

1. Scope of Application

- 1.1. These General Delivery Conditions of LEDVANCE GmbH ("GDC") shall apply to the sale and delivery of goods including, without limitation, lamps, luminaires, control gears or accessories by LEDVANCE GmbH, Parkring 29-33, 85748 Garching near Munich, Germany ("LEDVANCE") to the purchaser ("Purchaser").
- 1.2. These GDC shall apply exclusively. Any and all verbal agreements between Purchaser and LEDVANCE and/or verbal commitments by LEDVANCE prior to the conclusion of the purchase contract shall be fully replaced by these GDC. Deviating or supplementary conditions of Purchaser or any third party shall not apply unless LEDVANCE expressly agrees to their applicability in writing. This shall also apply if LEDVANCE does not separately object to the applicability of such deviating or supplementary conditions in individual cases or if LEDVANCE unconditionally carries out the delivery to Purchaser in knowledge of such deviating or supplementary conditions. However, separate written agreements made in individual cases with Purchaser shall in any case take precedence over these GDC.
- 1.3. These GDC shall also apply to all future deliveries to Purchaser, even if they are not separately agreed upon once again.
- 1.4. These General Terms and Conditions shall apply exclusively to entrepreneurs within the meaning of § 14 of the German Civil Code (BGB), legal entities under public law and special funds under public law.

2. Contract Conclusion

- 2.1. Unless otherwise agreed in writing, LEDVANCE's offers are subject to change and non-binding.
- 2.2. The effectiveness of a purchase contract is subject to the written acceptance by LEDVANCE via order confirmation. Unless otherwise agreed in writing, LEDVANCE may accept purchase orders of Purchaser within 14 calendar days after receipt. Unless otherwise agreed in writing, exclusively LEDVANCE's written order confirmation and these GDC shall determine the legal relationship between LEDVANCE and Purchaser.

3. Delivery, Delay of Delivery/of Acceptance, Force Majeure

- 3.1. Unless otherwise agreed in writing, the delivery shall be made FCA dispatch point of the delivering LEDVANCE distribution center in accordance with Incoterms® 2010.
- 3.2. LEDVANCE shall be entitled to make partial deliveries to a reasonable extent.
- 3.3. Time limits and dates for deliveries announced by LEDVANCE are always only approximate, unless a fixed time limit or date has been expressly confirmed by LEDVANCE or agreed upon between the parties in writing. The foregoing provision does not constitute a reversal of the burden of proof.

- 3.4. The statutory provisions shall apply with regard to the occurrence of a delay of delivery by LEDVANCE. However, in any case, a dunning notice by Purchaser shall be required.
- 3.5. If LEDVANCE is in delay of delivery due to ordinary negligence, the liability for damages caused by delay (damages in addition to performance) shall be limited to 0.5 % of the net purchase price of the goods delivered late for each complete calendar week, however limited in total to not more than a maximum of 5 % of the net purchase price of the goods delivered late; this shall not apply in case of injury to life, body or health. LEDVANCE reserves the right to prove that Purchaser has suffered no damage at all or only a significantly lower damage. Purchaser's right to withdraw from the purchase contract as per Sec. 7.7 and/or to claim damages instead of performance as per Sec. 9 shall remain unaffected.
- 3.6. If Purchaser is in delay of acceptance, fails to perform an act of cooperation or if delivery is delayed for other reasons for which Purchaser is responsible, LEDVANCE shall be entitled to demand from Purchaser a corresponding extension of the delivery period or a postponement of the delivery date and/or compensation for the resulting damage including, without limitation, additional expenses (e.g. storage costs). Further claims and rights shall remain reserved.
- 3.7. Delays of delivery or delivery restrictions due to force majeure or other events outside of the sphere of influence of the parties which could not be foreseen at the time of contract conclusion and for which neither party is responsible (e.g. war, strike, lawful lockout or operational disruptions) shall result in a reasonable extension of the delivery period by the duration of the hindrance. If the hindrance lasts longer than three months, each of the parties shall be entitled to withdraw from the purchase contract. In this case, LEDVANCE shall reimburse Purchaser for any consideration already rendered without delay.

