

## General Terms and Conditions of Sale

Last revised: September 2021

### 1. Scope of Application, Form

- 1.1. These General Terms and Conditions of Sale (GTCS) apply to all business relations between Lenze Limited (with registered company number 00962777) and their Buyers ("Buyers"). The GTCS shall only apply if the Buyer is a legal person or a sole trader. These GTCS shall not apply to consumers.
- 1.2. The GTCS shall apply to the sale of movable goods ("Goods"), irrespective of whether we produce the goods ourselves or purchase them from suppliers. Unless otherwise agreed, the current version of the GTCS at the time of the Buyer's order or as sent to them in writing shall also apply to similar further sales and deliveries in the future without our having to refer to them again on each occasion.
- 1.3. Our GTCS shall apply exclusively to the sale of Goods, and set out all the terms between the parties in relation to the subjects covered by it. These GTCS shall prevail over any deviating, conflicting or supplementary terms of the Buyer, which shall only become part of these GTCS if we expressly consent to their inclusion.
- 1.4. Any other written agreements executed between the parties (including ancillary agreements and amendments) shall always take precedence over these GTCS.
- 1.5. All notices and consents under these GTCS (e.g. setting of deadlines, notification of defects, termination or reduction) must be made in writing (e.g. letter, e-mail, fax).

### 2. Conclusion of Contract

- 2.1. Any proposals we submit to the Buyer 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 all intellectual property rights and other rights.
- 2.2. When the Buyer make an order for the Goods, (an "Order") this constitutes a binding offer to enter into an agreement with us.
- 2.3. We shall accept the Order 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.
- 2.4. Each Order shall constitute a separate contract.

### **3. Delivery**

- 3.1. The delivery date shall be as specified by us on acceptance of the Order or as agreed between the parties.
- 3.2. We shall not be liable where delivery is impossible or delayed to the extent these are caused by events beyond our reasonable control (force majeure) or other events unforeseeable at the time we accept your Order (e.g. operational disruptions of any kind, difficulties in procuring materials or energy, transportation delays, strikes, lawful lock-outs, shortage of labour, energy or raw materials, difficulties in obtaining necessary official approvals, regulations, prohibitions or measures on the part of any public authority, epidemics or pandemics, late delivery of supplies by our suppliers despite corresponding contractual agreement, act of God, explosion, flood, tempest, fire or accident) for which we are not responsible. If such events make it considerably more difficult or impossible for us to deliver Goods or render services, and if the impairment is not only of a temporary nature, we may terminate these GTCS on notice to you. In case of impairment of a temporary duration, the delivery date or service deadlines shall be extended by the period of the impairment. To the extent that it would not be reasonable for the Buyer to accept the delivery of Goods or services as a result of the delay, the Buyer may terminate the relevant Order and these GTCS on prompt written notice to us.
- 3.3. If we have not delivered the Goods by the delivery date, the Buyer may charge liquidated damages for any damage caused due to the delay. The liquidated damages shall be 0.5% of the net price of the Goods for each full calendar week of delay, provided that this shall be no more than 5% of the total net price of the delayed Goods. We reserve the right to prove that the Buyer has not suffered any damage or that the damage is significantly less than the aforementioned liquidated damages. The Buyer shall have no additional claim for reimbursement of damages caused by delayed delivery of Goods, subject to Section 8.

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

- 4.1. The delivery is made on ex warehouse incoterms. However, on the Buyer's request and at the Buyer's expense, we shall arrange for delivery of the Goods to a different destination ("Alternate Delivery"). In such cases, and unless otherwise agreed between the parties, we may determine the delivery particulars (in particular, the transport operator, shipping route, packaging).
- 4.2. The risk of accidental loss and accidental damage to the Goods shall pass to the Buyer on delivery. However, in the case of Alternate Delivery, the risk of accidental loss and accidental damage to the Goods, as well as the risk of delay, shall pass on hand-over of the Goods to the person designated to deliver the Goods. The Buyer shall be deemed to have accepted delivery of the Goods after 5 working days.
- 4.3. If the Buyer fails to cooperate with delivery arrangements or if our delivery is delayed for other reasons for which the Buyer is responsible, we may charge liquidated damages for the resulting damage, including additional expenses (e.g. storage costs), which shall be a reasonable and genuine pre-estimate of loss. For each month of storage, or part of

a month on a pro-rated basis, we shall charge storage fees in the amount of 0.5% of the net price of the Goods which were not delivered, but not totalling more than 5% of the total net price of the Goods, beginning with the delivery date or – in the absence of a delivery deadline – on notification of readiness for despatch of the Goods.

