

# General Terms and Conditions of Business and Delivery

## I. General

1. The following General Terms and Conditions of Business and Delivery (GTC) shall apply to the exclusion of any conflicting conditions for the sale and delivery of goods by Libattion AG (hereinafter referred to as LIBATTION) to its customers in Germany and abroad.
2. Any terms and conditions of purchase or business of the customer shall not form part of the contract. Any further provisions or provisions of the customer deviating from these GTC shall require the written confirmation of LIBATTION in order to be valid.
3. All agreements, amendments and other legally relevant declarations of the parties must be in writing in order to be valid. Declarations in text form which are transmitted or recorded by electronic media (e-mail, fax, etc.) shall be deemed equivalent to the written form.
4. In the event of any conflict between the provisions of the Contract (i.e. the Main Contract Document) and these General Terms and Conditions, the provisions of the Contract shall prevail.

## II. Conclusion of contract

1. Offers from LIBATTION are non-binding.
2. A legally valid contract shall only be concluded for an individual transaction upon delivery of the written order confirmation by LIBATTION to the customer or upon commencement of the execution of the order. The same shall apply to order amendments and order supplements.
3. The customer has no right to cancellation of ordered products or services. Cancellations are only possible in exceptional cases after prior written agreement. In this case, the customer will be charged the accrued costs for the processing of his order as well as any services already provided.
4. The documents belonging to the offer or contained in price lists, catalogues and manuals, such as illustrations, drawings, weights and dimensions, are for orientation purposes only and are non-binding unless they are expressly designated as binding. LIBATTION reserves the right to adapt or change them at any time.
5. Offers and cost estimates as well as drawings or other offer documents remain the property of LIBATTION. LIBATTION shall be exclusively entitled to any existing copyrights thereto. Without LIBATTION's consent, these may neither be reproduced nor passed on and must be returned to LIBATTION upon first request.
6. LIBATTION is authorised to involve third parties (in particular LIBATTION subsidiaries) for the performance of the contract or to transfer the performance in whole or in part to third parties.

## III. Delivery, transfer of risk and return of products

1. The type and scope of the delivery and service are determined in the order confirmation of LIBATTION and any appendices.
2. In the absence of a special agreement, delivery of the goods shall be deemed to be their provision at the place of manufacture of LIBATTION (Incoterms 2020 EXW).
3. The delivery periods stated by LIBATTION shall be complied with as far as possible, but shall not be binding unless expressly agreed otherwise in writing or confirmed by LIBATTION. The customer shall not be entitled to revoke the transaction in the event that the delivery period is exceeded, or to assert claims for delay or damages. Partial deliveries and partial performance by LIBATTION are permissible. Unforeseeable, unavoidable events for which LIBATTION is not responsible, e.g. force majeure, epidemics and pandemics, strikes and lock-outs, operational disruptions, difficulties in the procurement of materials and energy, transport delays, shortages of energy and raw materials, official measures, as well as difficulties in obtaining permits, in particular import and export licences, shall extend the delivery period - including binding delivery periods and those for the observance of which contractual penalties have been agreed - appropriately, without this entitling the customer to withdraw from the order or to any claims for delay or damages. This shall also apply if the impediments occur with a sub-supplier of LIBATTION. If a delay lasts longer than three months, both contracting parties shall be entitled to withdraw from the contract. In this case, claims for damages are excluded on both sides.
4. Blanket orders are to be processed within the agreed term by call orders. LIBATTION reserves the right to otherwise dispose of the goods at the earliest 6 weeks after the customer's default in acceptance and to fix a new delivery date or to withdraw from the contract. If LIBATTION has reason to believe that the customer will not meet his acceptance

obligations, LIBATTION shall also be entitled to withdraw from the contract. In any case LIBATTION reserves the right to claim further damages. In the event of default in acceptance, the customer shall pay interest of 5% p.a. on the invoice value of the call not made as from the expiry of the aforementioned period. We reserve the right to claim further damages.

