

# LINDENBERG-ANLAGEN GMBH

51491 Overath Germany

Power generating and pump sets  
Switching units



## Sales terms and delivery conditions (1/2009)

### I. GENERAL

1. These terms and conditions are valid for all offers, products, work and services, deliveries, and other performances of Lindenberg-Anlagen GmbH (called the seller or supplier, respectively, in the following text), i.e. also valid for all future business activities. The legal invalidity of individual regulations does not impair the remaining parts of the contract in any way. In addition, the provisions of the German Commercial Code and, in a subsidiary way, the provisions of the German Civil Code are valid if the corresponding regulations are not to be found in the Commercial Code, with these provisions applying to customers being business persons or not. The customer's conditions to the contrary are only applicable if they have been explicitly accepted in writing. Otherwise, the seller's regulations stated before and below are deemed to be accepted on receipt of the delivered item at the latest.
2. Offers of the supplier remain without engagement. Data indicated in offers regarding operating costs, consumption figures, weights, etc. are only approximately authoritative unless they are expressly mentioned to be binding.
3. The conclusion of the contract is effected through a written acknowledgment of order by the supplier. The ordering party is bound to his order for a period of four weeks.  
In conjunction with the present terms and conditions, the acknowledgment of order submitted by the supplier shall be exclusively authoritative for the content of the contract. Any additional oral agreements and subsequent contract modifications are only binding after being accepted by the supplier in writing. The same applies with assured characteristics of the contractual items.  
Technical modifications made by the manufacturer of the goods to be delivered remain subject to alterations.
4. The copyright on drawings, plans, and computations remains with the seller.

### II. PRICES

1. Prices are valid ex supplier's works including loading in the works and exclusive packing and VAT to be paid additionally and in full as prescribed by law.
2. The prices valid on the day of shipment are invoiced to the customer. Packing is charged at original cost and cannot be returned to the supplier.
3. On submitting offers and offer acknowledgments, the prices indicated in these documents are either based on the raw material and energy prices, wages, taxes, social insurance contributions, freight costs, and public charges valid at that date which and have a direct or indirect impact on the cost of the goods or are based on the resulting price maintenance or price recommendations of the manufacturers. With any changes of this basis, the supplier reserves the right for a corresponding price correction if a period of more than six weeks between the conclusion of the contract and the delivery date has been agreed upon.

### III. TERMS OF PAYMENT

1. If not agreed upon otherwise, payments have to be effected in the currency of the Federal Republic of Germany (EURO) in cash, due net, and free point of payment of the supplier:  
If no special terms of payment have been agreed upon, the customer has to pay a down-payment amounting to 15 % of the total order price on receipt of the order acknowledgment, and shall pay the remaining amount of the total order price after delivery or notification of readiness to deliver, respectively. In the case of partial deliveries, partial payments shall be effected.  
If, however, the erection work is done by the supplier, the remaining amount is due to be paid after completion of this work, i.e. after handing-over of the installation to the buyer but not later than three weeks after the notification of readiness to deliver.
2. The supplier accepts exchange as well as payment authorisations and cheques by billing the corresponding collection and discount charges in fulfillment to the customer.
3. In the case agreed payment periods have been exceeded, the supplier is entitled to charge interest amounting to 8 % above the corresponding base lending rate irrespective of any further claims.
4. If the ordering party is behind schedule with a part, or with all of his payment obligations or if the supplier finds out about any circumstances after the conclusion of the contract objectively appropriate to impair the credit standing of the ordering party, all claims of the supplier shall become due immediately unless the ordering party is entitled to a right of repudiation. Furthermore, the above-mentioned circumstances authorise the supplier to execute any remaining work or service only against pre-payment or the provision of a security, to cancel the contract after granting a period of grace, or to claim damages.
5. The ordering party may only clear against claims of the supplier or assert a right of retention if its counter-claim is beyond controversy or if it has a legally binding title at hand.

### IV. DELIVERY

1. The indicated delivery dates are only authoritative in an approximated way. Events of force majeure including events of war and mobilisation allow the supplier to partially or

completely cancel his obligations to deliver. Any interruption of operations caused by lack of raw materials, machine breakdown, cessation of work, traffic hold-ups, or other reasons disengage the supplier from maintaining the delivery dates agreed upon. The impossibility to deliver or the refusal to deliver by sub-suppliers as well as any other unavailability of performance entitles the seller to cancel the contract partially or completely. The supplier agrees to inform the ordering party immediately about the unavailability of the performance and to remunerate the consideration granted by the buyer without delay. The period of validity for the delivery date starts when all questions regarding the order have been completely resolved. In the case an agreed delivery date is culpably delayed with more than four weeks, and with foreign products delayed with more than eight weeks, the buyer is entitled to grant an appropriate period of grace. If the item to be delivered has still not been delivered after expiration of the period of grace, the buyer may cancel the contract in writing. The ordering party may only claim for damages in the case of intent or gross negligence, respectively, of the supplier or with death, physical injury or injury to health.