The Buyer reserves the right to prove that we have not suffered any damage or that the damage is significantly less than the aforementioned liquidated damages.

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

- 5.1. Unless otherwise agreed in writing between the parties, our prices current at the time of the Order shall apply, subject to statutory value-added tax.
- 5.2. In respect of Alternate Delivery, the Buyer shall bear the transport costs ex warehouse. The Buyer shall be responsible for any transport insurance it opts to purchase. We will either invoice the transport costs actually incurred in delivery or agree on a fixed fee for transport costs (excluding transport insurance). In any case, any customs duties, fees, charges, taxes and other public levies shall be borne by the Buyer.
- 5.3. Packaging, loading, freight, assembly, commissioning, application software, certification of origin, consular, permits and insurance costs shall be invoiced to the Buyer separately.
- 5.4. Planning, engineering and other supplementary services shall be charged separately and do not form part of the price for standard equipment. We will provide standard form operating manuals and wiring diagrams. The following shall not form part of the services for particular drive cases:
  - 5.4.1. circuit diagrams;
  - 5.4.2. project planning
  - 5.4.3. the mains in-feed;
  - 5.4.4. switch-on control;
  - 5.4.5. external control; and
  - 5.4.6. linking.
- 5.5. We shall honour the price agreed for Goods in an Order for a period of four months after entry into that Order. If the delivery date (or final delivery date for Orders divided into instalments) is further than four months from entry into that Order, we may, in the event of an increase in the cost of materials or labour, to charge a pro-rated surcharge for such increase, 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 in accordance with Section 5.6.
- 5.6. If a material price surcharge is agreed for servo synchronous motors, the following shall

apply. An increase in price of raw materials required shall incur a material price surcharge. Such surcharge shall be calculated (by kilogram of material incorporated in the Good) on the difference between the March 2011 base value and the value current at the time of either a) if not more than five days from the date of delivery, the date and time of invoicing, or b) if more than five days from the date of delivery, the date of delivery. The prices shall be based on those quoted on Asian Metal ([www.asianmetal.com](http://www.asianmetal.com)).

For 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 Buyer shall pay each invoice within 14 days from the date of the invoice provided that we have not required advanced payment. We shall notify you of any advanced payment requirements by the time of the Order confirmation.
- 5.8. On expiry of any payment due date, we may charge interest on the overdue sum from the due date until payment of the overdue sum, accruing each day at 4% per year above the prevailing Bank of England base rate from time to time.
- 5.9. The Buyer may only set-off or withhold any payments to the extent their claim has been approved a court of law.
- 5.10. If, after entry into an Order, it becomes apparent (e.g. due to an application for the opening of insolvency proceedings, bankruptcy, winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator or similar officer in relation to any of its assets or revenues, repeated failure to meet payment terms, exceeding of the limit set by the credit insurer) that the Buyer's financial position has deteriorated so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy, we may refuse performance and, to the extent permissible by law, terminate these GTCS and any Order. In the case of Orders for the manufacture of non-fungible items (custom-made products), we may terminate such Orders immediately.

## **6. Retention of title**

- 6.1. Until full payment is made for the Goods, we retain title to the Goods sold.
- 6.2. Until full payment is made, the Goods may neither be pledged to third parties nor assigned as security. The Buyer shall notify us immediately in writing if an application is filed to open insolvency proceedings, bankruptcy, winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator or similar officer in relation to any of its assets or revenues, or if such Goods are subject to appropriation by third parties (e.g. seizures).
- 6.3. If the Buyer fails to make full payment by the due date, we may impose a reasonable deadline for the Buyer to make full payment. On expiry of such deadline, we may terminate these GTCS and any Order, and/or demand the return of the Goods. The demand for return shall not automatically constitute notice of termination which we may

separately submit to the Buyer.

- 6.4. Subject to Section 6.4.3, the Buyer shall be authorised to resell and/or make use of 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 that the Buyer mixes or combines the Goods with other goods, we shall acquire co-ownership in the ratio of the invoice values of the mixed or combined goods. The provisions contained in Section 6.1 to 6.3 shall apply to the resulting product.
  - 6.4.2. The Buyer hereby assigns to us with immediate effect all claims against third parties arising in accordance with Section 6.4.1 in total or in the amount of our co-ownership share, if any. The Buyer's obligations specified in Section 6.2 shall also apply with respect to the assigned claims.
  - 6.4.3. Both we and the Buyer may collect for claims set out in Section 6.4.2. As long as the Buyer meets their payment obligations towards us, we shall not assert the retention of title by exercising our rights under Section 6.3. If this is the case, however, we may require 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 of the assignment. We may in this case revoke the Buyer's authorisation to re-sell and make use of the Goods subject to retention of title.

