

Lenze Service & Support

General Conditions of Service (GCS)

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1 Scope of validity

- 1.1** All services – such as, for example, repairs, modifications, overhauls, commissioning, programming, telephone consultation, maintenance and repair work, upgrading of machines and systems, replacement of equipment – performed by member companies of the Lenze Group (hereinafter: "Lenze"), shall be subject to these General Conditions of Service. These form an integral part of any and all agreements concluded by Lenze with the customer in respect of services. They shall also apply to all future deliveries, services or offers from Lenze, even if they are not specifically agreed upon again.
- 1.2** Terms and conditions of customers or third parties shall not apply, even if Lenze does not expressly contradict their applicability in the individual case. Even if Lenze refers to a letter containing terms and conditions of the customer or a third party or draws attention thereto, this will not constitute agreement as to the validity of those terms and conditions. The customer shall give Lenze written acknowledgement of the exclusive validity of these General Conditions of Service.
- 1.3** These Conditions of Service shall only apply if the customer is an entrepreneur.

2 Placement of order

- 2.1** Offers from Lenze are subject to change. A contract shall come into being upon Lenze's written confirmation of the order.
- 2.2** Contracts, purchase orders and delivery schedules and any changes or additions thereto must be in made in writing in order to be legally valid. Communication thereof by fax or e-mail shall suffice in respect of compliance with the written form requirement.
- 2.3** If the object for which the service is provided (hereinafter referred to as "performance object") has not been supplied by Lenze, the customer shall draw attention to existing industrial property rights of third parties relating to the performance object. The customer shall indemnify Lenze against any and all claims which might be asserted by third parties against Lenze on the basis of such industrial property rights.
- 2.4** Should the respective country-specific operating permit relating to a system or machine be compromised as result of the service to be provided by Lenze, in particular modifications, enhancements, upgrades, etc., this shall fall within the customer's sphere of responsibility.

- 2.5** The replacement and/or modification of individual components or items of equipment in machines and systems which bear the CE mark in accordance with Machinery Directive 2006/42/EC or the Low Voltage Directive 2006/95/EC in their respectively valid version might necessitate a check as to whether all safety-relevant requirements and constraints are still met thereafter. The customer shall be responsible for said check and possible restoration of compliance.
- 2.6** Unless expressly agreed otherwise in writing, Lenze does not provide services in the field of functional safety. The observance of and compliance with the relevant standards and regulations relating to the performance object in the field of functional safety shall be the responsibility of the customer.

3 Cost information, price quotation

- 3.1** Unless agreed otherwise, the services shall be charged for on the basis of the resultant time outlay as per Lenze's price lists relating to the respectively commissioned service.

The above shall also apply if the customer declares an issue to be a warranty claim in respect of a Lenze product but Lenze at its reasonable discretion determines that a warranty claim does not exist; This provision shall not affect the right of the customer to exercise its right against the entity liable for the warranty.

- 3.2** Should the customer wish a price quotation with binding prices prior to the execution of the service, this is to be expressly requested by the customer. Such cost quotation shall only be binding if it is submitted in writing and explicit reference to its binding nature is made. It is to be remunerated. The services provided for the submission of the cost quotation will not be charged to the customer to the extent that they can be utilized in the performance of the service.

- 3.3** The services provided for the submission of a cost quotation as well as the further outlay incurred (troubleshooting time shall be deemed working time), of which substantiation is to be provided, will be charged to the customer in the event that the service in question cannot be performed for reasons for which Lenze cannot be held responsible, in particular because

- the deficiency about which complaint was made did not occur in the inspection,
- replacement parts are not obtainable,
- the customer has culpably failed to adhere to the agreed date/appointment,
- the agreement has been terminated during the performance.

- 3.4** The repair item only needs to be restored to its original condition at the express request of the client against reimbursement of the costs unless the work carried out was not necessary.

4 Price and payment

- 4.1** Lenze shall have entitlement to request a reasonable advance payment upon conclusion of the contract.
- 4.2** When billing for the service performed, the invoice is to include the prices for parts and materials used and special services as well as the prices for the work performed, the costs of provision, labour, travel and transportation, in each case itemized separately. If the service is performed subject to a binding price quotation, it shall suffice to make reference to said price quotation in the invoice and only variations in the contractual scope need to be itemized separately.
- 4.3** VAT will be additionally charged to the customer at the statutory rate.
- 4.4** Payment shall be made, without cash discount upon acceptance and the handing over or sending of the invoice.
- 4.5** The customer shall only have entitlement to offset or assert a right of retention in respect of undisputed or judicially established claims.

