

Luxendo GmbH

Terms and Conditions of Sale (Germany)



Version #4817-3735-6215.1

1. GENERAL.

Orders are accepted by Luxendo GmbH ("Seller") subject to these terms and conditions.

These terms and conditions apply to the exclusion of all other terms. In case of a conflict, inconsistency or addition not expressly accepted in writing by Seller, the terms and conditions of sale provided herein shall be considered as superseding the conflicting, inconsistent or additional terms stated in Buyer's purchase order, order form, contract or otherwise.

The acceptance of an order will supersede all prior communications and constitute a complete and binding contract between the party purchasing equipment hereunder ("Buyer") and Seller, which contract cannot be modified or canceled without the written agreement of both parties.

2. OFFER / CONCLUSION OF CONTRACT.

Seller's quotations shall be non-binding and subject to change unless expressly indicated otherwise.

Buyer's order constitutes a legally binding offer to enter into a contract.

The acceptance of an order shall be by way of a written contract confirmation by Seller (including by email). If no written confirmation is issued, a contract (subject to these terms and conditions) shall take effect by placing at disposal the goods. In this case, Buyer shall waive the receipt of a written confirmation.

3. SHIPMENT.

Seller shall attempt to comply with, but will not guarantee, shipping date and loading and routing instructions. Seller reserves the right to allow or prorate shipments against all orders whenever, in its judgment, an oversold condition exists as to any particular product manufactured or sold by it. In the event of a default by Buyer, Seller may decline to make further shipments without waiving any of its rights under such order. If, despite such default, Seller elects to continue to make shipment, its action shall not constitute a waiver regarding, or otherwise diminish, Seller's legal remedies with respect to such default or any future default.

Any claims of Buyer for compensation due to the inability to deliver goods, or due to delays in delivery, shall be limited as set forth in Section 15 of these terms and conditions.

4. TITLE AND DELIVERY.

All sales are made EXW factory, Incoterms 2020 and Buyer shall pay all freight, duties, cartage and handling. Title and risk of loss or damage shall pass from Seller to Buyer upon Seller's putting the material purchased hereunder in good condition into the possession of a common carrier, such carrier acting as Buyer's agent.

5. PRICES.

Irrespective of any prices quoted by Seller or listed on Buyer's order, an order is accepted only at the prices shown on Seller's written quotation (the "Quotation"). Installation of utilities required for equipment is not included in the specified price.

6. PAYMENT TERMS.

(a) Unless agreed otherwise, payment terms shall be as set forth in Seller's quotations.

(b) Buyer shall be automatically deemed in default upon expiration of the applicable period for payment under the preceding paragraph (a) without the need for a default notice to be issued. During any period of default, the price shall bear interest at the applicable statutory rate for default interest. Seller reserves the right to claim additional damages for default.

(c) All orders are subject to credit approval by Seller. The amount of any credit extended by Seller to Buyer may be changed, and such credit may be withdrawn by Seller. With respect to an order on which credit is not extended by Seller or, if extended, is subsequently withdrawn, shipment or delivery shall be made, at Seller's election, cash with order (in whole or in part), C.O.D., letter of credit or Sight Draft attached to Bill of Lading or other shipping documents, with all costs of collection for the account of Buyer. If, in the judgment of Seller, the financial condition of Buyer does not justify continuation of production or shipment on the terms of payment originally specified, Seller may require full or partial payment in advance. In the event any proceeding is brought by or against Buyer under any bankruptcy or insolvency laws, Seller shall be entitled, in addition to any other remedies at law or in equity, to (i) stop or divert any shipment in transit, (ii) cancel any order then outstanding and/or (iii) receive reimbursement for its cancellation charges.

(d) Seller shall be entitled to partial performances to the extent that (i) the partial performance can be used by Buyer in the context of the contractually intended purpose, (ii) the performance of the remaining parts is ensured and (iii) Buyer does not incur any additional costs as a result. Each shipment shall be considered a separate independent transaction, and payment therefor shall be made accordingly.

(e) If for any reason the delivery is delayed at Buyer's request, Seller may store the goods at Buyer's expense and risk in the name of Buyer.

7. TAXES.

Quoted prices do not include federal, state or local excise, sales, use or similar taxes. Accordingly, in addition to the prices specified on the Quotation, the amount of any applicable excise, sales, use and/or similar taxes will appear as separate items on the invoice and will be paid by Buyer unless prior to shipment Seller receives an appropriate tax exemption certificate from Buyer.

