

**General Terms and Conditions**  
of  
**LED 24-7 PUNKT COM GmbH**  
**with its statutory seat in Owen, Germany**  
(Version: 31 January 2020)

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**1. Area of Application**

- 1.1 Our General Terms and Conditions apply vis-à-vis entrepreneurs within the meaning of Section 14 BGB (German Civil Code) only if the contract belongs to the operation of the enterprise, as well as vis-à-vis legal persons under public law and special public funds within the meaning of Section 310 para. 1 BGB.
- 1.2 We provide all our deliveries and services exclusively subject to these General Terms and Conditions. We shall not recognize any conflicting or differing conditions of the customer, in particular terms of purchase and quality assurance agreements, unless we have expressly consented to their validity in writing.

**2. Offers, Offer Documents**

- 2.1 Our offers are free-of-charge and non-binding, unless they are explicitly designated as a binding offer.
- 2.2 Our confirmation of an order is decisive for the order. This confirmation of an order can also be made by sending an invoice with the goods. If the customer has objections to the contents of the confirmation of an order, he must immediately object to the confirmation of an order. Otherwise, the contract shall be concluded in accordance with the confirmation of the order.

**3. Object of the Contract**

- 3.1 Information in documents other than offer and confirmation of an order, such as drawings, weights and measurements, are not binding, unless they are expressly stated as binding.
- 3.2 Without express agreement, we do not furnish any guarantee. Even in the case of an obligation in kind (*Gattungsschuld*), we assume no procurement risk without express agreement.

**4. Prices**

- 4.1 The prices stated in the confirmation of an order are decisive. These are valid ex works and do not include packaging, insurance, transport, customs clearance and VAT.
- 4.2 Consultancy services, assembly and installation work, product acceptance, service and maintenance work as well as any associated travel expenses must be agreed and compensated / reimbursed separately. This contractual content can only be terminated for an important reason.
- 4.3 If, after the expiration of half of the stated approximate delivery period, we have incurred unforeseeable cost increases, for example by increasing labor or material costs, we are entitled to adjust the prices within the context of the changed circumstances and without calculation an additional profit. The unpredictable cost increases will be demonstrated to the customer on request.

**5. Delivery, Transfer of Risk, Delay**

- 5.1 The risk of accidental destruction and accidental deterioration of the goods passes to the customer upon delivery, in case of shipment upon delivery of the goods to the freight forwarder, freight carrier or other person specified to carry out the shipment. This also applies if, in individual cases, freight-free shipment by us has been agreed upon.
- 5.2 If we select the type of shipment, the way of shipment or the shipping person, we are only liable for gross negligence in the respective selection.
- 5.3 Delivery times are given by us only approximate. Fixed binding delivery periods require special agreement. With regard to deadlines and delivery dates not expressly referred to as "fixed" in the confirmation of an order, the customer may set us a reasonable additional period of time for delivery and/or performance after the regular period has been exceeded. We may be deemed to be in delay only after the expiration of such additional period. Delivery periods begin with the date of the confirmation of an order, however not before the timely and proper performance of the customer's

obligations, in particular not before the submission of all documents, licenses and releases to be obtained by customer as well as the receipt of any stipulated down payment.

- 5.4 Correct and timely delivery by our suppliers remain reserved. We will immediately notify the customer of the non-availability of the delivery item.

Influences of force majeure like wars or war risks and other unforeseeable, extraordinary events for which we are not responsible such as interruptions of operations, strikes, lockouts, interventions by public authorities (e.g. also including control of diseases or epidemics), difficulties with the supply of energy etc. entitle us to delay our performance for the duration of the impediment and a reasonable period of time for operations to get started again. The same shall apply if our sub suppliers are affected by such circumstances. In important cases we will inform the customer of the beginning and ending of such circumstances as soon as possible. If, due to the aforementioned circumstances, the delivery or service to be provided becomes impossible or we can no longer reasonably be expected to perform, we shall be released from our duty to deliver.

In the event that the delivery period is extended or that we are released from our duty to deliver, the customer cannot derive any claims for damages from such extension or release. As far as we are released from our duty to deliver any advances of the customer will be given back.

