

# Purchase and Order Conditions of LEDVANCE GmbH (Status as of February 2020)

## I. General

### 1. Order and Order Confirmation

(1) For orders of LEDVANCE GmbH (in the following referred to as "LEDVANCE"), the following purchase and order conditions apply exclusively unless there is an applicable written priority agreement in place between the parties. Deviating general terms and conditions of the contractor are only binding for LEDVANCE insofar as they are consistent with LEDVANCE's conditions or the applicable agreement or LEDVANCE has confirmed its explicit agreement in writing.

(2) These purchase and order conditions shall exclusively apply vis-à-vis entrepreneurs within the meaning of § 14 BGB (German Civil Code).

(3) Order acceptance has to be confirmed immediately - however, at the latest 14 days after receipt of LEDVANCE's order - by returning a duly signed copy of the order form. After expiration of the said time period LEDVANCE shall no longer be bound to the respective order.

(4) If the order confirmation differs from the order, LEDVANCE shall only be bound if it has agreed to such deviation in writing. Acceptance of goods or services or payment by LEDVANCE does not constitute such agreement.

(5) All agreements made between LEDVANCE and the contractor upon contract conclusion are fully put down in writing. There are no oral side agreements. LEDVANCE's employees are not entitled to enter into deviating oral agreements.

### 2. Prices

(1) The prices quoted by LEDVANCE and confirmed by the contractor shall be considered as fixed prices. Costs for packaging are included in the prices unless otherwise set forth in the order in writing.

(2) Any increase or reduction in the price as a result of changes of the execution of the goods or services must be notified to LEDVANCE immediately in writing and is subject to LEDVANCE's written approval prior to the shipment of the goods or the provision of the service.

### 3. Payment

(1) Unless otherwise agreed separately in writing, the payment term is 30 days net after receipt of the invoice indicating LEDVANCE's order number and the full receipt of the goods or full provision of the service.

(2) Payment by LEDVANCE does not constitute acceptance of the goods delivered or services performed as according to contract.

(3) LEDVANCE shall be obliged to make payments to the contractor only. The assignment of a claim by the contractor requires LEDVANCE's prior written approval.

(4) LEDVANCE shall not be bound to make any payment or otherwise fulfill its contractual obligations in the event of a conflict with national or international foreign trade law regulations, embargos or other sanctions.

### 4. Delivery and Service Delays

The contractor is obliged to inform LEDVANCE in writing without delay about any hindrances or delays which will result in delay with the agreed delivery or performance date or period. LEDVANCE is entitled to raise any statutory default claims without limitation.

### 5. Secrecy / Data Protection

(1) The order and any associated commercial or technical information provided by LEDVANCE to the contractor are confidential and may not be passed on to third parties without LEDVANCE's prior written approval, unless this is strictly necessary for the performance of the contract. In the event of a violation of this confidentiality obligation, LEDVANCE reserves the right to claim damages.

(2) Insofar as the contractor handles personal data within the context of its contractual obligations, the contractor shall bind all its employees in writing to the data secrecy in accordance with § 5 BDSG (Federal Data Protection Act).

### 6. Advertising

No reference may be made to business relations with LEDVANCE for advertising purposes unless LEDVANCE has given its written approval.

### 7. Compliance

(1) The contractor shall comply with all relevant statutory regulations. Reference is made in particular to the adherence to antitrust law and the regulations on fighting corruption. Within its organization, the contractor is obliged to respect the basic rights of its employees and to procure a safe work environment. The contractor shall observe the prohibition of child labor according to the Declaration of the International Labor Organization (ILO) on Fundamental Principles and Rights at Work.

(2) LEDVANCE may withdraw from or terminate the contract if the contractor does not fulfill its obligations as per Para. 1. Other statutory or contractual rights of withdrawal and termination remain unaffected.

### 8. Applicable Law / Place of Performance / Jurisdiction

(1) The law of the Federal Republic of Germany shall apply exclusively. Application of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 and of the conflict of law rules is excluded.

(2) The place of performance is the delivery or reception point specified by LEDVANCE.

