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## General Terms and Conditions

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# General Terms and Conditions of Sale

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## **1 Scope of Application, Form**

- 1.1 These General Terms and Conditions of Sale (GTCS) apply to all business relations between LENZE POLSKA Sp. z o.o. seated in Katowice, nr KRS 0000186401 and its Buyers ("Buyers"). The GTCS shall only apply if the Buyer is an entrepreneur within the meaning of art. 431 of Civil Code.
- 1.2 The GTCS apply in particular to agreements on the sale and/or delivery of movable goods ("Goods"), irrespective of whether we produce the goods ourselves or purchase them from suppliers. Unless otherwise agreed, the GTCS in the version valid at the time of the Buyer's order or at any rate in the version last transmitted to them in writing shall also apply to similar future agreements without our having to refer to them again in each individual case.
- 1.3 The goods may only be used for commercial, business, craft or professional purposes. Resale to consumers is prohibited.
- 1.4 Our GTCS shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Buyer shall only become an integral part of the agreement if and to the extent that we have expressly consented to their validity. This consent requirement shall apply in any case, for example even if we carry out the delivery to the Buyer without reservation, in knowledge of the Buyer's general terms and conditions.
- 1.5 Individual agreements made with the Buyer in individual cases (including collateral agreements, supplements and amendments) shall take precedence over these GTCS in any case. Subject to evidence to the contrary, a written agreement or our written confirmation shall be definitive for the content of such agreements.
- 1.6 Legally relevant declarations and notices of the parties relating to the agreement (e.g. setting of deadlines, notification of defects, withdrawal or reduction) must be made in writing (e.g. letter, e-mail, fax). Legal formal requirements and further proof, in particular in case of doubts about the legitimacy of the declarator, shall remain unaffected.
- 1.7 References to the applicability of statutory provisions are provided only for clarification. Therefore, even without such clarification, the statutory provisions shall apply, to the extent they are not directly amended or expressly excluded in these GTCS.
- 1.8 In the case of framework agreements and continuing obligations, the Buyer shall be notified in writing of any amendments to the GTCS. They shall be deemed approved unless the Buyer raises an objection in writing within one month of receipt of the notification. We shall make special reference to this consequence. This does not apply to material contractual obligations. Material contractual obligations are those obligations that make the proper fulfilment of the contract possible in the first place and on the observance of which the contracting parties may regularly rely.

## **2 Conclusion of Contract**

- 2.1 Our proposals are subject to change and non-binding. This shall also apply if we have provided the Buyer with catalogues, technical documentation (e.g. drawings, plans,

evaluations, calculations, references to DIN standards), other product descriptions or documents – also in electronic form – to which we reserve property rights and copyrights.

- 2.2 The ordering of the Goods by the Buyer shall be deemed to constitute a binding offer to conclude a contract.
- 2.3 Acceptance can be provided either in writing (e.g. through order confirmation) or through delivery of the Goods to the Buyer within 14 days after receipt of the order, unless otherwise specified in the order.

### **3 Deadlines and Delay in Delivery**

- 3.1 Deadlines shall be agreed individually or specified by us upon acceptance of the order.
- 3.2 In cases of force majeure we are released from the obligation to deliver or accept for the duration and to the extent of the effects. Force majeure is any unforeseeable and extraordinary event beyond our control which unavoidably prevents us in whole or in part from fulfilling our contractual obligations for delivery and acceptance and which could not have been averted or rendered harmless even with reasonable care. Force majeure in this sense includes, in particular, unforeseen natural disasters, fire damage, hacker and/or cyber attacks that cannot be avoided with appropriate technical and organisational measures, attacks on critical infrastructure, industrial action (strikes and lawful lock-outs), unexpectedly occurring pandemics or epidemics as well as operational disruptions of official decrees for which we are not responsible as well as supply difficulties and other disruptions in performance on the part of our suppliers.

The affected party shall notify the other party immediately of the occurrence and end of force majeure and do everything in its power to remedy the force majeure and to mitigate its impacts to the greatest extent possible.