- 5.5 Delivery periods and delivery dates shall be deemed to be on time if, before the expiration of the delivery period, the respective ordered item has either left the factory or if notice of readiness for its shipment has been given. That does not apply if an acceptance of performance or an obligation for an installation is agreed upon.
- 5.6 Within a reasonable amount, partial deliveries shall be permitted.
- 5.7 If we are in delay of delivery, we shall be liable for the damages caused to the customer by gross negligence. In the case of slight negligence, our liability for delays is limited to a compensation for each completed week of delay of 0.5%, but not more than 5% of the price for the part of the deliveries which could not be used expediently due to the delay. Sentence 2 shall not apply if the delay in delivery is based on a breach of a material contractual obligation or if liability for injury to life, body or health is mandatory; a change of the burden of proof to the disadvantage of the customer is not associated with this.
- 5.8 The customer's statutory right to rescind the contract shall remain unaffected but requires that we are responsible for the delay. At our request the customer is obliged to declare within a reasonable period of time whether he will rescind the contract after the expiration of this period of time due to the delay with delivery and/or claim damages in lieu of the performance of the contract and/or reimbursement of expenses or whether he will insist on delivery.
- 5.9 If delivery is delayed for reasons attributable to the customer, the risk shall pass to the customer from the date of readiness of shipment and the customer shall bear the costs for storage, insurance and other protective measures. We can charge a storage fee of 0.5% of the invoice amount, but a maximum of 5% of the invoice amount for each completed week of the delay. We are allowed to prove that a higher damage has occurred. After setting and expiry of a reasonable period and after a corresponding advance notice, we are entitled to dispose otherwise of the delivery item and to supply the customer with an appropriately extended deadline.

## **6. Call order**

Unless otherwise agreed, in the event of call orders, the call must be made at the latest in such a way that delivery can take place within a period of six months after confirmation of order. Requests are to be announced at least two weeks beforehand. Upon expiry of a reasonable period of grace for delivery or acceptance, we shall be entitled to deliver and invoice the goods, to withdraw from the contract or to demand compensation.

## **7. Payment**

- 7.1 Bills of exchange and checks will only be accepted undertaking to pay on the basis of express agreement, in no case in lieu of payment. Costs and expenses incurred by the customer must be borne by the customer.
- 7.2 Unless provided otherwise in the confirmation of the order, the purchase price shall be due immediately without any discount. Deduction of cash discount requires a separate agreement in writing.

- 7.3 Unless otherwise agreed, default occurs 14 days after issuing an invoice. If the customer is in default of payment, we are entitled to demand default interest of 8% above the base interest rate. The assertion of further damages shall not be excluded hereby.
- 7.4 If, after accepting the order, we obtain knowledge of facts that give rise to justified doubts about the customer's ability to pay, we shall be entitled to demand full payment or the provision of according security prior to delivery and/or to rescind the contract after setting an unsuccessful deadline for performance. Besides delays in payment that have already occurred, negative information provided in accordance with the due care of a prudent businessman by a bank, a credit agency (Auskunftei), a company maintaining business relations with the customer or a similar party shall be considered proof of a significant deterioration in the customer's financial situation. If delivery has already occurred, regardless what conditions of payment have been agreed, the entire purchase price becomes due for payment immediately, as the case may be versus return of acceptances.

## **8. Offsetting and Retention**

The customer is only allowed to set off with an undisputed or legally binding counterclaim. Furthermore, the customer shall be entitled to exercise a right of retention only to the extent that his counterclaim arises from the same contractual relationship. The customer has no right of retention due to partial performances according to Section 320 para. 2 BGB.

## **9. Material and Legal Defects**

9.1 Our liability for material and legal defects requires that:

- a) these are not based on the following circumstances (to the extent that these circumstances are not attributable to our fault):
- aa) inappropriate or improper use,
  - bb) faulty installation and/or faulty initial operation,
  - cc) incorrect or negligent handling, use of inappropriate operating materials or substitute materials by the customer or a third party,
  - dd) natural wear and tear,
  - ee) deficient construction works,
  - ff) modifications, technical changes / adjustments or service works which have not been authorized by us in writing in advance,
  - gg) chemical, electro-chemical or electrical influences.

Compliance with statutory requirements, in particular the Electromagnetic Compatibility Act (EMVG), is the sole responsibility of the customer, even if we should assemble and put into operation the delivery item.

- b) the customer has duly complied with his duties to examine and object under Section 377 HGB (German Commercial Code). Complaints in respect of defects must be made in writing within 10 days after receipt of the delivery item or, if not visible in spite of a duly examination, within 2 days as of the customer becoming aware of the respective defect.
  - c) the customer is not in delay with payment, taking into account a reasonable amount retained for warranty reasons according to no. 9.7 below.
  - d) the customer has not removed or made unrecognizable the serial numbers on the delivery item.
- 9.2 Claims for defects do not exist in the event of a minor deviation from the agreed quality or in case of insignificant impairment of usability.
- In particular, no claims for defects exist in case of
- a) non-functioning LEDs at an error rate of 100ppm,
  - b) brightness and / or color differences between the individual LED boards.
- 9.3 Insofar as there is a material or legal defect (hereinafter: defect), the cause of which already existed at the time of transfer of risk, we are entitled to supplementary performance by remedying the defect or delivering a defect-free product at our choice. The customer has to grant us a period of 4 weeks for the

supplementary performance. The place of performance and fulfillment of the supplementary performance is the seat of our company.

