



## **General Terms and Conditions of Trade (GTCT) of the Licatec Group**

Version: October 2020

### **1. Area of validity and conclusion of contract**

**1.1** The following conditions shall apply to all offers, deliveries and services from an agreement of sale, works order or services contract and other contracts including those from future business agreements and continuing obligations. This shall also apply where we provide our services unconditionally while recognising opposing conditions of the customer. The effect of any general terms of purchase and / or general terms of business on the part of the customer shall be expressly excluded.

**1.2** Unless agreement to the contrary exists, offers shall be non-binding. The customer shall be bound to an issued order for three weeks. An order shall only be deemed to have been accepted where it has been confirmed by us in writing or where we have commenced with the supply or production within this period. Technical specifications in offers shall be non-binding. The determining factor for the extent of our contractual obligation shall only be the express written confirmation of the order.

### **2. Extent and delivery obligation**

**2.1** The technical details of our catalogues, lists and sketches (including details about weights and dimensions) have been compiled carefully. Error excluded. This also applies to all data of our sales documents.

**2.2** The right to modifications to models, constructions or equipment shall be retained insofar as this does not result in a change to the object of the contract that is unreasonable to the customer, in particular modifications to technical specifications based on continuous improvement; minor and insignificant deviations in mass, quantity, colour, form, design and volume; customary deviations based on components and materials used, as well as based on processing options of a technical nature. The deliverer expressly reserves all property rights and copyrights for all documents. Without the deliverer's written consent the offers and the relevant documents may not be made accessible to third parties. The documents, sketches, samples etc. that are part of an offer must be returned upon request.

**2.3** Products, which are confirmed with the deliverer's order numbers or type labels, have been developed by the deliverer and exclude any limitation of disposition on the part of the orderer.

**2.4** For custom-made designs deliveries additions and deletions of up to 10 per cent are binding for the orderer. The same applies to partial deliveries.

**2.5** Packaging materials are not taken back, unless agreed otherwise in writing.

### **3. Prices**

**3.1** The prices apply on delivery for the relevant confirmed order ex factory, including packaging, unless agreed otherwise in writing. In the event of general changes of the actual costs up to the day of delivery, the deliverer reserves the right to price adjustments. Prices shall be understood to be in EURO of the German Federal Bank, to the extent that no other agreement has expressly been concluded. The agreed prices are understood to be exclusive of statutory VAT applicable at the time that the service is provided.

**3.2** Samples are only delivered at extra cost, unless other contradicting agreements have been concluded.

### **4. Retention of title**

**4.1** The objects of the deliveries (goods subject to retention of title) remain the deliverer's property to the fulfilment of all claims from this business relationship that he is entitled to from the orderer. If the value of all sureties, which the deliverer is entitled to, exceeds the amount of all secured claims by more than 20 per cent the deliverer will release the relevant part of the sureties upon the orderer's request.

**4.2** For the duration of the retention of title the orderer is prohibited to pledge or assign sureties and the selling on to resellers is only permitted in the course of orderly business and under the condition that the reseller receives payment from his customer or reserves the right that the property is only assigned to the customer if the latter has fully satisfied his payment obligations.

#### **4.3**

**4.3.1** If the orderer sells on goods subject to retention of title he as a precaution herewith already assigns to the deliverer his future claims from the sale to his customers with all subsidiary rights – including any balance claims – without any special declarations being required later. If the goods subject to retention of title is sold on together with other objects, without an individual price being agreed for the goods subject to retention of title, the orderer herewith assigns to the deliverer with priority to other claims the part of the total price claim, which corresponds to the price the orderer has been invoiced for for the goods subject to retention of title.

**4.3.2** If a probable cause of interest is shown the orderer must provide the deliverer with the information required for the assertion of his rights against the customer and the orderer must hand over to the deliverer the required documents.

