

General Terms and Conditions (GTC)

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LexCon GmbH · Process automation and electrical, instrumentation and control engineering

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1. Scope and contractual basis

- 1.1** These General Terms and Conditions ("Terms") apply to the engineering, planning, consultancy and automation services provided by LexCon GmbH, Roonstraße 23a, 76137 Karlsruhe, Germany ("LexCon"), in the fields of process automation and electrical, instrumentation and control engineering. They are intended exclusively for entrepreneurs within the meaning of section 14 of the German Civil Code (BGB), legal entities under public law and special funds under public law ("Client"). Contracts with consumers are not concluded on the basis of these Terms.
- 1.2** The respective engagement and the scope of services agreed in it are authoritative. Individual agreements take precedence over these Terms. LexCon's performance of services with knowledge of the Client's differing terms does not, in itself, constitute acceptance of those terms. Where contractual terms conflict, their applicability is determined by the agreement reached and the statutory provisions.
- 1.3** LexCon's offers remain binding for any expressly stated validity period. If no such period is stated, they are non-binding. A contract is concluded by corresponding declarations of the parties. To provide a traceable record, offers, engagements and changes should be documented in text form, in particular by email. The precedence of valid individual agreements remains unaffected.

2. Scope of services and type of contract

- 2.1** Depending on the engagement, LexCon performs services under a contract for services (Dienstvertrag) or work under a contract for work (Werkvertrag). Under a contract for services, LexCon owes the professional performance of the agreed activities, not a particular result. Under a contract for work, LexCon owes the agreed work result. Classification depends on the agreed scope of performance; remuneration on a time-spent basis alone does not determine the type of contract.
- 2.2** The engagement should specify, in particular, the tasks, results, interfaces, technical basis, applicable project standards, delivery formats, deadlines, and testing and acceptance criteria. For work on existing plants, the underlying as-built documentation and system versions must be identified. Agreed duties to check, warn and inform, as well as mandatory statutory requirements, remain in effect.
- 2.3** LexCon undertakes only the agreed services and areas of responsibility. The provision of individual engineering, programming or commissioning services does not, in itself, establish overall responsibility for the design, construction, operation or safety of the entire plant. LexCon remains responsible for contractual performance within its own scope of services.
- 2.4** Automation software is developed and configured, in particular, using systems such as Siemens TIA Portal, STEP 7 or WinCC. The engagement specifies the platforms and versions used. Ongoing software maintenance, subsequent functional changes, support for new system versions and separate on-call services are owed only to the extent agreed. Statutory rights in respect of defects remain unaffected.
- 2.5** The procurement of hardware and third-party licences forms part of the services only if expressly agreed. As a general rule, the Client procures the engineering and runtime licences required for use, operation and maintenance at the Client's premises. LexCon identifies the products and licence types that are recognisably required for the agreed solution. Licensing the tools used by LexCon itself remains LexCon's responsibility.

2.6 LexCon provides its services both under direct contracts with end customers and as an independent contractor to intermediary companies, in particular project placement agencies or engineering service providers. The reusable automation package developed by LexCon on the basis of Siemens systems is used exclusively for direct engagements where its use is expressly included in the agreed scope of services. For engagements through intermediary companies, LexCon's managing director or employees work on the end customer's hardware and software as part of the agreed project services. The LexCon automation package is neither used nor supplied in such engagements. This does not affect the use of LexCon's own tools to perform the services. The contracting parties and scope of services must be clearly identified in each engagement.

3. Client cooperation and collaboration

- 3.1** The Client provides the information, as-built documentation, access, contact persons and decisions required for the agreed services in good time. The parties coordinate the scope and timing of this cooperation. LexCon identifies recognisable ambiguities, inconsistencies or missing prerequisites; a full review of third-party documentation is owed only to the extent agreed or required for the professional performance of LexCon's own services.
- 3.2** For on-site work, the Client ensures safe working conditions, the necessary approvals and instructions, and access to the plant within its area of responsibility. Interventions in operating plants, tests and commissioning activities are coordinated with the designated persons responsible. The Client's duties as plant operator and LexCon's own statutory and contractual duties remain unaffected.
- 3.3** Before agreed interventions, the parties must define the arrangements for data backup, restoration and approval of the plant state. Each party fulfils the backup and protective duties allocated to it. The Client informs LexCon of special risks, periods when work is not permitted, and plant changes relevant to the work.
- 3.4** LexCon may engage suitably qualified subcontractors, engineering firms and self-employed specialists to perform the contract, unless the engagement requires personal performance or prior consent. LexCon remains responsible for the performance owed and ensures appropriate obligations regarding confidentiality, data protection and the rights of use necessary for contractual performance. Specific statutory or contractual consent requirements remain unaffected.

