

**Standard Terms and Conditions of Sale (STCs) of
Lincoln Electric Deutschland GmbH, ZNL der Lincoln Smitweld B.V., Nijmegen**

(As of 29.03.2017)

1.

Application of these Standard Terms and Conditions of Sale (STCs); exclusion of other terms and conditions

- (1) These Standard Terms and Conditions of Sale (STCs) apply to all of our business dealings with our customers.
- (2) Our STCs shall apply exclusively. We shall not recognise conflicting terms and conditions of the customer unless we expressly consent to them in writing. The foregoing consent requirement shall apply in any event, for example, even where we accept delivery without reservation in full knowledge of the customer's standard terms and conditions.
- (3) Our STCs, as amended from time to time, shall automatically apply to all future goods and services provided or offers to the same customer, without any requirement to refer to them afresh. We will notify the customer promptly of any amendments to our STCs.

2.

Formation and terms of contract; writing requirement; representation; reservation of rights;
confidentiality

- (1) Our offers are non-binding and subject to change. The customer's order constitutes a legally binding offer to enter into a contract. Unless the order provides otherwise, we may accept the order within 5 working days (Monday to Friday, irrespective of public holidays) from the date of receiving the order.
- (2) Our acceptance shall be in the form of a written notice (e.g., our order confirmation or our dispatch/collection notice). The terms of such written notice shall be decisive for the terms of the contract. Legal declarations and notices served on us by the customer after formation of the contract (e.g., stipulation of a grace period, default notice, notice of defects) must be executed in writing in order to be valid.
- (3) Transmission by facsimile or by e-mail is also sufficient in order to meet the written form requirement.
- (4) The written contract, including these STCs, which form an integral part of the written contract, constitutes the entire agreement between us and the customer relating to the subject matter addressed therein.

- (5) Individual (including oral) contractual agreements take precedence over these STCs. A written contract or our written confirmation is decisive for the proof of the content.
- (6) We reserve all proprietary rights, copyrights and intellectual property rights in all documents, materials and other items handed over to the customer by us. The customer is not allowed to make the delivered documents, materials and other objects, as such or in content, accessible to third parties without our prior written consent or to use, reproduce or alter them.

3.

Export; ethical business practices

- (1) Should any of the goods or services to be provided by us be subject to import and/or export control laws, in particular of the Federal Republic of Germany (e.g., the German Foreign Trade and Payments Act (*Außenwirtschaftsgesetz* - AWG), the German Foreign Trade and Payments Ordinance (*Außenwirtschaftsverordnung* - AWV)) the European Union (e.g., the EC Dual Use Regulation) or the United States of America, the customer shall be obliged to provide us with any and all information and documents required for compliance with those laws without undue delay. This also applies to any end use statements. The customer shall in any event be responsible for obtaining any import permits.
- (2) The goods we deliver may be subject to export restrictions, for example, in the United States of America or the European Union. The customer shall comply with the relevant rules and regulations in the event of resale.
- (3) The customer shall observe Lincoln's code of conduct (www.lincolnelectric.com) when (re-)selling and marketing Lincoln products.

4.

"EXW Incoterms (2010)"; other delivery details; delay in acceptance, cooperation etc.; acceptance

- (1) Unless agreed otherwise, "EXW Incoterms (2010)" shall apply to all of our deliveries (referring to the respective warehouse from which we deliver). If, however, we have agreed that the customer's acceptance is required (subsection (3)), the risk shall not pass to the customer until actual acceptance.
- (2) Notwithstanding subsection (1), and only if agreed with the customer, we will dispatch the goods to a location specified by the customer. The goods will be shipped at the customer's expense, also with regard to the packaging as far as it is not our standard packaging. We may determine the mode of transport (particularly the selection of freight company and shipping method) and the type of packaging, at our due discretion. In cases of sentence 1 of this subsection, the risk shall pass to the customer upon the customer's receipt of our notice that the goods are ready for dispatch (dispatch

notice) or, if the contract does not provide for a dispatch notice, at the latest when the goods are handed over to the carrier or freight company or any other party responsible for transportation. The foregoing also applies to partial deliveries or if we have also agreed to provide other services (e.g. shipping, transport or assembly). Subsection (1) and the terms governing place of performance (of these STCs) shall otherwise remain unaffected.