2. Any non-compliance of the supplier with agreed delivery dates qualifies the ordering party to claim remuneration for the verified damages caused by this delay. For each finished week, this remuneration may amount to a maximum of 0.5 %, with the total amount not exceeding a maximum of 5 % of the contractual price of the delayed delivery. In the case of gross negligence of the supplier or in the cases of death, physical injury or injury to health, there shall be no limitation of liability. If a circumstance as mentioned in paragraph 1 may occur subsequently and have an impact on the delay in delivery, any further remuneration for delay ceases to apply from that date on.
3. The delivery date is deemed to be kept if, up to the date, the item to be delivered has left the works or readiness to deliver has been notified.
4. Delivery is effected at buyer's risk. If reasons not to be answered for by the supplier cause a delivery to be delayed for more than one week after notification of readiness to deliver, the supplier may store the parts to be delivered at his own discretion and at the buyer's risk and expense. On storing the parts in his own works, the supplier may charge at least 0.5 % of the contractual price of the stored parts per month unless the buyer provides evidence of a smaller damage caused to the supplier.
5. If, after notification of readiness to deliver, the ordering party is in arrears of more than four weeks with the reception of the contractual items or with the meeting of its payment obligations, the supplier shall grant a period of grace of 14 days after which he is entitled to withdraw from the contract and/or to claim damages for non-compliance of contractual obligations. In the case the supplier claims damages for non-compliance, he is entitled to demand 15 % of the sales price as lump sum compensation irrespective of the right to assert a greater damage sustained unless the buyer provides evidence of a smaller damage caused to the supplier.  
Should the supplier not make use of this right, he is entitled to dispose freely of the contractual item and to deliver an equivalent replacement item with the present contractual terms within a reasonable period of time and irrespective of any of his other rights.

### V. DELIVERY AND ERECTION

1. In the case erection is included in the supplier's contractual obligations, he only needs to start the erection work as soon as the base plate is completely dry and set and all other construction work has been completely finished to allow for erection and handing-over. If the delivered item is to be mounted into a ship, the supplier only needs to start the mounting work when the ship's base plates for the engine, gearings, etc. have been completely finished and the ship has been launched.  
With a delay of the before-mentioned work, the period of time for erection and commissioning agreed upon extends appropriately.
2. The transfer of the delivered item from the supplier's works to the erection/mounting site is generally effected at the buyer's risk and expense.
3. If the supplier takes over the erection, or commissioning work, he is obliged to supply the required erection engineers to shall work with the erection tooling of the ordering party. The ordering party shall make the hoisting gear, scaffolding, facilities, and building materials available at its risk and expense. This includes a suitable lockable storage room for the storing of the erection tooling. In addition, the ordering party shall be responsible for the unskilled workers supplied by it.
4. In the case the supplier has taken over the erection and mounting of the delivered installation, he shall not be responsible for any damaged or stolen parts if the machine room cannot be locked.
5. Should there be a delay or interruption with the transfer, the erection, the commissioning of the machine, or an obstruction inhibiting the work of the erection engineer without the supplier's fault, the buyer shall be obliged to pay compensation for all incurred additional costs and damages caused by the delay, interruption or obstruction unless the reasons for the delay are not within buyer's range of influence and the buyer is not responsible for the reasons. The obligation to meet the terms of payment is not affected by this in any way.
6. The engineer may only carry out work and services exceeding the scope of delivery as per order acknowledgement or contract for delivery if there is a separate order on this work to be placed by the ordering party. This extra work shall be charged separately.

7. In the case the supplier also undertakes the trial operation or the test travel, respectively, the normal working time shall be valid. If the engineer has to work more hours due to special circumstances, the additional hours are separately charged as overtime.
8. The engineer is not allowed to work overtime unless otherwise explicitly demanded by the ordering party and confirmed to the engineer in writing.