(3) The exclusive place of jurisdiction for all disputes arising from and in connection with the contract concluded with the contractor is Munich if the contractor is a merchant. However, LEDVANCE is also entitled to sue the contractor at the contractor's place of general jurisdiction.

### 9. Severability Clause

If individual provisions of these purchase and order conditions are invalid, this does not affect the validity of the remaining provisions. Statutory regulations shall apply and replace the invalid provision.

## II. Particular Regulations for Contracts on the Delivery of Goods

### 1. Delivery and Shipment

(1) In case of air and sea freight, delivery shall be made "FOB to the loading (air)port indicated by LEDVANCE", as for the rest "FCA from the contractor's premises" (as per INCOTERMS® 2010) unless otherwise agreed in writing.

(2) Meeting the delivery date requires that the goods were received at the reception point by the agreed delivery date.

(3) Deliveries exceeding the contracted quantity or advance deliveries require LEDVANCE's prior written approval. Any additional costs incurred shall be borne by the contractor.

(4) If pricing is agreed ex works or ex contractor's sales depot or in case LEDVANCE pays for the freight, shipments are to be transported at the lowest costs available. If LEDVANCE has expressly instructed the contractor to use a particular shipment method, carrier or shipment route, the contractor has to ensure that the lowest possible costs incur for the stipulated shipment.

(5) In the event that LEDVANCE pays for the freight, the contractor shall ensure that the forwarder is not concluding a cargo damage insurance according to 21.1 ADSp 2016 (General German Freight Forwarders Conditions).

(6) Postal parcels and postal goods are to be sent prepaid. In the event of ex works pricing, the advance postal prepayments are to be included in the price for the goods.

### 2. Warranty

(1) The contractor shall warrant its goods and services against defects according to the applicable laws. The warranty period for defects in material or workmanship or defects as to title is 36 months from delivery. For an item which was used for a building as per its standard use and caused the building's defectiveness, the warranty period is 5 years from delivery.

(2) Defects which result in a refusal of acceptance as well as all defects determined upon transfer of risks or during the warranty period have to be remedied by the contractor at its own costs or contractor has to provide a replacement delivery without defects at LEDVANCE's choice.

(3) If the contractor does not remedy the defects or does not provide replacement delivery during an adequate period of time determined by LEDVANCE, LEDVANCE is entitled to

- partially or fully withdraw from the contract,
- request a price deduction,

- remedy the defect or effect replacement delivery itself, or have it remedied, and/or
- claim damages for a breach of contractual obligations.

The same applies if the contractor declares itself unable to remedy the defects or to provide replacement delivery within an adequate time frame. It is not necessary to set a grace period before exercising the aforementioned rights if the contractor refuses performance, if supplementary performance is unacceptable for LEDVANCE or if there are particular circumstances which justify immediate exercising of the aforementioned rights after consideration of the parties' mutual interests.

(4) Notices of defects are considered in time if they are made within two weeks after delivery or performance with regard to defects which are noticeable in the course of proper and feasible examination during normal operations, and with regard to defects which become apparent later, within two weeks after they were observed.

(5) Any further statutory claims remain unaffected.

(6) The contractor bears the costs and risks for returning defective goods.

(7) The contractor is obliged to indemnify and hold harmless LEDVANCE from third party damage compensation claims arising from bodily injury and/or damage to property due to a defect in a good originating from the contractor's sphere of control and organization and for which the contractor is liable towards third parties. In this context, the contractor is also obliged to refund any expenses which arise from or in connection with a product recall undertaken by LEDVANCE. LEDVANCE will inform the contractor of the content and extent of the product recall measures insofar as possible and reasonable and will give the contractor the opportunity to make a representation related to the recall.

### 3. Export Control and Foreign Trade Data Regulations, Customs and Security in the Supply Chain

(1) For all products to be delivered and services to be provided, the contractor shall comply with all applicable export control, customs and foreign trade regulations as well as free trade agreements.