The expenses necessary for this purpose, such as wage, material, transportation and travel costs, will be borne by us if not otherwise agreed and only to the extent that such expenses have not been increased due to the fact that, after delivery, a delivered good has been brought to a place other than the seat of the customer, unless such relocation corresponds to the proper use of the respective good. Replaced parts shall become our property and must be returned to us.

A failure of the supplementary performance is only given after the unsuccessful second attempt. If the supplementary performance is refused by us, if it has failed or is unacceptable to the customer, the customer may - at his discretion and without prejudice to any claims for damages and reimbursement of expenses according to Section 10 - withdraw from the contract if the defect is overall significant due to the functional and aesthetic impairment or reduce the amount of consideration.

- 9.4 In coordination with us, the customer has to grant us the necessary time and opportunity for all reparation and replacements, which are necessary in our equitable discretion. Otherwise, we shall be released from the consequences of damages which occur due to the fact that the customer did not grant us the necessary time and opportunity to carry out the necessary removal of defects or replacements. The customer has the right to remove the defect by himself or through a third party and to demand the compensation of the costs incurred only in urgent cases of endangerment of the general plant safety and the defence of out of scale damages - whereas we have to be informed immediately - or in case that we are in delay of removing the defect.
- 9.5 Claims for defects become statute barred within 12 months from delivery or service, provided that no intent or gross negligence or liability for the injury of life, body or health exist. We shall be liable for spare parts until expiry of the limitation period applicable to the original delivery item.
- 9.6 The customer's claims against us pursuant to Section 478 BGB (recourse of the entrepreneur) shall only exist insofar as the customer has not concluded any agreements with the purchaser which go beyond the statutory claims for defects. Section 9.3 sentence 2 shall apply mutatis mutandis. If the customer is held liable for a defect of the newly produced delivered goods, he is obliged to inform us without delay. He has to oblige his subcontractors accordingly if they are entrepreneurs. We reserve the right to fulfill the claims asserted by the purchaser against the customer by way of self-entry (*Selbsteintritt*). In this case, the fulfillment of the purchaser's claims shall be deemed to be the fulfillment of any claims of the customer.
- 9.7 In the event of complaints in respect of defects, the customer may retain payments to an extent reasonably proportional to the defects having occurred only if the claims of the customer have been recognized by declaratory judgment or have been recognized by us. If the complaint in respect of a defect is unjustified, we are entitled to demand from the customer reimbursement of our expenses incurred.

## **10. Claims for Damages and for Reimbursement of Expenses**

- 10.1 We shall be liable according to the statutory provisions if the customer asserts claims for damages or for reimbursement of expenses (hereinafter: "claims for damages") incurred as a result of wilful misconduct or gross negligence, including wilful misconduct or gross negligence of our representatives or vicarious agents. We shall be liable for slight negligence only if we are concerned with the culpable violation of essential contractual obligations arising from the nature of the contract or whose violation jeopardizes the attainment of the object of the contract. In the case of liability under sentence 2, the damages shall be limited to the contract-typical, foreseeable damage. Further claims for damages in the case of slight negligence, irrespective of their legal basis, are excluded.
- 10.2 The foregoing exclusion and limitation of liability does not apply to the claims under the Product Liability Act, in the event of injury to life, body or health.
- 10.3 In the case of claims for damages due to defects, the limitation of liability does not apply if we have maliciously concealed a defect or have assumed a guarantee for the quality of the goods. In the event of the limitation of claims for damages due to material defects, the provisions under 9.5 shall apply mutatis mutandis.
- 10.4 The customer's claims for reimbursement of expenses shall be limited to the amount of the interest the customer has in the performance of the contract.
- 10.5 To the extent that our liability is excluded or limited, this shall likewise apply with regard to the personal liability of our employees, workers, representatives and vicarious agents.