#### VI. LIABILITY FOR DEFICIENCIES WITH THE DELIVERY

1. The buyer is obliged to check the incoming goods immediately after receipt and to complain about any deficiencies in writing within two weeks after the goods have arrived at the place of destination. The written complaint shall be evidently sent off within the mentioned period of time by letter or telegram. Hidden deficiencies not allowing to be detected even with meticulous inspections within this period of time must be complained about immediately after detection and in the same way as is done with apparent deficiencies. Otherwise, any warranty claims shall be excluded
2. Without the prior explicit consent of the seller, the customer is not entitled to remedy any deficiencies by himself. Should the customer undertake any remedy activities all the same, he shall only be entitled to an agreed warranty if he can provide evidence that neither the existing damage nor any subsequent damage were caused by his intervention. In any case, all costs caused by the customer's intervention shall be paid by the customer.
3. With new installations, the seller grants warranty for their quality, workmanship, and assured characteristics for employment from the delivery date ex works on and only in the scope of the relevant regulations of the sub-suppliers which are deemed to be known or, if unknown, have to be requested from the seller.
4. In the case the buyer has not yet met his payment obligations, the seller is entitled to settle warranty claims due to deficiencies only after the payment of a partial amount of the sales price, with the partial amount to be fixed by the seller at his own discretion and by taking the deficiency into consideration.
5. In the first instance, the seller meets his warranty obligations by transferring his warranty claim against the sub-supplier to the buyer. The obligation of the seller to grant warranty becomes valid again if the warranty granted by the sub-supplier fails. If the buyer is not able to enforce his warranty claims for reasons he is responsible for, this shall not be deemed to be a failure. Prior to the buyer's asserting his warranty claims against the seller again, he is obliged to claim against the sub-supplier before the Courts unless such proceeding has obviously no reasonable chance to succeed.
6. On exclusion of any further claims and rights, the supplier is entitled to decide at his own discretion to repair all parts free of charge ex works at the erection/mounting site or at his works free of charge or to replace these parts free of charge which have verifiably become unusable or defect due to a circumstance already existing prior to the transfer of perils, with the circumstance being particularly due to bad construction material, a defective type of construction, or insufficient craftsmanship.
7. The obligations of the supplier to grant warranty expire one year after commissioning of the machine or of the contractual subject matter of the contract at the latest. In any case, the obligations of the supplier expire 15 months after notification of readiness to deliver or, in the case of work and services, 15 months after completion of the work and services if this period runs out at an earlier date.
8. Objected parts of the contractual item shall be sent post-paid and free of freight. Replaced parts are passed into the possession of the supplier.
9. All damages caused by natural wear and tear are excluded from liability. The supplier is not responsible for damages caused by faulty and negligent handling or excessive stress due to the use of inappropriate operating resources and lubricants, to defective construction work or for damages caused by chemical or electrical influences. Liability can be rejected in cases where required repair work has not been carried out by personnel of the supplier or where modifications or repair work have been carried out by other parties unless the customer is able to provide evidence that the deficiency has not been caused by such intervention. Additional work required by the intervention shall be at the customer's expense.
10. The ordering party is obliged to grant the supplier an appropriate period of time to make all necessary modifications and to deliver replacement items or spare parts. In the case that repair work fails, particularly due to the impossibility, failure, or refusal of repair work or if the supplier lets an appropriate period of grace for the elimination of the deficiency pass in a culpable way, the ordering party is entitled to assert abatement or compensation. In this case, too, claims for compensation shall only be valid if the supplier is accused to have acted with intent or gross negligence, respectively, or in cases of death, physical injuries, or injury to health.
11. Moreover, a cancellation of the contract by the ordering party is only permissible if the interest of the ordering party in the contractual item has been destroyed or essentially impaired by the deficiency in a way that the ordering party cannot be expected to go on employing the contractual item any longer.
12. Repaired parts, delivered spare parts, and a new replacement delivery are all subject to the same regulations for liability as were valid for the original contractual item. However, the liability period for repaired parts and spare parts is a maximum of one year unless the original liability period exceeds this period of time. The new liability period for the mentioned parts starts at the date the buyer can begin employing the contractual item after elimination of the deficiency.

#### VII. RIGHT OF WITHDRAWAL OF THE ORDERING PARTY AND OF THE SUPPLIER

1. Over and above, the ordering party can only withdraw from the contract if the delivery prior to the transfer of peril has definitely become impossible for the supplier. In the case the impossibility can neither be attributed to a fault of the supplier nor of the ordering party, the supplier is entitled to receive a part of the remuneration in correspondence to his work and a compensation for the expenses not covered by the remuneration. If the impossibility begins during the delay in reception or is caused by a fault of the ordering party, the party remains obliged to grant consideration.
2. In the case of unexpected events in the sense of paragraph IV 1 of the present terms, with the events being of economic importance, considerably changing the content of the

contractual performance or having an essential impact on the operation of the supplier, and in the case of an impossibility of contractual execution to be subsequently ascertained, the supplier shall be granted the right to withdraw partially or completely from the contract. In the case of unavailability, the supplier shall agree to inform the buyer about this unavailability and to reimburse the consideration of the contractual partner without delay.