(2) The contractor shall advise LEDVANCE in writing as early as possible but not later than 2 weeks prior to the delivery date of any information and data required by LEDVANCE to comply with all export control, customs and foreign trade regulations and free trade agreements for the products and services applicable in the countries of export and import as well as re-export in case of resale, and update this information and data in case of any alterations. In any case, the contractor shall provide to LEDVANCE for each product and service:

- all applicable export list numbers, including, if need be, the Export Control Classification Number according to the U.S. Commerce Control List (ECCN),
- the statistical commodity code according to the current commodity classification for foreign trade statistics and the HS (Harmonized System) coding,
- the country of non-preferential origin determined based on the origin rules of the destination country and
- upon request by LEDVANCE: preferential certificates in compliance with the rules of the applicable free trade agreement.

(3) Upon request by LEDVANCE or the relevant authority, contractor shall promptly provide the respective requestor with all relevant information pertaining to non-preferential and preferential origin determination if required for the performance of audits by either LEDVANCE or the responsible authorities.

(4) Should the contractor fail to comply with applicable export control, customs and foreign trade regulations or the applicable free trade agreement, or fail to provide all relevant information, the contractor hereby agrees to indemnify and hold LEDVANCE harmless from and against all expenses, damages and claims resulting from such failures, unless the contractor is not responsible for said failures. The foregoing provision does not constitute a reversal of the burden of proof.

(5) The contractor shall provide the necessary organizational instructions and take measures, particularly with regard to premises, packaging and transport, business partner, personnel and information security in order to guarantee the security in the supply chain according to the requirements of respective internationally recognized initiatives based on the WCO SAFE Framework of Standards (e.g. AEO, CTPAT). The contractor shall protect the goods and services provided to LEDVANCE or provided to third parties designated by LEDVANCE against unauthorized access and manipulation. The contractor shall only deploy reliable personnel for those goods and services and shall obligate any sub-suppliers to take equivalent security measures.

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## 4. Product Safety, Chemical and Environmental Protection Regulations, Accident Prevention, Compliance with the REACH Regulation

(1) The contractor shall ensure that the goods supplied and services performed as well as the production processes for supplied goods comply with the applicable laws and regulations including, without limitation, the German Product Safety Act (Produktsicherheitsgesetz/ProdSG) and the German Chemicals Act (Chemikaliengesetz/ChemG) and other laws and regulations governing product safety and chemicals as well as other applicable recognized standards, practices and procedures. Applicable environmental protection regulations and, if specified in the order, the regulations of any international associations must also be observed. The requirements of the LEDVANCE Index List Environment (ILE), which is available online at [www.ledvance.com/ile](http://www.ledvance.com/ile), have to be fulfilled.

(2) Any necessary protective equipment shall be provided by the contractor and shall be included in the price. Regulations governing the transport of dangerous goods must be observed by the contractor. If the order indicates that the goods are to be forwarded by sea, air or ground, the contractor shall also comply with all the regulations connected with these modes of transport in respect of packaging, labeling, marking and documentation.

(3) In the event LEDVANCE orders substances or preparations thereof for which a material safety data sheet exists, the contractor has to provide such sheet free of charge and in the form required by the REACH regulation (EC) no. 1907/2006. A copy thereof has to be sent to LEDVANCE's purchasing department.

(4) Any articles of the contractor that contain more than 0.1 mass percent per article of a substance on the "candidate list" in its currently valid version (substances of very high concern (hereinafter "SVHC")) according to Article 59 para. 1 and 10 of REACH Regulation (EC) no. 1907/2006 have to be notified to LEDVANCE by the contractor immediately. The notification is necessary only for equipment, parts and material directly used in products distributed by LEDVANCE (e.g. lamps, luminaires, electronic components, glass, plastic parts etc.). This notification has to be made via e-mail to [reach@ledvance.com](mailto:reach@ledvance.com) and must contain detailed information regarding

- the identification (company name and address) of the supplier (contractor),
- the identification of the article (product name und LEDVANCE product number) and
- the identification and content (mass percent) of the SVHC in the article.