5 Remote/telephone support

- 5.1** Should the customer order remote/telephone support services, he will be invited to take part in a telephone or online conference within the framework of the support serviced to be provided. Within the framework of an online conference, the customer may on its own responsibility share its screen, activate a webcam connected to its for video transmission and use the chat mode or the internet phone function. Should it be necessary for the control of the customer's computer to be transferred to the Lenze support personnel for the purposes of performing support services, said transfer of control shall take place actively via the customer. The customer shall at all times have the possibility to terminate said transfer of control.
- 5.2** If Lenze identifies defects or other nonconformities within the machine by way of remote diagnosis – i.e. via telephone or online conference – which require a measure to be taken, it shall then assist the customer in the respective repair and maintenance work to the extent that this is possible for it to do by means of the telecommunications-based means specified in the agreement.
- 5.3** Lenze shall notify the customer accordingly if it should not be possible to repair the system at all or in part by telecommunications-based means (remote or telephone support). Subject to a charge, Lenze will at the customer's request perform further maintenance and repair measures or suggest further maintenance and repair measures to the customer by way of which the proper operation of the system in question can be ensured, and shall provide the customer with support in the implementation of the suggested measures. This shall require the conclusion of a separate agreement.

- 5.4** Lenze shall take on the obligations and commitments as set down in detail in the contract concluded with the customer. This does not entail a guarantee that all existing damage and defects of the machine/system will be diagnosed and rectified by way of the contractual services nor any guarantee for the functional capability of the machine/system.
- 5.5** The customer shall ensure the reliable operation and security of its computers, the other IT infrastructure and of any systems and machines connected therewith. The customer shall in particular ensure that during the remote support activity there is nobody in the danger zone of a system or machine to be controlled via its computers and that such system or machine can be switched off at any time via an emergency stop switch.
- 5.6** Each party is responsible on its own side for the maintenance and operation of the necessary data connection. The customer shall on its side and at its own expense obtain and provide a data connection and ensure that said connection is available to Lenze for the performance of the contractual services. The customer shall bear the costs of the data connection and the costs for the individual transmission procedures. Furthermore, the customer shall be responsible for ensuring that the data connection is suitable for the intended communication by telephone or online conference and in particular has the necessary bandwidth.
- 5.7** Lenze shall be exempted from performance of the contractual services in the event that the data connection fails and Lenze is unable to receive data at all or to an adequate degree as result thereof. This shall also apply if the data quality is such that Lenze is unable to perform the services. In such case Lenze shall inform the customer of an identifiable disruption of the data connection.
- 5.8** The remote support is based on an SSL secured connection via the Lenze web app server, with special software needed to establish the connection. Before the invitation to remote support, the customer shall be informed about the technical requirements of remote support. The customer shall bear responsibility for ensuring that these technical requirements for the remote support are met on its side. Moreover, the customer shall bear responsibility for ensuring that when using the remote support, it is also possible to access and control the systems and machines used by him.
- 5.9** Lenze shall use any and all information that becomes known to it in the course of the remote support work solely for the purposes of the remote support. The responsibility for the protection of personal data relating to the customer's employees and customers and to its business secrets shall rest solely with the customer. The customer assures that no personal data will become known to Lenze within the framework of the remote support. In this connection the customer shall take any security precautions which might be necessary to ensure that the aforementioned obligations and commitments are met. Since it has no possibility of accessing personal data, the activity of Lenze is not to be classified as commissioned data processing.

5.10 Lenze herewith draws attention to the fact that remote services are solely for providing the customer's personnel with on-site support. Within the framework of the remote support activities Lenze solely provides support in that recommendations for concrete measures are given which will be undertaken or are to be implemented by the customer's personnel. To the extent that Lenze personnel themselves implement the recommendations provided by way of remote support, said implementation shall at all times and in all cases be solely for the customer and in agreement with the customer. The customer shall remain responsible for all measures taking place via its computer. The customer shall in particular check all recommendations and activities of Lenze in terms of suitability and appropriateness and taking account of possible risks. Under no circumstances may the decision on a specific measure or an individual activity be left up to the Lenze personnel or may a recommendation by Lenze be accepted without first having been checked.

5.11 When providing remote services, Lenze presumes that the assumptions listed below are in all cases accurate and hold true. In this respect the customer guarantees the accuracy and trueness of these assumptions at the time the respective remote services are performed.

