

**General Conditions of Purchase**  
**of LCS Cable Cranes GmbH & LCS Pipelines GmbH**  
as of 12 October 2020

## **1 Introduction**

- 1.1. Unless the contracting parties have expressly agreed otherwise in writing, the present General Terms and Conditions shall apply. They are applicable for the delivery of products or the performance of services by the Contractor based on a written order from Purchaser.
- 1.2. The contracting parties are hereinafter referred to as Purchaser and Contractor, or individually as Party and together as Parties.

## **2 Conclusion of contract**

- 2.1. The contract shall be deemed to have been made upon receipt of the statement of acceptance associated with the offer.
- 2.2. Any modification and amendment of the contract shall be confirmed in writing in order to become effective.
- 2.3. The Contractor acknowledges the exclusive validity of these General Conditions of Purchase with the delivery or the performance of services.
- 2.4. The Contractor's General Terms and Conditions shall only be binding upon Purchaser if Purchaser has accepted them separately.
- 2.5. The Contractor shall immediately notify the Purchaser in writing of any changes to products or services which have been subject of an earlier delivery or service. If the Contractor does not notify the Purchaser of such changes prior to acceptance of the offer the Purchaser may resign from the offer, provided that the notification is given out of season for persisting in the delivery of the unchanged products or services.
- 2.6. In the event that import and/or export licenses or foreign currency permits or other authorizations are required for the performance of the contract, the party responsible for obtaining such documents shall make every reasonable effort in order to obtain the necessary licenses or permits in due time.
- 2.7. The Contractor may not transfer any rights arising out of the contract to a third party without the prior written approval of the Purchaser.

## **3 Scope of Delivery**

Type and scope of delivery or services are specified in the order.

## **4 Price and Payment**

- 4.1. Prices are specified in the order. Any freight or packaging costs, levies, fees, duties, import or export charges, insurance and incurring taxes are included in the price, but shall be quoted separately. All amounts owed by Purchaser to Contractor are to be paid net within 14 (fourteen) days with 3 % (three per cent) discount or within 30 (thirty) days as of contractual fulfilment of the contract and submission of invoice.
- 4.2. Unless agreed otherwise, Purchaser's principal place of business shall be the place for payments. The Purchaser has the right to withhold payments in case of a deviation from contractual obligations by the Contractor.
- 4.3. The Purchaser has the right to set off claims it might have against the Contractor with claims the Contractor has against the Purchaser.

## 5 Delivery and Passage of Risk

- 5.1. In the absence of any other agreement, the period of delivery of goods shall begin at the latest of the following dates:
- the date when the contract is signed;
  - the date on which Contractor has complied with all technical, commercial and financial preconditions;
  - the date on which Purchaser has transferred the advance payment that is due prior to the delivery of the goods, or a commercial letter of credit has been issued.
- 5.2. Unless not contractually agreed otherwise, delivery or performance of services, including transport, customs and other documents, is subject to INCOTERMS 2020 DAP at the place of business of the Purchaser at its premises in Austria. Passage of risk occurs with delivery and unloading of the goods or performance of the services at the place of business of the Purchaser, unless stated otherwise in the contract.
- 5.3. The Purchaser has the right to amend or cancel, in its sole discretion, the delivery of the ordered product or services even after signing of the contract. In such case, the Purchaser shall pay the Contractor for all contractual products or services delivered.
- 5.4. The costs and risk of the transport are for the Contractor's account. It shall also bear the costs for the insurance and the packaging.
- 5.5. The Purchaser is obliged to payment of the price in full no earlier than receipt of complete contractual delivery of goods or services occurred.
- 5.6. The Purchaser has the right to reject delivery in case of inadequate packaging, marking or documentation as well as partial or advance deliveries, if not pre-agreed in writing. Alternatively, the Purchaser may decide to accept such delivery and store it at the Contractor's cost and risk until full contractual delivery.
- 5.7. Upon request of the Purchaser, the Contractor is obligated to take, free of charge, its packaging material back and dispose of it in an environmentally sound manner.
- 5.8. To guarantee a safe handling of the new products, the Contractor shall provide the following documents with delivery:
- Working material:
    - Declaration of conformity
    - Instructions and Maintenance manual in German and English
  - Personal protective equipment:
    - Declaration of conformity
    - Instructions and Maintenance manual in German and English
  - Chemical substance:
    - Safety data sheet
  - Raw material:
    - if requested by Purchaser, certificates for the material and any Testing
  - Assembly part (electric and mechanical):
    - Declaration of conformity (unless it is a work in progress)
    - Operations manual
    - Assembly manual
    - Maintenance manual
    - List of spare parts

## 6 Delivery Period and Delays

- 6.1. The delivery period is stated in the order.
- 6.2. In case of threatening or expected delays the Contractor shall immediately take all appropriate measures at no costs to the Purchaser to avoid any actual delays. The Purchaser shall be immediately informed in writing about any threatening or expected delays.
- 6.3. In the event of non-compliance with the delivery period or dates the Contractor is immediately in delay without the necessity of a prior overdue notice by the Purchaser.
- 6.4. If Contractor has caused a delay in delivery Purchaser may either demand the performance of the contract or withdraw from the contract, granting a reasonable respite.