**4.3.3** Until revoked the orderer is entitled to collect the assigned claims from the sale. In the event of an important reason, in particular in the event of delayed payments, suspension of payments, initiation of insolvency proceedings (bankruptcy, settlement, total enforcement), bill protest or if there are comparable justified indications that suggest the illiquidity of the orderer the deliverer is entitled to revoke the orderer's right to collection. Furthermore, after prior warning of the disclosure of the surety assignment and the use of the assigned claims subject to an adequate period of grace the deliverer may disclose the surety assignment, use the assigned claims as well as demand the orderer's disclosure of the surety assignment towards the customer.

#### **4.4**

**4.4.1** The orderer is permitted to further process, restructure or combine with other objects the goods subject to retention of title. The processing, restructuring or combination is for the deliverer. The order keeps the new object for the deliverer with the due diligence of an orderly businessperson. The processed, restructured or combined object is considered a good subject to retention of title.

**4.4.2** In the event of the processing, restructuring or combination with other objects that are not the deliverer's property the deliverer is entitled to the joint property right of the new object amounting to the share, which results from the ratio of the value of the processed, restructured or combined good subject to retention of title to the value of the remaining processed good at the time of the processing, restructuring or combination. If the orderer acquires the sole property right of the new object the deliverer and the orderer agree that the orderer grants the deliverer the joint property right of the new object developed due to the processing, restructuring or combination in the ratio of the value of the processed, restructured or combined good subject to retention of title to

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**Licatec** Profilextrusion GmbH | Am Sinnerhoop 44-46 | 58285 Gevelsberg | Germany

**Licatec** Produktions GmbH | Erzstraße 7 | 09618 Brand-Erbisdorf | Germany

the remaining processed, restructured or combined good at the time of the processing, restructuring or combination.

**4.4.3** In the event of a sale of the new object the orderer herewith assigns to the deliverer as a precaution his claims from the sale towards the customer with all subsidiary rights, without any further declarations being required later. The assignment, however, only applies to the amount, which corresponds to the value of the processed, restructured or combined good subject to retention of title, which the orderer has been invoiced for. The share of the claim assigned to the deliverer must be satisfied with priority.

**4.4.4** If the orderer combines the good subject to retention of title with realties or moveable assets the orderer assigns as a precaution to the deliverer, without any further declarations being required, the claims with all subsidiary rights, which he is entitled to as payment for the combination, to the amount of the ratio of the value of the combined good subject to retention of title to the remaining combined goods at the time of the combination.

**4.5** The orderer must notify the deliverer immediately of pledges, confiscations or other dispositions or interventions on the part of third parties.

**4.6** In the event of the orderer's culpable breach of essential contractual obligations, in particular in the event of delayed payments, the deliverer is entitled to withdrawal after warning. The orderer is obliged to the handover. The withdrawal or assertion of the retention of title or the pledge of the delivery object on the part of the deliverer is not a withdrawal from the contract, unless the deliverer expressly declares the same. After prior warning the deliverer is entitled to use the withdrawn goods subject to retention of title and by offsetting to satisfy his outstanding claims from their proceeds.

**4.7** The deliverer is entitled to offset with all claims, which he or one of the companies listed below is entitled to from the orderer, against all claims, which the orderer is entitled to from him or any of the companies listed below. The following companies have authorised the deliverer to offset:

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Licatec GmbH Leuchtenbau und Kabelführungssysteme, 09618 Brand-Erbisdorf, Germany,

Licatec Profilextrusion GmbH, 58285 Gevelsberg, Germany and Licatec Produktions GmbH, 09618 Brand-Erbisdorf, Germany.

## 5. Payment conditions

**5.1** Invoices shall be payable 30 days after date of same, to the extent that no other written agreement has been concluded. In the event of delayed payments defaulting interest is charged for current account credits. The first day of the payment term is the date of issue of the invoice. In the event of the orderer's delayed payments the deliverer may demand immediate payment of all claims including those maturing later regardless of any contradicting conditions.

**5.2** The offsetting and / or retention of payments due to the orderer's counterclaims, which the deliverer has not recognised, are not permitted.