8. ACCEPTANCE / CUSTOMER SPECIFIC ACCEPTANCE ("CSA").

8.1 Where it has been expressly agreed that Buyer's acceptance (in the meaning of § 640 German Civil Code) is required, then Buyer will accept the purchased equipment in accordance with the agreed CSA provisions. The parties will give priority to achieving CSA and the purchased equipment shall not be used by Buyer for material production, for development of new processes or for any purposes other than achieving CSA, prior to successful completion or waiver of the CSA provisions.

It is the responsibility of the Buyer to ensure that all the required facilities are ready and site preparation is completed for successful commencement of CSA on delivery of the equipment.

8.2 In the event of a delay in acceptance despite readiness for acceptance, the goods shall be deemed accepted if a) CSA has not been commenced within 30 days after delivery and completed within 60 days after delivery (through no fault of Seller) or b) (if an additional installation has been agreed) CSA has not been commenced within 15 days after any agreed installation and completed within 45 days after any agreed installation (through no fault of Seller), if not agreed otherwise or c) Buyer has started using the goods and 15 days have elapsed since delivery or (if applicable) any agreed installation.

9. FORCE MAJEURE.

Seller shall not be liable for failure to perform occasioned by strikes, lockouts, labor difficulties, riots, inability or difficulty in obtaining or procuring supplies, labor or transportation, fires, storms, floods, earthquakes, explosions, accidents, acts of God, interference by civil or military authorities, whether legal or de facto, acts of the public enemy, war, rebellion, insurrection, sabotage, embargoes, orders given priority by any public authority or any other cause beyond the reasonable control of Seller if such event was not foreseeable at the time when the contract was entered into.

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10. PATENTS.

If a third party claims that the purchased equipment infringes that party's patent or copyright or other intellectual property right, Seller will defend Buyer against that claim and will pay all costs, damages and attorneys' fees that a court finally awards, provided that Buyer: (a) promptly notifies Seller in writing of the claim, and (b) allows Seller to control, and cooperates with Seller in, the defense and any related settlement negotiations.

If such a claim is made or appears likely, Seller, at its option, may obtain a license to enable Buyer to continue to use the product, may modify the product or may replace it with one that is functionally equivalent. If Seller is unable to do either of these things within a reasonable time, the Buyer may rescind the contract or claim a reasonable reduction of the purchase price.

Seller shall not be liable for any claim based on (i) anything Buyer provides which is incorporated into a product, (ii) Buyer's modification of a product or use thereof other than in its specified operating environment, or (iii) the combination, operation or use of a product with products provided by other manufacturers or other products not provided by Seller as a system.

Any claims of Buyer for compensation shall be limited as set forth in Section 15 of these terms and conditions.

Sale of products or parts thereof does not confer on Buyer any license relating to (a) the structure of any devices to which the products or parts may be applied or (b) a process or machine in connection with which they may be used.

11. RESCHEDULING.

If Buyer has been granted by Seller any rescheduling rights, such rights shall be as set forth in [Exhibit A](#).

12. CANCELLATION.

If Buyer has been granted by Seller any additional contractual cancellation rights, such rights shall be as set forth in [Exhibit A](#).

13. ASSIGNMENT.

Buyer shall not assign this order or any portion thereof without the prior written consent of Seller.

14. WARRANTY ("Gewährleistung" in terms of German Civil Code).

(a) Unless these terms and conditions (including Sections 10 and 15) provide otherwise or specify additional terms, the relevant statutory provisions shall govern Buyer's rights in the case of material or legal defects ("*Sach- und Rechtsmängel*").

(b) No warranty shall be provided for standard wear and tear for this type of contract (particularly for filters, lamps, pilot lights, filaments, fuses, mechanical pump belts, probes, V-belts, wafer transport belts, pump fluids, O-rings and seals),

(c) No warranty shall be provided for all used equipment, including demo equipment.

(d) No warranty shall be provided for equipment and system failures resulting from (i) abuse, misuse, modification or mishandling; (ii) damage due to forces external to the machine including, but not limited to, acts of God, flooding, power surges, power failures, defective electrical work, transportation, foreign equipment/attachments or Buyer-supplied replacement parts or utilities or services such as gas; (iii) improper operation or maintenance; or (iv) failure to perform preventive maintenance in accordance with Seller's recommendations (including keeping an accurate log of preventive maintenance). In addition, this warranty does not apply if any equipment or part has been modified

without the written permission of Seller or if any Seller serial number has been removed or defaced.

(e) Specifically excluded from this warranty is all standalone computer and data storage equipment not manufactured by Seller (such as computers, monitors, printers and printer buffers). Such equipment will carry only the original manufacturer warranty.

