

## General Terms and Conditions of Supply of Goods and Services

(Version April 2019)

### 1. GENERAL

- 1.1 A contract ("Contract") between LECLANCHÉ SA ("Leclanché") and its customer (the "Customer"); together with Leclanché the "Contractual Parties") regarding the purchase of goods and/or services is concluded if Leclanché issues an acknowledgement of order.
- 1.2 These General Terms and Conditions apply to every delivery of goods by and all services of Leclanché. Other general terms and conditions only apply if expressly accepted by Leclanché in writing. Any contractual provisions which differ from these General Terms and Conditions are only valid if in writing.
- 1.3 If any provision or part-provision in these General Terms and Conditions is or becomes invalid, illegal or unenforceable, the Contractual Parties agree to replace such provision by a new provision which best serves the legal and economic purpose of the invalid, illegal or unenforceable provision. If such a replacement is not possible, the relevant provision shall be deemed deleted. Any replacement or deletion of a provision under this clause shall not affect the validity and enforceability of the rest of these General Terms and Conditions.

### 2. GOODS AND SERVICES

- 2.1 Leclanché states all goods to be delivered and all services to be rendered in its acknowledgement of order. The Customer is not entitled to any additional services or goods which are not explicitly stated in such acknowledgement of order. Leclanché may provide enhanced goods, if available, for the same price.

### 3. DELIVERY AND RELATED CUSTOMER OBLIGATIONS

- 3.1 The terms of delivery start the moment the Customer receives the acknowledgement of order. Any technical details shall be clarified between the Contractual Parties prior to the issuance of the acknowledgement of order.
- 3.2 The Customer shall be obligated to inform Leclanché with a sufficient advance notice of the intended delivery date of any rules, regulations, and provisions or similar which are applicable at the point of destination and which may have an impact on the delivery of goods/services or the use of the goods. The Customer shall also inform Leclanché with a sufficient advance notice of any applicable health and safety regulations at the point of destination. The Customer shall pay any cost for special labelling, packaging, adapting of the goods or similar which is required based on rules, regulations, and provisions or similar which are applicable at the point of destination and the delivery location.
- 3.3 The Customer is obligated to obtain and maintain all necessary licenses, permissions, government approvals, consents and similar which may be required for the goods and/or services before the date on which the services are to start or the goods are to be delivered.
- 3.4 Delivery shall be made to the place and by the method specified in the acknowledgement of order. The delivery shall be completed once the goods arrive at the delivery location. It is the Customer's obligation to prepare its premises for the supply of the goods and/or services. If the Customer fails to accept the goods and/or services, Customer shall be solely responsible for any extra costs and/or damages resulting therefrom (e.g. for extra storage or shipping cost) and Customer shall indemnify and hold Leclanché harmless of any such costs.
- 3.5 Partial deliveries shall be permitted. Failing to make any particular delivery shall not affect any remaining deliveries and does not entitle the Customer to withdraw from the Contract.
- 3.6 Any times quoted for dispatch or delivery are estimates only and are given in good faith but are not guaranteed.
- 3.7 Leclanché has the unilateral right to extend the delivery date in its own discretion, without limiting its other rights or remedies, in the following situations: (i) if the Customer fails to timely produce information necessary for the execution of the order; (ii) if the Customer requests changes after the acknowledgement of an order; (iii) if the Customer fails to adhere to the payment terms; (iv) if necessary import licenses and/or other permits are not received by Leclanché in time; (v) if the Customer breaches any other contractual obligations, including those set out in these General Terms and Conditions; (vi) if the Customer breaches any applicable legal provision; (vii) in the event of force majeure as defined in Section 16; (viii) if necessary raw materials or semi-finished or finished goods are delivered late to Leclanché or are faulty; (ix) if important tools or machines fail; (x) in the event of governmental measures; or (xi) in any other event causing a delay which is beyond Leclanché's reasonable control.

### 4. CUSTOMER DEFAULT AND/OR BREACH

- 4.1 If Leclanché's performance of any of its obligations in respect of the services or delivery of goods is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer Default"):
- (a) Leclanché shall, without limiting its other rights or remedies, have the right to suspend performance of the services or delivery of the goods until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Leclanché's performance of any of its obligations;
- (b) Leclanché shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Leclanché's failure or delay to perform any of its obligations as set out in this Section 4; and
- (c) the Customer shall reimburse Leclanché on written demand for any costs or losses sustained or incurred by Leclanché arising directly or indirectly from the Customer Default.

