

Terms of Delivery and Payment

valid from 17.10.2013

I Conclusion of Contract, Prices, Minimum Order

1. These terms and conditions of commercial sale of LIH Light Impex Henze GmbH (the “Terms and Conditions”) apply to and form an integral part of all quotations and offers made by LIH Light Impex Henze GmbH (“LIH”), all acceptances, acknowledgements and confirmations by LIH of any orders by Buyer and any agreements (“Agreements”) regarding the sale by LIH and purchase by Buyer of goods and services (“Products”), also for future business transactions, unless and to the extent LIH explicitly agrees to otherwise in writing.
2. Any terms and conditions set forth in any document or documents issued by Buyer either before or after issuance of any document by LIH setting forth or referring to these Terms and Conditions are hereby explicitly rejected and disregarded by LIH, and any such terms shall be wholly inapplicable to any sale made by LIH to Buyer and shall not be binding in any way on LIH.
3. LIH’s offers are open for acceptance within the period stated by LIH in the offer or, when no period is stated, within thirty (30) days from the date of the offer, but any offer may be withdrawn or revoked by LIH at any time prior to the receipt by LIH of Buyer’s acceptance thereof.
4. At all times our quotations and price lists shall be without obligation and not binding. By submitting quotations we shall in no way be obliged to accept orders. Orders shall not be deemed accepted by us until our written confirmation of order is available. This also applies to orders placed with our agencies. The prices given in our confirmation of order shall be binding for a term of 4 months as from the date of confirmation of order.
5. Documents like figures, drawings and indications of weights pertaining to a quotation are only binding, if they have been explicitly designated as such. LIH reserves the proprietary right and copyright with regard to cost estimates, drawings and other documents; and these must not be made accessible to any third parties. Documents pertaining to quotations must be returned immediately if the order is not assigned to LIH.
6. Orders cancellation, quantity reduction:
 - a) If orders are cancelled or quantities are reduced, we reserve the right to cancel special agreements or discounts, and for goods already supplied to subsequently charge the amount of the difference from the net price list in force at the time.
 - b) If cancelled orders include goods specially manufactured for this customer, we will charge the customer the expenses thereby incurred.
7. Prices in any offer, confirmation or Agreement are in Euros, based on delivery Ex-Works (INCOTERMS latest version) from our warehouse or other facility designated by LIH, unless agreed otherwise in writing between Buyer and LIH and do not include any taxes, duties or similar levies, now or hereafter enacted, applicable to the Products. LIH will add taxes, duties and similar levies to the sales price where LIH is required or enabled by law to pay or collect them and these will be paid by Buyer together with the price. Prices are subject to pro-rata increases in case the prices of raw materials and wages rise after conclusion of the contract.
8. Drawings and indications of weights and dimensions in catalogues and prospectuses of our contractors have been generated at the best of knowledge, errors

excepted; the same applies to the indications in our sales documents. The right to any changes for the purpose of technical advancement is reserved.

9. The indications in our sales documents, catalogues and prospectuses apply to lamps wired ready for connection for operating voltages of 230V, 50Hz and ambient temperatures of max. 30°C. However, lamps for voltages, ambient temperatures and frequencies deviating from these values can also be supplied. A separate quotation is necessary for that purpose.

II Payment, Interest, Setoff, Retention

1. Unless agreed otherwise between LIH and Buyer in writing, LIH may invoice Buyer for the price of the Products delivered upon delivery of the Products in accordance with the applicable INCOTERM. Net payment is due within thirty (30) days of date of invoice unless agreed otherwise between LIH and Buyer in writing. All payments shall be made to the designated LIH address. If deliveries are made in installments, each installment may be separately invoiced and shall be paid for when due. No discount is allowed for early payment unless agreed to in writing by LIH.

2. All deliveries of Products agreed to by LIH shall at all times be subject to credit approval of LIH. If, in LIH's judgment, Buyer's financial condition at any time does not justify production or delivery of Products on the above payment terms, LIH may require full or partial payment in advance or other payment terms as a condition to delivery, and LIH may withhold, suspend, delay or cancel any credit, delivery or any other performance by LIH.

3. Payment shall not be deemed effected until we can irrevocably dispose over the amount in full.

4. In the event of any default by Buyer in the payment of any fees or charges due, or any other default by Buyer, LIH shall have the right to refuse performance and/or delivery of any Products until payments are brought current. LIH may withhold, suspend, delay or cancel any credit, delivery or any other performance by LIH without any liability for consequential or incidental damages towards the Buyer. Such right shall apply without prejudice to any other rights and remedies available under the Agreement or at law.

