

**TERMS AND CONDITIONS OF DELIVERY AND INSTALLATION**  
**LJU Automatisierungstechnik GmbH**  
**As of: March 2010**

**I. Scope and conclusion of agreement**

1. The latest version of our terms and conditions of delivery and installation at the time of conclusion of the agreement shall be applicable to all our services. In addition, the latest version of our cost rates at the time of conclusion of the agreement shall be applicable.
2. The latest version of our terms and conditions of delivery and installation and our cost rates respectively at the time of conclusion of agreement shall also apply to future business dealings with the customer.
3. Save any contractual arrangements, these general terms and conditions (GTB) of business shall be applicable exclusively. Other provisions shall not become part of this agreement even if we have no explicit objection. This shall hold true particularly for GTBs of contractual partners conflicting with or supplementary to our GTB.
4. Our offers are subject to change. An agreement shall come into effect only upon written confirmation of order by us. Our scope of services shall be conclusively defined via our written confirmation of order along with annexures in writing.
5. Collateral agreements and amendments shall be effective only after our written confirmation. This applies to the waiver of this provision as well.
6. Our performance of the agreement in respect of those elements of delivery that are covered under governmental export regulations shall be subject to necessary approvals being granted to us.
7. Documents and data provided by us such as images, diagrams, specifications of weights and measures shall be binding only if we explicitly list these as a component of this agreement or explicitly refer to the same.
8. We reserve our rights of ownership and copyright to all information and documents provided (e.g. samples, cost estimates, diagrams, documentation), even in electronic form. These shall not be provided to third parties without our prior written consent.
9. The written form can be substituted by fax, but not by electronic form in accordance with § 126a *BGB* (*Bürgerliches Gesetzbuch* = German Civil Code) or text form in accordance with § 126b *BGB*.
10. These GTB may not be used with respect to clients in accordance with § 13 *BGB*.

**II. Prices and payment**

1. Our prices are ex works plus statutorily applicable VAT, packing and loading.
  - a. For services within the European Union, the customer must provide its sales tax ID number in good time before the contractually arranged delivery date as proof of its exemption from VAT. We reserve the right to charge the VAT applicable respectively in case of failure to provide this information in full and in good time.
  - b. For services outside the European Union, we shall be entitled to charge statutory VAT additionally if the customer does not provide us proof of exportation within a month of dispatch.
2. Cost estimates are binding in written form alone.
3. Unless agreed otherwise, the customer must make payments as follows: a 1/3 installment after receipt of order confirmation, 1/3 after performance or notification of readiness for delivery/acceptance in respect of the main parts, the last installment after the passing of risk.
4. Installations, repairs and other services shall be invoiced at the costs rates in effect at the time, which we may request. Surcharges will be levied for work outside normal working hours. Travel and wait times shall count as working hours.
5. Payment must be made into one of our accounts without deduction.
6. Customer may only set off or withhold payment in the case of counterclaims for which the legal basis or amount thereof are not disputed or are final and absolute.

7. Payments by the customer shall come due after receipt of our invoice. Provided no other payment deadline is arranged, the customer shall come into default 30 days after receipt of invoice without further notice and shall be obligated to pay interest on arrears at 8 percentage points above the base interest rate.
8. Offer prices shall be applicable only if the full range of services offered is ordered.

**III. Further use of service/assignment for security purposes**

1. If the contract awarded to us or order placed by the customer with us relates to a specific project by a contractual partner of the customer (consumer) and our service becomes a part of the service provided by our customer to the consumer, the following shall apply:
2. By "Consumer's project" is meant every contractual relationship between the customer and the consumer whose purport wholly or partly is aimed at the deployment or further deployment of services rendered or to be rendered by us, in whole or in part, by the consumer to meet its company or other business objectives.
3. At the time of award of contract or order, the customer must name its contractual partner and the project wherein our services will be an integral part of the service owed by the customer to the consumer or otherwise deployed by the consumer. We undertake to maintain secrecy in respect of information furnished to us by the customer. Should the customer on its part be called upon or committed to secrecy by the consumer, we reserve the right to withhold delivery of the object of the agreement until full payment for the counter-performance agreed upon.
4. Regardless of the provisions at Item 3, the customer hereby assigns us all present or future claims existing against its consumer if and to the extent our service is an integral part of the service owed by the customer to the consumer. The assignment shall be merely by way of security and only in the amount of our pecuniary claim under Item II. With this assignment for security purposes, our customer empowers us to disclose to its consumer the assignment of the claim assigned to us for security purposes in the event of default of payment by the customer and expiry without outcome of a further payment deadline of four weeks set by us in writing, and to invoke the claim to the extent of our payment claim after disclosure to the consumer.