- (3) Where it has been expressly agreed that the customer's acceptance is required (according to the meaning of the term in section 640 BGB (*Bürgerliches Gesetzbuch* - BGB), the goods shall be deemed accepted, at the latest, when:

the delivery and, where we have also agreed to assemble or provide a similar service (e.g. mounting, installation, putting into operation, set-up/settings), the assembly or similar service is complete;

we have notified the customer hereof promptly after completion and requested the customer's acceptance;

(aa) 15 working days have elapsed since delivery or (if applicable) the completion of assembly or a similar service; or (bb) the customer has started using the goods (e.g., has put the delivered and (if applicable) assembled equipment into operation) and 10 working days have elapsed since delivery or (if applicable) the completion of assembly or a similar service; and

the customer failed to accept the goods within the aforementioned period for a reason other than a defect of which we were notified, and which substantially impairs use of the goods or renders use of the goods impossible.

- (4) The place of performance for our deliveries is the warehouse from which we deliverer (subsection (1) shall apply). If we have also agreed to assemble or provide similar services (e.g., mounting, installation, putting into operation, set-up/settings), the place of performance shall be the where this is to be done according to the contractual stipulations..

5.

Prices, terms of payment, retention of the goods; exclusion of rights of set-off and liens; prohibition on assignment; customer's inability to perform

- (1) Unless agreed otherwise, our net prices (plus statutory value added tax (VAT)) applicable at the time of entering into the respective contract shall apply in all cases; prices are specified "EXW Incoterms (2010)".
- (2) Any insurance, transport and packaging costs as well as any assembly costs and any other taxes and duties shall be added in addition, unless agreed otherwise. Any claims resulting from additional work performed or price changes shall be due and payable immediately.

- (3) Costs incurred in connection with goods provided by the purchaser (including costs for loading and unloading, transport of raw materials, installing and assembling equipment of the purchaser) shall be invoiced separately. Any inspections and tests conducted that go beyond our standard procedure shall also be invoiced separately.
- (4) If price-determining factors (such as the cost of raw materials, wages, transport, import customs duties, taxes) change after the contract was entered into in such a way that our costs increase by 5% or more, the purchase price shall increase accordingly.
- (5) Unless agreed otherwise, our invoices must be paid in full within 30 calendar days of delivery and receipt of invoice in the currency specified in the order confirmation. Delivery shall mean the customer's receipt of our dispatch/collection notice or, if shipping is agreed, the handing over of the goods to the party responsible for transportation. The date on which payment is received determines whether payment was on time.
- (6) The customer may only exercise liens or rights of set-off if its counterclaims are uncontested or have been established by a final and binding judgement by a court of law. The purchaser's rights in the event of defective delivery (subsection (8)) shall remain unaffected.
- (7) The customer may not transfer or assign to third parties any rights or obligations arising out of the contract.

6.

Delivery times, extensions; provisions for *force majeure*, deliveries from our suppliers etc.; partial deliveries

- (1) Prospective lead times/delivery dates given by us for the provision of goods and services (delivery period) shall always be regarded as approximate only, unless a fixed delivery time is expressly agreed. A delivery period is complied with, if until expiration, the customer has received our dispatch/collection notice or, where agreed, we have handed over the goods to the party responsible for transportation. The beginning of an agreed delivery period presupposes that the customer has made all the necessary preparations and sent us in due time all the information required to execute the order.
- (2) If we can foresee that we will be unable to comply with a certain delivery period, we will notify the customer promptly thereof and notify him of the anticipated new delivery time. If the item is not available for delivery by the new date, we may withdraw from the contract; we shall refund any consideration already paid by the purchaser.
- (3) In particular, any failure by our suppliers to deliver on time shall be deemed an event of unavailability, provided a corresponding supply agreement with our supplier was in place, neither we nor our suppliers are at fault for the delay or we are not under a procurement obligation in the individual case.