4. Changes and additional services

- 4.1** Change requests should be communicated in text form, specifying their technical objective and scope. LexCon assesses the effects on the services, fees, deadlines, interfaces and work already performed, and explains them to the Client in a clear and traceable manner. Any extensive change assessment subject to a separate fee must be agreed in advance.
- 4.2** A change is implemented once the parties have agreed on its implementation and material consequences. Until then, work continues under the existing agreement to the extent that this is practicable and appropriate. Any necessary suspension of affected work and its consequences are coordinated between the parties. Statutory rights to request changes or issue instructions, where applicable to the particular contract, remain unaffected.

5. Fees and payment

- 5.1** Fees are governed by the engagement. Charges are based on the agreed hourly or daily rates, fixed prices or other remuneration models, plus statutory VAT where applicable. Fixed prices relate to the agreed scope of services and the assumptions expressly underlying them.
- 5.2** Travel time, travel costs, accommodation, subsistence expenses and other incidental costs are addressed in the offer. They are included in fixed prices only to the extent expressly agreed. In the absence of an agreed arrangement, the parties agree how foreseeable additional travel costs will be treated before they are incurred; statutory claims remain unaffected.
- 5.3** Services charged on a time-spent basis are generally invoiced monthly with traceable records of the activities performed. The Client reviews the records promptly and raises specific objections, where possible, within 14 days of receipt. Silence alone constitutes neither acknowledgement of the invoice nor acceptance of a work result. Statutory requirements concerning the substantiation and proof of claims remain unaffected.
- 5.4** Waiting time and additional effort resulting from a lack of cooperation or other circumstances for which the Client is responsible are remunerated only to the extent owed under the contract or by law. LexCon promptly notifies the Client of the impediment and its anticipated consequences, documents the effort involved, and takes account of expenses saved and capacity that can reasonably be used elsewhere. The same time is not charged twice.
- 5.5** Unless otherwise agreed, invoices are payable without deduction to the account specified in the respective invoice within 14 days of receipt, but not before the statutory or agreed conditions for payment becoming due have been met. For work performed under a contract for work, payment generally becomes due upon acceptance; agreed payments on account and statutory rights to progress payments remain unaffected.
- 5.6** The conditions for default in payment are governed by law. In the event of default, LexCon may claim statutory default interest at nine percentage points above the applicable basic rate of interest under section 247 BGB, as well as the statutory lump sum of EUR 40, provided that the relevant conditions are met. Further statutory claims remain unaffected; any legally required crediting of the lump sum will be taken into account.
- 5.7** In the event of default in payment, LexCon may withhold performance only to the extent permitted by law. Unless exceptionally unnecessary, LexCon gives advance notice of the suspension and sets a reasonable payment deadline. Legitimate objections and proportionality must be taken into account. This provision does not entitle LexCon to unilaterally lock plant software already supplied or to shut down operating plants.
- 5.8** The Client may set off claims that are undisputed, established by a final and binding judgment, or ready for judicial determination. Set-off of claims arising from the same contractual relationship is also permitted. These Terms do not exclude statutory rights of retention.

6. Deadlines and impediments

- 6.1** Binding deadlines and the cooperation needed to meet them must be specified in the engagement. If either party becomes aware of circumstances that put a deadline at risk, it informs the other party without undue delay of the cause, effects and possible mitigation measures. Any extension due to an impediment takes account of its actual effects and any reasonably necessary time to resume work; it does not apply automatically to all services.

- 6.2** Force majeure means an external event that was not foreseeable when the contract was concluded and cannot be averted even by reasonable measures. To the extent that such an event prevents a party from performing, the affected obligations are suspended for the duration and to the extent of the impediment. The parties inform each other without undue delay, mitigate the consequences and agree on the next steps. Ordinary staffing or procurement difficulties do not, in themselves, constitute force majeure.
- 6.3** Statutory rights in cases of impossibility, failure of the basis of the transaction, or where continued performance cannot reasonably be required remain unaffected. If a material impediment persists, the parties should first agree on an adjustment. Fee claims that have already arisen do not lapse merely because of the event. A contractual penalty is payable only on the basis of an express agreement.

7. Testing and acceptance of work

- 7.1** Work performed under a contract for work is tested and accepted upon completion against the agreed requirements. LexCon notifies the Client of completion and provides the work results and documentation agreed for acceptance. The parties coordinate the testing conditions, contact persons and a reasonable acceptance date.
- 7.2** Acceptance may not be refused on the grounds of minor defects. Identified defects, reservations and agreed outstanding work are documented in the acceptance record. Partial acceptance takes place only if agreed. The statutory conditions for deemed acceptance under section 640(2) BGB remain unaffected; mere use, payment or signing of an activity record does not, in itself, replace acceptance that is expressly required.