**IV. Performance, passing of risk, acceptance**

1. We reserve the right to part performance that is reasonable.
2. INCOTERMS 2000 EXW shall be considered agreed. Deliveries shall take place "ex works Potsdam" unless agreed otherwise.
3. In the case of work services, risk shall pass to the customer upon their acceptance. If the customer undertakes to transport the item from the place of manufacture to the place of use, it must bear the risk for the duration of the transportation.
4. Provisions for the passing of risk shall apply even if part performance is effectuated or further services are to be provided by us.
5. If delivery or acceptance is delayed or does not take place due to circumstances not attributable to us, risk shall pass to the customer on the date of notification of readiness for delivery or readiness for acceptance.
6. If desired by the customer, we shall take out insurance policies as required at the customer's cost.

**V. Reservation of ownership**

1. Delivery items shall pass into the ownership of the customer only after complete payment has been effected. The customer is responsible for ensuring that any specific preconditions or formalities linked to reservation of

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ownership in the country of consignment for it to have legal force are satisfied.

2. The customer may not hypothecate, sell or assign by way of security the delivery item prior to the transfer of ownership. In the event of hypothecation, confiscation or other disposals by third parties, the customer must indicate our ownership and inform us immediately.
3. We shall be entitled to take back the goods after notice in case actions by the customer lead to a breach of this agreement, particularly in case of default of payment. The customer is obligated to return the goods. Neither assertion of reservation of ownership nor confiscation of the delivery item by us shall be considered as rescission of the agreement.
4. An application to initiate bankruptcy proceedings over the customer's assets entitles us to rescind from the agreement and to demand immediate return of the delivery item.
5. In addition, the following shall be applicable if the customer has its headquarters in the Federal Republic of Germany:
  - a) Notwithstanding Section V.1, we reserve the right to ownership of the delivery items till all claims against the customer arising out of the current business relationship are satisfied.
  - b) Notwithstanding Section V.2, the customer is entitled to resell or refinish the delivery items covered under reservation of ownership in the ordinary course of business subject to the following conditions: It must resell delivery items that are subject to reservation of ownership if a third party purchasing the delivery items does not pay for them immediately in full. The right to resell shall stand cancelled if the customer comes into default of payment. With the conclusion of this agreement, the customer assigns us all claims arising out of a resale or any other legal ground. In the event of creation of co-ownership, the assignment shall include only that portion of the claim that corresponds to our co-ownership.
  - c) The customer shall remain entitled to recover claims assigned to us even after assignment as long as it complies with its payment obligations towards us in accordance with the agreement. Irrespective of the same, we shall be at liberty to request the customer to provide information about claims assigned and their debtors at any time. In such cases, the customer must furnish us all information required for collection, provide all documents needed and inform the debtor about the assignment.
  - d) The customer shall finish goods subject to reservation of ownership for us at all times. If goods subject to reservation of ownership are mixed, mingled, combined or finished with other items not owned by us, we shall acquire (co)-ownership to the new item in proportion to the ratio of the invoice amount, at the time of finishing, of the goods subject to reservation of ownership to the other items finished. If our goods are mixed, mingled, combined or finished with other movable items into one uniform item, and the other item can be considered the principal item, it shall be considered agreed that the customer has conferred us proportionate ownership, provided the principal item belongs to it. The customer shall maintain ownership or co-ownership for us. The same shall apply in other respects to the item resulting from mixing, mingling, combining or finishing as it does to items subject to reservation of ownership.
  - e) We undertake to release the securities to which we are entitled to the extent that their invoice value not only temporarily exceeds our as yet unsatisfied (residual) claims by more than 15%.
  - f) The affixing or incorporation of our delivery items that are affixed to land or incorporation into a building shall be for temporary purposes only.

**VI. Service period**

1. Compliance with the service period arranged presupposes that all commercial and technical issues between us and the customer have been clarified, that the customer has met all obligations incumbent on it, and in particular has provided us all documents, service descriptions etc. The service period shall be extended appropriately if this is not the case, but not if the delay is attributable to us.
2. Compliance with the service period is subject to correct on-time receipt of components by us from our component suppliers. We shall provide information immediately of any impending and evident delays, providing reasons for the same.