4. Prices

- 4.1. Unless otherwise agreed in writing, prices shall be understood to be in Euro plus value added tax at the respective applicable statutory rate.
- 4.2. Unless otherwise agreed in writing, the prices shall include LEDVANCE standard packaging.
- 4.3. If purchase order quantities deviate from the respective valid LEDVANCE standard shipping units, LEDVANCE shall be entitled to charge a surcharge of € 6.00 for each partial quantity position.
- 4.4. LEDVANCE shall be entitled to charge a processing fee of € 10.00 for each purchase order with a net order value of less than € 500.00 per recipient. The net order value is calculated excluding any applicable taxes and fees.

5. Payment Terms

- 5.1. Unless otherwise agreed in writing, LEDVANCE's payment

claims for goods delivered and received by Purchaser shall be due for payment within 30 days of invoice receipt without early payment discount or other deductions to the place of payment specified by LEDVANCE. The receipt of payment by LEDVANCE shall be decisive for the timeliness of the payment. Unless otherwise agreed in writing, provision of a letter of credit shall not be deemed as payment.

- 5.2. In case of delay of payment, interest for delay shall be charged at the respective applicable statutory rate. The assertion of further damages, claims and/or rights, in particular, without limitation, as per Sec. 6.5 and/or § 353 of the German Commercial Code (HGB), shall remain reserved. In case of delay of payment, Purchaser shall bear the risk of any currency losses incurred by LEDVANCE compared to the value of the claim in Euros on the due date.
- 5.3. If circumstances become known after conclusion of the purchase contract which are suitable to significantly reduce the creditworthiness of Purchaser and which endanger the payment of the outstanding claims by Purchaser, LEDVANCE shall be entitled to carry out any outstanding deliveries against advance payment or provision of security only. If Purchaser does not comply with the request for advance payment or provision of security within a reasonable period set by LEDVANCE, LEDVANCE shall be entitled to withdraw from the purchase contract.
- 5.4. The offset with counterclaims of Purchaser or retention of payments due to such claims shall only be permissible to the extent such counterclaims are undisputed, ready for decision or finally determined by a court or have been established in the same contractual relationship.

6. Retention of Title

- 6.1. LEDVANCE retains title to the delivered goods ("Reserved Goods") until any and all current and future claims to which LEDVANCE is entitled from the ongoing business relationship with Purchaser including, without limitation, any and all balance claims from a current account, have been completely fulfilled. Ownership shall not pass to Purchaser until LEDVANCE is able to freely dispose of the amount owed.
- 6.2. Purchaser shall be entitled to resell the Reserved Goods, however only in the ordinary course of business and against immediate payment or subject to reservation of title. Purchaser now hereby already assigns the following receivables in full to LEDVANCE by way of security:
 - a) receivables of Purchaser against Purchaser's customers arising from the resale of the Reserved Goods including, without limitation, the balance claims arising from the termination of a current account relationship as well as the rights to terminate such a current account and to determine the account balances and
 - b) receivables of Purchaser regarding the Reserved Goods against Purchaser's customers or third parties on any other

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legal grounds (in particular, without limitation, claims from tort and for insurance benefits).

LEDVANCE hereby accepts such assignment.

