

Terms and Conditions for Delivery and Assembly

§ 1 Scope

1. These conditions apply to all commercial relations between Linnhoff & Henne GmbH & Co. KG (hereinafter referred to as "L&H") and its Customers. Unless expressly agreed in writing, any conditions deviating from those listed do not apply.
2. These conditions do not apply to legal transactions with consumers as defined by § 13 of the German Civil Code.

§ 2 Offers and conclusion of the contract

1. Offers (brochures, advertisements etc.) by L&H are – inclusive of quotes – subject to change. L&H is bound to finalised offers for 30 days following the date of the offer.
2. Offers are only deemed final if they have been confirmed in writing by L&H. A waiver of the requirement for written form may be agreed only in writing.
3. Subsidiary agreements, amendments, additions and/or deviations from the existing terms and conditions are only valid if L&H has expressed its approval of them. All such agreements must be recorded in writing.
4. Bidding documents, signatures, descriptions, prototypes and quotes by L&H shall not be relayed, published, duplicated or otherwise made available to a third party without the approval of L&H. The documents shall be returned on request and copies shall not be retained.

§ 3 Prices and payment conditions

1. The delivery times specified in the order confirmation are binding. Packaging and shipping costs shall be invoiced separately. VAT shall be calculated and stated separately.
2. All amounts invoiced to the Customer are payable immediately and without delay. A separate warning regarding late payment by the Customer is not required. Interest on late payments is calculated from the due date according to legal requirements. L&H reserves the right to assert further damage caused by delay.
3. L&H reserves the right to withhold its services until full payment of outstanding receivables has been confirmed.
4. If the Supplier suspends his payments and/or insolvency proceedings have been initiated against his assets, L&H is entitled to withdraw from the non-fulfilled part of the contract.
5. The Customer is not entitled to waive or withhold payments, insofar as this is not approved in writing or otherwise legally established.
6. L&H is entitled to credit payments firstly to the Customer's previous debts, irrespective of any contrary conditions of the Customer. L&H shall notify the Customer of the type of settlement which has taken place. Where costs and interest have already arisen, L&H is entitled to credit a payment first to the costs, then to the interest and finally to the principal amount.
7. L&H expressly reserves the right to refuse cheques or exchanges. These shall only ever be accepted as payment on account of performance. Discounts or bill of exchange charges shall be borne by the customer and are payable immediately.

§ 4 Delivery dates and delay

1. Agreed delivery dates are not binding, unless otherwise stipulated in the written order confirmation. Agreed delivery dates shall be deemed to have been met when the object to be delivered has left the factory or notification of readiness for dispatch has been provided.
2. Delivery times shall begin on the issue date of the respective order confirmation, but not before the receipt of documents required from the customer, including permits and clearances, and receipt of an agreed deposit.
3. If delivery or services should be delayed for any reason for which L&H, its legal representative or vicarious agents may be held responsible, liability shall be determined according to legal provisions.

In the case of slight negligence, liability is limited to foreseeable damage considered typical for the Contract. This principle applies above all in the case of force majeure, strike, lockout, official directives etc., even if these impediments are due to suppliers of L&H or their subcontractors.

4. The duration of a grace period, established by the Customer in the case of delay and according to legal requirements, shall be fixed at two weeks, beginning with receipt of written notification of a grace period with L&H.
5. If the customer fails to comply with the terms of the Contract, and particularly if he delays payment, L&H is entitled to withdrawal following notification and the customer is required to surrender the products. If the Customer does fulfil the terms of Contract however, L&H shall return the products.

§ 5 Shipping and transfer of risk

1. Risk is transferred at the latest with the dispatch of delivery to the Customer, and in the case of part-deliveries or where L&H have transferred additional services, e.g. shipping charges or delivery and assembly charges. Where dispatch is delayed or impossible through no fault of L&H, risk shall be transferred to the Customer upon notification of the delivery being ready for dispatch.
2. Part-deliveries are permitted.
3. On the Customer's request, deliveries shall be assured in his name and to his account.

§ 5a Duty to co-operate with assembly and installation

1. The Customer shall bear the costs of the personnel involved with assembly. In particular, the client is obliged to provide:
 - The necessary technicians and assistants with the required tools.
 - An employee capable enough in speaking the German language to promptly clarify any problems which may occur.
 - All groundwork, construction, moulding, scaffolding, plastering, painting and other additional work external to the sector, including the corresponding construction materials.
 - The items necessary for assembly and starting operation.
 - Necessary materials such as scaffolding timbers, shims, supports, lubricants, fuels etc. and scaffolds, hoisting devices and other equipment.
 - Operating personnel and water including any necessary connections.
2. L&H accepts no responsibility for work carried out by its assembly personnel, insofar as this work is not related to delivery, assembly or installation or has not been arranged by the Customer. L&H accepts no responsibility for the Customer's personnel.
3. If the assembly, installation or operation setup should be delayed through circumstances which – particularly onsite – occur through no fault of L&H, but rather can be attributed to the risk area of the Customer, then the Customer shall bear an appropriate proportion of the costs for maintenance time and additional travel required travel by the assembly personnel.