We shall not be liable if the delivery of goods or provision of our services is delayed or rendered impossible due to *force majeure* or other events outside our control, which were not foreseeable at the time the contract was entered into (e.g. disruptions to operations of any kind, strikes, wars). We may also withdraw from the contract if the goods are not available for delivery by the anticipated new delivery date (subsection (2)).

- (4) Delivery periods shall be automatically extended by a reasonable time if the customer fails to comply with its contractual obligations or is in breach of any contractual condition or obligations of cooperation. In particular, the customer is responsible for providing us timely with any and all documents, information, prototypes, samples and other information and items to be provided by the customer as well as ensuring, if applicable, that technical, construction-related, staff and organisational requirements for the agreed assembly of products at the customer's premises (if applicable) or for similar services are met (e.g. mounting, installation, putting into operation, set-up/settings).
- (5) We may make partial deliveries if: (a) partial delivery is usable for the customer within the scope of the contractual purpose; (b) the provision of the remaining goods and services is assured; and (c) the customer does not incur any substantial additional expense as a result of the partial delivery.
- (6) Our statutory rights, specifically those relating to any exclusion from the duty of performance (e.g., because performance and/or cure was impossible or unreasonable) and based on default in performance or acceptance on the part of the customer, as well as the customer's rights under section 9 of these STCs shall remain unaffected.

7.

Retention of title

- (1) We shall retain title in the goods sold ("reserved goods") until such time as all present and future claims arising out of any ongoing business relationship (secured claims) have been paid in full.
- (2) If the customer intends to ship the reserved goods to a destination outside of Germany, the customer must ensure at its expense to fulfil any and all local statutory requirements for the formation and maintenance of our retention of title and shall notify us of such intention without undue delay.
- (3) The customer shall hold the reserved goods in safe custody on our behalf free of charge. The customer shall treat them with care and adequately insure them at replacement value at its own expense. Should maintenance, inspection, service and repair work be required, the customer shall perform such work in a timely manner and at its own expense.
- (4) The reserved goods may not be pledged nor assigned as collateral security. Where third parties seize or attach reserved goods, the customer shall advise them clearly of our title and notify us in writing without undue delay.

- (5) The customer shall be entitled to process or sell the reserved goods in the ordinary course of business until the time of the enforcement of the reservation (subsection (9)).
- (6) The retention of title shall also extend to processing, combining and mixing, although we shall be deemed to be the manufacturer within the meaning of section 950 of the BGB. If the reserved goods are processed, combined or mixed with the goods of a third party and the third party retains ownership therein, we shall acquire a co-ownership interest in the proportion of the invoice values of the processed, mixed or combined goods. Otherwise, the same shall apply to the resulting product as applies to the reserved goods.
- (7) The purchaser hereby assigns to us as collateral any claims against third parties arising from the resale of the reserved goods or the product in full or in the amount of any co-ownership interest we may hold pursuant to the paragraph above. We hereby accept the assignment. The purchaser shall be authorised to recover the assigned claim as long as he meets its payment obligations. In the event of the purchaser's default in payment or inability to perform, we may revoke the authorisation to recover the claim. In such case, the purchaser shall at our request provide us with all the information required for recovery and permit an appointed agent to inspect the inventory of assigned claims on the basis of the purchaser's accounts and shall notify debtors of the assignment.
- (8) If the estimated value of the collateral exceeds the amount of our claims by more than 50%, we will at the purchaser's request release collateral at our discretion.
- (9) If we withdrawal from the contract by law due to breach of contract on the part of the customer (particularly due to the customer defaulting on payment) (enforcement event), we may request the customer to return the reserved goods.

8.