- 6.3. Even after the assignment as per Sec. 6.2, Purchaser shall remain revocably authorized to collect the assigned receivables for LEDVANCE on Purchaser's own account and in Purchaser's own name. The right of LEDVANCE to collect these receivables autonomously shall remain unaffected. However, LEDVANCE shall not collect these receivables autonomously and shall not revoke the collection authorization of Purchaser as long as Purchaser duly meets its payment obligations and no deficiency in Purchaser's performance capacity occurs. If LEDVANCE revokes the collection authorization of Purchaser, LEDVANCE shall be entitled to require Purchaser to disclose the assigned receivables and their debtors to LEDVANCE, to provide all information necessary for collection, to hand over the relevant documents and to inform the debtors (third parties) of the assignment.
- 6.4. Purchaser shall not be permitted to pledge or assign the Reserved Goods by way of security. In case of seizures of or other interferences of third parties with the Reserved Goods or receivables assigned to LEDVANCE by way of security, Purchaser shall be obliged to notify the third party of LEDVANCE's ownership and to inform LEDVANCE without delay in writing of the interference in order to enable LEDVANCE to enforce its ownership rights. To the extent the third party is not able to reimburse LEDVANCE for the judicial and/or extrajudicial costs incurred in this context, Purchaser shall be liable towards LEDVANCE for such costs.
- 6.5. In case of contractually non-compliant behavior by Purchaser or delay of payment, LEDVANCE shall be entitled to withdraw from the purchase contract in accordance with the statutory provisions and/or to demand the return of the Reserved Goods. Further claims and rights shall remain reserved.
- 6.6. LEDVANCE shall be obliged to release the securities to which LEDVANCE is entitled to the extent the realizable value of the securities exceeds the secured outstanding claims against Purchaser to which LEDVANCE is entitled by more than 10 %. LEDVANCE reserves the right to determine in LEDVANCE's own discretion which goods or claims are to be released.
- 6.7. If the retention of title as per this Sec. 6 is not effective according to the local laws applicable at the place where the goods are located, the means of security equivalent to retention of title under such applicable local laws shall be deemed agreed upon instead. To the extent Purchaser's cooperation is necessary for the creation of such means of security, Purchaser shall be obliged, at LEDVANCE's request and Purchaser's expense, to take all measures within reason which are necessary to establish and maintain such means of security.

7. Warranty

- 7.1. Warranty rights of Purchaser shall only exist to the extent the

goods have shown a defect at the time of transfer of risk. Objected goods shall be returned to LEDVANCE for examination. To the extent such examination shows that no defect exists and this was recognizable for Purchaser, LEDVANCE shall be entitled to demand reimbursement of the costs and expenses incurred (in particular, without limitation, examination and transport costs) from Purchaser.

- 7.2. In particular, without limitation, the following shall not be deemed to be defects:
- expiration of the usual lifetime of the goods within the warranty period,
 - natural wear and tear,
 - failures or damages resulting from the fact that Purchaser or a third party has modified, repaired or operated the goods in combination with products or software of Purchaser or a third party without LEDVANCE's prior express written consent and
 - failures or damages resulting from the fact that the goods have not been installed, put into operation or utilized in accordance with the specifications in the relevant product data sheet and/or the relevant installation/user instructions or have been used improperly or unsuitably in any other way by Purchaser or a third party.
- 7.3. The product descriptions of LEDVANCE do not contain any quality guarantee.
- 7.4. Sales of used goods are made under exclusion of any warranty.
- 7.5. Purchaser shall carefully inspect the goods without delay after delivery to the extent that this is feasible in the ordinary course of business. Purchaser shall notify LEDVANCE in writing without delay after delivery of any obvious defects that are recognizable in an immediate and careful inspection. Other defects shall be notified to LEDVANCE in writing without delay after their detection. To the extent Purchaser fails to carry out a proper immediate inspection and/or fails to give proper notice of defects without delay, LEDVANCE's liability for defects shall be excluded in accordance with the statutory provisions.
- 7.6. In case of a defect, LEDVANCE shall be entitled to carry out subsequent performance, at LEDVANCE's choice, by rectifying the defect or making a replacement delivery. Purchaser shall give LEDVANCE the opportunity to carry out subsequent performance within a reasonable period of time. The replacement delivery of a different equivalent product of the same kind by LEDVANCE shall be permissible and deemed reasonable for Purchaser. In case of a replacement delivery, Purchaser shall return the defective item to LEDVANCE in accordance with the statutory provisions. LEDVANCE's right to refuse subsequent performance under the statutory conditions shall remain unaffected.
- 7.7. If subsequent performance has failed or is unreasonable for Purchaser or if a reasonable grace period to be set by Purchaser for subsequent performance has expired without success or is dispensable according to the statutory provisions, Purchaser shall

be entitled to withdraw from the purchase contract or reduce the purchase price by a reasonable amount. However, Purchaser shall have no withdrawal right in case of an insignificant defect.