If non-compliance with the service period is attributable to manufacturing or supply outages at our suppliers or to defects in components supplied by our suppliers or other third parties, or to force majeure, strike, lockout, non-receipt or delayed receipt of government approvals by us or our suppliers, transportation stoppages, discontinuation of important components or other events outside our control, the service period shall be extended appropriately. We shall provide information about impending delays that are evident on the basis of the above events.
3. The service period shall be complied with if notification of readiness for delivery is made before expiry of the service period. If acceptance is to take place, the date of acceptance or, in the alternative, our notification of readiness for acceptance is authoritative in respect to timeliness.
4. Costs incurred due to delay shall accrue to the customer if the delay in delivery or acceptance of the delivery item is attributable to the customer. The right to assert other damages shall remain reserved.
5. After an appropriate timeframe has been set for delivery or acceptance that expires without outcome, we reserve the right to dispose of the delivery item in any other manner and provide it to the customer within a suitably extended period.

**VII. Service delays, impossibility**

1. In case of partial impossibility, the customer may rescind from the agreement only if part performance is demonstrably of no interest to the customer. If part performance continues to be of interest to the customer, the customer must pay the contractual price that can be apportioned to the part performance. Section X shall be applicable in other respects.

The customer shall remain obligated to provide counter-performance if impossibility were to arise during the delay in acceptance or due to its fault.
2. If the impossibility cannot be attributed to either party to the agreement, we shall be entitled to partial compensation based on the service rendered by us thus far.
3. If we are in default and this results in damages for the customer, the customer is entitled to demand a lump-sum compensation for default.

Damage for default shall accrue from the date the claim is received by us in writing, at 0.5 % per week of delay, for a maximum total of 5% of the value of that portion of the overall performance that cannot be used in time or in accordance with the agreement as a result of the delay.
4. The customer is entitled to rescind from the agreement within the scope of legal provisions if a suitable deadline for the supply of services set for us at the time of our default expires without outcome, subject to exceptions under the law.
5. Other claims due to delays in delivery shall be determined exclusively in accordance with Section X.

**VIII. Acceptance**

1. Our work services shall be considered accepted two weeks after our notification of readiness for acceptance

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unless the customer notifies the presence of fundamental defects in writing within this period.

2. The customer is entitled to refuse delivery only if the defect incapacitates or substantially reduces the normal and/or contractually presumed use of the item and/or its usefulness. If the work has defects that do not justify refusal of delivery, acceptance can take place subject to removal of defect.
3. Refusals of delivery or objections to acceptance must be communicated immediately in writing, providing specific details and describing the defect notified.
4. Use of the delivery item by the customer or its end customers for production purposes shall be considered acceptance.
5. A practice run by the customer shall be considered acceptance.

#### **IX Claims for defects**

1. In the event of material defects and defects in title, the customer has the following claims for defects:
  - a. Claims for defects by the customer presuppose that it has properly complied with its requirements to examine the merchandise and notify defects as required under § 377 HGB (*Handelsgesetzbuch* = German Commercial Code).
  - b. If the delivery item was already demonstrably defective at the passing of risk in accordance with the Section IV, we shall at our discretion supply an item free of defect or with defects rectified. The customer must report the defect immediately providing us written details specifying and describing the defect notified. We reserve the right to ownership of any parts replaced under the exchange procedure.

If the customer does not provide a description of the defect and the item is examined by us for the presence of defects, and no defect is detected or a defect covered under one of the cases described in sub-para. c) is detected, the customer shall compensate us for costs incurred in the examination of the item and its restoration to a functional state.
  - c. Claims for defects cannot originate on grounds where negligence cannot be imputed to us. They cannot originate in the following cases not attributable to us either, such as:

Natural wear and tear, excessive strain, improperly undertaken changes or maintenance work by the customer or third parties, incomplete or erroneous information provided by the customer, inappropriate or improper use, faulty operation, installation or commissioning, faulty or negligent handling, improper maintenance, use of inappropriate equipment/substitutes, defective construction work, unsuitable construction site, harmful ambient conditions unknown to us, chemical, electrochemical or electrical effects, changes to the delivery item made without our consent.
  - d. The customer must give us sufficient time and opportunity for subsequent performance. We shall not be responsible for the consequences if we are not given this opportunity. The customer shall have the right to rectify the defect itself or have it rectified by a third party only in emergencies involving danger to operational safety or to prevent excessively heavy damage, of which we shall be notified immediately, and shall be entitled to ask us for reimbursement of the costs occasioned.
  - e. In case of subsequent improvement, we shall bear the labor and material costs incurred for the removal of defect. Excluded are expenditures for shipments of the supposedly defected items back to the place of performance for subsequent improvement.
  - f. In the event of negligent contributory fault for the defect on the part of the customer, particularly due to noncompliance with its obligation to prevent and reduce damage, we shall be entitled to claim

compensatory damages corresponding to the customer's contributory fault after subsequent performance.