5. In case of late payment, interest on arrears amounting to 8% above the applicable basic interest rate shall be calculated annually, unless LIH proves a higher level of damage, or the Buyer a lower level of damage on the part of LIH.

III Delivery, Consignment, Delay

1. Unless otherwise agreed, deliveries shall be made ex works. All costs arising from deliveries within Germany made freight paid to their final destination will be charged separately, unless otherwise agreed. We shall not assume any guarantee for the cheapest or quickest form of transport.

2. Express consignments shall only be made on Buyer's instructions, provided the latter assumes the entire costs incurred.

3. As a matter of principle, only full packaging units shall be delivered. If an order fails to meet this standard, we shall make a surcharge of EUR 3,00 per partial unit delivered.

For deliveries within Germany whose net value of order totals EUR 500,00 or less we shall make an additional surcharge for shipping and handling based on weight and

dimensions of the goods. For international deliveries additional surcharge for shipping and handling will be made in any case.

4. Unless otherwise agreed, all consignments – including those to countries outside the EU – shall be transported at Buyer’s risk. The risk shall pass to Buyer as soon as the goods leave our factory or warehouse. Unless otherwise agreed, the clause “ex works” (EXW) as defined in the INCOTERMS (latest version) shall be deemed agreed with regard to orders for delivery abroad.
5. The delivery period shall be reasonably extended if we are subsequently prevented from punctually performing the contract due to any disruption of procurement, manufacture or deliveries either at our place of business or that of our own suppliers, e.g. due to energy shortages, traffic disruptions, shortages of raw materials, defects in quality, changes in the quality of raw materials, strikes, lockouts, staff shortages and all other instances of force majeure and reasons which are beyond our control and evidently prevent us from keeping to the deadlines. Buyer may only rescind the contract if we have been granted a subsequent extension of time in writing. Notice of rescission must be given in writing if we fail to perform within the extended period.
6. If Buyer defaults in payment for a previous delivery, then we shall be entitled to withhold deliveries or to rescind the contract without being under any obligation to provide compensation for any losses incurred.
7. We are entitled to make partial deliveries and to make excess or short deliveries of up to 10% of the total order, such as is normal in the branch.
8. The Buyer shall accept delivered goods even if they have marginal deficiencies. Partial deliveries are admissible.
9. Deliveries to foreign countries are exempt from tax under the following conditions:
 - a) if Buyers from European Countries provide a valid VAT ID number and a satisfactory proof of exportation (confirmation of arrival) after receipt of the goods,
 - b) if Buyers from Third Countries provide a satisfactory proof of exportation (e.g. customs export notice on the export declaration).

IV Export/Import Restrictions

1. If the delivery of Products under the Agreement is subject to the granting of an export or import license by a government and/or any governmental authority under any applicable law or regulation, or otherwise restricted or prohibited due to export or import control laws or regulations, LIH may suspend its obligations and Buyer’s rights regarding such delivery until such license is granted or for the duration of such restriction and/or prohibition, respectively, and LIH may even terminate or cancel the Agreement, without incurring any liability towards Buyer. Furthermore, if an end-user statement is required, LIH shall inform Buyer immediately thereof and Buyer shall provide LIH with such document upon LIH’s first written request; if an import license is required, Buyer shall inform LIH immediately thereof and Buyer shall provide LIH with such document as soon as it is available. By accepting LIH’s offer, entering into any Agreement and/or accepting any Products, Buyer agrees that it will not deal with the Products and/or documentation related thereto in violation of any applicable export or import control laws and regulations.

V Returning Goods

1. The right to return or exchange goods that have been ordered is excluded. However, if in any specific case we agree to a return being made, issuing written confirmation to this effect beforehand, then the goods must be delivered to our place of business freight paid and at Buyer's risk.

As a matter of principle, credit notes shall only be issued for whole boxes in their original packaging.

2. When credit notes are issued, costs at a flat rate of 20% shall be deducted. If additional expenses are required, e.g. repairs or repackaging, these shall be charged separately. Warehouse goods which are not easily sold or are out-dated, and items made to order and specially stamped goods may not be returned. This shall not apply if Buyer's withdrawal from the contract is justified.

VI Retention of Title

1. Products shall remain our property until payment of all claims in respect of the business relationship with the Buyer, including any future claims. The retention of title shall also extend to any Products delivered by way of exchange.