**5.3** Cheques and bank transfers are accepted on account of payment to their rightful redemption. The day of fulfilment of payments is the day on which the deliverer can dispose of the amount without reservation. Bills of exchange are not valid as means for payment and are only accepted subject to agreement that the debtor bears the bank, discount and redemption fees.

## 6. Delivery term

**6.1** The beginning of the delivery term is the day on which the written agreement relating to the order is available to the

orderer and the deliverer. The compliance with the delivery term presupposes the timely receipt of all documents to be supplied by the orderer, such as e.g. required permissions, authorisations, the timely clarification and authorisation of plans, the compliance with the agreed payment conditions and with any other conditions. The delivery terms stated are always approximate and unbinding. Partial deliveries are permitted at any time. We only carry out deliveries to unknown orderers in return for cash on delivery or advance payments. The deliverer is liable for the compliance with the delivery terms only in the event of the express acceptance of a liability. If these obligations are not met in due time the delivery term is extended without the deliverer being liable for damages.

**6.2** The delivery term is subject to unforeseen events, whether they occur in the factory of the deliverer or his suppliers, such as force majeure, mobilisation, war, rebellion, an important work piece becoming reject or any other inculpable delays for the delivery, business disruptions, strikes and lockouts as well as subject to a delayed delivery of essential raw and production materials that is not culpably caused by the deliverer, if these events are demonstrably of significant influence on the production or delivery of the delivery object. This also applies to already existing delays. In the case of such events occurring the deliverer must notify the orderer as soon as possible. The deliverer must be granted an adequate period of grace.

**6.3** The term of delivery shall be deemed to have been adhered to when the relevant consignment leaves the supplier's production facility or the warehouse.

**6.4** If upon the orderer's request the dispatch or delivery is delayed in relation to the agreed delivery date the orderer is charged storage fees amounting to 1/2 percent of the amount invoiced for each commenced month beginning from one month after the notification of the readiness to deliver.

## 7. Transfer of risk

**7.1** The risk is transferred to the orderer even if the factory or the delivery storehouse has agreed freight paid deliveries:

If the good has left the deliverer. The dispatch is upon the orderer's commission. If no particular delivery regulation has been agreed the deliverer chooses the cheapest delivery kind at his discretion. The packaging is carried out with due diligence, the dispatch is at the best to the ability, however, without liability on the part of the deliverer. Upon the orderer's request and at the orderer's expenses the deliverer will insure the delivery for loss of the delivery and for damages due to breakages, transport and fire.

**7.2** In the event of dispatch or delivery delays upon the orderer's request the risk is transferred to the orderer on the day of the goods being ready for dispatch for the duration of the delay; however, upon the orderer's request and at the orderer's expenses the deliverer is obliged to take out relevant insurances.

**7.3** Returns may only be accepted with the deliverer's prior consent and freight paid. Special designs are excluded from returns.

Principally, the buyer receives a credit subject to the deduction of the handling fees amounting to 20% of the delivery value as well as the costs for the returns, review, reinstatement work and new packaging.

## 8. Acceptance and fulfilment

**8.1** The orderer must accept the products supplied even if they are insignificantly faulty and of a quality that does not hinder the function of the product.

**8.2** Partial deliveries are permitted.

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**8.3** The readiness for dispatch of the goods reported to the orderer as stipulated in the delivery conditions is considered as fulfilment of the delivery contract.

**8.4** From the day of fulfilment, the supplier shall only be responsible according to the provisions of these General Terms and Conditions of Trade pursuant to section 9 (Liability for Defects in Delivery) and for dispatching the objects upon request. Any assured qualities are only considered as such if they are expressly stated and perfectly recognisable as such.

#### **9. Liability for defects in delivery**

**9.1** The buyer must inspect and test the goods immediately after delivery.

**9.2** The deliverer must be notified in writing of complaints due to false or incomplete deliveries or due to defects immediately, at the latest, however, once week after the delivery. If defects occur later the deliverer must be notified in the same form and within the same period from the discovery of the defect. Complaints due to hidden defects are at any rate only permitted to the expiry of 12 months after the delivery of the goods. Defects must be specifically described.