In case of the occurrence of force majeure, the parties shall come to an agreement as to the further course of action and determine whether the products which were not delivered during this time shall be delivered subsequently after it has ended.

Notwithstanding the foregoing, each party is entitled to withdraw from the orders affected by this condition if force majeure lasts for more than eight (8) weeks from the agreed delivery date. The right of each party to terminate the agreement for good cause in case of prolonged force majeure shall remain unaffected.

- 3.3 The occurrence of our delivery delay shall be determined according to statutory provisions. In any case, however, a reminder by the Buyer shall be required. If we are delayed in delivery, the Buyer may demand lump-sum compensation for the damage caused due to the delay. The lump-sum compensation shall be 0.5% of the net price (delivery value) for each full calendar week of delay, overall, however, no more than 5% of the delivery value of the delayed Goods. We reserve the right to demonstrate that the Buyer has not suffered any damage or that the damage is significantly less than the aforementioned lump sum. The Buyer shall have no additional claim to reimbursement of damages caused by delay, unless a case of Section 8.1.1 or 8.1.3 exists.

- 3.4 Our statutory rights, especially in case of exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

## **4 Delivery, Passing of Risk, Acceptance, Default in Acceptance**

- 4.1 The delivery is made ex warehouse, which is also the place of performance for the delivery and any subsequent performance. Upon request and at the expense of the Buyer, the Goods will be shipped to a different destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, we are entitled to determine the type of shipment at our discretion (in particular, the transport operator, shipping route, packaging).
- 4.2 The risk of accidental loss and accidental deterioration of the Goods shall pass to the Buyer upon handover at the latest. However, in the case of sale by delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the Goods, as well as the risk of delay, shall already pass upon delivery of the Goods to the forwarding agent, the carrier or any other person or institution designated to deliver the Goods. To the extent acceptance has been agreed upon, this shall be decisive for the passing of risk. In all other respects, the statutory provisions of laws governing contracts for work and services shall also apply mutatis mutandis to agreed acceptance. If the Buyer is in default of acceptance of delivery, this is equivalent to delivery and/or acceptance.
- 4.3 If the Buyer is in default of acceptance, if they fail to engage in an act of cooperation or if our delivery is delayed for other reasons for which the Buyer is responsible, we shall be entitled to demand compensation for the resulting damage, including additional expenses (e.g. storage costs). For each month of storage or part thereof, we shall charge storage fees in the amount of 0.5% of the price of the product accepted late, but not totalling more than 5% of the price of the product accepted late, beginning with the delivery deadline or – in the absence of a delivery deadline – upon notification of readiness for despatch of the Goods.

The proof of higher damage and our legal claims (in particular compensation for additional expenses, reasonable compensation, termination) shall remain unaffected; however, the lump sum is to be credited against further monetary claims. The Buyer reserves the right to demonstrate that we have not suffered any damage or that the damage is significantly less than the aforementioned lump sum.

## **5 Prices and Terms of Payment**

- 5.1 Unless otherwise agreed on an individual basis, our prices current at the time of conclusion of contract shall apply, ex warehouse, subject to statutory value-added tax.
- 5.2 In case of sale by delivery to a place other than the place of performance (Section 4.1), the Buyer shall bear the transport costs ex warehouse and the costs of transport insurance, if desired by the Buyer. We will either invoice the transport costs actually

incurred in the individual case or agree on a lump sum for transport costs (excluding transport insurance). Any customs duties, fees, charges, taxes and other public levies shall be borne by the Buyer.