§ 6 Retention of Title

1. All deliveries shall be made exclusively with retention of title. Delivered goods remain the property of L&H until full payment of the purchase price and all other receivables from the customer to L&H with relation to the continuous commercial relationship.
2. Should the delivered goods be manipulated or exploited by the Customer, it will result in manufacture for L&H, which as manufacturer as defined by § 950 of the German Civil Code and acquires ownership of the interim or end report. In the case of manufacture together with other goods not belonging to the customer, L&H acquires joint property of the new goods, in relation to the value of the goods delivered by L&H, to the value of foreign goods at the time of manufacture.
3. The customer is entitled to withdraw at any time in the context of the agreement made and its corresponding commercial activities for the resale of delivered goods and further licensing of rights.

As a precaution, the customer has already assigned all the claims regarding resale to its Customers, with ancillary rights to the value of the respective delivered goods. The Customer is obliged to provide the assigned claims to L&H at any time and without prior warning.

4. L&H is entitled, but not obliged, to insure the articles of sale at the expense of the Customer, insofar as the Customer himself has not demonstrably concluded the guarantee.
5. The Customer may not pledge or assign as security the items delivered hereunder. The Customer must immediately inform L&H in the event of pledging, appropriation or other transfers or interventions by third parties.

§ 7 Acceptance and obligation to inspection

1. The Customer is obliged to accept the service or delivery, as soon as the service or delivery has been carried out, or as soon as conclusion of the assembly has been demonstrated by L&H to the Customer. The outcome and the establishment of possible defects results from a separate record signed by the contracting parties and an annotation signed by the contracting parties on the delivery receipt or assembly certificate.
2. If no significant defects are found, the Customer is not permitted to refuse the delivery. If acceptance is delayed through no fault of L&H, acceptance shall be deemed as having taken place following 14 days after delivery, provision of services or advertisement of the conclusion of installation.
3. If installation cannot be successfully completed through reasons for which the Customer cannot be held responsible, L&H shall reimburse for the Customer the services already provided and the related costs.
4. The liability of L&H for discernible defects does not apply, insofar as the Customer has not asserted a particular defect in writing. Neither does the liability of L&H for discernible defects apply, where the Customer has not reserved the right for a particular defect in accordance with the Contract in relation to a retrospective approval of the installation services.
5. The Customer shall inspect the goods immediately following delivery by L&H, and where a defect is found, shall register an objection regarding this defect in writing with L&H, at the latest within two weeks of delivery. If a previously unidentified defect should subsequently present itself, the objection must be communicated without delay, at the latest one week following identification of the defect. Otherwise the goods shall be deemed to have been approved, even in light of this defect.

§ 8 Claims for defects

1. Should the service provided by L&H or the goods delivered be inadequate, L&H is permitted to either deliver a replacement or rectify the fault, as it wishes. Multiple amendments of this fault - generally two - are permissible within an appropriate period of time.
2. The right of the Customer to make claims regarding faults is valid in all cases for up to 12 months following the point of the transfer of risk, insofar as a longer period is not legally and imperatively stipulated.
3. Evident defects relating to services can no longer be claimed following receipt. Such defects shall otherwise be communicated in writing to L&H within two weeks of delivery, for the purpose of maintaining defect claims for the Customer. Defective items shall be made available for inspection in the condition in which they were found when the defect was identified.
4. Negligible, reasonable deviations in dimensions and implementation – particularly in relation to repeat orders – may not authorise an objection, unless the absolute compliance between both parties has been expressly agreed.
Technical improvements and necessary technical amendments apply just as stipulated in the Contract, insofar as they do not constitute a decline in serviceability.

5. Where operating or maintenance instructions from L&H are not adhered to, amendments to products are made, parts exchanged or consumables used, which do not correspond to original specifications, any guarantee will become invalid, if the Customer fails to establish a corresponding evidential claim that the only one of these circumstances resulted in a defect.
6. Liability for normal wear and tear is excluded.
7. The existing regulations of this paragraph do not apply to the sale of used items. For consumers, a period of one year applies for the enforcement of claims for defects. According to § 14 of the German Civil Code, used items shall be delivered to contractors, to the exclusion of each claim for defects.
8. If L&H makes its legal responsibilities available to the Customer regarding the issuing of information on the use of its product, L&H is only liable if a specific fee was agreed for this purpose.

§ 9 Limitation of liability

Damages claims caused by a positive violation of the Contract, negligence on the conclusion of the Contract or prohibited activities, which are not concurrently based upon violation of a contractual obligation to provide a principle service, are excluded both from L&H and their vicarious agents and assistants, insofar as the damage was not caused intentionally or by way of gross negligence. This does not apply to damages claims caused by an absence of contractual presupposition, which should safeguard the Customer from risk of damages caused by a defect. Damage claims according to the Product Liability Act (ProdHaftG), remain unchanged from that of injury to life, limb or health.

§ 10 Final provisions

1. These Terms and Conditions and all legal transactions concluded between the parties are governed by the law of the Federal Republic of Germany, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). The language of the Contract is German.
2. The location for delivery and services and the place of jurisdiction for all obligations and disputes arising from the Contract is the head office of L&H or – on the request of L&H – the subsidiary branch of L&H where delivery/services were carried out. L&H is also entitled to file objections with the head office of the contractor.
3. Subsidiary agreements may only be effective if agreed upon in writing. Amendments and/or additions must be made in writing. This shall also apply to waiving the requirement for the written form.
4. In the event that one of the above conditions is or becomes invalid, or contains an illegal loophole, the validity of the remaining conditions remains unaffected. Instead of the invalid provision, a provision shall apply which is agreed by both parties to come closest to the intended purpose. The same shall apply in the event of a loophole.