**9.3** Upon the receipt of a dispatch, which is already damaged externally, the buyer is obliged to assert damage claims with the carrier / freight forwarder by submitting the official rail or postal protocol and to notify the deliverer immediately in writing.

**9.4** The buyer must inspect the goods thoroughly, particularly in view of any material defects. The deliverer is not liable for damages and accidents occurring during and / or after mounting.

**9.5** The natural wear and tear and damages, which are caused as a result of the orderer's negligent or improper handling, are excluded from the liability. The liability expires if the object of purchase is change on the part of a third party or if the orderer or a third party installs parts of foreign origins. This also applies for the improper handling, inexpert mounting or activation of the contractual object. In these events the deliverer is released from any liability.

**9.6** With the exemption from further liability claims the deliverer is obliged at his discretion to provide amendments, replacement deliveries or the delivery of replacement parts within an adequate period of time.

**9.7** In order to carry out all changes that the deliverer deems required as well as to deliver replacement parts the orderer must grant an adequate period of time and adequate opportunities. If he refuses the same the deliverer is released from his liability for defects.

**9.8** All further claims, not matter of which kinds (in particular damage claims from the impossibility of performance, damage claims due to consequential damages, claims due to culpability upon the conclusion of the contract, claims from extra-contractual liabilities as well as damage claims due to any culpable breaches of the deliverer's obligation to provide amendments or replacement deliveries) are excluded. This shall not apply where either the supplier or his legal representative or agent has acted with intent or gross negligence, or where mandatory liability exists in the case of missing guaranteed characteristics or the breach of significant contractual obligations.

**9.9** In principal, the orderer must comply with the contractual obligations residing with him, namely the agreed payment conditions. If claims of defects are asserted the payments of the orderer may only be retained to an extent, which is of adequate ratio to the occurred defects and which was in advance agreed in writing with the deliverer.

**9.10** If the orderer demands the liability from the deliverer and it emerges later that the deliverer is not subject to any

obligations hereto the orderer bears all adequate expenses incurred to the deliverer in this connection.

#### **10. The orderer's right to withdrawal or reduction**

**10.1** If before the transfer of risk it is finally impossible for the deliverer to perform the orderer may withdraw from the contract in the event of absolute impossibility without any entitlement to compensation for damages. If for an order of equal objects one part of the delivery is impossible in its number the orderer may reduce the counter-performance accordingly.

**10.2** The customer shall be entitled to withdraw from the contract if in the sense of section 6 of these General Terms and Conditions of Trade a delay in service exists as well as the express declaration by the customer that after expiry of the reasonable period of grace granted by same, acceptance of the service will be refused, provided that the period of grace was not adhered to due to the fault of the supplier.

**10.3** If impossibility occurs during the delayed acceptance or due to the orderer's culpability the orderer remains obliged to counter-performances.

**10.4** Moreover, the orderer may withdraw from the contract if the deliverer lets expire fruitlessly due to his culpability an adequate period of grace stipulated for the removal or amendment of a defect, which he is responsible for. The adequate period of grace does not commence before the defect and the deliverer's responsibility have been acknowledged or proven.

**10.5** The orderer may only declare the withdrawal if his interest in the delivery is significantly affected or no longer remains.

**10.6** All other claims on the part of the customer shall be excluded.

#### **11. The deliverer's right to withdrawal**

The supplier shall have a right of withdrawal to the extent that he is not able to perform according to section 10. This shall apply in the case of unforeseen events in the sense of section 6 of these General Terms and Conditions of Trade, to the extent that they significantly change the economic intention or the content of the performance of have a significant effect on the operation of the supplier and in the case where actual impossibility of delivery subsequently becomes apparent. In realisation of the extent of the event the deliverer must notify the orderer immediately of his intention to withdraw, even if initially an extension of the delivery term has been agreed with the orderer. The orderer's claims for damages are excluded in the event of such a withdrawal. The deliverer's obligation to deliver presupposes the orderer's creditworthiness. If even after the obligations have been assumed justified doubts emerge in this respect the deliverer is entitled to demand sureties or to withdraw from his obligation to deliver without this resulting in the orderer's right to compensation for damages. Also, the purchase price for the goods already delivered is payable immediately.