- 5.3 Packaging, loading, freight and insurance costs, as well as assembly and commissioning costs, shall be invoiced separately. The same shall apply to application software. The Buyer shall be charged separately for fees and costs for the procurement and authentication of certificates of origin, consular invoices, permits, etc.
- 5.4 When standard equipment is sold, planning work, supplementary work and other engineering services are not part of the standard service and are not included in the prices. Documentation is provided by standard operating manuals and standard wiring diagrams. Circuit diagrams and project planning with regard to the specific drive case are not part of our services, nor are the mains in-feed, switch-on control, external control and linking.
- 5.5 We shall be bound to the prices agreed for an order for two months after conclusion of contract. If longer periods have been agreed upon for the provision of the delivery or service, we shall be entitled, in the event of an increase in the cost of materials or labour, to add a pro-rated surcharge for the increase in costs that has occurred on the basis of the original price calculation. The provision in this Section 5.5 shall not apply to prices for which a material price surcharge has been agreed upon in accordance with the following Section 5.6.
- 5.6 If and to the extent that a material price surcharge is agreed upon in an order for servo synchronous motors, the following shall apply: Servo synchronous motors use magnets containing the raw materials neodymium and dysprosium (so-called "rare-earth elements"). These commodities, which are subject to strong price fluctuations, were calculated using a base value from March 2011 or lower in the price calculation.

The material price surcharge shall be calculated if there is an increase in price between the March 2011 base value and the current value at the time of invoicing. The price in March 2011 for both raw materials (by kilogram of material incorporated in the respective engine) and the prices at the time of invoicing, provided that this is not later than 5 days after delivery, shall be compared; otherwise the day of delivery of the respective engine shall be decisive for the calculation. The prices quoted on Asian Metal ([www.asianmetal.com](http://www.asianmetal.com)) shall be decisive in each case. Price increases occurring in relation to March 2011 – based on the weight of the two raw materials contained in each motor – shall be calculated in addition to the contractually agreed price.

With respect to further details of the material price surcharge, please refer to the below website <https://www.lenze.com/en-de/material-price-surcharge/>.

- 5.7 The purchase price shall be due and payable within 14 days from the date of invoice and delivery or acceptance of the Goods. However, we are entitled at any time, even within the scope of an ongoing business relationship, to make a partial or complete delivery subject only to advance payment. We declare such a reservation at the latest with the order confirmation.
- 5.8 Upon expiry of the aforementioned payment deadline, the Buyer shall be in default. During the period of default, interest shall be charged on the purchase price at the

prevailing statutory default interest rate. We reserve the right to assert further damages caused by the default.

- 5.9 The Buyer shall only be entitled to rights of set-off or retention to the extent their claim has been legally established by the final judgement of a court of law. In case of defects in the delivery, the Buyer's counter rights shall remain unaffected, in particular in accordance with Section 7.7 Sentence 2 of these GTCS.
- 5.10 After conclusion of contract, if it becomes apparent (e.g. due to an application for the opening of insolvency proceedings, repeated failure to meet payment terms, exceeding of the limit set by the credit insurer) that our claim to the purchase price is jeopardised by the Buyer's lack of ability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and – if necessary after setting a deadline – to withdraw from the agreement. In the case of contracts for the manufacture of non-fungible items (custom-made products), we may declare withdrawal immediately; the statutory provisions on the dispensability of notice shall remain unaffected. In addition, we are entitled to refuse all further services and to demand advance payment.

## **6 Retention of title**

- 6.1 Up until full payment of all our present and future claims arising from the purchase agreement and an ongoing business relationship (secured claims), we retain title to the Goods sold.
- 6.2 The Goods subject to retention of title may neither be pledged to third parties nor assigned as security prior to full payment of the secured claims. The Buyer shall be obliged to inform us immediately in writing if an application is filed to open insolvency proceedings or if the Goods belonging to us are subject to appropriation by third parties (e.g. seizures).
- 6.3 If the Buyer acts in breach of contract, in particular in the event of non-payment of the purchase price due, we shall be entitled to withdraw from the agreement in accordance with the statutory provisions and/or to demand the return of the Goods on the basis of the retention of title. The demand for return does not at the same time include the declaration of withdrawal; rather, we shall be entitled to demand the return of the Goods only and to reserve the right of withdrawal. If the Buyer does not pay the purchase price due, we may only assert these rights if we have previously set the Buyer a reasonable deadline for payment without success or if setting such a deadline can be dispensed with according to the statutory provisions.
- 6.4 Pending withdrawal according to Section 6.4.3, the Buyer shall be authorised to resell and/or process the Goods subject to retention of title in the ordinary course of business. In this case, the following supplementary provisions shall apply.
  - 6.4.1 In the event of processing, mixing or combining with goods of the Buyer or of third parties, we shall acquire co-ownership in the ratio of the invoice values of the processed, mixed or combined goods. Otherwise, the same shall apply to the resulting product as to the Goods delivered under retention of title.
  - 6.4.2 The Buyer hereby assigns to us with immediate effect by way of security all claims against third parties arising from the resale of the Goods or the product in total or in