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

- 7.1. Nothing in this section shall affect the Buyer's rights under law or any liability which we cannot limit.
- 7.2. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from these GTCS.
- 7.3. We shall accept no liability for public statements made by the manufacturer or other third parties (e.g. promotional claims) in relation to the Goods.
- 7.4. We shall not be liable for defects of which the Buyer is aware at the time an Order is made. In the case of Goods intended for installation or other further use, an inspection must be carried out prior to such use. If a defect becomes apparent during delivery, inspection or at any later time, the Buyer shall notify us 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 to us of defects, our liability for the defect which was not reported or not reported in a timely or proper manner shall be excluded to the extent permitted by law.
- 7.5. If delivered Goods are defective, we may either remedy the defect or replace such Goods, such choice being at our discretion.

- 7.6. If payment for defective Goods has not been made, we may require the Buyer to make payment before remedying or replacing such defective Goods. However, the Buyer may retain a reasonable portion of such payment in relation to the defect.
- 7.7. The Buyer shall comply with our reasonable requirements to facilitate our remediation or replacement of defective Goods, and in particular hand over any rejected Goods for our inspection. In the case of replacement, the Buyer must return the defective item to us. We shall not be liable for the removal of any defective Goods, nor re-installation of Goods if we were not obliged to install them on initial delivery.
- 7.8. Provided that a defect is present, we shall be liable for the expenses required for the purpose of inspection, remediation and/or replacement, including transport, travel, labour and material costs. If we determine in our reasonable opinion that there is no defect, we may demand from the Buyer reimbursement of the costs incurred as a result of the request to remedy the defect.
- 7.9. In urgent cases, e.g. if operational safety is jeopardised or to prevent disproportionate losses or damage to people or property, the Buyer shall have the right to remedy a defect themselves and to request reimbursement from us for the expenses objectively required for this purpose. The Buyer shall notify us as soon as possible, if possible in advance, of such measures. The Buyer shall not carry out such measures if we would be entitled to refuse remediation or replacement.
- 7.10. If remediation or replacement has failed or if a reasonable period for such performance has expired, the Buyer may terminate the Order or request a reasonable reduction to the purchase price. The Buyer shall have no right of termination in the case of a trivial defect.

## **8. Other Liability**

- 8.1. Neither party's liability:
  - 8.1.1. for fraudulent misrepresentation or for any other fraudulent act or omission,
  - 8.1.2. for death or personal injury caused by its negligence,
  - 8.1.3. for statutorily-implied term as to title of the Goods,
  - 8.1.4. to pay sums properly due and owing to the other in the normal course of performance of these GTCS,
  - 8.1.5. under any express indemnity contained in these GTCS,
  - 8.1.6. for any other liability which may not lawfully be excluded or limited,  
  
is excluded or limited by these GTCS .
- 8.2. Subject to 8.1, we shall not be liable (whether from breach of contract, tort (including

negligence), breach of statutory duty or otherwise) for (i) any loss of sales, profit, revenue, business, opportunity, software, data, customers or contracts, (ii) production downtime, (iii) loss of or damage to goodwill, or (iv) any indirect, consequential or special loss, arising out of or relating to these GTCS, whether or not such loss was foreseeable. For these purposes, the term "loss" includes a partial loss or reduction in value as well as a complete or total loss.

- 8.3. Subject to 8.1 and 8.2, our total liability arising out of or relating to these GTCS or their subject matter and to anything which it has done or not done in connection with the same (whether from breach of contract, tort (including negligence), breach of statutory duty or otherwise) shall be limited per event to the respective order volume of the respective individual Order, but limited to a maximum of GBP 850,000.
- 8.4. The provisions of this Section 8 shall also apply to a claim for reimbursement of expenses.
- 8.5. In all other cases, and to the extent permissible by law, our liability (whether from breach of contract, tort (including negligence), breach of statutory duty or otherwise) shall be excluded.

## **9. Limitation**

- 9.1. To the extent permissible by law, the limitation period for claims based on:
  - 9.1.1. material defects of any Goods;
  - 9.1.2. defects of title; and
  - 9.1.3. any other claims for damages in relation to a defective Goods, shall be 24 months from the delivery date. The limitation period shall begin with acceptance of the Goods.