5. The customer is obliged to accept and pay for the packaging units of the purchased material, as well as the resulting finished and semi-finished products, even if this is not explicitly mentioned in the order. The type of packaging is left to LIBATTION's discretion. Packaging units of components and materials will not be taken back by LIBATTION.
6. Delivery and dispatch shall be at the expense and risk of the customer. Shipment and insurance against damage of any kind shall be the responsibility of the customer. Even if shipment and insurance are to be arranged by LIBATTION as agreed or are arranged by LIBATTION in accordance with existing practice, they shall be deemed to have been concluded on behalf of and at the expense of the customer (cf. clause IV. 1 of these GTC).
7. Benefit and risk shall pass to the customer as soon as the goods leave the warehouse of LIBATTION. In the event of delays in delivery for which the customer is responsible, benefit and risk shall pass to the customer as soon as the delivery is made available by LIBATTION.
8. In principle, the customer has no claim to the return of products duly delivered by LIBATTION. A return is only possible in exceptional cases after prior written agreement and indication of the reference no. for the original delivery.
9. Special and customised versions, third-party products (i.e. products not manufactured by LIBATTION), technically overhauled products, products delivered more than 6 months ago; as well as products already used or installed will not be taken back.
10. Subject to Section III. 8 of these GTC, the following credits shall be granted for returned products exclusively for offsetting against further orders of the customer:
  - Max. 80% of the net invoice value if the products are still in their original condition, the packaging has not yet been opened and the delivery was made within the last 6 months;
  - Max. 70% of the net invoice value if the products are still in their original condition but the packaging has been opened and the delivery was made within the last 6 months.A payout or transfer of the credit to the customer is excluded.

## IV. Prices

1. The prices are ex works of LIBATTION (Incoterms 2020 EXW), in Swiss Francs CHF, if necessary also in another currency, excluding VAT, customs, shipping and insurance charges and other fees. The costs for packaging, insurance, transport, installation, commissioning and service shall be borne by the customer.
2. If there are significant increases in delivery and/or production costs (>10%) for reasons beyond LIBATTION's control, LIBATTION reserves the right to adjust prices or cancel an order.
3. All prices quoted by LIBATTION in offers and price lists are subject to change and are not binding.

## V. Currency parities

LIBATTION reserves the right to invoice all documentable additional costs due to currency changes compared to the offer or order confirmation.

## VI. Terms of payment and default

1. All invoices are payable net within 30 days of the invoice date. The customer is responsible for all duties and taxes incurred outside Switzerland in connection with delivery and invoicing.
2. For an order volume of more than CHF 30,000, a deposit of ½ of the total amount will be invoiced within 10 days of order confirmation, then 1/2 after delivery, unless otherwise agreed.
3. The customer shall be in default upon expiry of the aforementioned payment deadline without reminder and shall pay interest on arrears of 5% p.a.. We reserve the right to claim further damages.
4. If LIBATTION has doubts about the customer's willingness or ability to pay, LIBATTION may carry out all agreed deliveries by advance payment or cash on delivery. LIBATTION may also refuse further services or deliveries under this and other contracts in the event of default of payment by the customer, without prejudice to its other statutory rights.

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5. A prerequisite for delivery is the full settlement of outstanding invoices due. LIBATTION reserves the right to withdraw from the contract at any time, even after confirmation of the order, if the customer's ability to pay should subsequently prove to be doubtful, or if the customer is in default with payments even for deliveries already in its possession.
6. Retention of payments and offsetting on the part of the customer are excluded.
7. In the event of late payment, the customer shall pay the statutory default interest of 5%. In addition, processing costs for necessary correspondence and collection measures will be invoiced at cost.
5. Warranty claims are fully excluded for defects of products and components due to:
  - Improper handling, storage or assembly;
  - Non-observance of assembly, operating and maintenance instructions;
  - Excessive stress or natural wear and tear; and
  - Force majeure or external influences not provided for in the contract, or use outside the scope of the normally assumed use.
6. If products or components (in particular components provided by the customer) are defective which were not manufactured or procured by LIBATTION, LIBATTION may release itself from any warranty by offering the customer the assignment of its own warranty claims against the supplier.