2. If the Products under retention of title should be processed, mixed or combined in the meaning of sections 947, 948 and 950 of the German Civil Code (BGB) with other items that do not belong to LIH, LIH shall have a right to co-ownership of the new item in the same ratio as that between the value of the Products under retention of title, including VAT, and the value of the other items processed or combined at the time of processing or combination. Buyer shall store the item on behalf of LIH free of charge.

3. Until further notice Buyer is authorized to dispose of the Products under retention of title within the framework of its ordinary business operations. For this event Buyer hereby assigns to LIH his claims from a resale of the Products under retention of title (the resale price including VAT) – including the corresponding claims from bills of exchange and all ancillary claims. If Buyer should sell the Products under retention of title together with Products that do not belong to LIH at a total price the assignment shall only apply to the sum which LIH has charged Buyer for the Products under retention of title which have been sold.

4. If Buyer's claims from the resale form part of the balance in a current account, Buyer hereby assigns to LIH his claims against his own customer in respect of the claims in the current account. The assignment shall apply to the resale price including VAT.

5. Until further notice Buyer shall be entitled to collect the claims that have been assigned to LIH. Any assignment or pledging of such a claim shall only be permissible with LIH's written consent. If Buyer defaults on payment or fails to comply with his obligations in respect of the retention of title, Buyer shall, on LIH's request, provide the debtors with written notification of the assignment, supply LIH with all information, submit and send LIH the documents and transfer any bills of exchange. If necessary, Buyer must grant LIH access to the relevant documents.

6. On the occurrence of the circumstances set out in Section VI.5 sentence 3 Buyer must grant LIH access to the Products under retention of title which are still in his possession and send LIH an exact list of the Products. Buyer must separate these from other Products and return them to LIH after withdrawal from the contract.

7. If the value of this security exceeds the sum of LIH's claim by more than 20%, LIH shall at LIH's option and upon Buyer's request release the security.

8. Buyer must immediately notify LIH in writing if any third parties should seize the Products under retention of title or take possession of the claims assigned to LIH and must give LIH every possible support in the intervention.

9. The costs for complying with the said duty to co-operate in enforcing all rights in respect of the retention of title and for all arrangements made for the maintenance and storage of the Products shall be borne by Buyer.

10. In case of insolvency proceedings over Buyer's property LIH is entitled to withdraw from the contract provided the Products under retention of title have not been fully paid.

VII Guarantee, Rescission

1. For defects in the goods we shall initially provide a guarantee in the form of subsequent improvement or substitute delivery, at our option.

2. If subsequent performance fails, Buyer may on principle demand a reduction in the price or rescission of the contract, at his option. However, if there is only a minor breach of contract, in particular if defects are only slight, Buyer shall have no right of rescission.

3. Buyer is under obligation to report obvious defects in writing within 2 weeks of receiving the goods; otherwise the assertion of the guarantee claims shall be excluded. For the deadline to be met, it shall suffice for the report to be sent off on time. Buyer shall have the full onus of proof for all the circumstances supporting his claim, in particular for the defect itself, for the time at which the defect was established, and for the complaint being lodged in good time.

4. If, after performance has failed, Buyer opts to rescind the contract due to a legal defect or a defect in quality, he shall not be entitled to claim any additional compensation for the defect.

5. If, after subsequent performance has failed, Buyer opts to claim compensation, then Buyer shall retain the goods if he may reasonably be expected to do so. The compensation shall be limited to the difference between the purchase price and the value of the defective object. This shall not apply if we have fraudulently caused the breach of contract.

6. The specifications given in our catalogue or other descriptions of our products (excluding packaging) shall constitute the agreed standards of the lighting products we supply. Public statements, recommendations or advertising made by us apart from this shall not constitute any contractual specification of the quality of the goods. The average life given means that at least 50% of the lighting products in a packaging unit have the average life given for a specific type of lighting product, provided the nominal voltage, normal switching conditions, and the normal length of usage per day are observed.

7. Irrespective of the average life, the guarantee is limited to a period of 12 months as from the date of delivery. For lighting products for which we give an average life of more than 12 months in our catalogue or in other product specifications (excluding packaging), this life shall be deemed an agreed standard, but the guarantee for these lighting products shall be limited to 24 months as from the date of delivery.

8. If we shall provide faulty assembly instructions to Buyer, we shall only be obliged to supply assembly instructions which contain no mistakes, but only if the mistakes in the assembly instructions prevent proper assembly.