- a) Immediately before the start of the remote services the customer shall make backups of all data that might be affected within the framework of the remote services.
- b) Access to and the inspection of personal data by Lenze is precluded in the course of the remote services.
- c) All machines and systems which can be accessed within the framework of the remote services will not be in productive use during said remote services.
- d) There are no people in the vicinity of machines and systems that are controllable via the customer's computer; even in the event of malfunctions and operator errors, any danger to people is ruled out.
- e) If there are objects in the vicinity of machines and systems, these are solely test materials in connection with which possible damage to or destruction thereof have been taken into account.
- f) Each and every activity on the part of Lenze within the framework of the remote services is checked continuously by personnel of the customer; the remote services will be stopped immediately if any risks or doubts should arise.

- 5.12** The parties agree that there can be no guarantee as to the complete security of the data transmission during the remote support. The customer shall therefore make adequate backups and protect sensitive data against unauthorized access via the remote support facilities. The liability for loss of data shall be limited to the typical recovery outlay that would be incurred in the case of a regular and risk-adequate creation of backup copies. In other respects, the provisions of Section 13 of these General Conditions of Service shall apply.
- 5.13** If, as opposed to the preceding provisions and warranties, Lenze is to provide remote services in respect of systems in productive use at the initiation of the customer and with Lenze's knowledge, this shall take place exclusively at the customer's risk. In such case, the customer shall act towards Lenze as if the remote services exclusively concern non-productive systems; the provisions on liability as per Section 12 of these General Conditions of Service shall remain unaffected hereby.

6 Participation and technical assistance to be provided by the customer for service assignments outside of Lenze's premises

- 6.1** The customer shall at its own expense provide support for Lenze service personnel in the execution of such service assignments.
- 6.2** The customer shall furnish Lenze with all information and documents that are necessary towards ensuring the proper and orderly performance of the service, doing so in good time before the work is commenced. The customer shall in good time give notification of the necessity for certain security checks or prerequisites. In the event of services performed abroad, the customer shall draw attention to necessary travel formalities (visa, invitations, etc.). Lenze reserves the right to withdraw from the contract in light of official travel warnings.
- 6.3** The customer shall notify Lenze of all relevant interfaces (hardware and software) of which Lenze must take note and observe in the provision of the contractual services. This shall in particular apply in the case of the performance of programming services on data processing systems of the customer.
- 6.4** The customer shall take the special measures necessary towards the protection of people and property where the service is to be performed. The customer shall brief the service personnel on existing special safety regulations to the extent that this is of importance for said personnel. The customer shall notify the Lenze service management of any violation of such safety regulations by the service personnel. In the event of serious violations, the customer may in consultation with the service management refuse the offender(s) access to the place at which the service is being performed.
- 6.5** The customer shall at its own expense provide technical assistance and shall in particular make necessary and appropriately qualified assistants available in the number required for the service assignment and for the necessary period of time. Such assistants shall follow the instructions given by the service personnel. Lenze assumes no liability for the assistants. Should any defects or damage be caused by the assistants as result of instructions given by the service personnel, the provisions of Sections 11 and 12 shall apply mutatis mutandis.
- 6.6** The technical assistance provided by the customer must ensure that the service can be commenced immediately after the arrival of the service personnel and can be carried out without delay until the acceptance thereof by the customer.
- 6.7** Should the customer fail to meet its obligations, Lenze shall, after having set a reasonable deadline, be entitled but not obligated to perform the duties of the customer on the latter's behalf and at its expense. In other respects, the statutory rights and claims of Lenze shall remain unaffected.

7 Transport and insurance relating to services on the premises of Lenze

- 7.1** Unless agreed otherwise in writing, shipment and return at Customer's request of the item to be repaired – including any packaging and loading – shall be performed for the customer's account; otherwise, said item to be repaired shall be delivered to Lenze by the customer at the latter's expense and picked up from Lenze by the customer again following performance of the repair.
- 7.2** The customer shall bear the transport risk.
- 7.3** At customer's request and expense, Lenze will arrange insurance covering insurable transport risks, e.g. theft, breakage, fire, for the transportation to and, if needed, back from Lenze's premises.
- 7.4** There will be no insurance coverage during the repair period on Lenze's premises. The customer shall be responsible for maintaining the existing insurance cover for the repair item, e.g. against fire, water damage, storm and machinery breakdown. Insurance coverage for these risks can only be arranged for at the express request and at the expense of the customer.
- 7.5** Should the customer be in delay with the takeover of the repair item, Lenze may charge a fee for the storage thereof on its premises. The repair item may also be stored elsewhere as Lenze sees fit. Costs and risk of storage shall be borne by the customer.