### VII. Ownership and retention of title

1. Notwithstanding the provisions of Section X. of these GTC, all technical documents, testing and operating equipment and software programmes not provided by the customer as well as any intellectual property rights or know-how shall remain the property of LIBATTION and may neither be copied nor reproduced, nor brought to the attention of third parties in any way, nor used for the manufacture of the product or components. The customer warrants that the manufacture and delivery of products or software programmes by LIBATTION in accordance with instructions, templates, plans, samples, etc. of the customer do not infringe any third party rights and shall indemnify LIBATTION in respect of such claims upon first demand. If there are indications of an infringement of third party rights, LIBATTION may suspend its performance until clarification.
2. All goods delivered shall remain the property of LIBATTION until all claims, including disputed claims, have been satisfied, irrespective of the legal grounds (including interest on arrears and legal costs). This shall also apply if the customer should unjustifiably sell the rights to the goods intended for him to third parties.
3. The customer hereby declares his express consent to the respective entry of the delivered goods in the retention of title register of the debt collection office responsible for him.
4. LIBATTION is and shall remain the owner of all intellectual property rights in the Product, its components and accompanying software/firmware or, where applicable, an authorised licensee of such third party rights. The relabelling, alteration or removal of any affixed trademarks, trade names or other marks or designations in relation to the Product, its components, included software/firmware and/or in accompanying documentation without the prior written consent of LIBATTION is expressly prohibited and shall constitute a material breach of this Agreement. The Customer shall not dispute or contest the validity of any trademark, trade name or other mark or name of LIBATTION or any third party. The Customer shall not adopt, use or register any trade mark of LIBATTION or any third party or any word or sign confusingly similar to any trade mark or sign of any third party, whether as a company name, trade mark or other indication of origin. The Customer shall not remove or obscure any proprietary notices on the Firmware and/or the Product.

### VIII. Obligation to inspect and give notice of defects, warranty

1. The customer is obliged to carefully inspect the delivered goods immediately after receipt for any quality or quantity defects and to notify LIBATTION in writing of any deviations or defects within 10 days. If the customer fails to do so, the delivery shall be deemed to have been approved. If such defects arise later which were not recognisable upon careful inspection, the written complaint must be made immediately after their discovery, otherwise the delivery shall be deemed to have been approved also with regard to such defects.
2. For all delivered products and their components, LIBATTION provides a warranty of one year from the date of delivery. If the delivered products are used by the customer for personal or family use, the warranty period is two years from delivery. After expiry of the relevant period, all warranty claims against LIBATTION shall be time-barred. This also applies to such defects that were not recognisable at the time of acceptance and after careful inspection.
3. Proven material, design or manufacturing defects shall - at LIBATTION's discretion - be repaired free of charge in LIBATTION's workshops or the product or its defective component shall be replaced, provided that the same are delivered to LIBATTION carriage paid.
4. For replaced or repaired parts, the warranty period, which entitles the customer exclusively to the aforementioned repair or replacement services, begins anew and lasts 6 months from delivery of the replacement parts or completion of the repair.

7. LIBATTION's warranty shall lapse if the agreed terms of payment are not complied with or if the customer has made changes or repairs to delivered products himself or has had them made by third parties without LIBATTION's consent.
8. Any warranty of any kind beyond the services described above is excluded, in particular rescission and reduction.
9. Products outside the warranty will no longer be taken back by LIBATTION.

### IX. Assembly, commissioning, maintenance and repairs

1. We do not undertake assembly, integration, maintenance, repair. These services are carried out by qualified personnel.  
In the context of on-site support requested for commissioning or servicing of the energy storage unit, CHF 100/h will be charged according to actual expenditure.  
Travel time will be invoiced at a flat rate of CHF 100/h, travel costs by car at CHF 1.00/km. Accommodation costs and expenses as well as travel costs by train/flight will be invoiced according to actual expenditure.

### X. Recycling

Libattion AG is a member of INOBAT-Recycling, which means that Libattion's spent batteries are disposed of professionally in Switzerland. Libattion therefore charges the customer the advanced disposal fee (VEG) for used batteries. Used batteries that have been sold and delivered abroad must be disposed of properly by the customer.

