

GENERAL TERMS OF SALE OF LO-CAT SYSTEMS GMBH

ART. 1 GENERAL INFORMATION, SCOPE

1. These General Terms of Sale (GTS) are applicable to all our business relations with our customers ("Buyers"). The GTS apply only if the Buyer is an entrepreneur within the meaning of article 14 of the German Civil Code or a legal entity or special fund under public law.
2. These GTS shall apply, in particular, to contracts for the sale and/or delivery of movables ("Goods"), whether made by us or bought from suppliers (articles 433 and 651 of the German Civil Code). The GTS, in their most recent version, shall also be applicable as a framework agreement for future contracts for the sale and/or delivery of Goods with the same Buyer, with no need for us to make any reference hereto in each individual case.
3. Our GTS alone are applicable. Any of the Buyer's general terms of business that differ from, contradict or supplement these GTS shall be incorporated into the contract only if and insofar as we expressly consent to the applicability thereof. This requirement of consent shall apply in every case, including, for example, in cases in which we are aware of the Buyer's general terms of business and make a delivery to the Buyer without expressing any reservations.
4. Notwithstanding the foregoing, individual agreements entered into with the Buyer (including collateral agreements, supplements and amendments) shall supersede these GTS in every case, with the proviso that a written contract or our written confirmation shall be decisive for the contents of such agreements.
5. All legally relevant declarations and announcements that are to be made to us by the Buyer after formation of the contract (e.g., setting of time limits, notice of defects, declaration of rescission or reduced payment) shall not be deemed effective unless formulated in writing.
6. References to the applicability of statutory provisions are given for the sake of clarification only. The statutory provisions would be applicable even without such clarification, unless directly modified or expressly waived in these GTS.

ART. 2 FORMATION OF CONTRACT

1. Our offers are subject to change and non-binding. The same principle shall also apply to cases in which we provide the Buyer with catalogs, technical documentation (e.g., drawings, plans, computations, calculations, or references to DIN standards), or other product descriptions or documents, including in electronic format.
2. The Buyer's order of the Goods shall be deemed to constitute a binding offer to enter into a contract. Unless specified otherwise by the order, we are entitled to accept said offer to enter into a contract within 2 weeks after our receipt thereof.
3. We may declare our acceptance of the Buyer's offer to enter into a contract either in writing (e.g., through an order confirmation) or by delivering the Goods to the Buyer.

ART. 3 DELIVERY TIME LIMITS AND DEFAULT IN DELIVERY

1. The time limit for delivery shall be agreed upon on a case-by-case basis or stipulated by us at the time of acceptance of the order, failing which, the time limit for delivery shall be 5 weeks after formation of contract. Time limits shall not be binding unless expressly confirmed in writing. Deadline transactions must be designated as such and expressly confirmed as such by us in writing.
2. Insofar as we are unable to meet binding delivery time limits for reasons beyond our control (impossibility of performance), we shall promptly inform the Buyer thereof in writing and indicate the new estimated delivery date. If performance is not possible within the new delivery time limit either, then we shall be entitled to rescind the contract in whole or in part, in which case we shall promptly refund any payment already made by the Buyer on that account. In particular, performance shall be deemed impossible in case we fail to receive timely delivery from our suppliers after entering into a congruent transaction in order to cover the order. The foregoing is without prejudice to our statutory rights of rescission and termination and the statutory provisions governing the handling of contracts in cases of release from the obligation to perform (e.g., in cases of impossibility or infeasibility of performance and/or remedial performance). The foregoing is likewise without prejudice to the Buyer's rights of rescission and termination under article 8 of these GTS.
3. The occurrence of default in delivery shall be determined according to the relevant statutory provisions; in any case, a prior formal reminder by the Buyer is required.

ART. 4 DELIVERY, TRANSFER OF RISK, ACCEPTANCE, DELAY IN ACCEPTANCE

1. The delivery shall be made ex works Schönau; the place of performance shall be Weil am Rhein. At the Buyer's request and expense, the Goods may be sent to another destination (sale to destination according to Buyer's instructions). Unless agreed otherwise, we are entitled to select the manner of shipment at our discretion (especially the shipping agent, delivery route and packaging).
2. The risk of accidental destruction or accidental deterioration of the Goods shall pass to the Buyer at the time of handover to the Buyer, at the latest. In the case of sale to a destination other than the place of performance according to Buyer's instructions, however, the risk of accidental destruction or accidental deterioration of the Goods as well as the risk of delay shall pass to the shipping agent, carrier or other person or entity appointed to perform the shipment as soon as Goods are handed over. If the parties agree to an acceptance procedure, then acceptance shall determine the time of transfer of risk. In all other respects, if the parties agree to an acceptance procedure, the statutory provisions governing contracts for work shall apply, mutatis mutandis. If the Buyer delays acceptance, handover or acceptance shall be deemed to have occurred for the purposes of this clause.
3. If the Buyer delays acceptance or breaches its duties to cooperate or if delivery is delayed for other reasons imputable to the Buyer, then we shall be entitled to compensation for any resulting damages, including additional expenses (e.g., storage costs). In that case, we will charge a lump-sum indemnity in the amount of 1% of the net price per completed calendar week of delay, not to exceed 5% of the net price of the Goods in question, starting from the delivery date or, if no delivery date was agreed to, from the time of notification that the Goods are ready for shipping. The foregoing shall be without prejudice to our right to claim higher damages, if proven, or to our claims provided by law (particularly for reimbursement of our additional expenses, reasonable compensation, and termination of the contract); the lump-sum indemnity shall be credited towards any further pecuniary claims, however. The Buyer is allowed the defense of proving that we actually suffered no loss at all or substantially less than the amount of the above-mentioned lump-sum indemnity.