- 6.5. In any case, the Purchaser has the right to request immediate payment of liquidated damages in the amount of 1% of the value of the order for each commenced week of delay, however maximum 10%. Furthermore, the Contractor shall hold the Purchaser harmless for any further damage on account of the delay.
- 6.6. If a delivery is delayed on account of a circumstance on either Party's part that constitutes a reason for relief according to Article 9, a reasonable extension of the period of delivery shall be granted, without default being incurred.

## **7 Warranty**

- 7.1. Contractor warrants that the delivered products or performed services comply with the respective norms and are state of the art. Especially, machines and facilities shall suffice their product specific safety rules and requirements.
- 7.2. Contractor shall warrant for any defects in the product or services, which appear within 2 years, in case of immovable assets within 3 years, as of the date at which the operating permit is granted, at the date as of the delivery, in case of performance of services by Contractor as of the end of the performance. Warranty is due independent as to whether the defect already existed at the time of hand over or not. In case of hidden defects, the warranty period starts with their perceptibility.
- 7.3. A defect exists in case the product or service lacks an agreed or required characteristic.
- 7.4. The Contractor shall comply with its warranty obligation, at its choice by either repairing or replacing the defect. If a delivery is defective when processing it or taking it in use, the Contractor shall compensate the Purchaser also for all costs incurred in connection therewith.
- 7.5. In case of imminent danger, the Purchaser has the right to remedy defects itself or to have them remedied by third parties. The costs incurred thereby shall be borne by the Contractor.
- 7.6. For repaired or replaced parts and for improvement works the warranty period starts anew with the improvement or replacement. During the warranty period the Purchaser may report any defects at any time.

## **8 Damages**

- 8.1. The Contractor is liable to the Purchaser for all disadvantages arising out of an infringement, especially for damages occurring by means of late or deficient delivery or performance of services. This liability extends to deliveries or services of sub-contractors.
- 8.2. The Contractor warrants that no third-party rights are infringed by its delivery or services. Furthermore, Contractor holds Purchaser harmless of all claims arising due to a violation of such rights.

## **9 Termination**

- 9.1. Each Party may terminate the Contract by written notice to the other Party due to the following reasons:
  - The other Party breaches an essential term or condition of the contract by an act or omission and does not remedy such a breach within a grace period of 14 (fourteen) days.
  - The other Party or its parent company is or becomes insolvent or bankrupt.
  - The other Party or its parent company stops or suspends its operation, or sells a substantial part of its business, or a trustee or liquidator is appointed for a part or all of the assets of the other Party or its parent company.
- 9.2. Purchaser may terminate the contract by written notice to Contractor if Contractor does not deliver the goods as agreed in the contract. The same applies if Contractor, upon request of Purchaser, does not provide adequate evidence in a timely manner that it is capable of acting. A termination is only valid if Contractor does not remedy the breach within a grace period of 14 (fourteen) days.
- 9.3. Contractor may terminate the contract by written notice to Purchaser if Purchaser does not pay a contractual invoice when due and does not remedy such breach within a grace period of 14 (fourteen) days.

- 9.4. In case of termination due to Art. 9.1 9.2 or 9.3 Contractor shall be paid immediately for all the goods which were delivered until termination to the satisfaction of both Parties. However, Contractor shall also be entitled to demand that products and/or parts thereof already delivered shall be returned.
- 9.5. The termination is effective from the day which the terminating Party states in the termination notice (which may not be prior to the date of the termination notice; in case no date is mentioned the termination is effective from the day the other Party receives the written notice).

