

# **AGBs - Terms and conditions for sales and services of**

## **LIBA Lingener Baumaschinen GmbH & Co. KG**

### **I. General, deviating agreements, ancillary agreements**

(1) These terms and conditions shall apply to all our contracts, offers, deliveries and other services, including future contracts, offers, deliveries and other services, unless individual agreements have been made.

future contracts, offers, deliveries and other services. They shall therefore also apply

all future business relations, even if they are not expressly agreed again.

are expressly agreed. These terms and conditions shall be deemed to have been accepted at the latest on receipt of the goods or services.

accepted. The validity of any general terms and conditions of business of the buyer/customer is hereby of any general terms and conditions of business of the buyer/customer are hereby objected to, even in the event that they are

in any other way.

(2) Our ordinary representatives are, in contrast to qualified representatives with typified, unrestricted power of representation (e.g. general representatives or authorised signatories) and representatives, are not entitled to make any verbal or written promises to the customer that deviate from the

of any kind, such as amendments, additions or exclusions to these terms and conditions.

Any deviating promises made by ordinary representatives must be confirmed in writing by the user of these terms of

confirmed in writing by the user of these terms and conditions.

(3) Verbal collateral agreements, assurances or guarantee declarations require our express written confirmation to be effective.

our express written confirmation in order to be effective. This also applies to the waiver of this written form requirement.

### **II: Place of performance, place of jurisdiction, applicable law**

(1) Place of performance for all obligations of both parties, in particular for deliveries and payments including obligations arising from bills of exchange and cheques as well as all other current or future business transactions, including the delivery of spare parts and other merchandise and services, is Lingen.

goods and services, shall be Lingen.

(2) If the contractual partner is a registered trader, a legal entity under public law or a special fund under public law, Lingen shall be the place of

legal entity under public law or a special fund under public law, Lingen shall be the exclusive place of

contractual relationship directly or indirectly. We are entitled, instead of the court of jurisdiction agreed above, we shall be entitled to bring the matter before any other competent court.

(3) The law of the Federal Republic of Germany shall apply to the exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

### **III Offer, Conclusion of Contract, Prohibition of Assignment**

(1) Our offers are always subject to confirmation. All orders shall only become binding for us with our written

(2) Drawings, illustrations, dimensions, weights or other performance data are only binding if this is expressly agreed in writing.

expressly agreed in writing.

(3) Unless otherwise agreed in individual contracts, the buyer acquires the goods for his own use. The assignment or partial assignment of the rights or the transfer of the obligations of the obligations of the buyer/customer under the contract are not permitted without the written consent of the seller.

(4) We reserve the right to make design changes at any time; however, it is not however, it is not obligatory to make such changes to products that have already been delivered.

### **IV. Prices**

(1) Unless otherwise stated, we shall be bound by the prices contained in our offers for 30 days from their date.

days from their date.

(2) The prices for all objects of purchase and services shall apply from the date of conclusion of the contract for a period of

period of four months from the date of the conclusion of the contract, unless a deviating agreement has been

confirmed by us in writing. If a delivery period of more than four months has been agreed, the seller is

shall be entitled to charge for any increases in costs incurred in the meantime for procurement, manufacture, delivery, assembly or similar.

or similar, including increases due to changes in the law (e.g. increase in value added tax) by increasing the price.

of value added tax) to the customer by way of a price increase to a corresponding extent.

to the customer.

(3) Unless otherwise agreed, our prices shall be understood to be net ex works plus

the statutory value added tax. Packaging and shipping costs shall be borne by the buyer.

#### **V. Terms of Payment, Default, Collection, Prohibition of Set-Off, Right of Retention**

(1) Machines, spare parts and replacement parts are generally payable upon delivery, net cash.

Assembly and other services are also to be settled immediately without any deduction.

(2) Other payments must be made within thirty days of the invoice date without any deduction.

be made. Any further agreements on other payment conditions require our written confirmation.

written confirmation. The timeliness of payments shall be determined by the date on which we or the date on which the money is received by us or credited to our account without reservation.