## 11. Retention of Title

- 11.1 We retain ownership of all goods delivered by us until full payment of all claims arising from the entire business relationship. Claims also include checks and bills of exchange as well as receivables from current accounts. If a liability for bills of exchange is established for us in connection with the payment, the retention of title only expires when our liability is excluded from the bill of exchange.
- 11.2 In the event of a conduct of the customer that is contrary to the terms of the contract, especially in the event of a delay in payment, we shall be entitled to rescind the contract and to take back the delivered goods. The customer is obliged to grant access to the delivered goods to us or to an authorized agent and to give them back immediately. After taking back the delivered goods, we shall be entitled to utilize the same. The proceeds from utilization, less reasonable utilization costs, are to be counted towards the customer's liabilities.
- 11.3 The customer shall be obligated to handle the delivered goods with care and, on our demand and while the retention of title lasts, to insure them against damages sufficiently. The customer herewith assigns his claims against the insurer to us.
- 11.4 In the event of seizures or other interventions by third parties, the customer must notify us without delay in writing so that we may take action according to Section 771 ZPO (German Code of Civil Procedure). To the extent to which the third party shall not be able to reimburse judicial and extra-judicial costs of an action according to Section 771 ZPO, the customer shall be liable for our loss.
- 11.5 The customer shall be entitled to resell the delivered goods in the ordinary course of business; however, he herewith assigns all claims arising from resale to his purchasers or third parties amounting to invoice amount (including VAT) to us, regardless of whether the delivered goods were resold before or after processing. Even after assignment the customer shall be entitled for fiduciary collection of such claims; our right to collect such claims remains unaffected. However, we shall be obliged not to collect claims while the customer meets his financial obligations from proceeds received, while he is not in default with payments and in particular did not file for insolvency or stops payments. If this obligation not to collect claims does not apply, the customer shall, on our demand, disclose assigned claims and debtors thereof, give full information necessary for collection, deliver all corresponding documents and inform debtors about the assignment. In this case we are also entitled to revoke the authority of collection of the customer.
- 11.6 Processing or transformation of delivered goods by the customer shall be made only for us. We are regarded as a manufacturer within the meaning of Section 950 BGB without further obligation. In the event that delivered goods are processed with other objects not owned by us, we acquire co-ownership in the new object at the rate of the delivered good's value to the other processed objects at the time of processing. For the property resulting from the processing the same applies as for the goods delivered under retention of title.
- 11.7 In the case that the delivered goods are inseparably mixed or connected with other objects not owned by us, we acquire co-ownership in the new object at the rate of the delivered good's value to the other mixed or connected objects at the time of mixture or connection. In the case that the customer's object is to be regarded as the main object after mixture or connection, the transfer of co-ownership in the main object to us shall be deemed to be agreed on. In doing so, the customer preserves the accrued sole or co-ownership for us.
- 11.8 If the value of all the customer's securities exceeds the sum of all our secured claims by more than 20%, we will release an appropriate proportion of the securities at the customer's request. It is our choice which securities will be released.
- 11.9 As far as the law in which area the delivered goods are located does not permit retention of title, we shall be entitled to exercise all rights over the delivered goods we are able to reserve. The customer shall be obliged to participate in actions in respect of protection of our property rights or instead thereof, of other security interests regarding the delivered goods.

## 12. Industrial Property Rights of Third Parties

The customer is responsible for the fact that there is no infringement of third party property rights due to his instructions regarding shapes, dimensions, colors, weights, etc. The customer shall indemnify us against all third-party claims for infringement of the aforementioned industrial property rights, including all legal and extra-judicial costs, and, if requested, in any legal dispute.

### **13. Place of Performance, Place of Jurisdiction, Applicable Law**

- 13.1 For both parties, the place of fulfillment for delivery and payment shall be exclusively the seat of our company.
- 13.2 Place of jurisdiction for all disputes arising from the contractual relationship as well as from its emergence and its effectiveness is the seat of our company for both parties. We may also institute legal action at the customer's seat or at any other legal venue, as the case may be.
- 13.3 The contract is governed by the law of the Federal Republic of Germany, with the exception of the United Nations Convention on the International Sale of Goods (CISG) and other international agreements.
- 13.4 Should any particular provision of these Terms and Conditions or any other contractual agreement be or become invalid in whole or in part, the validity of the remaining provisions shall remain unaffected.
- 13.5 The German version of these Terms and Conditions shall be authoritative; the English translation is for convenience only.

### **14. Privacy Statement**

- 14.1 Personal data of the customer (e.g. title, name, house address, e-mail address, phone number, bank details, credit card number) are processed by us only in accordance with the provisions of German data privacy laws.
- 14.2 Personal data of the customer, insofar as these are necessary for this contractual relationship (inventory data) in terms of its establishment, organization of content and modifications, are used exclusively for fulfilling the contract. For goods to be delivered, for instance, your name and address must be relayed to the supplier of the goods.
- 14.3 Without explicit consent of the customer or a legal basis, personal data of the customer are not passed on to third parties outside the scope of fulfilling this contract. After completion of the contract, data of the customer are blocked against further use. After expiry of deadlines as per tax-related and commercial regulations, these data are deleted unless the customer has expressly consented to their further use.

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