Warranty for defects

- (1) Unless these STCs provide otherwise or specify additional terms, the relevant statutory provisions shall govern the customer's rights in the case of defects in quality or defects in title (including incorrect or short shipments, defective assembly or instructions).
- (2) The agreed qualities of the goods (e.g., the manufacturer's product descriptions) incorporated into the contract with the customer shall serve as the basis for our liability for defects. We assume no liability for public statements made by the manufacturer or other third parties.
- (3) Except in the cases referred to in section 9 subsection 2, subsection 3 of these STCs,-we offer no warranty for defects in quality where the delivery of used products has been agreed. The customer is solely responsible for integrating the products into its existing technical, structural and organisational framework (customer's responsibility for system integration). We are under no warranty obligation if the customer has modified the goods without our consent such that it is impossible or unreasonably difficult to effect cure as a result.

- (4) We shall not be liable for defects caused by the customer (e.g., by defective design, use of defective materials, improper processing) or resulting from improper use (e.g., failure to follow our instructions).
- (5) Unless expressly agreed otherwise: (a) our products and services are solely required to conform to the statutory requirements applicable in Germany.
- (6) Unless acceptance has been expressly agreed, the customer has a duty to inspect delivered goods promptly after they are delivered to the customer or the third party nominated by it, and promptly report any defects. Sections 377 and 381 of the German Commercial Code (*Handelsgesetzbuch - HGB*) and the terms of this subsection shall apply to goods inspections and defect notifications. The requirement of prompt notification shall be deemed satisfied if notice of defects is sent, at the latest, within five (5) working days of delivery or, where assembly/installation has been agreed, five (5) working days of assembly/installation. If the defect was not evident at the time of the goods inspection (section 377 (2) and (3) HGB), notice of defects must be sent at the latest within three (3) working days after the defect is discovered. However, if the aforementioned defect could have been detected earlier by the customer during normal use of the goods than the date on which it was actually discovered, the time period for giving notice of defects shall be calculated from that earlier date.

Contrary to the provisions of section 640 (2) of the BGB, if the customer accepts the goods without reservation despite known defects, it shall not only forfeit those rights as set out in section 634 no. 1 - no. 3 of the BGB, but also those claims for compensatory damages set out in section 634 no. 4 of the BGB. The foregoing shall not apply in cases where we have assumed a guarantee of quality or fraudulently concealed a defect.

- (7) If the customer is allowed to be present when the goods are inspected but fails to attend the inspection despite having been informed of the inspection date, the inspection shall be conducted without the customer and the inspection reports prepared by us shall be controlling.
- (8) The return goods shall be sent back to us at our request without undue delay, initially at the customer's expense. Subsection (9) (allowing the necessary time and opportunity to examine reported defects and review other complaints) remains unaffected. In case of justified complaints, we will reimburse the costs of the cheapest method of dispatch. This does not apply to the extent that the costs increase because the goods are located at a location other than the place of the intended utilisation.

We assume no warranty and accept no other liability for the respective defect if the customer has failed to properly inspect the goods and/or report the defect.

- (9) The customer must always give us the time and opportunity required in order to examine reported defects and other complaints and to effect cure; this particularly includes furnishing us with the goods in question for the aforementioned purposes or, if they have been permanently installed or

similarly affixed at a certain location, providing access to the goods. Subsection (8) (return at our request) remains unaffected.