#### VIII. RETENTION OF TITLE

1. The possession in the delivered goods is transferred to the buyer after the full payment of his obligations in conjunction to the business relation. Effected payments may be compensated with the claims provided with the lowest security. With current account, the retained possession is deemed to serve as a safety for the claim.
2. If the purchase is financed by a third party, the buyer transfers, with the present terms and in advance, all claims against third parties with regard to the possession in the contractual item to the seller. The possession is then passed to the buyer on the date the retention of title of the seller ceases to exist due to the existing regulations.
3. The buyer shall not dispose of the goods subjected to retention of title by selling, garnishing, mortgaging of goods, or in any other way. He shall inform the seller immediately about garnishments or other adverse effects. In the case the goods subjected to a retention of title are linked or mixed with other items, the buyer conveys his right of property or leased-out property to the seller already at present and agrees to hold the new item or the mixed unit in custody for the seller.
4. In the case the buyer does not meet his obligations in conjunction with payments or with the retention of title, the seller is entitled to withdraw from the contract and, with the exclusion of any retaining lien, to demand the handing-over of the delivered item including all accessories and to take it into his possession. The buyer's right to detain the share of the purchase price indicated in paragraph VI 4 on exercising the warranty claims remains unaffected. All costs incurred by the assertion of the retained property against third parties or by the appropriation of the delivered item shall be borne by the buyer. During the period of retention of title, the purchased item shall be covered by sufficient insurance in favour of the seller. For this, evidence shall be provided. The seller is entitled to arrange insurance coverage at the buyer's expense.
5. A RESELLER is entitled to sell the goods in the scope of an orderly business operation as long as he is not behind schedule. He shall reserve his title against his customers even if the selling is effected in conjunction with other items or after processing, linking and mixing of the item with other items. He conveys his claims from the selling including all additional rights up to the amount of the total claims from the business relation to the seller already at present and, with this, is only deemed to be a trustee. On demand, the reseller is obliged to inform his customers about this assignment and to hand out all necessary information and documentation.

#### IX. REPAIR WORK

1. Any liability of the supplier for the loss or damaging of parts handed over to us through burglary, theft, fire, unrest, or similar reasons is excluded with the exception of cases of intent or gross negligence or with death, physical injury or injury to health.
2. Cost estimates for repair work shall be prepared as precisely as possible but shall remain without commitment.

#### X. LIABILITY

1. The supplier shall be responsible with cases of intent or gross negligence, respectively, of his organs and leading staff or with death, physical injury or injury to health caused by them. In addition, the supplier shall be responsible with cases of intent or gross negligence, respectively, of vicarious agents, or with death, physical injury or injury to health caused by his vicarious agents.  
Irrespective of this fact, the supplier shall only be liable at the time when, and to an extent to which the existing commercial general liability policy of the supplier compensates damages. The commercial general liability policy is based on the General Insurance Conditions for General Liability Insurance.
2. In the case assured characteristics are missing or deficiencies are found, the supplier shall be liable for resulting damages on the purchased item. Damages not caused on the purchased item shall only be covered by the supplier's liability if the purpose of the mentioned assurance is the protection of the buyer against the existing damage. Assured characteristics are characteristics explicitly mentioned as such in the contractual text. In any case, the liability of the supplier remains unaffected in cases of intent or gross negligence, respectively, or with death, physical injury or injury to health.  
In those cases where the supplier is not liable for cases of intent or gross negligence, respectively, or for death, physical injury or injury to health, the extent of liability shall be limited to damages caused directly to the purchased item; therefore, it does not particularly cover property damage suffered by the buyer.
3. Any other claims against the supplier than those covered by these terms or by the contractual text are excluded, with this stipulation also particularly applying to any liability of the supplier exceeding the scope of liabilities defined in the above-mentioned stipulations unless there is any responsibility for cases of intent or gross negligence, respectively, or for death, physical injury or injury to health. This is particularly true for further contractual and/or legally stipulated damage claims, no matter on which legal basis they rest upon.

#### XI. PLACE OF PERFORMANCE AND PLACE OF JURISDICTION

1. The place of performance for all obligations originating from the business relation is the head office of the company Lindenberg-Anlagen GmbH.
2. The place of jurisdiction for all claims including those in conjunction with certificates and bills of exchange is Bergisch Gladbach (Local Court) and Cologne (Regional Court), respectively. The German law is applicable.