ART. 5 PRICES AND TERMS OF PAYMENT, ASSIGNMENT OF ACCOUNTS RECEIVABLE

1. Unless agreed otherwise on an individual basis, our prices in effect at the time of signature of the relevant contract shall apply, ex works, plus the rate of VAT required by law.
2. In the case of sale to a destination other than the place of performance according to Buyer's instructions [see article 4 (1) above], the Buyer shall bear the cost of transport ex works and of any transport insurance desired by the Buyer. All customs duties, fees, taxes and other official charges shall likewise be borne by the Buyer. We do not take back any transport packaging or other packaging according to the German Packaging Ordinance, which shall become the property of the Buyer, with the exception of pallets, Euro boxes and returnable crates.
3. The purchase price is payable within 14 days after receipt of invoice and delivery or acceptance of the Goods. In the case of contracts in which the price of deliverables exceed EUR 10,000, we are entitled to demand a down-payment of 30% of the purchase price. The down-payment is payable within 14 days after receipt of invoice. We are entitled to withhold delivery until receipt of the down-payment.
4. If the Buyer fails to pay by the due date, the Buyer shall be considered to be in default. For the duration of the default, we may charge interest on the purchase price at the applicable statutory rate. We reserve the right to further damage claims for default, including, in the case of merchants, interest commencing on the due date as defined by article 353 of the German Commercial Code.
5. The Buyer shall be entitled to offsetting or retention only for such claims as are undisputed or established by final court judgment. In the case of defects in the delivered Goods, the foregoing shall be without prejudice to article 7 (6) below.
6. If it becomes apparent, after signing the contract, that our claim to the purchase price is at risk due to the Buyer's inability to pay (e.g., in the case of a petition in bankruptcy), then we shall be entitled to withhold performance in accordance with the applicable statutory provisions and – after granting an additional time allowance, where applicable – to rescind the contract (article 321 of the German Civil

Code). In the case of contracts for the manufacture of fungibles (custom-made items), we are entitled to give notice of rescission immediately, without prejudice to the statutory provisions providing an exemption from the obligation to grant an additional time allowance.

7. We are entitled to assign our claims arising out of the business relationship. Payments shall not be deemed to have been effectively received unless sent to the bank account of RB Heidelberger Factoring AG, Heidelberg, indicated in our invoice, to which we have assigned our present and future claims arising out of our business relationship, including our rights of retention of title.