(3) We shall be entitled, in spite of any provisions of the buyer to the contrary, to set off payments against the buyer's older debts and shall inform the buyer of the type of set-off effected.

inform the buyer. If costs and interest have already been incurred, we shall be entitled to offset the payment first against the costs, then against the interest and the debt.

costs, then to the interest and finally to the main performance.

(4) A payment shall only be deemed to have been made when we can dispose of the amount. In the case of

In the case of cheques, payment shall only be deemed to have been made when the cheque has been cashed.

(5) We are not obliged to accept payment by cheque or bill of exchange. Bills of exchange and

Cheques and bills of exchange are only accepted on account of payment. The surrender of the bill of exchange or the cheque leads does not result in a deferral of our claim. The costs associated with the realisation of a cheque or bill of exchange

shall be borne by the buyer.

(6) If we become aware of circumstances which call into question the creditworthiness of the buyer, especially in the case of dishonour of cheques or cessation of payments or if we become aware of other

circumstances become known to us which call into question the creditworthiness of the buyer, we shall be entitled to

the entire remaining debt due. In this case, we shall also be entitled to demand advance payments or the

or to demand the provision of security.

(7) If these terms of payment are not complied with, the seller shall be entitled to charge interest on arrears in the amount of

9% per annum above the base rate from the due date until the date of actual payment.

payment. The assertion of a claim for damages in excess of this remains unaffected.

shall remain unaffected in any case.

(8) Payments to agents or representatives who have not been commissioned shall be at the risk of the buyer. Agents

are not entitled to collect payments without express written authority to collect on our part.

(9) The offsetting of counterclaims / counterclaims is excluded, unless these are undisputed or have been legally established.

(10) Any statutory right of retention or right to refuse performance, e.g. on account of due to defects in the item, shall only be available to the buyer in respect of such undisputed or or legally established claims arising from the same contractual relationship with the seller.

relationship with the seller. If the buyer is not an entrepreneur, a legal entity under public law or a special fund under public law, the performance obligation shall remain unaffected.

public law special fund, the right to refuse performance in accordance with § 320 of the German Civil Code shall remain unaffected.

#### **VI Retention of Title and Extended Retention of Title**

(1) We reserve title to the goods until all claims arising from an ongoing business relationship have been settled in full.

from an ongoing business relationship. If the value of the goods subject to retention of title exceeds the claims to be

the claims to be secured from the current business relationship by 20% percent, we are obliged to release

the reserved goods at the customer's request.

(2) The customer is obliged to treat the goods with care during the existence of the retention of title.

treat the goods with care. Insofar as maintenance and inspection work is required, the customer shall carry this out

regularly at his own expense.

(3) In the event of access by third parties to the goods subject to retention of title, in particular seizures, the customer shall draw attention to our

property and notify us immediately so that we can enforce our property rights.

enforce our property rights. Insofar as the third party is not in a position to pay us the judicial or extra-judicial

court or out-of-court costs incurred in this connection, the buyer shall be liable for them.

(4) Processing or transformation shall always be carried out for us as service provider, but without any obligation for us. If our (co-)ownership lapses as a result of combination, it is already agreed now that the (co-)ownership of the

(co-)ownership of the purchaser in the uniform object shall pass to us pro rata (invoice value).

transferred to us. The buyer shall keep our (co-)ownership in safe custody free of charge.

(5) The customer shall be entitled to process and sell the goods subject to retention of title in the ordinary course of business

and to sell them as long as he is not in default. Pledges or transfers of ownership by way of security are

inadmissible. Any claims arising from the resale or any other legal reason (insurance, tort) with regard to the goods subject to

legal grounds (insurance, tort) in respect of the goods subject to retention of title (including all from the current account) shall be assigned by the customer to us in full by way of security.

to us by way of security. We revocably authorise him to collect the claims assigned to us for our account in his own name.

for our account in our own name. This authorisation to collect can only be revoked if the buyer does not

buyer fails to meet his payment obligations in an orderly manner.