- g. If a suitable deadline set for us for subsequent performance expires without outcome due to a defect, the customer is entitled to rescind from the agreement, subject to exceptions under the law. In case of only a minor defect, the customer is merely entitled to a reduction in the contractual price. A right of reduction in contractual price shall otherwise be excluded.
- h. For installations, repairs and other services, Item XIV shall be applicable instead of Item IX.1.g. 11.
- i. Should the use of the delivery item within the timeframes listed in Section XII lead to an infringement of protected privileges or copyrights, we shall in principle acquire for the customer the right to further use or shall modify the delivery item in such manner that the infringement of protected privilege of copyright no longer persists. The parties shall be entitled to rescind from the agreement if this is not possible under conditions that are economically appropriate or within an appropriate time frame. During these periods, we shall release the customer from claims by the concerned rights holder that are disputed or recognized by declaratory judgment.
- j. In case of infringement of protected privilege or copyright, our obligations listed in Section IX Item 1.i are final, subject to Section X.
- k. A claim for subsequent performance due to infringement of protected privilege or copyright shall exist only if
  - the customer informs us immediately in writing, providing specifications and a description of the infringement of the protected privilege and copyrights asserted,
  - the customer supports us appropriately in the defense of claims asserted and facilitates the institution of the measures for modification under Section IX Item 1.i,
  - we retain the right to take any defensive measures, including out-of-court settlement,
  - the infringement of protected privileges or copyrights is not at the customer's instructions or specifications,
  - the infringement of protected privilege or copyright was not caused by the customer's modification of the delivery item arbitrarily or its use in a manner contrary to the agreement.
2. All other claims for defect (in particular, claims for damages not sustained by the delivery item itself) shall be determined exclusively in accordance with sections IX and XVI. 11.
3. Claims for defects in the sale of used goods are excluded, provided liability is not compulsorily stipulated under law.

#### **X. Liability**

1. We shall only be liable, even in the event of damages due to breach of duty in contractual negotiations regardless of legal ground (and in particular, for damages not sustained by the delivery item itself), in the case of:
  - intent,
  - culpable violation of essential contractual obligations,
  - gross negligence by organs or senior executives,
  - culpable injury to life, body or health,
  - defects maliciously concealed by us,
  - breach of warranties for condition or durability
  - personal injury or property damage to the extent the *Produkthaftungsgesetz* (German Product Liability Act) provides for liability for privately used items.
2. In the violation of essential contractual obligations, we shall also be liable for gross negligence by employees who are not senior executives, and for slight negligence

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by organs and senior executives. In case of slight negligence, liability shall be restricted to reasonably foreseeable damages that are typical for this type of agreement.

3. Liability for the destruction of data is restricted to proven expenditure required for its reconstruction if this data was properly insured by the customer, to a maximum of € 1,000.00.
4. Compensation for pure pecuniary loss shall be restricted through the general principles of good faith to a maximum of € 1,000.00, for instance in cases of disparity between the contract value and the loss amount.
5. All other liability shall be excluded regardless of any legal ground whatsoever, particularly compensation for damages not sustained by the delivery item itself.
6. We shall not be liable for consequences from defects for which no claims for defects arise under Section IX Item 1.c.

**XI. Insurance claims under the agreement**

The customer hereby consents to our assertion of any direct claims we may have with the customer's insurance company as a co-insured in respect of the delivery item.

**XII. Software**

1. The general terms and conditions of software products from other suppliers included within the scope of delivery shall take priority. We shall have these delivered to the customer upon request if not already available.
2. Our terms and conditions shall supplement the general terms and conditions of the software supplier, sections X.3 to X. 5 shall apply analogously. Our terms and conditions shall apply in case the general terms and conditions of the software supplier are invalid.
3. For contracts for developing customer specific software, the customer must provide us all necessary technical specifications, system requirements etc. in writing at the time of award of contract. Otherwise, claims by the customer for defects or damage to the product or to customer items, articles etc. that can be attributed to the fact that our software is not compatible or is not fully compatible shall be excluded. This exclusion shall also apply to further damages, with the exception of damages under X Item 1.
4. The customer shall receive a simple, non-exclusive right to use our software products and associated documentation in perpetuity. Granting sub-licenses is not permitted.
5. In principle, we are not obligated to provide the source code underlying the software product.
6. The customer may work with our software products only to the extent legally permitted. The customer must not remove any product information, particularly notices of copyright, or change these without our prior written consent.