ART. 6 RETENTION OF TITLE

1. We retain title to the sold Goods until receipt of payment in full of all our present and future claims arising out of the contract of sale and the ongoing business relationship (secured claims).
2. The Goods subject to the retention of title shall not be pledged to third parties or given by way of collateral until the secured claims have been paid in full. The Buyer shall inform us promptly in writing if and to what extent any third parties lay claim to the Goods belonging to us.
3. If the Buyer commits a breach of contract, particularly by failing to pay the purchase price when due, we are entitled, in accordance with the statutory provisions, to rescind the contract and/or demand restitution of the Goods by virtue of our retention of title. The demand for restitution shall not be deemed to constitute notice of rescission of the contract at the same time; on the contrary, we are entitled to merely demand restitution of the Goods while reserving the right to rescind. If the Buyer fails to pay the purchase price when due, we are not entitled to enforce said rights unless the Buyer fails to remedy the breach by the end of a reasonable additional time allowance, except in cases in which no such additional time period is required by law.
4. The Buyer is entitled to resell and/or further process the Goods subject to the retention of title in the ordinary course of business. Our retention of title shall then carry over to the products resulting from the processing, mixing or combining of our Goods at their full value, in which case we shall be considered to be the manufacturer. If third-party ownership rights persist after our Goods have been processed, mixed or combined with goods of third parties, then we shall acquire co-ownership rights in proportion to the respective invoice values of the processed, mixed or combined Goods. In all other respects, the same principles shall apply, mutatis mutandis, to the resulting products as to the Goods delivered with retention of title.
5. The Buyer hereby assigns to us by way of security all claims against third parties that may arise out of the resale of the Goods or products, in the full amount of said claims or in proportion to our co-ownership rights therein in accordance with paragraph 4. The Buyer's obligations mentioned in subsection 2 above shall also apply with respect to the assigned claims.
6. Without prejudice to the assignment in accordance with subsection 5 above, the Buyer and we are both entitled to collect the receivables. We agree not to collect the receivables so long as the Buyer meets its payment obligations to us and does not enter into default, no petition in bankruptcy has been filed and the Buyer's ability to pay is not impaired in any other way. Otherwise, we are entitled to demand that the Buyer informs us of the assigned claims and the associated debtors, makes all the disclosures necessary for collection, hands over the relevant documents, and informs the (third-party) debtors of the assignment.
7. If the cash value of the security exceeds the value of our claims by more than 10 %, then we will release the security of our choice at the Buyer's request.
8. If the above-stipulated retention of title is not recognized by the laws of the country in which the delivered item is located or in which it is brought before full payment is made, or if retention of title is recognized there but subject to certain conditions (e.g., registration in official or court registers, agreement formulated in writing, etc.), then the Buyer shall inform us thereof by no later than the time of formation of the contract. If the laws of said country do not permit retention of title or the extended retention of title but allow us to reserve other rights providing security in a manner similar to retention of title, then we hereby declare that we will exercise said rights, and the Buyer shall cooperate by taking the measures necessary to that purpose (in particular, by complying with the formal requirements, etc.).

ART. 7 BUYER'S CLAIMS BASED ON DEFECTS

1. The Buyer's rights in cases of material defects or defects of title (including improper deliveries or short deliveries, as well as improper assembly or defective assembly instructions) shall be regulated by the applicable statutory provisions, save as stipulated otherwise below, without prejudice, in any case, to the special statutory provisions for final delivery of goods to a consumer (entrepreneur's recourse against the supplier as defined by articles 478 and 479 of the German Civil Code).
2. Our liability for defects is primarily based on the agreement made concerning the condition of the Goods. For the present purposes, an agreement concerning the condition of the Goods means all product descriptions that are the subject matter of each contract, irrespective of whether the product description originates from the Buyer, from the manufacturer or from us. Notwithstanding the foregoing, product descriptions that do not originate from us are not deemed authoritative unless confirmed by us in writing.
3. If no specific condition of the Goods is agreed upon, then the decision as to whether or not a defect exists shall be determined according to the relevant statutory provisions (sentences 2 and 3 of article 434 [1] of the German Civil Code). We assume no liability for public statements made by the manufacturer or other third parties (e.g., advertising statements), however.
4. As a prerequisite for the Buyer's assertion of claims based on defects, the Buyer must meet his obligations to inspect the Goods and give notice of any defects (articles 377 and 381 of the German Commercial Code). If a defect is discovered during inspection or later, then the Buyer shall inform us thereof in writing without delay. If the Buyer fails to perform a proper inspection or to report the defect to us, than our liability for the unreported defect is excluded.
5. If the Goods are defective, we shall have the choice of whether to provide remedial performance by eliminating the defect (repair) or by delivery of non-defective items (replacement), without prejudice to our right to refuse remedial performance under the conditions stipulated by law.
6. We are entitled to make our obligation of remedial performance conditional upon the Buyer's payment of the purchase price when due. The Buyer is entitled, however, to withhold a reasonable amount of the purchase price in proportion to the defect.
7. The Buyer must give us the time and opportunity necessary for us to perform our obligation of remedial performance, particularly by handing over to us the Goods that gave rise to the complaint for purposes of inspection. If we opt for replacement, the Buyer must return the defective item to us in accordance with the applicable statutory provisions.
8. If a defect actually exists then we will bear the costs of inspection and remedial performance, including freight, travel, material and labor expenses. If the Buyer's demand for elimination of the defect turns out to be unjustified, however, we are entitled to demand reimbursement of our expenses from the Buyer.
9. The Buyer is entitled to eliminate the defect itself in cases of emergency (e.g., if operational safety is jeopardized or if necessary to prevent excessive damage) and to demand reimbursement of the objectively necessary expenses from us. The Buyer must inform us of any such actions undertaken on its own initiative without delay, if possible before taking action. Notwithstanding the foregoing, the Buyer shall not be entitled to reimbursement for actions taken on his own initiative if we would have been legally entitled to refuse remedial performance.
10. If the attempt at remedial performance fails or we fail to provide remedial performance by the end of a reasonable additional time limit granted by Buyer, or in cases in which no such an additional time limit is required by law, the Buyer may rescind the purchase agreement or reduce the purchase price. Notwithstanding the foregoing, the Buyer shall not have the right of rescission in the case of an insignificant defect.
11. The Buyer's claims for damages or reimbursement of expenses incurred to no avail are subject to the limits stipulated by article 8 below and all claims beyond those limits are excluded.

ART. 8 OTHER LIABILITY

1. Unless stipulated otherwise by these GTS including the following provisions, our liability for breach of contractual or extra-contractual obligations shall be regulated by the relevant statutory provisions.

2. We are liable for damages caused intentionally or by gross negligence, irrespective of the legal grounds of the claim. In cases of ordinary negligence, our liability is limited to:
 - a. claims based on injury to life, limb or health,
 - b. claims based on breach of a material contractual obligation (i.e., an obligation whose fulfillment is an essential prerequisite for proper performance of the contract and which the party has regularly relied on and is entitled to rely on), in which case our liability is limited to typical, foreseeable damages.
3. The limitations of liability stipulated by paragraph 2 above do not apply to defects which we fraudulently concealed or for which we guaranteed the condition of the Goods. The same also applies to the Buyer's claims under the German Product Liability Act.
4. The Buyer is not entitled to rescind or terminate the contract on the grounds of a breach of duty not based on a defect unless we are responsible for said breach of duty. The Buyer hereby expressly waives that right to terminate at will (particularly under articles 651 and 649 of the German Civil Code). In all other respects, the statutory requirements and legal consequences shall apply.

ART. 9 LIMITATION PERIOD

1. Notwithstanding article 438 (1) No. (3) of the German Civil Code, the general limitation period on claims based on material defects and defects in title shall be one year after the delivery date. In cases in which the Parties agree to an acceptance procedure, the limitation period shall commence at the time of acceptance.
2. The foregoing is without prejudice to the special statutory provisions governing the real claim for return of third parties (article 438 (1) (1) of the German Civil Code), fraudulent concealment by the seller (article 438 (3) of the German Civil Code) and the entrepreneur's rights of recourse against his supplier in cases of final delivery to a consumer (article 479 of the German Civil Code).
3. The foregoing limitation periods under commercial law shall also apply to the Buyer's contractual and extra-contractual damage claims based on a defect in the Goods, unless application of the regular statutory limitation period (articles 195, 199 of the German Civil Code) would lead to a shorter limitation period in the individual case. The foregoing shall be without prejudice, in any case, to the limitation periods under the German Product Liability Act. In all other cases, the Buyer's damage claims under article 8 shall be subject exclusively to the statutory limitation periods.

ART. 10 KNOW-HOW, INFORMATION AND DATA, THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS

1. The designs, samples, construction drawings, production instructions, internal company data, tools, installations and so on that we make available to the Buyer

in the course of the contract negotiations, for submission of a quotation or performance of a contract shall remain our property. The items enumerated above must not be used for any other purposes, duplicated or made accessible to third parties, and must be held in safekeeping with the due care and diligence of a prudent businessperson.

2. The Buyer hereby agrees to maintain secrecy for an unlimited period concerning all information that is designated as confidential or recognizable as a business or trade secret based on the circumstances and that is made accessible to the Buyer in connection with the business relationship or the relevant individual contract; the Buyer further agrees to record or make any other use of such information only to the extent necessary to achieve the purpose of the contract. We reserve all property rights, copyrights and other industrial intellectual property rights to documents, prototypes, construction drawings, samples and illustrations. You agree to refrain from making any other use thereof, particularly by copying and/or making same available to third parties, without our prior written consent.
3. Insofar as we produce Goods according to the Buyer's instructions or guidelines, the Buyer hereby warrants that the production and use of said Goods as intended will not infringe the rights of third parties, especially third-party intellectual property rights. If we are nevertheless sued for a possible infringement of third-party rights, such as copyrights, patent rights or other intellectual property rights, the Buyer agrees to indemnify us for such claims and all payments made in connection therewith, as well as all reasonable costs of legal defense.

ART. 11 CHOICE OF LAW AND PLACE OF JURISDICTION, SEVERABILITY CLAUSE

1. These GTS and all legal relationships between us and the Buyer shall be subject to the laws of the Federal Republic of Germany, to the exclusion of all international and supranational (contract-related) legal systems, particularly UN commercial law. Notwithstanding the foregoing, the prerequisites and effects of retention of titles under article 6 above shall be subject to the laws of the country in which the Goods are located, to the extent that said laws do not permit our choice of German law or render said choice inoperative.
2. If the Buyer is an entrepreneur within the meaning of the German Commercial Code or a legal entity or special fund under public law, then all disputes (including international disputes) arising directly or indirectly out of this contract shall be referred exclusively to the courts having jurisdiction over our registered head office in Weil am Rhein. Notwithstanding the foregoing, we are entitled to initiate proceedings in the courts having general jurisdiction over the Buyer's domicile.
3. If any provision of these GTS is or becomes inoperative or null and void, the remaining provisions shall remain in full force and effect.