(6) The customer shall compensate us for all damages and costs incurred as a result of a breach of these

obligations and by necessary intervention measures against third party access to the goods.

third parties to the goods.

(7) We shall be entitled to withdraw from the contract and return the goods in the event of a breach of contract by the customer, in particular in the event of default in payment,

from the contract and to demand the return of the goods.

#### **VII Cheque/Bill of Exchange Clause**

If, in connection with the payment of the purchase price by the buyer/customer, a liability of the seller based on a bill of

of the seller in connection with payment of the purchase price by the buyer/customer, the retention of title and the

from the delivery of goods shall not expire until the bill of exchange has been honoured by the buyer as drawee.

drawee.

#### **VIII. Delivery, Delay in Performance, Period of grace, Incoterms**

(1) Our obligation to perform shall be subject to correct and timely delivery by our

and timely self-delivery.

(2) Unless otherwise expressly agreed in writing, information on delivery times, including in correspondence, shall not be binding.

agreed in writing, are non-binding. After expiry of a reasonable period of grace set by the buyer

of at least three weeks set by the buyer in writing, the seller shall be liable in accordance with the

legal provisions, taking into account section XV, if he is in default with the delivery of goods.

with the delivery of goods.

(3) If Incoterms have been agreed, their interpretation shall be governed by the recommendation of the International Chamber of Commerce in Paris at the time of their agreement.

Chamber of Commerce in Paris at the time of their agreement.

(4) Delivery dates or periods which may be agreed as binding or non-binding must be in writing.  
in writing.

(5) Delays in delivery and performance due to force majeure and due to events that make delivery substantially more difficult or impossible for us not only temporarily - this includes, in particular, strike

strike, lockout, official orders, etc., even if they occur at our suppliers or our sub-suppliers.

suppliers or our sub-suppliers - we shall not be responsible even in the case of bindingly

agreed deadlines and dates. They entitle us to postpone the delivery or service,

by the duration of the impediment plus a reasonable start-up time or to

or to withdraw from the contract in whole or in part due to the part not yet fulfilled.

(6) If the impediment lasts longer than three months, the buyer/customer shall be entitled, after setting an appropriate

period of grace, the buyer/customer shall be entitled to withdraw from the contract with regard to the part not yet fulfilled.

If the delivery time is extended or if we are released from our obligation, the buyer cannot derive any claims for damages from this.

derive any claims for damages from this. We can only invoke the aforementioned circumstances, if we have notified the buyer without delay.

(7) If we are responsible for non-compliance with bindingly agreed deadlines and dates or if we are in arrears, the buyer shall have

we are in default, the buyer/customer shall be entitled to compensation for default amounting to

0.5% for each full week of delay, but in total not more than up to 5% of the

of the invoice value of the deliveries and services affected by the delay. Claims in excess of this

claims are excluded, unless the delay is due to at least gross negligence on the part of the seller.

gross negligence of the seller.

(8) We are entitled to make partial deliveries and provide partial services at any time, unless the partial delivery or partial service is

partial performance is not of interest to the buyer/customer.

(9) Our compliance with our delivery and performance obligations shall be conditional upon the timely and

and proper fulfilment of the buyer's obligations.

## **IX. Default of acceptance, damage caused by default**

(1) The buyer shall accept the goods immediately upon notification of readiness for dispatch. The buyer shall be in

in default at the latest fourteen days after notification of readiness for dispatch if he has not accepted the goods by then.

has not accepted the goods by then. This shall only apply if the buyer is responsible for the non-acceptance.

for the non-acceptance. The statutory provisions on creditor default shall remain unaffected.

(2) During the buyer's default in payment, we shall be entitled, after setting a reasonable deadline for acceptance, we shall be entitled to claim damages or reimbursement of our expenses, irrespective of further

compensation for our expenses.

