) Liability for slight negligence as well as compensation for consequential damage, purely pecuniary damage, indirect damage, loss of production, financing expenses, cost of replacement energy, loss of energy, data, or information, lost profit, savings not made, loss of interest and damage arising from third-party claims against the Customer shall be excluded.
- (4) Failure to observe conditions required for assembly, putting into service, and use (e.g., as stipulated in the operating instructions) or conditions of admission stipulated by the authorities shall result in all claims for damages being excluded.
- (5) If contractual penalties have been agreed, any claims in excess thereof which are based on the same grounds shall be excluded.
- (6) The provisions of Article 14 shall apply with final effect to any and all claims of the Customer against LTW, regardless of their legal ground or title, and shall also take effect for all employees, subcontractors and sub-suppliers of LTW.

14.4 Product liability

The delivery item provides only such safety as may be expected on the basis of the admission regulations, acceptance tests, and instructions for use applicable from time to time.

15 Compliance

These General Terms of Business and Delivery shall be governed by the behavioural standards, laws, guidelines, and corporate values summarised in the Code of Conduct of the Doppelmayr Garaventa Group. The Code of Conduct as amended from time to time is permanently available on the internet at www.doppelmayr.com. The Code of Conduct is binding on all employees of the Doppelmayr Garaventa Group. The Customer agrees to be bound by these provisions, too.

16 Data storage

- (1) The Customer declares its express consent to the storage of all data relevant to the business relationship and to the processing of the orders placed, and/or to the delivery commitments.
- (2) Any personal data transmitted shall be stored and used solely for purposes of Contract implementation and will be forwarded to partners/ "Erfüllungsgehilfen" (i.e. persons employed by the contractor in performing its obligations) within the scope of Contract implementation to the extent that this is necessary for performance of the Contract. The Customer declares its consent to this provision. The provision of personal data is therefore voluntary.
- (3) The Customer may demand to have personal data deleted at any time (right of revocation.)
- (4) The data shall not be made available to uninvolved third parties.
- (5) To the extent that personal data are stored or otherwise processed, such storage or processing shall be performed in compliance with the relevant data protection laws.

17 Industrial and intellectual property rights

- (1) LTW owns any and all registrable and non-registrable intellectual property rights registered or filed for registration (including without limitation patents, brands, designs, copyrights, etc.) that may exist in plans, drawings, cost estimates, technical documents, samples, catalogues, brochures, images, tools, software, and similar materials and data and which LTW has handed over to the Customer ("Materials".) Any use of such Materials (including without limitation copying, distributing, publishing, and presenting the Materials or putting them in the public domain) which goes beyond the use stipulated in the Contract shall be subject to the express approval of LTW.

- (2) Insofar as the goods delivered under the Contract contain software, LTW herewith grants to the Customer a non-exclusive right of use in that software in connection with the delivery item. The Customer may not make copies of the software (except for the purpose of securing the future use of the software) or modify the software in any way. In particular, the Customer may not, except with the prior written approval of LTW, disassemble, decompile, decode or reverse-engineer the software unless this is permissible under mandatory statutory provisions in order to establish interoperability of the software with an independently created computer program and provided the applicable legal conditions for such an exception are met. In the event of an infringement, LTW may withdraw the right of use. If LTW supplies to the Customer software of a third party, then the Customer shall observe that third party's terms of use with regard to such software. LTW shall inform the Customer of any such terms.