the amount of our co-ownership share, if any, in accordance with Section 6.4.1. We accept such assignment. The duties of the Buyer specified in Section 6.2 shall also apply with respect to the assigned claims.

- 6.4.3 The Buyer, in addition to us, shall remain authorised to collect the claim. We oblige not to collect the claim as long as the Buyer meets their payment obligations towards us, there is no lack of ability to pay, and we do not assert the retention of title by exercising a right in accordance with Section 6.3. If this is the case, however, we can demand from the Buyer to inform us of the assigned claims and their debtors, provide all information necessary for collection, hand over the relevant documents and inform the debtors (third parties) of the assignment. In addition, we shall be entitled in this case to revoke the Buyer's authorisation to re-sell and process the Goods subject to retention of title.
- 6.4.4 In case the realisable value of the securities exceeds our claims by more than 10%, we will release securities at our discretion upon request of the Buyer.

## **7 Buyer Warranty Claims for Defects**

- 7.1 Unless otherwise specified below, the statutory provisions shall apply to the rights of the Buyer in the event of material defects and defects of title (including wrong delivery and short delivery as well as improper assembly or defective assembly instructions).
- 7.2 The basis of our liability for defects shall be exclusively the agreement reached on the quality of the Goods. All product descriptions and manufacturer specifications incorporated in the individual agreement shall be deemed to be an agreement on the quality of the Goods.
- 7.3 To the extent the quality was not agreed upon, it is to be judged according to statutory rules whether a defect exists or not. However, we shall accept no liability for public statements made by the manufacturer or other third parties (e.g. promotional claims) to which the Buyer has not drawn our attention as being decisive for their purchase.
- 7.4 As a general rule, we shall not be liable for defects of which the Buyer is aware at the time when the agreement is concluded or is not aware due to gross negligence. Moreover, the Buyer's warranty claims for defects presuppose that they have fulfilled their statutory duty of inspection and notification of defects. In the case of Goods intended for installation or other further processing, an inspection must be carried out at the latest immediately prior to processing. If a defect becomes apparent during delivery, inspection or at any later time, we must be notified of this in writing without delay. In any case, obvious defects must be reported in writing within 5 working days of delivery, and defects that cannot be detected during inspection must be reported within the same period of time after their discovery. If the Buyer fails to carry out a proper inspection and/or to give notice of defects, our liability for the defect which was not reported or not reported in a timely or proper manner shall be excluded in accordance with the statutory provisions.