(3) If we claim damages in lieu of performance, we are entitled, without prejudice to

the possibility of claiming higher damages, we are entitled to claim ten percent of the purchase price as

price as compensation without proof. This shall be without prejudice to the buyer's right to prove that we have suffered less damage or no damage at all.

## **X. Dispatch, transfer of risk, installation and commissioning**

(1) Unless otherwise agreed, we shall ship the goods at the risk and expense of the buyer.

the buyer, whereby we are also entitled to dispatch the goods to the buyer from a place other than the place of

place of performance mentioned in clause II (1). The choice of the transport route and the

means of transport shall be left to us. The risk shall pass to the buyer when the goods are handed over to the forwarding agent,

carrier or other transport agent or when the goods have left our warehouse for the purpose of shipment.

our warehouse for the purpose of dispatch. If the shipment is delayed at the request of the buyer, the risk shall be

risk shall pass to the buyer upon notification of readiness for shipment. The above shall also apply in each case

if the goods are delivered by ourselves. Transport damage and loss shall be reported to us immediately

by enclosing a confirmation of damage or loss from the transport company. The

The damaged goods shall be kept at our disposal.

(2) In the absence of any agreement to the contrary, the installation and commissioning of the delivered

products are not part of the services to be rendered by us.

#### **XI. Spare parts**

Spare parts can only be taken back within eight days of the date of delivery if the parts are unused and in perfect condition.

parts are delivered to us unused and free of defects and freight charges. The credit note shall be issued after

after inspection, less the re-stocking costs incurred by us, which amount to ten per cent of the of the list price of the spare part.

#### **XII. Exchange parts**

(1) Replacement parts or units, in particular replacement engines, must be delivered to us in a cleaned

freight prepaid to us. Exchange parts must not have any defects or faults that are not due to natural defects or faults that are not due to natural wear and tear.

(2) Old parts, in particular old motors that have already been mounted or rusted or damaged by force, are excluded from exchange.

rusted or destroyed by force or by improper handling. This also applies to damage that occurs as a result of transport. The condition on receipt of the goods at our our delivery plant is decisive. All damaged or defective parts of the unit will be recalculated at the charged at the new price.

(3) We have the right, at our discretion, not to accept exchange parts or units which do not meet these requirements,

at our discretion not to accept them or to return them to the sender carriage forward.

#### **XIII. Notification of defects, rights of the buyer in the event of defects**

(1) Obvious defects which are recognisable in the course of a proper inspection - insofar as such inspection is

the ordinary course of business - the buyer must notify us immediately, i.e. within two weeks after weeks after handover/delivery of the goods. Defects which are not obvious and

inspection, the buyer shall immediately, i.e. within two weeks after their discovery, at the latest within two weeks of their discovery, but at the latest within one year of handover/delivery.

in writing within one year after handover/delivery at the latest. The timeliness of the notification of defects shall depend on the

time of receipt by us shall be decisive for the timeliness of the notice of defect. In the event of failure to comply with the deadlines for giving notice of defects, any and all rights

of the purchaser on account of the defect in question shall lapse.

(2) Any claims of the buyer due to a defect are limited to the right to subsequent performance.



limited. Subsequent fulfilment shall be effected, at our discretion, by remedying the defect or by delivery of a defect-free item. In the event of failure of the supplementary performance, the purchaser may, at his

contract or reduce the purchase price.

(3) In principle, the LIBA warranty conditions apply. In the event of non-applicability, the following regulations. Excluded from the warranty are damages caused by natural wear and tear.

damage. We shall not be liable in the event of damage as a result of faulty or negligent handling or the use of unsuitable operating materials, if operating or maintenance instructions from us are not instructions are not followed, modifications are made to the products, parts are replaced or consumable

consumables are used which do not comply with our original specifications. The

The same shall apply if the purchaser fails to comply with the manufacturer's instructions on the handling of the

(operating instructions) and, in particular, does not carry out the prescribed checks/inspections properly.

checks/inspections are not carried out properly. Claims due to defects of the

products shall not be forfeited if the customer makes a corresponding substantiated claim that only one of these

that one of these circumstances caused the defect.