9. Unless otherwise expressly agreed in writing, we shall not give Buyer any guarantees in a legal sense.

VIII Impossibility, Adjustment of the Contract

1. If the delivery or performance incumbent upon us or Buyer becomes impossible, then the general legal principles shall apply with the following proviso: if impossibility is due to our fault, then Buyer shall be entitled to demand compensation. However, Buyer's compensation claims shall be restricted to 10% of the value of that part of the delivery or performance which cannot be put to expedient use due to said impossibility.

Buyer's compensation claims that exceed the 10% limit stipulated above are excluded. This shall not apply if the assumption of liability is compulsory in cases of intent or gross negligence. Buyer's right to rescind the contract shall remain unaffected

2. If unforeseen events as defined in section III.5 above substantially alter the economic significance or the subject-matter of the delivery or performance, or have a substantial impact on our field, then the contract shall be adequately adjusted in as far as this is in line with good faith. If it is not reasonable in economic terms to do so, then we shall be entitled to rescind the contract. If we wish to exercise this right of rescission, then we must notify Buyer to this effect without delay after realising the impact of the event, even if an extension of the delivery period had initially been agreed with Buyer.

IX Storage of Data

1. Personal data will be processed and stored electronically to ensure a proper handling of business transactions. Buyer is hereby informed in accordance with the Federal Data Protection Act [Bundesdatenschutzgesetz - BDSG] ss. 33, 34.1 and 43.4. We shall not give any further notification.

X Confidentiality

1. Buyer acknowledges that all technical, commercial and financial data disclosed to Buyer by LIH and/or our affiliates is confidential information of LIH and/or our affiliates. Buyer shall not disclose any such confidential information to any third party and shall not use any such confidential information for any purpose other than as agreed by the parties and in conformance with the purchase transaction contemplated herein.

XI Governing Law and Jurisdiction

1. All offers, confirmations and Agreements are governed by and construed in accordance with the laws of Germany. All disputes arising out of or in connection with any Agreement shall first be attempted by all parties to be settled through consultation and negotiation in good faith in a spirit of mutual cooperation. All disputes which cannot be resolved amicably including proceedings involving bills of exchange and deeds shall be submitted to the exclusive jurisdiction of the courts of Munich (Germany), with the proviso that LIH shall always be permitted to bring any action or proceedings against Buyer in any other court of competent jurisdiction. Application of the UN Convention on the International Sale of Goods (CISG) is excluded. Nothing in this Section shall be construed or interpreted as a limitation on either LIH's or Buyer's right under applicable law for injunctive or other equitable relief e.g. by means of injunction or to take any action to safeguard its possibility to enforce their claim on the other party

XII Breach and Termination

1. Without prejudice to any rights or remedies LIH may have under the Agreement or at law, LIH may, by written notice to Buyer, cancel or terminate with immediate effect the Agreement or any part thereof without any liability whatsoever, if:
 - a) Buyer violates or breaches any of the provisions of the Agreement,
 - b) any proceedings in insolvency, bankruptcy (including reorganization) liquidation or winding up are instituted against Buyer, whether filed or instituted by Buyer, voluntary or involuntary, a liquidator or receiver is appointed over Buyer, or any assignment is made for the benefit of creditors of Buyer.
2. Upon occurrence of any of the events referred to above, all payments to be made by Buyer under the Agreement shall become immediately due and payable.
3. In the event of cancellation, rescission or expiration of an Agreement the terms and conditions destined to survive such cancellation, rescission or expiration shall so survive.

XIII Miscellaneous

1. In the event that any provision of these Terms and Conditions shall be held invalid or unenforceable by a court of competent jurisdiction or by any legislative or administrative action, such holding or action shall not negate the validity or enforceability of any other provisions thereof. In the event that any provision of these Terms and Conditions shall finally be determined to be invalid or unenforceable, such provision shall be deemed severed from these Terms and Conditions, but every other provision shall remain in full force and effect, and in substitution for any such provision held unlawful or unenforceable, there shall be stipulated a provision of similar import reflecting the original intent of the clause to the extent permissible under applicable law.
2. If the invalidity in law of individual provisions of the contractual relationship would constitute a grave interference with the basis for transactions, the contract shall be adjusted in accordance with German Civil Code s. 313.
3. The failure on the part of either party to exercise, or any delay in exercising, any right or remedy arising from the Agreement shall not operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy arising therefrom preclude any other or future exercise thereof or the exercise of any other right or remedy arising from the Agreement or by law.