- 4.2 In addition, if the Customer commits any of the breaches listed below then, without limiting any other right or remedy available to Leclanché, Leclanché may cancel the Contract or under any other contract between the Customer and Leclanché without incurring any liability to the Customer, and all outstanding sums in respect of the goods delivered to the Customer and/or services completed, shall become immediately due:
- (a) If the Customer commits a breach of any provision of these General Terms and Conditions or of the Contract; or
- (b) If the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified to make such a payment; or
- (c) If the Customer does not settle advanced payments or does not provide agreed securities.

### 5. TECHNICAL DOCUMENTATION

- 5.1 Data in technical plans and brochures is only binding for Leclanché if Leclanché expressly guarantees such data. Leclanché owns all rights to such information and data, including the technical plans and brochures, which are handed over to the Customer. The Customer agrees not to disclose any information or data specified in such plans and brochures to any third party and confirms to use such information and data only for the purpose agreed upon with Leclanché. [For each violation of the covenants set forth in this Section 5, the Customer shall pay to Leclanché a contractual penalty (*Konventionalstrafe*) in the amount of 10% (ten percent) of the purchase price for the goods or services defined in the Contract but at least CHF 10'000 per case plus additional damages as may be incurred by Leclanché. The payment of this sum shall not operate as a waiver of the above obligations. Leclanché shall, in addition to all other damages, be entitled to obtain a court's order for specific performance, as well as adequate injunctive relief or any other adequate judicial measure, to immediately stop such violation.]

### 6. PRICES

- 6.1 Prices are net in Swiss Francs, EXW production site (Incoterms 2010) unless agreed upon otherwise between the Contractual Parties. VAT will be added where applicable.
- 6.2 The Customer pays any other cost, such as cost for delivery and for transport/shipping, insurance cost, cost of export or import license, cost of transit, recycling fees, fees for any necessary official permission and for any necessary notarization. The Customer also pays any tax, divestiture, customs and any other fee payable in connection with Leclanché's delivery of goods/services or reimburses Leclanché if Leclanché pays such fees upfront.
- 6.3 The Customer is responsible for installation unless agreed upon otherwise in writing with Leclanché. The Customer is responsible for operation of the goods.
- 6.4 Leclanché may adapt the prices if production costs change (for example raise of wages or prices of raw material) between the offer and the acceptance of the offer.

### 7. PAYMENT CONDITIONS

- 7.1 The Customer agrees to pay Leclanché's invoices within 30 days after the invoice date to the account and at the place specified by Leclanché without any deduction of, for example, allowance, discount, taxes, dues, fees, customs. The Customer agrees to pay the invoice in the requested currency by bank transfer and Customer shall pay any fees due resulting from such bank transfer. If the parties agree on any other payment method, the Customer agrees to pay any applicable taxes, fees, interest, collection expenses and any other cost which are caused by the alternative payment method.
- 7.2 The Customer agrees to settle the invoices within 30 days even if transport/shipping, delivery, installation, operation or performance of the goods or services is delayed or impossible to the extent that Leclanché is not solely responsible therefore.
- 7.3 Full payment is also due if Leclanché must provide additional work or if the delivery is not complete but only minor parts are missing which do not impede the use of the goods.
- 7.4 The Customer agrees to pay interest on arrears of 2% per month from the moment Leclanché's invoice is mature. A reminder shall not be required and Leclanché is entitled to further damages.
- 7.5 If the Customer does not settle advanced payment invoices or does not provide agreed securities, Leclanché has the right to cancel the Contract and may claim damages.
- 7.6 If the Customer is in arrears with payments or if Leclanché has reasons to believe that the Customer will not meet its payment obligations under the Contract, Leclanché may stop the delivery of goods and/or the provision of services.

### 8. PACKAGING, SHIPPING, TRANSPORT AND INSURANCE

- 8.1 Packaging will be invoiced separately. If packaging is designated as the property of Leclanché, the Customer shall send it back to the point of departure or to such place as otherwise agreed upon [at its own costs].
- 8.2 Shipping, transport and insurance are to be paid by, are for the account of and are at the sole risk of the Customer and are organized by Leclanché if not otherwise agreed upon. Particular requests concerning shipping, transport and insurance shall be communicated to Leclanché with a sufficient advance notice and any delay or other adverse effects shall exclusively be carried by the Customer. Complaints concerning shipping or transport are to be addressed to the freight carrier and Leclanché immediately upon receipt of the goods or the freight documents.