8. Defects and remedial performance

- 8.1** Statutory rights in respect of defects apply to work performed under a contract for work. The Client describes the alleged deviations as specifically as possible and provides the information reasonably required to investigate them. Complaints should be made promptly; this does not create any additional time limits that exclude claims. For services under a contract for services, the statutory remedies for breach of duty apply, rather than automatically the defect remedies applicable to contracts for work.
- 8.2** LexCon is given the opportunity for remedial performance required by law. Its scope, access arrangements and reasonable deadlines depend on the nature and urgency of the defect and the operational circumstances. Statutory cases in which setting a deadline is unnecessary or further rights are available immediately remain unaffected.
- 8.3** Changes made by the Client or third parties do not automatically extinguish rights in respect of defects. However, LexCon is not responsible for deviations to the extent that they are demonstrably caused by interventions for which LexCon is not responsible, unsuitable operating conditions or use contrary to the contract. Any chargeable investigation or modification outside LexCon's responsibility for defects is agreed in advance. The statutory limitation periods apply.

9. Liability

- 9.1** LexCon's liability is unlimited in cases of intent and gross negligence, for culpably caused death, bodily injury or damage to health, and under mandatory statutory liability provisions, in particular the German Product Liability Act. Liability for fraudulently concealed defects and under any expressly assumed guarantee remains governed by the statutory provisions.

- 9.2** Where none of the cases under clause 9.1 applies, LexCon is liable for ordinary negligence only in the event of a breach of an essential contractual obligation whose fulfilment makes proper performance of the contract possible in the first place and on whose observance the Client may ordinarily rely. In such cases, liability is limited to loss or damage typical of the contract and foreseeable when the contract was concluded. In all other respects, liability for ordinary negligence is excluded.
- 9.3** In the event of data loss, the agreed backup duties and any contributory fault must be taken into account in accordance with the statutory provisions. This does not release LexCon from any backup or restoration duty it has undertaken. The above liability provisions also apply for the benefit of LexCon's legal representatives, employees and persons engaged to perform its obligations (Erfüllungsgehilfen).

10. Project files and rights of use

- 10.1** For engagements involving the creation or modification of automation software, the Client receives, as part of the agreed services, the complete original automation project files corresponding to the plant configuration handed over, including the embedded blocks required for use, together with the agreed documentation. System versions, the handover format and the handover date are specified in the engagement. The files are handed over in a manner that permits operation, data backup and the agreed maintenance.
- 10.2** Where protected function blocks from the LexCon automation package are used as agreed in a direct engagement, they are supplied in an executable and integrable form, but with their internal implementation protected by password or know-how protection. The passwords and unprotected internal source files for these blocks remain with LexCon unless expressly agreed otherwise. The affected blocks and the resulting maintenance limitations must be disclosed before the contract is concluded. Interfaces, parameters and the functions required for the agreed use are documented.
- 10.3** Upon full payment of the fees owed for work results created and supplied by LexCon, the Client receives a non-exclusive right of use, unlimited in time, for the plant identified in the engagement and the agreed project. Until then, use is permitted for the agreed testing, commissioning and intended operation, including the necessary data backup, restoration, maintenance and error correction within the scope of clauses 10.2 and 10.4. The legitimate exercise of statutory rights of retention does not restrict this permission to use the work results. Any more extensive or exclusive rights require an express agreement.
- 10.4** The right of use covers intended operation, necessary backup and restoration copies, and maintenance, error correction and modifications for the agreed plant within the access granted. The Client may engage qualified third parties for these purposes and give them access to the necessary documentation and project files, provided that they are bound by the restrictions on use and confidentiality obligations. If the Client is not itself the operator of the identified plant, it may pass on the rights of use granted for that plant to the plant operator identified in the engagement or envisaged by the agreed contractual purpose, and supply that operator with the necessary project files and documentation. The agreed restrictions on use and confidentiality obligations must also be ensured in relation to the plant operator. This does not permit use for other plants or projects. If the identified plant is sold, the right of use may pass with it, provided that the purchaser assumes the corresponding obligations; this does not permit additional use by the seller. Mandatory statutory rights of resale and onward transfer remain unaffected.