#### **12. Other liability for breaches of obligations**

**12.1** Irrespective of the guarantee provisions as well as other special arrangements concluded in these provisions, the following shall apply in cases where we are in breach of an obligation:

We shall be liable for compensation for damages by our employees, agents and representatives to an unlimited extent as well as for minor negligence in the case of injury to life, limb or health. Beyond this, we shall only be liable to the following extent:

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**12.2** The customer shall grant us a reasonable period of grace to remedy a breach of obligation, which shall not be less than three weeks. The customer may only withdraw from the contract and / or claim compensation for damages after fruitless expiry of the period of grace.

**12.3** Where we breach a significant obligation in terms of the contract, that is, one that must be adhered to for fulfilment of the purpose of the contract, we shall also be liable for cases of intent, gross negligence and minor negligence. In these cases damages shall however be limited to those typically foreseeable.

**12.4** Where the breach of obligation does not constitute a breach of a significant obligation of this contract, we shall only be liable in cases of gross negligence and intent.

**12.5** Our liability due to bad faith and in accordance with the product liability law shall remain unaffected.

Produktions GmbH, 09618 Brand-Erbisdorf shall be Freiberg. The supplier shall however reserve the right to litigate at any other competent court. The laws of the Federal Republic of Germany shall exclusively apply, to the exclusion of uniform international law on trade in merchandise.

### **13. Breach of trademark rights**

Where claims due to breach of German trademark rights are asserted against the customer based on objects supplied or licensed in terms of these conditions, we shall reimburse the customer for all legally imposed costs and amounts for compensation of damages if we are immediately informed of such claims in writing and we receive all necessary information from the customer, the customer has fulfilled his general obligations of cooperation, we are in a position to make the final decision as to whether the claim is to be rejected or reconciled, and we are responsible for breach of the trademark. Where it can be legally determined that further use of the contractual objects breaches German trademark rights of third parties, or the danger of complaints in terms of trademarks exists, in our opinion, we are entitled, to the extent that the breach does not lapse, at our own costs and at our discretion, either to grant to the customer the right to continue using these contractual objects or to exchange or otherwise modify same such that this no longer constitutes a breach, or to reimburse the customer the value of the returned contractual object less compensation for use up to this time. Compensation for use shall be calculated on the basis of an accepted write-off period of three years, such that an amount of 1/36 of the price shall be paid for each month of use.

### **14. Binding nature of the contract**

**14.1** Should one or several of the above provisions be or become ineffective or contain a loophole, the remaining provisions shall remain unaffected by this.

**14.2** To the extent that no regulation exists in our General Terms and Conditions of Trade for particular cases, the "Allgemeinen Lieferbedingungen für Erzeugnisse und Leistungen der Elektroindustrie" (General conditions for the supply of products and services of the electrical industry) in the version of June 2005 of the ZVEI (German Electrical Manufacturers Association) shall apply.

### **15. Place of fulfilment and place of jurisdiction**

**15.1** Place of fulfilment for all obligations by Licatec GmbH Licht- und Kabelführungssysteme, 50226 Frechen shall be Kerpen, by Licatec GmbH Leuchtenbau und Kabelführungssysteme, 09618 Brand-Erbisdorf shall be Freiberg, by Licatec Profilextrusion GmbH, 58285 Gevelsberg shall be Hagen and by Licatec Produktions GmbH, 09618 Brand-Erbisdorf shall be Freiberg.

**15.2** Place of jurisdiction for Licatec GmbH Licht- und Kabelführungssysteme, 50226 Frechen shall be Kerpen, for Licatec GmbH Leuchtenbau und Kabelführungssysteme, 09618 Brand-Erbisdorf shall be Freiberg, for Licatec Profilextrusion GmbH, 58285 Gevelsberg shall be Hagen and for Licatec

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