- 7.5 Warranty claims do not exist if and insofar as the deviations in the quality of the goods are due to installation errors on the part of the buyer, omitted or faulty maintenance, improper repairs, modifications or normal wear and tear of the goods.
- 7.6 If the delivered item is defective, we may initially choose whether to provide supplementary performance by remedying the defect (rectification) or by delivering an item free of defects (replacement). Our right to refuse subsequent performance under the statutory conditions shall remain unaffected.
- 7.7 The parties agree that (i) a ratification of defects or a subsequent delivery by Lenze within the scope of the agreed warranty shall neither expressly nor tacitly be construed as an acknowledgment in the legal sense and (ii) neither a rectification of defects nor a subsequent delivery by Lenze shall be construed as a new delivery. The parties wish to ensure that neither subsequent delivery nor subsequent improvement triggers the start of a new limitation period.
- 7.8 We shall be entitled to make the subsequent performance owed dependent on the Buyer paying the purchase price due. However, the Buyer shall be entitled to retain a reasonable portion of the purchase price in relation to the defect.
- 7.9 The Buyer shall give us the time and opportunity necessary for the subsequent performance owed, in particular hand over the rejected Goods for inspection purposes. In case of a replacement delivery, the Buyer must return the defective item to us in accordance with the statutory provisions. Subsequent performance shall neither include the removal of the defective item nor its re-installation if we were not obliged to install it in the first place.
- 7.10 We shall bear or reimburse the expenses required for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs, in accordance with the statutory provisions if a defect is actually present. However, we will only reimburse the transport costs from or to the original place of delivery, unless the actual transport costs are lower. Otherwise, we may demand from the Buyer reimbursement of the costs incurred as a result of the unjustified request to remedy the defect (in particular, inspection and transport costs).
- 7.11 If supplementary performance has failed or if a reasonable period to be set by the Buyer for the supplementary performance has expired unsuccessfully or is dispensable according to the statutory provisions, the Buyer may withdraw from the purchase agreement or reduce the purchase price. No right of withdrawal shall exist, however, in case of a trivial defect.
- 7.12 Claims of the Buyer for damages or reimbursement of futile expenses shall also exist in the case of defects only according to Section 8 and shall otherwise be excluded.
- 7.13 A free right of withdrawal from the contract by the Buyer shall be excluded. Otherwise, the statutory prerequisites and legal consequences shall apply.

## **8 Other Liability**

- 8.1 To the extent not specified to the contrary in these GTCS, we shall be liable as follows:
- 8.1.1 in case of wilful misconduct,

- 8.1.2 in case of gross negligence of our legal representatives and employees,
- 8.1.3 in case of malice,
- 8.1.4 for damage resulting from injury to life, limb or health for which we are responsible,
- 8.1.5 for damage resulting from the breach of an essential contractual obligation (i.e. an obligation the fulfilment of which is a prerequisite for the proper performance of the agreement and on the observance of which the contractual partner regularly relies and may rely),
- 8.1.6 for the warranties assumed,
- 8.1.7 for claims arising from the German Product Liability Act and
- 8.1.8 to the extent legally mandated liability exists for other reasons.
- 8.2 Except in the cases of 8.1.1 and 8.1.3, we shall not be liable for loss of profit.
- 8.3 Except in the cases of 8.1.1 and 8.1.3, we shall not be liable for production downtime.
- 8.4 In cases of liability due to a minor negligent breach of an essential contractual obligation (Section 8.1.5), our liability per damage incident shall be restricted to the respective order volume of the respective individual order, but limited to a maximum of EUR 100.000, -.
- 8.5 The provisions of this Section 8 shall also apply to a claim for reimbursement of expenses.
- 8.6 In all other cases, our liability – irrespective of the legal grounds – shall be excluded.

## 9 Limitation

- 9.1 The limitation period for claims based on material defects and defects of title shall be two years from delivery. To the extent that acceptance is agreed upon, the limitation period shall begin with acceptance.
- 9.2 The Buyer's claims for damages according to Sections 8.1.1 and 8.1.3, and in accordance with the rules on product liability, expire only in accordance with the statutory limitation periods

## 10 Product life cycle

The parties are aware that Lenze products are subject to a product life cycle ("PLC"), the duration of which is determined by Lenze at its own discretion in each individual case and which is therefore not contractually promised to the Customer in any way. The parties are aware that (after expiry of the agreed warranty period) spare parts will only be supplied by Lenze within the scope of the specific PLC on a non-binding basis, whereby Lenze in particular does not assume any procurement obligation with third parties. At the special request of the Customer in individual cases, Lenze shall inform the Customer in a binding manner that the specific product is in the end-of-life phase and that therefore the purchase of a current model, for example, should be considered. Within the framework of an ongoing warranty period, Lenze reserves the

right to subsequently supply a compatible successor product, if necessary against payment of an additional price to be determined by Lenze at its reasonable discretion, "new for old", instead of repairing the purchased item.