18 Confidentiality clause

- (1) Each Party undertakes to keep confidential information of the other Party confidential for a duration of ten years as from the completion of the Contract and in particular not to disclose such information to third parties, to protect it from any unauthorized access by means of reasonable technical, organizational and legal measures, and to use it exclusively within the scope of the cooperation.
- (2) The following shall be deemed confidential information:
- a) the conclusion of the Contract as well as its content;
 - b) any information developed jointly within the scope of the cooperation;
 - c) any and all information or documentation disclosed by one party to the other party within the scope of the cooperation; as well as
 - d) any and all knowledge gained within the scope of the cooperation and concerning operational and/or organizational processes at either party.
- (3) This undertaking shall not apply if and insofar as
- a) confidential information was already known to the other party at the time of the signing of the Contract or became known to the other party afterwards through a third party in a lawful manner, *i.e.*, without breach of a confidentiality agreement, a statutory provision or an administrative order;
 - b) confidential information was already in the public domain at the time of the signing of the Contract or thereafter comes into the public domain without culpable breach of this secrecy obligation;
 - c) confidential information has been independently developed or discovered by the other party;
 - d) its disclosure is required within the context of the cooperation or for the protection of the legal interests of the party, provided that such disclosure takes place vis-à-vis auxiliaries which have been bound to secrecy in writing in accordance with the above obligation or vis-à-vis advisors which are bound to professional secrecy;

- e) one party has released the other party from its obligation; or
 - f) statutory requirements, other applicable laws, or a court or administrative order require the disclosure. In such cases, the Parties shall inform each other without delay in writing or in text form and jointly determine the scope of the disclosure within the scope permitted by law.
- (4) The right to terminate this Confidentiality Clause by due notice shall be excluded.
- (5) If the Customer passes any of the performances rendered under the Contract or parts thereof to third parties, and if such performances contain confidential information, the Customer shall bind the receiving third party to secrecy in accordance with the extent and nature of the above provisions. In particular, the Customer undertakes to ensure that any confidential information discovered while decoding or reverse-engineering software shall not be disclosed or used by third parties.
- (6) However, LTW may inform of its cooperation with the Customer in its list of references.

19 Dispute resolution, jurisdiction, applicable law

19.1 Mediation clause

- (1) The parties shall at first endeavour to settle amicably any and all disputes or claims arising out of or in connection with this contract, as well as any breach of Contract as such, or the termination or nullity of individual provisions of the Contract, through mediation with an unbiased third party (mediator.)
- (2) The Parties shall appoint the mediator in mutual agreement and shall enter into an agreement with that mediator concerning the course of the proceedings within four (4) weeks as from the date on which the conflict first arose. Throughout the duration of the proceedings any and all time limits shall be suspended, and both parties shall be bound by the utmost confidentiality and secrecy.
- (3) If no agreement concerning mediation can be reached within four weeks, or if the mediation procedure fails to produce a result within four weeks, the parties shall initiate court or arbitration proceedings.

19.2 Jurisdiction

The Parties agree that the venue for all disputes arising directly or indirectly out of the Contract shall lie with the court having jurisdiction over the headquarters of LTW.

19.3 Arbitration clause

In the Contract, the Parties may also agree to submit disputes to a court of arbitration.

19.4 Applicable law

- (1) These General Terms of Business and Delivery as well as all agreements entered into between LTW and the Customer shall be governed by the laws of Austria.
- (2) The United Nations Convention on Contracts for the International Sale of Goods of 11 April, 1980, *BGBI.* (Austrian Federal Law Gazette) 1988/96, is expressly excluded.

20 Final provisions

20.1 Written form

No oral side agreements exist. Modifications of, or amendments to, these General Terms of Business and Delivery and/or to the Contract as such and/or to Annexes to the General Terms or to the Contract, shall be valid only if made in writing. This shall also apply to any derogation from this requirement of written form.

20.2 Translations

In the event that contracts or the General Terms of Business and Delivery of LTW are drawn up in German and in another language, the provisions of the German version shall prevail.

20.3 Severability clause

If individual clauses of a Contract turn out to be invalid or unenforceable in full or in part, or if they become invalid or unenforceable due to a change in legislation after the Contract has been concluded, the remaining clauses of the Contract as well as the validity of the Contract as a whole shall not be affected thereby. The invalid or unenforceable provision shall be replaced by a valid and enforceable provision which comes as close as possible to the invalid provision in meaning and purpose. If it is found that a Contract contains gaps, such provisions are deemed agreed upon as correspond to the meaning and purpose of the Contract, and which the Parties would have agreed upon had they considered the issue/issues.