(4) Used materials/machinery are sold as inspected and to the exclusion of any

warranty, provided that the customer is a registered trader. The buyer shall be given the opportunity to inspect and

purchase is given the opportunity to inspect and check them. Used

materials/machinery which have not been inspected and thoroughly examined at the place of

place of storage, shall be deemed to be in order upon loading. The liability of the

liability of the contractor for intent and gross negligence.

(5) Insofar as we are liable in accordance with the statutory provisions - for whatever legal reason

including any claims for damages arising from positive breach of contract, culpa in contrac

negotiations and tort - we are obliged to pay damages on account of a defect, this

this obligation to pay damages is limited in accordance with section XV.

The same applies to our liability for personnel assigned by us to the buyer (e.g. for handover and installation, instruction).

for handover and installation, instruction of operating personnel, repair, etc.).

(6) Any recourse claims of the buyer pursuant to § 478 of the German Civil Code shall remain unaffected.

Insofar as we are obligated to pay damages within the scope of such recourse in accordance with the provisions, this obligation to pay damages shall be limited in accordance with section XV.

limited.

(7) Claims of the buyer due to defects shall become statute-barred after one year beginning with the delivery of the item.

delivery of the item. This shall not apply in the event of intent or fraudulent concealment of the defect. The aforementioned

one-year limitation period shall not apply to claims for damages due to defects even if the damage is claims for damages due to defects even if the damage is due to gross negligence on the part of our legal

or managerial staff, or in the event of personal injury, or if we are liable in tort.

tort. The one-year limitation period for rights based on defects shall also not apply to defects which in a right in rem of a third party on the basis of which surrender of the item can be demanded, in which case the limitation period shall be three years.

#### **XIV. Security deposit of the hirer, assignment clause**

If one of our machines is rented by the customer, the following shall apply: Notwithstanding any security

security provided, the hirer assigns to us (as hirer) until settlement of all liabilities arising from this or any other

other equipment rental contracts concluded with us (as lessor), the hirer shall assign to us all claims against third

third parties for services which he provides or has provided for third parties through the use of the rental equipment.

#### **XV. Limitation of liability**

(1) For damages caused by intent or gross negligence on the part of our legal representatives or executives, as well as for personal

employees, as well as for personal injury, we shall be liable in accordance with the statutory provisions.

provisions of the law. In the event of intent or gross negligence on the part of simple vicarious agents as well as in the event of a

negligent breach of essential contractual obligations which are indispensable for the achievement of the

purpose of the contract and on whose strict observance the buyer must therefore be able to rely.

the strict observance of which the buyer must therefore be able to rely, we shall be liable in accordance with the statutory provisions, limited to such damages

which were foreseeable for us at the time of conclusion of the contract in terms of type and scope. For the rest, claims

claims of the buyer for compensation for direct or indirect damage - irrespective of the legal grounds including any claims for compensation due to breach of pre-contractual obligations and from tort - are excluded.

(2) Any statutory liability due to the absence of a quality guaranteed by us or due to the under the Product Liability Act shall remain unaffected.

(3) The limitation of liability stated in this clause shall also apply to any liability of our legal legal representatives, executive employees and other vicarious agents vis-à-vis the buyer.

XVI Data protection, machine information systems

The contractor hereby informs the purchaser that his data will be automatically processed and stored. The processing is carried out for the purpose of automation of correspondence and payment transactions. The principal hereby gives his consent to the recording and processing of his data collected in connection with the business transactions.

Insofar as the equipment handed over by the contractor is equipped with data transmission facilities (e.g. InSite

Fleet Management), the Principal undertakes to put these data transmission

data transmission equipment in operation and to maintain it at its own expense. He grants the irrevocable express authorisation to the contractor to retrieve, access and transmit the data data transmitted by means of remote transmission, to store them and to use them for his own purposes. A forwarding

of this data to the equipment manufacturer shall also be permitted.