- 7.8. Purchaser shall be entitled to claim damages or reimbursement of expenses from LEDVANCE with regard to a defect within the limits of the provisions in Sec. 9 only.
- 7.9. The limitation period for claims arising from material defects and defects of title shall be one year after delivery of the goods. The statutory limitation provisions pursuant to § 438 para. 1 no. 1 and no. 2 of the German Civil Code (BGB) and to § 445 b of the German Civil Code (BGB), if the last contract in the supply chain is a purchase of consumer goods pursuant to § 474 of the German Civil Code (BGB), shall remain unaffected. Furthermore, the statutory limitation period for claims from culpable injury to life, body or health, intentional or grossly negligent breach of an obligation, assumption of a quality guarantee, fraudulent concealment of a defect or mandatory liability under the German Product Liability Act (ProdHaftG) shall remain unaffected.

8. Third Party Property Rights

- 8.1. LEDVANCE warrants that the goods are free from third-party property rights.
- 8.2. If a third party asserts justified claims against Purchaser due to infringement of third party property rights based on the goods, LEDVANCE shall be liable towards Purchaser as follows:
- 8.2.1. Subject to the provisions of Sec. 8.2.2 and 8.2.3, LEDVANCE shall at LEDVANCE's own choice and expense
- provide Purchaser with a right of use for the goods concerned to the extent necessary and reasonable,
 - modify the goods concerned in a manner reasonable for Purchaser so that the property right is no longer infringed, but the goods are still essentially equivalent to the contractually agreed functional and performance characteristics,
 - replace the goods concerned with other equivalent goods which do not infringe property rights or
 - refund the purchase price to Purchaser against return of the goods concerned.
- 8.2.2. Purchaser's claims pursuant to Sec. 8.2.1 shall only exist to the extent that
- Purchaser immediately notifies LEDVANCE in writing of the assertion or threat of such third party claims,
 - all extrajudicial and judicial defensive measures and settlement negotiations are reserved to LEDVANCE or are only conducted with LEDVANCE's written consent and
 - Purchaser makes available to LEDVANCE without delay any and all information not requiring confidentiality which is necessary for the assessment of the situation and for the defense against the claims and provides LEDVANCE with appropriate support.

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8.2.3. Purchaser's claims pursuant to Sec. 8.2.1 shall be excluded in particular, without limitation, to the extent that

- a) the goods concerned have been manufactured in accordance with the instructions or specifications of Purchaser and the property right infringement is based on such instructions or specifications,
- b) Purchaser itself is culpable for the property right infringement or
- c) the property right infringement is caused by an unauthorized modification, repair or combination within the meaning of Sec. 7.2 c) or an improper or unsuitable use within the meaning of Sec. 7.2 d).

8.2.4. Purchaser shall be entitled to claim damages or reimbursement of expenses from LEDVANCE due to property right infringement within the limits of the provisions in Sec. 9 only.

9. Liability

9.1. LEDVANCE shall be liable towards Purchaser in accordance with the following provisions:

9.1.1. LEDVANCE shall be fully liable with regard to cause and amount in case of deliberate intent, gross negligence, culpable injury to life, body or health, assumption of a quality guarantee, fraudulent concealment of a defect or in case of mandatory liability under the German Product Liability Act (ProdHaftG).

9.1.2. Moreover, without prejudice to the provision in Sec. 9.1.1, LEDVANCE shall be liable in case of a violation of a material contractual obligation due to ordinary negligence, however limited to the foreseeable typical occurring damage. Material contractual obligations are such obligations the fulfillment of which enables the proper execution of the purchase contract in the first place and in the observance of which Purchaser generally trusts and may trust.