## **10 Force Majeure**

- 10.1. Contractor shall be released from its responsibility for full or partial non-performance of its obligations if such non-performance is the consequence of a Force Majeure event, including but not limited to: flood, fire, earthquake and other natural disasters, war or military operations, resolutions or decrees of the government in country of deployment, confiscation, embargo, prohibition of foreign-currency transfers, riot, absence of means of transport, sinking of ship, plane crash, general dearth of supply goods, or restrictions of energy consumption.
- 10.2. Each Party shall immediately inform the other Party about the existence of such a Force Majeure event to prevent the enlarging of any loss. The consequences of such a Force Majeure event regarding the obligations of the Parties are determined by Art. 6. Immediately upon cessation of the Force Majeure event each Party shall take all necessary steps to resume performance of its obligations.
- 10.3. If a Force Majeure event lasts for a period of 90 (ninety) consecutive days, either Party may terminate the contract by giving 30 (thirty) days prior written notice.
- 10.4. Any amount due by Purchaser to Contractor in accordance with the contract prior to the date of occurrence of Force Majeure shall be paid independently of occurrence of said Force Majeure. If any such circumstance directly affect fulfilment of the obligations in time stipulated by the contract, this term should be shifted adequately for the validity period of the corresponding obligation

## **11 Quality, Safety and Environment**

- 11.1. The Contractor shall provide records or other documents which shall prove that the Contractor operates according to the quality management system ISO 9001, the safety management system ISO 18001 and the environmental management system ISO 14001, or a similar system.
- 11.2. The obligation referred to in paragraph 9.1 above is also applicable to subcontractors of the Contractor. The Contractor shall submit, upon request, respective evidence to the Purchaser.

## **12 Place of Jurisdiction, Applicable Law, Place of Performance**

- 12.1. These Terms and Conditions and all rights and obligations under contracts between Purchaser and Contractor shall exclusively be governed by and construed in accordance with the laws of Austria.
- 12.2. The Convention of the United Nations on Contracts for the International Sale of Goods of 11 April 1980, Federal Law Gazette 1998/96, shall expressly be precluded.
- 12.3. All disputes shall be settled by negotiations between the Parties. If the Parties do not come to a settlement within 3 (three) months, the dispute shall be submitted to the exclusive jurisdiction of the court with competences for Purchaser's principal place of business. Purchaser may, however, also resort to another court with jurisdiction for Contractor.
- 12.4. The contracting Parties may also agree that an arbitral tribunal has jurisdiction.
- 12.5. Purchaser's principal place of business shall be the place for the performance of services, the delivery of products and for payments, also in the event that the transfer is agreed to be in a different place.

### **13 Confidential Information & Data Storage**

- 13.1. All rights to the data which the Purchaser provides to the Contractor for performance of the contract remain with the Purchaser. The Contractor may use the documents and all related information only to fulfil the contract.
- 13.2. The Contractor declares its express consent to the storage of all data (e.g. plans, drawings, technical documents, software) relevant to the business relationship and processing of the orders placed and/or to the delivery commitments.
- 13.3. Without prior written consent of the Purchaser the Contractor is not entitled to manufacture products for third parties on the basis of such documents or information or to copy such documents or information or to give third parties access to them, unless the fulfilment of the contract requires it. The Contractor shall not mention the Purchaser's name in any publication in connection with the contract without the prior written consent of the Purchaser.
- 13.4. Any personal data transmitted shall be solely stored and used for the purposes of the contractual relationship and, to the extent which is necessary for the performance of the contract, shall also be passed on to any cooperation partners/vicarious agents involved during the course of the performance of the contract. The Contractor declares its consent thereto. Thus, transfer of personal data shall be on a voluntary basis. The Contractor has the right to have personal data erased at any time (right to revoke).
- 13.5. To the extent that personal data is stored or otherwise processed, such storage or processing shall be performed in compliance with the relevant data protection laws.

### **14 Final Provisions**

- 14.1. There are no oral side agreements. Modifications of or amendments to these General Conditions of Purchaser and/or to the contract and/or annexes hereto or to the contract shall be effective only if made in writing. This shall also apply to any waiver of this requirement.
- 14.2. If any of the provisions of these General Conditions of Purchase is or becomes invalid, the validity of the remaining provisions hereof shall not be affected thereby
- 14.3. The invalid provision shall be replaced by a valid provision that comes as close as possible to the intended purpose of the invalid provision in economic and commercial terms.
- 14.4. A favourable pricing for the Purchaser shall not be amended if these General Conditions of Purchase lead to a change in the legal situation which is to the disadvantage of the Purchaser.
- 14.5. In the event that any contract or the General Conditions of Purchaser are drawn up by the Purchaser in German and in a different language, the German version shall prevail.
- 14.6. The Parties may use the name of the other Party for marketing purposes or as a reference only after the prior written approval of the other Party.

**LCS Cable Cranes GmbH & LCS Pipelines GmbH, October 2020**