- 10.5** LexCon's generally reusable function blocks, libraries, templates, methods and specifically developed solutions remain with LexCon to the extent legally protected and unless otherwise agreed. Supplying them does not extend the rights of use to other plants or projects. In particular, without LexCon's prior consent in text form, the Client may not use supplied LexCon blocks, templates or confidentially disclosed LexCon know-how for further projects, incorporate them into its own standard libraries for use across projects, reproduce them for such purposes or pass them on to third parties for such purposes.
- 10.6** These restrictions do not cover general technical principles, publicly known knowledge or independently developed solutions. LexCon may use its own general knowledge and reusable components for other engagements, but may not thereby disclose the Client's confidential information or infringe rights contractually reserved to the Client.
- 10.7** Circumvention of the agreed protection and disclosure of protected internal source materials are not permitted beyond the rights granted or those guaranteed by mandatory law. Mandatory rights, in particular under sections 69d, 69e and 69g of the German Copyright Act (UrhG), remain unaffected. If long-term maintenance independent of LexCon is intended to include modifications within protected blocks, a separate agreement on access or escrow arrangements must be made in advance.
- 10.8** Third-party software and components are subject to their applicable licence terms. Where providing rights of use forms part of LexCon's services, LexCon ensures the rights necessary for the agreed contractual purpose. Any expressly agreed procurement of manufacturer licences by the Client under clause 2.5 remains unaffected. This provision does not restrict the Client's statutory rights in respect of defects in title. Where LexCon supplies such components, they and the applicable licence terms are identified and made accessible before the contract is concluded. The supply of project files does not replace any required licence from the respective manufacturer. Any differing mandatory licence terms for individual components, such as open-source licences, remain authoritative for those components.
- 10.9** Rights in software, libraries, templates, documentation and other components provided by the Client or end customer remain with the respective rights holders. Work performed on them by LexCon does not restrict their existing rights of use. The protection and usage restrictions for LexCon's own components under this section do not apply to such supplied components. For engagements through intermediary companies, no right of use in the LexCon automation package is granted, as it is not included in these services under clause 2.6. Rights in newly created project-specific work results and modifications are governed by the respective agreement; unless otherwise agreed, clauses 10.3 and 10.4 apply. Pre-existing rights of the Client, end customer or other rights holders remain unaffected in this respect as well.

11. Confidentiality and data protection

- 11.1** The parties keep the other party's non-public commercial and technical information confidential where it is marked as confidential or the circumstances make its need for protection apparent. Such information may include, in particular, project documentation, programs, protected blocks, calculations and access credentials. It may be used only for the agreed contractual purpose and made accessible only to authorised persons bound by corresponding confidentiality obligations.

- 11.2** This duty does not apply to information that is publicly known without a breach of duty, was already lawfully known to the receiving party, was lawfully obtained from third parties or was independently developed. Legally required disclosures remain permissible; the other party is informed in advance to the extent legally permitted. Confidentiality must also be maintained after the contract ends for as long as a legitimate interest in confidentiality exists.
- 11.3** Both parties comply with the applicable data protection legislation. The transmission of personal data is limited to what is necessary for the services. Where personal data is processed on behalf of another party, the parties conclude a separate data processing agreement containing the required provisions before the relevant processing begins. These Terms alone do not replace such an agreement.

12. Termination and documentation

- 12.1** The contract term and ordinary termination are governed by the engagement and the statutory provisions applicable to the respective type of contract. Statutory termination rights, in particular for good cause and, for contracts for work, under section 648 BGB, remain unaffected. The consequences for remuneration are governed by the valid agreement and the law; expenses saved and earnings from other work that must be credited are taken into account.
- 12.2** When the contract ends, the services performed up to that point, open items and the current state of the projects are documented in a traceable manner. Work results owed and original documentation provided by the Client must be handed over in accordance with the contract and statutory provisions. Any rights of retention are subject to the statutory requirements. Safety-relevant documentation may not be withheld contrary to statutory duties.
- 12.3** Additional handover support or archiving beyond the scope of the engagement must be agreed separately. Statutory retention duties, documentation of a party's own claims, and continuing confidentiality and data protection duties remain unaffected. The Client backs up the project versions handed over to it for its own use. This does not release LexCon from any backup or retention duties it has expressly undertaken.

13. Final provisions

- 13.1** The law of the Federal Republic of Germany applies, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG). Mandatory statutory provisions whose application cannot be excluded by this choice of law remain unaffected.
- 13.2** If the Client is a merchant within the meaning of German commercial law (Kaufmann), a legal entity under public law or a special fund under public law, Karlsruhe is the place of jurisdiction to the extent that an agreement on jurisdiction is legally permissible. Mandatory exclusive jurisdictions remain unaffected.
- 13.3** If any provision of these Terms is or becomes invalid, the remainder of the contract remains effective in accordance with section 306 BGB. Invalid provisions are replaced by the statutory provisions.