(f) Unless acceptance (in the meaning of § 640 German Civil Code) has been expressly agreed, Buyer has a duty to inspect delivered goods promptly after they are delivered to Buyer or any third party nominated by it, and promptly report any defects. §§ 377 and 381 German Commercial Code and the terms of this subsection shall apply to goods inspections and defect notifications. The requirement of prompt notification shall be deemed satisfied if a notice of defects is sent, at the latest, within five (5) working days of delivery or, if the defect was not evident at the time of the goods inspection, at the latest within three (3) working days after the defect is identified. Seller assumes no warranty and accepts no other liability for defects if Buyer has failed to properly inspect the goods and/or report defects.

(g) Buyer must give Seller an opportunity to review the complaint, particularly by making available respective goods and their packaging to Seller for inspection. At Seller's request, the goods subject to complaint must be sent back to Seller. Buyer must contact Seller in advance for authorization to return equipment and must follow Seller's shipping instructions. Freight charges and shipments to Seller are Buyer's responsibility. In the event of a justified defect complaint, Seller shall reimburse the costs of the least expensive shipping method; this shall not apply if the shipping costs are increased because the goods are located somewhere other than the place of contractually agreed use.

(h) If the goods are in fact defective, Seller will cover the necessary expenses for the purpose of examining the goods and effecting supplementary performance, particularly including transport, infrastructure, labor and material costs. Supplementary performance shall not include either dismantling and removing the defective item or re-installing a non-defective item if Seller had no installation obligation originally. However, if Buyer's request to remedy a defect proves to be unjustified, Seller may require Buyer to reimburse Seller's costs.

(i) If the delivered goods are defective, Seller shall be entitled to its choice of supplementary performance ("*Nacherfüllung*"), either by rectifying the defect (repair) or by providing a new, non-defective item (replacement).

(j) If it is not possible to effect supplementary performance or if the attempt to supplementary performance is unsuccessful, or if the reasonable period for effecting supplementary performance has expired without result or can be dispensed with according to statute, Buyer may, at its election, rescind the contract or reduce the purchase price. However, there is no right of rescission in the case of minor defects.

(k) Any claims of Buyer for compensation shall be limited as set forth in Section 15 of these terms and conditions.

15. LIMITATION OF LIABILITY.

15.1 Further claims by Buyer, particularly for damage compensation in place of performance and compensation for other direct or indirect loss – including accompanying or consequential loss, regardless of legal grounds – are hereby excluded. This shall not apply if:

(a) Seller has fraudulently concealed a legal or material defect or has provided a guarantee for its absence, or for a characteristic of the goods;

(b) The damage is due to intent or gross negligence on the part of Seller, one of its legal representatives or assistants, or is due to a negligent violation of material contractual obligations on the part of Seller or these

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persons. Material contractual obligations are obligations whose fulfillment is material to due and proper implementation of the contract and which the contractual partner regularly expects and can trust to be fulfilled. However, in the event of simple negligence, Seller's liability for damages other than personal injury or damage to health shall be limited to the foreseeable loss typical for this type of contract;

(c) A culpable breach of obligations on the part of Seller or its legal representatives or vicarious agents has led to personal injury or damages to health; or

(d) Seller is liable under the German Product Liability Act ("*Produkthaftungsgesetz*").

For the avoidance of any doubt, the foregoing provision in Section 15.1 does not imply a change in the burden of proof to the detriment of Buyer.

15.2 The provisions of Section 15.1 shall apply correspondingly to any direct claims by the Buyer against Seller's legal representatives and vicarious agents.

15.3 Contractual penalties (penalties for non-performance, flat-rate damages, etc.) to which Buyer is subject by a third party can only be claimed as damage compensation from Seller – regardless of the other requirements – if this has been expressly agreed in advance between Buyer and Seller or if Seller has been expressly informed in writing of a potential contractual penalty agreed between Buyer and a third party before the conclusion of the contract with Seller.

15.4 In every case, the statutory provisions for final delivery to a consumer who is a private individual shall remain unaffected (supplier's recourse as per §§ 478, 479 German Civil Code).

16. LIMITATION PERIOD.

16.1 In deviation from § 438 (1) no. 3 German Civil Code, the limitation period for claims based on material or legal defects (including those not based on the contract) shall be 12 months from the date of delivery; however, the foregoing shall not apply in the cases described in Section 15.1 (a) to (d) of these terms and conditions. The applicable statutory limitations period shall apply in those cases. If an acceptance in the meaning of § 640 German Civil Code has been agreed, the periods shall begin upon acceptance.

16.2 The limitation period in the event of supplier's recourse as per §§ 478, 479 German Civil Code and the limitation periods set forth in § 438 (1) no.1 and no. 2 and 438 (3) German Civil Code shall remain unaffected.