### 9. TRANSFER OF TITLE, BENEFIT AND RISK

- 9.1 The moment the goods are set aside or designated for the Customer by Leclanché, all risks concerning the goods shall be with the Customer.
- 9.2 Title to the goods shall not pass to the Customer until Leclanché has received payment in full and all of Leclanché's claims under the Contract have been fully settled. Leclanché may register the title retention.



- 9.3 Claims of the Customer arising from the resale of the goods subject to retention of title are assigned to Leclanché in advance. Leclanché hereby accepts the assignment.
- 9.4 The Customer is obligated to use all reasonable means to protect Leclanché's property and to safeguard Leclanché's property rights.
- 9.5 In the event of seizure or confiscation of the goods, the Customer must draw attention to Leclanché's ownership. Leclanché is to be informed immediately of access by third parties to the goods subject to retention of title.
- 10. TESTING AND INSPECTION OF GOODS**
- 10.1 Leclanché tests its goods according to current industry standards. Further testing according to Customer's requests shall be specifically agreed upon in writing and paid for separately by Customer.
- 10.2 The Customer shall inspect the goods within five working days from delivery and shall inform Leclanché immediately in writing in case of any defects, precisely describing in such notification the nature and extent of such claimed defects. If the Customer fails to do so, the goods are deemed accepted.
- 10.3 Leclanché is not liable for defects known to the Customer at the time of purchase.
- 10.4 Leclanché shall have the right to remedy any existing defects that have been notified in time. After a defect has been remedied, both the Customer and Leclanché may request an inspection of the repair. The repair is deemed to be accepted (i) if the inspection has not taken place on the designated date for reasons not attributable to Leclanché; (ii) if the Customer declines the inspection without reason; (iii) if the Customer declines to sign the inspection protocol without reason; or (iv) as soon as the Customer uses Leclanché's goods or services.
- 10.5 Customer's rights concerning defects which occur later are exclusively covered by Section 11 (Warranty).
- 11. USE OF GOODS AND SERVICES**
- 11.1 The Customer warrants to use the goods and/or services ordered from Leclanché only for their respective intended use and further warrants to at all times adhere to all laws applicable to the Customer and any of its auxiliary persons. The Customer specifically warrants to adhere to all applicable laws regarding anti-bribery, dual-usage of products, export restrictions and sanctions laws and regulations, regulation regarding export, import and customs as well as the REACH and similar regulation.
- 11.2 The Contract is subject to and valid only as permitted under applicable export control and sanctions legislation. Applicable legislation includes, but is not limited to, certain rules and policies that have been issued by the United States' and European Union's authorities or those of the country whose laws govern the Contract or in which the Contract is performed which strictly control the export, re-export, service, support and other activities with certain countries. Customer will comply at all times with such trade control laws.
- 12. WARRANTY**
- 12.1 Unless agreed otherwise, the warranty period is 12 months and begins when the goods are ready for shipment or transport. If Leclanché undertakes the installation (purchase with installation obligation), the warranty period begins with the completion of the installation. Under contracts for work and services, the warranty period begins with the acceptance of the work or service.
- 12.2 If the start of the warranty period is delayed for reasons not attributable to Leclanché, the warranty period starts at the latest 3 months after the readiness for shipment or transport or notification of the completion of the installation, as the case may be.
- 13. LIABILITY FOR DEFECTS**
- 13.1 Any warranty is void immediately if the respective good has been altered or modified by an unauthorized party or if the Customer, in case of a defect, fails to take the appropriate measures to contain the damage or fails to give Leclanché the opportunity to remedy the defect.
- 13.2 Leclanché, upon written notification from the Customer, undertakes to replace or repair at its sole discretion any parts of the goods which have become damaged or defective within the warranty period due to poor material or faulty construction.
- 13.3 If repairs cannot be performed in Leclanché's factory, the Customer pays the cost to the extent that the cost exceed the usual costs for transport/shipping, personnel, travel and accommodation as well as the costs for the dismantling and reassembly of the defective parts.
- 13.4 Only such characteristics are warranted as declared to be warranted in the acknowledgement of order. If a formal acceptance has been agreed, the warranty is fulfilled if the respective characteristics are proven to be present at the time of such acceptance.