## **10. Termination**

- 10.1. We may terminate these GTCS or any Order by giving you notice if:
  - 10.1.1. you materially breach any term of these GTCS and it is not possible to remedy that breach,
  - 10.1.2. you materially breach any term of these GTCS (which, in the case of the Buyer, shall include non-payment of any invoiced amount that is properly due and owing) and it is possible to remedy that breach but you fail to do so within 30 days of being requested in writing to do so, or
  - 10.1.3. section 5.10 applies.
- 10.2. Termination of these GTCS or any Order for any reason will not affect any accrued rights

or liabilities which either party may have by the time termination takes effect, or the coming into force or the continuation in force of any of their provisions that expressly or by implication are intended to come into force or continue in force on or after termination.

## **11. Intellectual Property Rights**

- 11.1. The Buyer shall ensure that, in respect of all information and items provided to us for the purpose of delivery or performance, the intellectual property rights of third parties are not infringed. The Buyer shall indemnify us against claims by third parties and compensate us for any damage or losses incurred in relation to infringement or third party intellectual property rights. If we are prohibited from performance, manufacturing or delivery by a third party invoking intellectual property rights belonging to them, we may discontinue such work and demand compensation from the Buyer for the expenses incurred. All information and items provided to us which shall be returned on the Buyer's request after reimbursement of costs. Otherwise, we may destroy them three months after submitting a proposal.
- 11.2. We reserve all right, title and interest in any intellectual property rights to all works, products, documentation, information, data, samples, models, drawings, cost estimates, calculations and similar information of a tangible or intangible nature (whether in electronic form or otherwise) provided or made available by or on behalf of us in connection with our performance of these GTCS ("Lenze Materials"). If the Buyer receives Lenze Materials in connection with entry into these GTCS, they shall be obliged to return it to us free of charge if an Order is not entered into or these GTCS or any Order is terminated.
- 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. Any other agreements entered into between the parties shall take precedence over these GTCS in respect of such software.

## **12. Confidentiality**

- 12.1. The Buyer shall keep strictly confidential all information (in particular data and documents) pertaining to us or received from us (including related to our business, operations, systems, processes, products, trade secrets, know-how, contracts, finances, plans, strategies or current, former or prospective clients, customers, partners or suppliers, hereinafter collectively referred to as "Information") to which they become privy in verbal, written or any other form, even if prior to entry into these GTCS or an Order, during the term of these GTCS and thereafter. The Buyer shall, unless absolutely necessary for the performance of these GTCS, not copy Information, disclose Information to third parties or exploit Information themselves. This also applies to Information of other companies of the Lenze Group.
- 12.2. The aforementioned confidentiality obligations shall not apply to Information that:

- can be demonstrated to have already been known to the Buyer prior to the agreement with us without obligation to maintain confidentiality,
- is or becomes generally known without the fault of the Buyer,
- is disclosed to the Buyer by a third party without breach of any confidentiality obligation,
- is trivial or obvious, or
- must be disclosed on the basis of legal or regulatory obligations. 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 Buyer shall be responsible for proving the existence of a legitimate exemption to its confidentiality obligations under this Section 12.

- 12.3. The Buyer shall not be entitled to disclose the fact of the parties' cooperation to third parties, in particular to name us as a reference, without 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 to the extent that they conflict with mandatory statutory provisions, in particular statutory disclosure requirements.

### **13. Data Protection**

Each party will, at all times during the term of these GTCS, comply with, to the extent applicable to these GTCS, (i) the United Kingdom General Data Protection Regulation, the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, and the Security of Network & Information Systems Regulations 2018, all as amended and/or replaced, and in force from time to time, (ii) the General Data Protection Regulation 2016 (EU) 2016/679 and all other applicable laws and regulations relating to data protection and privacy, and (iii) all related statutory codes of practice and guidance issued by any relevant data protection authority.

### **14. Export**

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

## **15. Choice of Law and Place of Jurisdiction**

- 15.1. The law of England 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. The exclusive – including international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the courts of England.
- 15.3. However, we may also initiate proceedings at the place of delivery under these GTCS or other agreed terms or at the Buyer's general place of jurisdiction.

## **16. General**

- 16.1. No right, power or remedy under these GTCS or otherwise available to a party is exclusive of any other right, power or remedy under these GTCS or otherwise available to that party.
- 16.2. The Buyer may not sub-license or assign, sub-contract or delegate any or all of its rights or obligations under these GTCS without our prior written consent.
- 16.3. If any provision of these GTCS is held for any reason to be ineffective or unenforceable, this shall not affect the validity or enforceability of any other provision of this agreement or this agreement as a whole.
- 16.4. Nothing in these GTCS shall or is intended to create a partnership or joint venture between the parties, constitute one party as agent of the other or give either party authority to make or enter into commitments, assume liabilities or pledge credit on behalf of the other party.
- 16.5. With the exception of the Lenze Group, a person who is not a party to these GTCS shall not have any rights under or in connection with them, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.