17. NONSOLICITATION.

Buyer will not solicit the employment of any employee of Seller who has come into contact with Buyer in connection with the products or services provided to Buyer hereunder.

18. COMPLIANCE WITH LAWS.

(a) The performance of each party hereunder is subject to compliance with all applicable laws.

(b) Buyer understands that exports and re-exports of Seller's products and any related software, service, technical assistance, training and related technical data, and any media in which any of the foregoing is contained (the "Items") may be subject to German, European, U.S. and foreign trade controls, customs, anti-boycott and economic sanctions laws, regulations, rules and orders (the "Export Laws"). In addition to any other remedy it may have, Seller may suspend or cancel the export, delivery, installation, or any maintenance or repair service of any Item if (a) Seller has not received all export-related documentation requested by Seller, including end-user certificates, (b) Seller has not received the

governmental approvals that Seller deems to be required, or (c) Seller believes that such activity may violate any Export Laws or Seller's own compliance policies.

Buyer shall only use the Items for non-military, peaceful purposes. Buyer shall not export, re-export or otherwise transfer or provide any Item in contravention of any applicable Export Law or any end-user certificate provided by Buyer, including to an embargoed or otherwise sanctioned country, to anyone listed on any applicable prohibited persons list published by the U.S., the UN, the EU or the OSCE, or for a prohibited end-use (such as research on or development of chemical, biological, or nuclear weapons, unmanned air vehicles or missiles, or nuclear explosive or fuel cycle activities). Buyer must notify Seller before providing any technical data to Seller that is controlled under any applicable Export Law. Seller will not be liable to Buyer for any loss or expense if Buyer fails to comply with any Export Law.

(c) Buyer will comply with all applicable import laws or other restrictions or conditions respecting the import of Items that are now in effect or are hereafter imposed by any government or other applicable jurisdiction. Buyer shall be responsible for obtaining any necessary import permit, license or authorization at its sole cost and expense. Buyer shall immediately notify Seller if an import permit, license or other authorization is required in connection with any such import.

19. APPLICABLE LAW / PLACE OF JURISDICTION.

The contract created hereby shall be interpreted and construed under the laws of Germany, without regard to the choice of law provisions thereof and not including the U.N. Convention on Contracts for the International Sale of Goods.

The place of exclusive (and international) jurisdiction for any and all disputes arising out of or in connection with the Seller's business relations with the Buyer shall be the place of Seller's registered office. However, Seller may also sue Buyer in the place of its domicile.

20. SEVERABILITY CLAUSE.

If individual provisions of these terms and conditions should be void or invalid in whole or in part, this shall not affect the validity of the remaining provisions. In place of any provisions which are invalid or not incorporated into the contract primarily the statutory provisions shall apply. In all other cases, the Parties shall agree a valid provision to replace the invalid or unenforceable provision which reflects as closely as possible the original economic purpose, provided a supplementary interpretation of the contract does not have precedence or is not possible

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EXHIBIT A

ADDITIONAL PROVISIONS

1. Rescheduling:

Buyer is entitled to request a one-time rescheduling of the delivery against payment of a "Rescheduling Charge". The charges shall be determined as follows and shall be due and payable within ten (10) days of the rescheduling:

Number of Weeks of Rescheduling Requested	Rescheduling Charge
Up to 4 Weeks	No Charge
5 to 12 Weeks	15% of Purchase Price
13 to 26 Weeks	35% of Purchase Price
27+ Weeks	Order Considered Canceled

More than one rescheduling of an order will be considered a cancellation of the order. Sixty-six percent (66%) of the rescheduling charge shall be applied against the purchase price if the order is subsequently shipped or against the cancellation charges if the order is subsequently canceled. On any order that is rescheduled and subsequently canceled, cancellation charges will be based upon the time between the originally scheduled delivery date and the date of notice of cancellation.]

2. Cancellation.

Buyer is granted a contractual right to cancel any order against payment of a "Cancellation Charge". In the event of attempted cancellation by Buyer of any order, Buyer shall pay Seller a cancellation and re-stocking charge based upon the timing of the attempted cancellation notice as follows:

Days Attempted Cancellation Notice Given Before Confirmed Shipment Date of Order	Cancellation Fee Equals the Following Percentage of Purchase Price
More than 90 Days	35% of Purchase Price
61 to 90 Days	50% of Purchase Price
31 to 60 Days	75% of Purchase Price
0 to 30 Days	100% of Purchase Price

Higher cancellation charges, up to the full value of the order, may apply in the case of special, custom or modified equipment.