8 Repair period, delay in repair

The details of the repair periods are based on estimates and therefore not binding unless the repair period is specifically referred to as binding. If it is agreed that the repair item is to be shipped, any repair period will be based on the time at which it is handed over to the forwarding agent, carrier or other third parties commissioned with the transportation.

9 Acceptance

- 9.1** The customer shall accept the service as soon as notification of the completion thereof has been given and, where applicable, a contractually agreed testing of the repaired item has successfully taken place. Should the completed service prove noncompliant with the contract, Lenze shall be obliged to remedy the respective shortcoming. This shall not apply if the defect is immaterial to the interests of the customer or due to circumstances attributable to the customer. The customer may not refuse acceptance on grounds of a defect of insubstantial importance.
- 9.2** If acceptance is delayed through no fault of Lenze, the acceptance shall be deemed to have taken place on expiry of two weeks as from notification of completion of the service has been given.
- 9.3** On acceptance, the liability of Lenze for visible defects shall no longer apply unless the customer has reserved the right to assert a certain defect.

10 Retention of title, extended right of lien

- 10.1** Lenze reserves the title to all accessories, spare parts and replacement units used until receipt of all payments to which it has entitlement under the contract. Further collateral arrangements may be agreed.
- 10.2** Its claim arising from the contract shall give Lenze entitlement to a right of lien in respect of the repair item of the customer which has come into its possession on the basis of the contract. Said right of lien may also be asserted in respect of claims arising from work previously performed, spare part deliveries and other services, to the extent that they relate to the repair item. As regards other claims arising from the business relationship, the right of lien shall only apply insofar as such claims are uncontested or legally binding.

11 Claims arising from deficiencies

- 11.1** After acceptance of the service, Lenze shall be liable for deficiencies in the service to the exclusion of all other claims of the customer without prejudice to Sections 11.4 and 12 in that it has to remedy the deficiencies. The customer shall give Lenze written notification of an identified deficiency immediately on the discovery thereof.
- 11.2** The liability of Lenze shall not apply if the deficiency is immaterial to the interests of the customer or due to circumstances attributable to the customer.
- 11.3** Lenze shall not be liable for changes or repairs of the repair item improperly undertaken by customers or third parties.
- 11.4** With due consideration being given to statutory exceptions, the customer shall have the right to a reduction of the repair price in the event that Lenze allows a reasonably set period for rectifying said deficiency to fruitlessly elapse. Only if the service is verifiably without interest for the customer in spite of such reduction may he withdraw from the contract. Any and all further claims shall be determined exclusively in accordance with Section 12 of these Conditions of Service.

12 Liability of Lenze, exclusion of liability

- 12.1** Regardless of the legal basis on which it rests, the liability of Lenze shall be limited to deliberate and gross negligence and the breach of essential contractual obligations. Essential contractual obligations are those which are of importance towards fulfilling the purposes of the contract, in other words the fulfilment of which enables the proper execution of the contract in the first place and on the fulfilment of which the customer can reasonably rely.
- 12.2** In the case of slightly negligent breach of essential contractual obligations the liability of Lenze shall be restricted to compensation of the foreseeable damage.
- 12.3** These limitations of liability (12.1 and 12.2) shall not apply to injury to life, limb or health and in cases of mandatory statutory liability, for example product liability.

13 Limitation period

Any and all claims of the customer – on whatever legal grounds – shall lapse after 12 months. Claims for damages based on wilful or grossly negligent breach of duty or the breach of essential contractual obligations by Lenze, as well as the cases referred to in Section 12.3, shall be subject to the statutory periods. The statutory periods shall likewise apply in the event that Lenze performs the service on a building and in doing so causes its defectiveness.

14 Applicable law, place of jurisdiction

- 14.1** The place of performance for the parties and the exclusive place of jurisdiction for any and all disputes arising from or in connection with the contractual relationship shall be the registered office of the respectively commissioned member company of the Lenze Group.
- 14.2** The contractual relations between the parties shall be subject to German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.
- 14.3** Should any provision of this contract be or become invalid or unenforceable, the validity of the remaining provisions shall not be affected. In such case the parties shall replace the invalid or unenforceable provision by one which comes as close as legally possible thereto in terms of economic intent with consideration being given to the principle of good faith.