**XIII. Limitation**

1. Claims for defects by the customer shall expire 12 months after the passing of risk.
2. Claims by the customer due to defects to buildings or for work for which the success depends on the rendering of planning or oversight services for buildings shall expire 5 years after the passing of risk.
3. With the exception of claims in Section XIII Item 4, all other claims by the customer, regardless of legal ground whatsoever, shall expire 12 months after the passing of risk.
4. For injury to life, body or health, grossly negligent conduct by organs or senior executives, intentional or malicious conduct, culpable violation of essential contractual obligations, warranties, as well as claims under the German Product Liability Act, statutory limitations shall be applicable instead.
5. Commencement of the period of limitation shall be determined on the basis of legal provisions.

**XIV. Installations, repairs and other services**

In addition, the following shall be applicable to installations, repairs and other services:

1. For work carried out at the customer site, the customer must instruct our personnel regarding existing safety regulations and risks at its cost, and must take all measures required for the protection of individuals and items in the workplace.
2. The customer must provide adequate support to our personnel in carrying out the work at its own cost and must provide all assistance required, such as preparation of the construction site, provision of tools and lifting equipment, provision of water and electricity etc.
3. The customer must assist in ensuring that work can start immediately upon arrival of our personnel and continue without delay until acceptance.
4. If the customer does not meet its obligations, we shall be entitled, though not obligated, to undertake the actions incumbent on the customer in its stead and at its cost.
5. Should we be unable to provide a service for reasons that cannot be attributed to us, the customer must compensate us for services already rendered as well as expenditure already incurred.
6. Parts replaced under the exchange procedure shall become our property.
7. If performance is lost or impaired before acceptance for no fault of ours, the customer must refund us the price minus any saved expenditures. For repair work, this shall apply in particular to the damage in transit to repaired goods caused by improper packing.
8. Repair timeframes confirmed by us in writing alone are binding.
9. Repairs will be carried out without guarantee if a defect report unambiguously describing the error or the circumstances of its occurrence is not provided.
10. Objections to repair works must be asserted within a week of receipt of the device or termination of the repair work at the latest. Subsequent claims cannot be considered. The terms and conditions under IX. "Claims for defects" and X. "Liability" shall apply mutatis mutandis.
11. For installation, repairs and other services, the customer is entitled to a reduction within the scope of legal provisions if a suitable deadline for the supply of services set for us at the time of our default expires without outcome, subject to exceptions under the law. This right of reduction shall exist in other cases of failure to rectify defects as well. The customer is entitled to rescind from the agreement only if installations, repairs and other services are demonstrably of no interest to the customer despite the reduction.

**XV. General provisions**

1. All taxes, fees and charges in connection with performance outside the Federal Republic of Germany shall be borne by the customer and if need be reimbursed to us.
2. Personnel related data shall be stored by us in compliance with statutory regulations.
3. We shall not refund return transportation packing costs.
4. The customer shall obtain all approvals and/or export and import papers required for the use of the products at its own cost.
5. The place of performance and the place of payment for all obligations related to the contractual relationship shall be our company headquarters.
6. Should individual terms in these terms and conditions of business or in the agreement be or become invalid in whole or in part, the remaining provisions shall not be affected thereby.

**XVI. Applicable law, Place of Jurisdiction**

1. If the customer's corporate headquarters are located in the Federal Republic of Germany, the place of jurisdiction shall be our company headquarters. We reserve the right

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to commence action at the customer's statutory place of jurisdiction.

2. If the customer's corporate headquarters are located outside the Federal Republic of Germany, arbitration proceedings shall be conducted at the International Chamber of Commerce in Paris under ICC rules of arbitration. Its order shall be final. The order shall be delivered by three judges stating reasons. Our insurance company may participate under the options for participation by due legal process. We reserve the right to commence action at a statutory place of jurisdiction.
3. This agreement is governed by the laws of the Federal Republic of Germany to the exclusion of all conflicting rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG).