

# General Terms and Conditions of Lang Technovation Co.

As of: October 2014

## **I. General provisions**

### **1. Area of application**

1.1 The goods, services, offers, acceptances, and transactions of Lang Technovation Co. and the Customer shall be made solely on the basis of the terms and conditions set forth herein. Consequently, they shall apply to all future business relations, even if they are not subsequently specifically agreed upon. These terms and conditions shall be regarded as accepted at the latest upon the issuance of an Order Confirmation (Paragraph 2.2).

1.2 Our terms and conditions shall apply exclusively. We shall not acknowledge or be required to acknowledge conditions of the Customer that contradict or deviate from our terms and conditions. Any attempt by the Customer to alter or modify our terms and conditions or impose contradictory terms and conditions is null and void. Any deviation or modification must be approved by us in writing.

### **2. Subject of the agreement, validity of offers, finalization of an agreement**

2.1 The subject matter of the agreement shall be the products and services we offer (hereinafter "Lang Technovation Co. Products/Services"). The contractual products or services, unless otherwise agreed, shall consist of:

- a) delivery of the hardware or services specified in the Order Confirmation, as defined in Paragraph 2.2 herein;
- b) adaptation of the system to the special operating requirements of the Customer which adaptation shall be binding only if expressly agreed upon by us in writing; and
- c) if appropriate, system support (maintenance) if a written service agreement is expressly finalized.

2.2 Should our offer for goods or services not be accepted by the customer within four weeks after submission by us, we shall be entitled to withdraw it. For any Order to be binding upon us, we must transmit written confirmation ("Order Confirmation") of acceptance or have commenced delivery of the products or undertaken steps to provide the required products. Should the Offer submitted by us be restricted to a specific period of time, the acceptance by the Customer must be finalized, in writing, on or before the expiration date.

2.3 For the scope of the delivery of products and services, only our Order Confirmation or subsequent written amendment issued by us to the Customer shall be binding. Should the correspondence of the Customer include deviations from our Offer, these shall only become applicable and binding if confirmed by us in writing.

Ancillary agreements and amendments shall require our written confirmation.

2.4 We shall reserve the rights of ownership and copyright to illustrations, drawings, calculations, software and other proprietary rights which are subject to statutory protection. They may not be transferred, assigned, or disclosed to third parties unless we have previously authorized, in writing, such transfer, assignment, or disclosure. Use of the documents for purposes other than or outside of the scope for which they were provided to the Customer shall not be permitted. Customer agrees that any violation or perceived violation of this section will cause immediate and irreparable harm to our Company.

### **3. Prices, terms of payment**

3.1 The prices for products and/or services shall be the price quoted on our Order Confirmation. All prices shall be net. The Customer must pay any statutory tax. Additional goods and services shall be invoiced separately.

3.2 The application of discounts shall require special written agreement.

3.3 Unless agreed to the contrary, in writing, the payment specified in the Order Confirmation for all products and services must be made without deductions or set-offs, within 30 days following the invoice date. Payments not made within 30 days after the invoice date, shall be subject to interest at a rate of 1.5% per month.

3.4 Payment must be made in full in advance of delivery for all orders relating to automation products and services.

3.5 For orders in excess of \$10,000.00 not relating to automation products and services, the following payment terms are applicable:

- a) a deposit of 30%, payable within 5 days of the Order Confirmation;
- b) 30% upon confirmation by us that the goods are ready for shipment; and
- c) the balance within 30 days after the goods are received by the Customer.

3.6 If payment according to hourly rates is agreed upon for services, we shall issue a monthly invoice which must be paid within 30 days following invoicing.

3.7 We retain the right to halt all services to the Customer without notice if invoices are not paid within 30 days.

**3.8 We are not liable for any damages whatsoever, including, but not limited to, incidental or consequential damages if services are terminated because of the Customer's failure to make timely payments.**

3.9 Should a flat-rate price be agreed upon for a project, then progress payments, as specified in the Order Confirmation, must be timely made.

3.10 The Customer has no right to off-set for any reason, including, but not limited to, alleged claims of non-performance by us.

3.11 Should the delivery time agreed exceed four months, we shall be entitled to charge the price current at the time of delivery and not the agreed upon price. Should the delivery of our products or services be delayed by the Customer in excess of four months, then we shall be entitled to charge the price current at the time of delivery.

### **4. Reservation of title**

4.1 We retain title and a security interest in all products and services that have not been paid for in full. Customer agrees that these Terms and Conditions represent a binding security agreement. Customer has taken all actions necessary to effectuate this security agreement.

4.2 All products shall remain our property. Integration of our products into a product that is sold to a third party does not impact our ownership rights or the security interest we hold in our products.

4.3 The Customer shall be entitled to process and sell our products in the normal course of business as long as it is not in default. Third party attachment or assignments are invalid. Customer will not use our products as security for any reason, including, but not limited to, Customer line of credit borrowing base calculations.

4.4 In the event a third party does attempt to attach or claim an ownership interest in any of our products or services, the Customer shall give the third party notice of our ownership. Additionally the Customer shall give us notice of any attempt to attach or claim immediately so that we can assert our rights of ownership. Should the third party not be in a position to reimburse us for the judicial or extra-judicial costs we incur in this connection, the Customer shall be liable for them. These costs include reasonable attorneys' fees.

4.5 In the event the Customer is in breach of contract – in particular default of payment – we shall be entitled to rescind the Order Confirmation and demand the return of our property.

### **5. Risk of Loss; Delivery time; default; customer's duty to cooperate**

5.1 Delivery and risk of loss shall be F.O.B our facility in Hartland, Wisconsin, unless otherwise agreed to. The delivery date and, if applicable, place of installation shall be stated in the Order Confirmation. The delivery and installation timeline agreed to shall primarily depend on the fulfillment of the Customer's duties (e.g. provision of information and documents, down payments, creation of the installation and connection preconditions). We can deliver partial orders if the parts to be delivered can be used and integrated in a meaningful fashion.

5.2 Information on delivery and service times shall in general be non-binding unless we have expressly agreed to them in writing.

5.3 The Customer shall be responsible for providing all special, technical installation information and all permits and authorizations which will enable us to complete the agreement in a timely manner.

This shall, in particular, include the installation and connection preconditions as described in more detail in the Order Confirmation.

We shall not be responsible for connecting our products with the Customer's devices or programs unless the Order Confirmation specifies that those services will be performed by us.

5.4 If the Customer requests changes, then the delivery time shall be extended appropriately.

The delivery period shall likewise be extended in the event of force majeure such as unforeseeable operational, traffic and forwarding disruptions, fire damage, flooding, unforeseeable labor, energy, raw material or auxiliary material shortages, strikes, lockouts, terrorist incidents, act of war, change of laws, or official decrees or other obstacles for which we are not responsible that delay, prevent or render unreasonable the manufacture or delivery of our products and/or services.

5.5 Should the Customer be in default, especially if it fails to provide the installation and connection preconditions in a timely manner, we shall be entitled, without prejudice, to the following:

- a) to withhold our service for as long as the Customer is in default;
- b) to demand damages especially for additional expenses, including collection fees and reasonable attorneys' fees;
- c) Liquidated damages in the amount of 115% of the gross purchase price agreed to in the Order Confirmation. Liquidated damages shall be 175% of the gross purchase price if our products were unique in nature and spe-

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cially designed for use by the Customer and can therefore not be sold to any other customers.

### **6. Warranty claims**

6.1 We shall guarantee that services and goods are suitable for the use intended by the Customer. If our products are to be integrated into an already existing system, then the Customer shall be responsible for ensuring that the already available systems comply with generally accepted technical procedures.

6.2 If our goods are not in full compliance with the terms and conditions set forth in the Order Confirmation, then we shall, at our discretion, be entitled to provide subsequent improvements and /or exchange of the products or individual components.

We may refuse to provide subsequent improvements or decline to exchange products if the expenses associated with the exchange are not reasonable given the particular product and the use intended by the Customer. Any subsequent improvement and exchange shall be at our expense.

6.3 Should we be unable within a reasonable time, despite a second attempt to eliminate any significant deviations from the contractually agreed service or products or provide a suitable alternative that permits the Customer to use the system in accordance with the agreement, then the parties will mutually agree upon an adjustment in the purchase price. The same shall apply if we decline to undertake the subsequent improvement or if the subsequent improvement does not occur within a reasonable time.

6.4 The Customer has a duty to inspect the products delivered and notify us of any defects within ten days of delivery.

Complaints regarding obvious defects must be lodged within ten working days of delivery and those regarding concealed defects immediately after their discovery. Complaints must be made in writing. The receipt of the complaint must be confirmed by us in writing. We will not honor complaints that are made beyond the ten day inspection period. We reserve the right to either repair or replace any defective product within a reasonable period of time after we have evaluated the validity of the complaint.

6.5 We will not honor any defects which result from the Customer's operating errors or deviations from the conditions of use stated in the Order Confirmation. All guarantees or warranties of any type shall lapse if the Customer, without our approval, modifies the components of the products (e.g. devices, elements or additional hardware facilities) or has these altered by third parties.

6.6 All product warranties are valid for one year from the date of delivery. All services are warranted by six (6) months after their completion.

### **7. Liability**

7.1 The Customer may not assert any claims for compensation against us beyond those granted to it in these terms and conditions; in particular, there can be no claims for damages, including, but not limited to, a recall, incidental or consequential, compensatory, nominal damages or other non-contractual liability. We are not liable for any bodily injuries that occur on the Customer's premises or on the premises of third parties.

Customer must notify us, in writing, if our products are to be integrated into or placed into service in settings which are considered to be greater than general business risks.

7.2. Our liability for damages shall be limited to the value of the goods or service set forth in our invoice. **Lang Technovation Co disclaims all other warranties and product liability, express, implied, statutory or under a treaty, including but not limited to any implied warranties of merchantability or fitness for a particular purpose or use. Lang Technovation Co.'s limitation of warranty shall apply even if its products fail to meet their essential purpose.**

7.3 The responsibility for the selection of the products, especially the decision on the fundamental suitability and possibilities of use in the business of the Customer, including the performance results to be achieved by its use, shall be made solely by the Customer.

7.4 We shall not be liable for loss of profits, failure to achieve savings or lack of business success, direct, incidental, indirect or consequential damages, or for damage claims by third parties.

### **8. Infringement of intellectual property rights**

8.1 Should a third party assert claims against the Customer on account of the infringement of intellectual property rights by a product supplied by us and the use of the product is as a result impaired or prohibited, we reserve the right to change or replace the product so that it does not infringe.

### **9. Training; spare parts; maintenance**

9.1 If expressly agreed in the Order Confirmation, we shall train suitable staff of the Customer to use our products. The number and qualification of the participants, the location of the training, and details of the training goals and training, as well as the training preconditions shall be set forth in the Order Confirmation.

9.2 At the request of the Customer, we shall provide training beyond that specified in the Order Confirmation. The Customer shall bear the costs of such additional training measures according to our current rates.

9.3 If expressly agreed in the Order Confirmation, we shall undertake to supply the Customer, at its expense, spare parts and/or services for a specified period.

9.4 If expressly agreed to and a corresponding service agreement is entered into, we are prepared for a period specified in the agreement to service our products and provide support services after the expiration of the warranty period. A separate service agreement shall provide for the costs and other details of all maintenance services. Unless agreed to the contrary, the invoicing shall occur according to our current hourly rates.

### **10. Confidentiality**

10.1 The Customer shall be obliged to treat all business information, data, and trade secrets ("Confidential Information") acquired prior to and throughout the contractual relationship in strict confidence. In particular, Customer is not to reveal any of our Confidential Information to third parties or to use our Confidential Information for any purposes other than those specified in the Order Confirmation.

10.2 Contractual objects, documents, test programs, etc which we make available to the Customer prior to or following conclusion of the agreement shall be regarded as our intellectual property and as our business and operating secrets.

10.4 This confidentiality obligation shall continue after the termination of the agreement.

10.5 The Customer agrees that any violation of these confidentiality terms will cause immediate and irreparable harm to us.

### **11. Applicable law, legal venue, other**

11.1 The contractual relationship created by these terms and conditions shall be controlled by the Uniform Commercial Code as adopted by the State of Wisconsin, without regard to conflict of law principles. All disputes between the parties shall be submitted to binding arbitration, in Waukesha, Wisconsin, in accordance with the local rules and regulations of arbitration.

11.2 Should individual clauses of this agreement be invalidated by a court of competent jurisdiction, it shall not impact the validity of the remaining provisions.