If the delivered articles do not contain SVHC, no notification is necessary. More information is available online at [www.ledvance.com/reach](http://www.ledvance.com/reach).

## 5. RoHS and WEEE

The Contractor shall fulfill all legal requirements arising from directives ROHS 2011/65/EU and WEEE 2012/19/EU, as well as the associated national regulations.

## 6. Drawings, Samples and Tools

Drawings, models, samples and/or tools made available to the contractor by LEDVANCE remain the property of LEDVANCE and shall be returned upon LEDVANCE's request at any time, but no later than upon full completion of the related contract. They shall be labeled as LEDVANCE's property and may be used only for the fulfillment of the contract in place between contractor and LEDVANCE. The Contractor shall preserve their confidentiality and must not allow them to be copied. Their loss must be reported to LEDVANCE immediately. LEDVANCE reserves the right to claim damages.

## 7. Provided Materials

(1) All materials provided by LEDVANCE remain property of LEDVANCE, and LEDVANCE is considered manufacturer of goods manufactured using the materials and retains or automatically acquires property rights to the goods produced through the processing of these materials. The materials and objects shall be labeled as LEDVANCE's property and stored for LEDVANCE in a safe place and insured against risks such as fire and theft.

(2) Palettes and other transport materials supplied by LEDVANCE remain LEDVANCE's property and must be returned to LEDVANCE. LEDVANCE reserves the right to claim compensation for any unreturned transport materials provided.

## 8. Industrial Property Rights

(1) The contractor grants to LEDVANCE a non-exclusive, irrevocable, worldwide license to its intellectual and/or industrial property rights and/or all other rights required for possession, distribution and use of the supplied goods and products resulting thereof.

(2) The contractor has to deliver the goods free of third party intellectual and/or industrial

property rights or any other third party rights. If third party intellectual and/or industrial property rights are infringed by the supplied goods or their use, the contractor has to make any reasonable effort in order to provide to LEDVANCE an unlimited right of use.

(3) The contractor is obliged to indemnify and hold harmless LEDVANCE from any third party claims raised on the basis of a violation of third party rights as stipulated in Para. 2 and to reimburse LEDVANCE for all reasonable expenses incurred in relation with the claim. LEDVANCE will not accept any claims without the contractor's approval and will not enter into any settlement, unless contractor's approval is refused arbitrarily.

(4) If the contractor deems the third party claim unjustified, the contractor - upon related request from LEDVANCE - has to conduct the defense against such claim at its own expenses. If the contractor conducts the defense against the asserted claims in the name of LEDVANCE, the contractor is obliged to always safeguard LEDVANCE's commercial interests and to keep LEDVANCE informed about any significant steps. The contractor is not allowed to enter into a settlement which affects LEDVANCE's rights and/or interests without LEDVANCE's express written approval, whereas LEDVANCE will not refuse approval arbitrarily.

(5) The obligations in Paras. 3 and 4 do not apply if the contractor can prove that it is not responsible for the violation of the said rights.

(6) Further statutory claims following a defect of title of the goods supplied to LEDVANCE remain unaffected.

## III. Special Regulations for Service and Work Contracts

### 1. Performance and Obligation to inform

(1) In order to provide the services owed, which may also comprise work services (Werkleistungen), the contractor has to employ skilled and competent personnel. The contractor is obliged to ensure that work permits which might be required are available.

(2) Services have to be provided according to the current state of the art.

(3) The contractor may decide on the allocation of working hours.

(4) The contractor shall inform LEDVANCE on the status and progress of the services which are carried out for LEDVANCE.

### 2. Subcontractors

The use of subcontractors by the contractor is only permitted with LEDVANCE's explicit written approval.

### 3. Changes in the Performance

LEDVANCE is entitled to request changes in the scope of services unless these are unacceptable for the contractor. If the change results in additional costs pursuant to Sec. I 2. Para. 2, the contractor has to inform LEDVANCE accordingly in writing without delay and before the changes are implemented.