## 11 Intellectual Property Rights

- 11.1 For all documents, objects, etc. provided to us for the purpose of delivery or performance, the Buyer shall be responsible for ensuring that the intellectual property rights of third parties are not infringed in the process. The Buyer shall indemnify us against claims by third parties and compensate us for any damage incurred. If we are prohibited from performance, manufacturing or delivery by a third party invoking an intellectual property right belonging to them, we shall be entitled – without review of the legal position – to discontinue the work and to demand compensation for the expenses incurred. Any documents, objects, etc. provided to us which have not led to the order shall be returned on request in exchange for reimbursement of costs. Otherwise, we shall be entitled to destroy them three months after submitting the proposal.
- 11.2 We shall reserve the ownership rights and copyrights to all samples, models, drawings, cost estimates, calculations and similar information of a tangible or intangible nature – also in digital form. This type of information must not be made available to third parties. If the Buyer receives such information in connection with contract initiation, they shall be obliged to return it to us free of charge if the agreement is not concluded.
- 11.3 To the extent software is embedded into the Goods, the Buyer shall have the non-exclusive right to use it in unmodified form in the delivered Goods. In addition, the ‘Licensing and Contractual Conditions for Software’ of the Lenze Group apply, which can be accessed via the following link: <https://www.lenze.com/en-de/imprint>. Any individual contractual agreements shall take precedence.

## 12 Confidentiality

- 12.1 The Buyer obliges to keep strictly confidential all information (in particular data and documents) pertaining to us (hereinafter collectively referred to as "Information") to which they become privy in verbal, written or any other form – even if prior to conclusion of this agreement – (also by our service providers) during the term of this agreement and thereafter and – unless absolutely necessary for the performance of this agreement – not to record it, disclose it to third parties or to exploit it themselves. This also applies to Information of other companies of the Lenze Group. It does not matter whether this information has been marked as secret, confidential or similar. However, Lenze protects this information by physical precautions and/or by contractual security mechanisms, including this agreement. Lenze expressly reserves the right to specify information separately to the Customer at any time, e.g. by e-mail, but shall not be obliged to do so.
- 12.2 The aforementioned confidentiality obligation shall not apply to Information that
- can be demonstrated to have already been known to the Buyer prior to the cooperation with us without obligation to maintain confidentiality, or

- is or becomes generally known without the Buyer being responsible for this, or
- is disclosed to the Buyer by a third party without breach of any confidentiality obligation, or
- must be disclosed on the basis of an enforceable official or judicial decision or a legal provision. In this case, the Buyer must notify us in writing prior to disclosure to give us the opportunity to obtain a protective court order.

The burden of proof for the existence of a legitimate exemption shall be borne by the Buyer.

- 12.3 The Buyer shall only be entitled to disclose the fact of the parties' cooperation to third parties, in particular to name us as a reference, with our prior written consent. Press releases or other statements to the public must be coordinated with us in advance. The above provisions shall not apply if and to the extent that they conflict with mandatory statutory provisions, in particular statutory disclosure requirements.

## 13 Export

The Buyer shall be obliged to comply with all applicable national and international export control and sanctions regulations, in particular those of the United Nations, the European Union, Poland and the United States. Listed dual-use products must also not be imported into free zones or free warehouses. This obligation shall only apply to the extent it does not lead to a violation of so-called anti-boycott regulations of EU or German law.

## 14 Due diligence in the supply chain

Lenze shall endeavour to ensure that appropriate organisational measures are taken in its own business area in order to fulfil its human rights and environmental due diligence obligations at all times. If Lenze has a justified suspicion that one of the aforementioned obligations is being violated in its business area, it shall immediately take the measures incumbent upon it by law. Lenze endeavours to pass on its compliance with these obligations along its supply chain.

## 15 Choice of Law and Place of Jurisdiction

- 15.1 The law of the Republic of Poland shall apply to these GTCS and the contractual relationship between us and the Buyer, to the exclusion of international uniform law, in particular, the UN Convention on Contracts for the International Sale of Goods.
- 15.2 Any disputes arising from contracts concluded on the basis of these GTCS or in connection with them, will be settled only by the common court competent for the seat of LENZE POLSKA Sp. z o.o. based in Katowice. Overriding statutory provisions, in particular on exclusive jurisdictions, shall remain unaffected.