### XI. Programmes (software and firmware)

- Notwithstanding anything to the contrary in Article X hereof, the following shall be deemed agreed:
  1. Definition: Programmes within the meaning of these Terms and Conditions are specific computer programs and firmware for embedded systems, consisting of a sequence of machine-readable instructions, which LIBATTION provides to the customer for use in the operation of a product supplied by LIBATTION or the contractually designated equipment in return for the payment of a contractual fee.
  2. Upon payment of the contractual fee, the customer acquires the non-exclusive and non-transferable right to use the contractually determined software / firmware exclusively for the delivered product or the designated equipment. "Use" within the meaning of these provisions means: to read the software / firmware for the agreed purpose in machine-readable form in a device for the execution of the instructions contained therein and to store them therein.
  3. The intellectual property rights and rights of use associated with the software / firmware as well as the ownership of any data carriers supplied shall remain with LIBATTION. The customer is not entitled to sell, pledge or make available to third parties the programmes, programme copies or partial programmes or to decrypt, change or publish the programme code.
  4. Subject to other written agreements in the sense described below, LIBATTION warrants that the delivered software / firmware comply with the specifications described by LIBATTION, provided that the programs are used in accordance with the instructions in LIBATTION's documentation.
  5. The warranty lasts 1 year from the date of invoice. In the event of an error in a valid programme version, LIBATTION shall provide the customer with information for the error correction, e.g. in the form of a description of the error correction or by issuing a new programme version (release). The warranty period does not start anew with the delivery of a new release. The prerequisite for this service is that the error is

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reproducible and occurs in the respective last release delivered by LIBATTION to the customer and that LIBATTION receives all documents and information required for the error correction from the customer within the one-year warranty period.

6. LIBATTION does not warrant that the software / firmware can be operated uninterruptedly and error-free in all combinations desired by the customer or with all data, components and programmes provided by the customer, nor that the correction of one programme error will exclude the occurrence of others. LIBATTION does not warrant that any software/firmware does not infringe any third party proprietary rights.
7. The warranty shall not apply if the customer does not comply with the dialogue instructions supplied by LIBATTION or if any faults that occur are due to improper or unauthorised installation, modification, deployment or use by the customer (including its auxiliary persons, subcontractors or external service providers) or to third-party causes.
8. Any warranty of any kind beyond the services described above is excluded.

## XII. Third party rights

1. The Customer acknowledges and agrees that the LIBATTION Products contain, among other things, firmware which is the property of a third party and to which LIBATTION has been granted a licence. With the sale of such products, LIBATTION grants a non-exclusive, worldwide, non-transferable sub-licence (without the right to grant sub-licences) to use such integrated third party firmware to the extent necessary for the contractual use of the respective product under the terms and conditions set forth herein.
2. The granting of the sub-licence pursuant to Section X. 1 of these General Terms and Conditions of Business shall apply subject to
  - of the quantities of firmware sub-licences specified in the respective contract;
  - the restrictions, conditions and limitations associated with the relevant product model; and
  - of the restrictions, conditions and limitations set out in the contract (if any).
3. The sub-licences granted herein for third party firmware are limited solely to the use by the Customer. Any use of such firmware outside the scope of the Agreement shall constitute an infringement of the third party's intellectual property and a material breach of the Agreement.
4. No ownership of the third party's firmware shall be transferred to the Client. Ownership of the firmware and all related rights to patents, copyrights, trade secrets and other intellectual property rights shall remain with the respective third party.
5. The provisions of this Section X. of these GTC shall apply to any Release and any update or upgrade of the Firmware of the relevant Third Party Provider.
6. LIBATTION shall have the right, upon reasonable prior written notice, to inspect the premises, books, records and other relevant documents of the Customer for the purpose of verifying compliance with the Customer's rights and obligations under the sub-licences granted pursuant to this Clause X. of these GTC and the other licences granted under the Contract.
7. The Customer acknowledges and agrees that, notwithstanding Section IX. 5 of these GTC, the statutory warranty that Third Party Firmware is free from defects is expressly excluded. LIBATTION hereby disclaims all statutory or contractual representations and warranties with respect to the sublicensed Third Party Firmware, whether express or implied, including without limitation all warranties of merchantability, non-infringement and fitness for a particular purpose. Defect remediation of third party firmware shall be provided solely on a voluntary basis and at LIBATTION's sole discretion only on the basis and to the extent provided for in the relevant licence agreement between LIBATTION and the third party and in any event not for more than one year from the date of the agreement. Any further warranty/support is expressly excluded by LIBATTION.
8. The sub-licences granted herein are subject to the validity of the underlying licences of the relevant third party granted to LIBATTION. Customer therefore acknowledges that in the event of termination or expiration of the applicable underlying licenses of the third party, for any reason whatsoever, the sublicenses granted hereunder shall automatically terminate and Customer shall immediately cease all use of the third party's Proprietary Rights and shall, upon LIBATTION's request, return or destroy all items in its possession containing or comprising such