### 4. Duty to cooperate

(1) If the provision of information and/or documents is required for the performance of services, LEDVANCE will make these available to the contractor in due time before the service is performed.

(2) Insofar as services are required to be provided in LEDVANCE's offices or at LEDVANCE's premises, LEDVANCE will grant the contractor the access required.

### 5. Acceptance of Work Services

(1) Results of work services are subject to an acceptance test. Upon finalization of the acceptance test, LEDVANCE will declare acceptance insofar as the results provided are free from defects.

(2) In case services provided by the contractor are defective, the contractor will, at LEDVANCE's choice, remove these defects within an adequate time period at its own costs or will provide its services again free of defects. If the contractor does not remove the defects or provide services free of defects within a reasonable period of time set, LEDVANCE may withdraw from the contract or adequately reduce the price, or remove the defect or have it removed at the contractor's expense and claim damages. It is not necessary to set a reasonable grace period before exercising the aforementioned rights if the contractor refuses performance, the subsequent performance is unacceptable for LEDVANCE or if there are particular circumstances which justify that the aforementioned rights are immediately enforced under consideration of the parties' mutual interests.

## 6. Rights to Results

(1) The results of the services (in the following referred to as "Results") become LEDVANCE's property upon their completion and in their respective state of processing. The contractor will properly store such Results for LEDVANCE until they are physically provided to LEDVANCE. In the event that for legal reasons LEDVANCE cannot become the sole owner to all rights in the Results as per the first sentence, LEDVANCE, upon their completion, is hereby granted the exclusive, transferable, sub-licensable, worldwide, substantively and temporally unlimited right to use the Results itself or have them used partly or fully by third parties in all known and unknown ways of use including, without limitation, the right to copy, change, make publicly accessible, publish and exploit the Results, all in a modified or unmodified form.

(2) If Results are created which can be protected with intellectual and/or industrial property rights, the contractor shall promptly inform LEDVANCE thereof in writing. LEDVANCE, at its sole discretion, may file for such intellectual and/or industrial property rights in any country in its own name as it sees fit, and maintain or abandon those rights at any time. If required, the contractor shall - free of charge - reasonably assist LEDVANCE with regard to the filing of such rights, in particular provide any information required without undue delay and take all measures reasonably provided; the contractor will refrain from any act that might interfere with LEDVANCE's application for said rights and efficient use thereof. In particular, the contractor must not apply for any such right in its own name or a third party's name and must not support a third party in applying for such rights. The intellectual and/or industrial property rights arising on the basis of any such registration shall belong to LEDVANCE. For any inventions or technical improvements made, the German employee invention act (Arbeitnehmererfindungsgesetz) applies.

(3) Unless otherwise agreed in writing in a given case, the contractor waives the right to be mentioned as author with regard to the Results obtained.

(4) The contractor is obliged to ensure that any intellectual property created during the provision of the services is transferred to LEDVANCE without additional costs for LEDVANCE, for instance by way of respective agreements with the persons involved in the creation of the Results.

(5) In relation to its employees, freelancers or third parties, insofar as they are involved in the provision of services in accordance with Sec. III 2., the contractor will ensure in written agreements with these employees, freelancers or third parties that LEDVANCE is exclusively and indefinitely entitled to the rights as per Sec. III 6 Para. 1 and Para. 2 and that these rights will not be affected by the termination of the contracts between the contractor and the third parties. In case of breach, the contractor will reimburse LEDVANCE for all damages and expenses incurred in this respect, including the costs for reasonable legal defense, and will indemnify and hold harmless LEDVANCE from any third party claims, unless the contractor is not responsible in this regard. The foregoing provision does not constitute a reversal of the burden of proof.

(6) The granting of the aforementioned rights is covered by the contractually agreed remuneration.

## 7. Liability

In the event of breach of contractual obligations of whichever kind, the contractor is fully liable as per the statutory regulations.

## 8. Construction Services

For construction services and ancillary construction services, the German Construction Contract Procedures (Vergabe- und Vertragsordnung für Bauleistungen (VOB)) Part B and C apply in place of these purchase and order conditions.