- (10) If the goods are in fact defective, we will cover the necessary expenses for the purpose of examining the goods and effecting cure, particularly including transport, infrastructure, labour and material costs. Cure shall not include either dismantling and removing the defective item nor re-installing the non-defective item if we had no installation obligation originally. However, if the customer's request to remedy a defect proves to be unjustified, we may require the customer to reimburse our costs.
- (11) If the delivered goods are defective, we are authorised and obligated to effect cure as a first step, which, at our choice to be made within a reasonable period, may take the form of remedying the defect (repair) or delivering a non-defective item (replacement). In the event of replacement, the customer must return the item requiring replacement in accordance with the relevant statutory provisions.
- (12) We are entitled to make our cure dependent on the customer's payment of the purchase price owed or, if applicable, the current instalment owed. However, the customer is entitled to retain a reasonable amount of the payment owed, such amount being proportionate to the severity of the defect.
- (13) If we deliver third-party products (in particular components) which prove to be defective and which for licensing or factual reasons we are not able to remedy, we will, at our choice, assert our warranty claims against such third parties for the account of the customer, or assign our claims to the customer. Such defects shall give rise to warranty claims against us (subject to the other requirements and the stipulations of these STCs) only where judicial enforcement of aforementioned claims against third parties failed or has no prospect of success (e.g. due to insolvency) or is otherwise unreasonable for the customer (e.g. due to time constraints). The limitations period for the relevant warranty claims of the customer against us shall be suspended for the period during which we assert (even mere out-of-court) claims against third parties.

9.

Liability for damages

- (1) To the extent these STCs, including the following provisions, do not provide otherwise, we shall be liable for breaches of contractual and non-contractual obligations in accordance with the statutory provisions.
- (2) We shall be liable without limitation and irrespective of the legal basis if we or any of our legal representatives or vicarious agents commit a wilful or grossly negligent breach of duty resulting in loss or damage. If we or any of our legal representatives or vicarious agents commit a negligent breach of duty, we shall be liable

(without limitation) for loss or damage resulting from injury to life, body or health;

for loss or damage resulting from the breach of material contractual obligations. Material contractual obligations are those obligations which must necessarily be fulfilled to enable the proper performance of the contract, and on whose compliance the customer would usually rely and be entitled to rely. However, in such cases our liability shall be limited in quantum to loss or damage that was reasonably foreseeable at the time the contract was entered into.

- (3) The limitations of liability arising from subsection (2) shall not apply to the extent that we fraudulently conceal any defects, assume a guarantee for the quality of the goods or assume a procurement risk. The foregoing shall not affect any strict liability in particular under German product liability law.
- (4) Compensatory damages claims relating to contractual penalties (*Vertragsstrafen*) and liquidated damages which the customer owes to third parties in connection with goods delivered by us may (subject to all other requirements) only be asserted as damages provided this has been expressly agreed with us or where the customer had advised us of this risk in writing before entering into the contract with us.

10.

Limitation of actions

- (1) All claims of the purchaser due to material defects and defects of title shall become time-barred 12 months from the date of delivery. Claims pursuant to section 9, subsection 2, sentence 1, and sentence 2, 1st indent and subsection 3 of these STCs shall be time-barred after the statutory limitation period. Special provisions in accordance with section 438 subsection 1 no. 1, subsection 3 BGB, section 444 in conjunction with 479 BGB, section 478 in conjunction with 479 BGB and section 438 subsection 1 no. 2 BGB in case of goods which are used for a building according to their usual usage shall remain unaffected. Likewise, the compensation claims of the purchaser under section 8 of these STCs shall remain unaffected.

11.

Special right of rescission where payment is discontinued, etc.

We have a special right to withdrawal from the contract in the following cases: (a) the customer discontinues payments to its creditors; (b) the customer personally applies to have its assets administered in insolvency proceedings; (c) we or another creditor make a lawful application to institute insolvency proceedings against the customer; (d) interim insolvency proceedings are instituted; (e) insolvency proceedings are definitively instituted; or (f) the application for insolvency proceedings is rejected because the customer has insufficient assets.

12.

Choice of law; jurisdiction; severability

- (1) Our business dealings with the customer are governed exclusively by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- (2) If the customer is a merchant within the meaning of the HGB, a legal entity under public law or a special fund under public law, the place of exclusive (and international) jurisdiction for any and all disputes arising out of or in connection with the contractual relationship shall be our registered office in Ratingen. However, we may also sue the customer at the customer's place of general jurisdiction.
- (3) Should any terms of these STCs be invalid, whether in whole or in part, this shall not affect the validity of the remaining terms.