9.1.3. Any further liability of LEDVANCE, regardless of the cause in law, shall be excluded; this shall apply in particular, without limitation, to claims for damages and reimbursement of expenses.

9.1.4. The exclusions and limitations of liability in the aforementioned provisions of Sec. 9.1 shall apply to the same extent for the benefit of the corporate bodies, legal representatives, employees and other vicarious agents of LEDVANCE.

9.2. Purchaser undertakes to mitigate the damage in any reasonable way and to support LEDVANCE reasonably in all damage mitigation measures.

10. Compliance with Export Control Regulations

10.1. If Purchaser transfers goods (hardware and/or software and/or technology as well as corresponding documentation, regardless of the mode of provision) delivered by LEDVANCE to a third party, Purchaser shall comply with all applicable national and international export control regulations.

10.2. Prior to any transfer of goods provided by LEDVANCE to a third party, Purchaser shall in particular, without limitation, check and

guarantee by appropriate measures that

a) there will be no infringement of applicable embargoes by such transfer, by brokering contracts concerning or by providing other economic resources in connection with such goods, also considering the limitations of domestic business and prohibitions of by-passing the embargoes,

b) such goods are not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorization, unless authorization is provided, and

c) the regulations of all applicable national sanctioned party lists concerning the trading with entities, persons and organizations listed therein are complied with.

10.3. If required to enable authorities or LEDVANCE to conduct export control checks, Purchaser, upon request by LEDVANCE, shall promptly provide LEDVANCE with all information pertaining to particular end customers, destinations and intended use of goods provided by LEDVANCE, as well as any relevant export control restrictions.

10.4. Purchaser shall indemnify and hold LEDVANCE harmless from and against any claim, fine, loss, cost and damages arising out of or relating to any noncompliance of Purchaser with above export control obligations or embargo regulations, unless Purchaser is not culpable for such noncompliance. The foregoing provision does not constitute a reversal of the burden of proof.

10.5. LEDVANCE shall not be obligated to fulfill a purchase contract if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.

11. Ownership of Documents/Auxiliary Materials

LEDVANCE retains title and/or copyright to any and all offers, cost estimates, drawings, illustrations, catalogues, brochures, models, samples, tools and other documents or auxiliary materials made available to Purchaser. Purchaser shall keep these objects confidential and shall not be entitled to make them accessible to unauthorized third parties or to copy them without the prior written consent of LEDVANCE. Purchaser shall return such objects to LEDVANCE in their entirety upon request without delay.

12. Applicable Law, Place of Jurisdiction

12.1. The contractual relationship between LEDVANCE and Purchaser and these GDC shall exclusively be governed by the law of the Federal Republic of Germany under exclusion of the UN sales law (CISG) and the provisions of international private law.

12.2. To the extent Purchaser is a merchant, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for any and all disputes arising from or in connection with the contractual relationship between LEDVANCE and Purchaser or these GDC shall be Munich, Germany. However,

LEDVANCE shall also be entitled to sue Purchaser at Purchaser's general place of jurisdiction. Mandatory statutory provisions regarding exclusive places of jurisdiction shall remain unaffected.

13. Text Form, Severability

13.1. To the extent these GDC require legally relevant declarations or notifications (both unilaterally and as part of a mutual agreement) to be made in writing, a readable declaration in text form on a durable medium in which the declaring person is named (e.g. e-mail or telefax) shall suffice for compliance with the form. Statutory formal requirements shall remain unaffected.

13.2. To the extent individual provisions of these GDC are or become invalid or unenforceable in whole or in part, the validity and enforceability of the remaining provisions shall remain unaffected. The parties shall replace the invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the original business intention of the invalid or unenforceable provision, unless supplementary contract interpretation takes precedence or is possible. The same shall apply in case of a regulatory gap.