third party's Proprietary Rights. The parties shall negotiate in good faith as to how to manage the effect of the termination of any Third Party Licence on the agreement with the Customer and the relevant Product and the Customer shall co-operate with and reasonably assist LIBATTION in ensuring that LIBATTION is able to meet its obligations under the licence agreement with the relevant Third Party.

## XIII. Data protection

1. To the extent that the Parties process personal data in connection with these GTC, they shall comply with all applicable data protection laws and regulations, in particular the Swiss Data Protection Act.
2. The Parties shall process Personal Data in connection with these GTC as independent data controllers and shall ensure that they have the necessary legal basis for processing Personal Data of their respective employees and, where necessary, are authorised to disclose it to the other Party.
3. The parties shall provide reasonable assistance to each other to comply with applicable data protection law. This may include, inter alia, agreeing on additional contractual safeguards in relation to the transfer of personal data (e.g. recognised standard contractual clauses).
4. The customer shall ensure that, before disclosing personal data to LIBATTION, it informs all persons concerned (e.g. employees) of the disclosure to LIBATTION and of LIBATTION's privacy policy.

## XIV. Liability, compensation and obligations of the customer

1. The customer's claims arising from delays in delivery and due to defects are conclusively regulated in the present GTC. Any further warranty as well as contractual and non-contractual liability of LIBATTION for possible damages of the customer due to defects or the violation of contractual or non-contractual obligations is excluded to the extent permitted by law. Liability of LIBATTION is excluded, in particular for installation and removal costs of defective devices, for shipping costs of replacement deliveries, for loss of profit, damage to brand and reputation, for consequential damage, consequential damage caused by defects and damage caused by delay, for damage resulting from non-fulfilment or poor fulfilment of contractual obligations of the customer towards its customers, for claims of third parties, etc.
2. LIBATTION shall not be liable for any damage resulting from improper handling, storage, assembly or use of LIBATTION's products by the customer or third parties or caused by strikes, natural events or similar cases of force majeure. Information and instructions in the documentation supplied as well as storage, assembly, use, operation and maintenance instructions for products must be observed by the customer.
3. Furthermore, any claims for damages arising in connection with advice and support from LIBATTION in the planning, development or implementation are excluded. Excluded are those services which were the subject of an individual contract concluded with the customer in which the scope of LIBATTION's liability was precisely defined.
4. The customer undertakes to take appropriate technical and organisational measures to minimise the security risks associated with access to LIBATTION's equipment via the Internet. This includes in particular the following measures:
  - The connection of automation stations to the Internet must always be secured with firewalls;
  - Software updates must be carried out promptly;
  - LIBATTION products must not be operated with the initial passwords supplied from the factory;
  - The customer must choose a suitable password of his own at the time of commissioning, keep it secret and change it regularly.
5. LIBATTION may from time to time recommend to the customer further measures for securing LIBATTION's equipment against unauthorised access. However, the customer acknowledges that it is beyond LIBATTION's control and responsibility to take such security measures. LIBATTION therefore excludes any liability for unauthorised access by third parties to devices of LIBATTION connected to the Internet and any loss of data or damage to the customer caused directly or indirectly as a result.

## XV. Transfer and place of performance

1. The customer may only transfer rights vis-à-vis LIBATTION to third parties after prior written agreement with LIBATTION.
2. The place of performance for both parties is CH-8152 Glattburg / ZH or at the domicile of a subsidiary of LIBATTION.

### **XVI. Choice of law and place of jurisdiction**

1. All legal relations between LIBATTION and the customer shall be governed by Swiss substantive law, to the exclusion of conflict of laws and international treaty agreements, namely the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).
2. The exclusive place of jurisdiction is Zurich, Switzerland. However, LIBATTION shall be entitled to assert its rights also at the domicile of the customer or before any other competent authority, whereby the above choice of law shall remain valid. The statutory places of jurisdiction of customers who use the products for personal or family use are reserved.