- 13.5 Leclanché's liability is in any event limited to the value of the goods/services. Damage is excluded from the warranty if it is not caused by poor material, faulty construction or poor execution on behalf of Leclanché, but, for example, by normal wear and tear, faulty maintenance, disregard of operating instructions, excessive operational demands, unsuitable operating material, chemical or electrolytic influences, works and installations not executed by Leclanché and any other causes not attributable to Leclanché.
- 13.7 Leclanché has the right to engage subcontractors for the production of the goods and/or the provision of the services. Leclanché warrants careful selection of such subcontractors. Leclanché assumes no warranty and no liability for deliveries and services from subcontractors which have been employed on the request of the Customer.
- 13.8 Customer's rights concerning poor material, faulty construction or installation and concerning the lack of warranted characteristics are exclusively covered by Section 11 (Warranty).
- 13.9 Leclanché's liability for faulty advice or for breach of contractual or pre-contractual obligations is limited to willful intent or gross negligence. Any liability for consequential harm caused by a defect is excluded in any event.
- 14. MATERIAL ADVERSE CHANGE (CLAUSULA REBUS SIC STANTIBUS)**
- 14.1 If unforeseen events arise, Leclanché has the right to alter or to terminate the Contract. If Leclanché intends to terminate the Contract, it shall inform the Customer as soon as it has knowledge of the respective event. In the event of termination, Leclanché shall be compensated for goods already delivered and services already provided. Customer's claims for damages due to a modification of the Contract or due to Leclanché rescinding the Contract are excluded.
- 15. POTENTIAL FINANCIAL DISTRESS**
- 15.1 If Leclanché reasonably believes that the Customer has become or is about to become subject to one of the events set out in clause 15.2 below and notifies the Customer accordingly, then Leclanché may cancel or suspend any further deliveries of goods and/or provision of services under the Contract or any other contract between Leclanché and the Customer without incurring any liability to the Customer. Leclanché shall be granted the right of inspection of the Customer's books of account so that Leclanché can form an impression of whether one of the events listed in clause 15.2 below is about to occur or has already occurred.
- 15.2 For the purpose of Article 15, the relevant events are:
- (a) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business or suspends or threatens to suspend payment of its debts or is unable to pay its debts; or
  - (b) the winding up, dissolution or reorganization of the Customer is commenced, other than for the sole purpose of a merger or the solvent reconstruction of the Customer; or
  - (c) a liquidator, administrator or administrative receiver or similar officer is appointed over the Customer.
- 15.3 The right of cancellation or suspension as stated in clause 15.1 does not limit any other rights or remedy available to Leclanché.
- 16. FORCE MAJEURE**
- 16.1 Leclanché shall not be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a force majeure event. A force majeure event means any event beyond Leclanché's reasonable control, which by its nature could not have been foreseen, or if it could have been foreseen, was unavoidable, including but not limited to significant disruptions in operations, industrial actions, failure of energy sources or transport/shipping network, accidents, epidemics, mobilization, uprising, terrorism, and armed conflict.
- 17. EXCLUSION OF FURTHER LIABILITY**
- 17.1 All cases of breach of contract and their legal consequences as well as any claims of the Customer, irrespective of their legal basis, are exclusively dealt with by these General Terms and Conditions unless agreed upon otherwise in writing. In any event, the Customer's claims for damages are limited to the reduction in value of the defective goods caused by such defects. Any other claims for damages are excluded, especially loss of production, loss of usage, loss of orders, lost profit or any other direct or indirect or consequential damages. This exclusion of liability does not apply to willful intent or gross negligence by Leclanché. Any liability of auxiliary persons is excluded, with the exception of the limited liability regarding sub-contractors as and to the extent stipulated in these General Terms and Conditions. If a good is altered or modified by an unauthorized party, any liability of Leclanché is excluded.
- 18. INDEMNITY**
- 18.1 The Customer agrees to instruct the user of the goods concerning safety measures according to Leclanché's specifications to avoid personal injury and/or damage to property and/or environmental damage. If Leclanché is made liable for personal injury or damage to property of third parties caused by acts or omissions of the Customer or its auxiliary persons, the Customer is obligated to indemnify Leclanché.
- 19. JURISDICTION AND APPLICABLE LAW**
- 19.1 For any dispute between the Customer and Leclanché the courts of the Canton of Zurich shall have exclusive jurisdiction, venue being Zurich 1. Leclanché has the right to sue the Customer at its place of business. The applicable law is Swiss substantive law. The Swiss conflict of law rules (PILA) and the United Nations Convention on the International Sales of Goods of 11 April 1980 (CISG) are excluded.

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