

**GENERAL COMMERCIAL TERMS AND CONDITIONS – SALES AND SERVICES**

**1. DEFINITIONS**

The meaning of the following words and phrases, widely used throughout these Terms and Conditions (hereafter: Terms), shall apply:

**L-inc:** Leverage Incorporated NV, company incorporated under Belgian law with registered offices at 8790 Waregem, Groendreef 30 and VAT-n° 0746.917.222; any of its legal successors and/or all companies and enterprises affiliated to it or to said legal successors;

**Customer:** any natural or legal person purchasing Products and/or Services from L-inc, or with whom L-inc enters into an Agreement or with whom an Agreement is negotiated;

**Contract:** The contract concluded between L-inc and the Customer, to which these Terms apply, including any written alternations and/or additions thereto that are incorporated herein by reference or otherwise;

**Goods:** all goods and/or products that are to be procured by L-inc as described and quantified by the relevant Contract;

**Service Tariffs:** The tariffs, fees and costs applied by L-inc to interventions at the Customer’s site, which form an integral part of these Terms, of which the Customer acknowledges prior knowledge and to which the Customer expressly consents. Following rates apply for services and support offered on time spent basis according to the technical proposal hereafter.

	00:00 a.m.	08:00 a.m.	05:00 p.m.	12:00 p.m.
Monday - Friday	Overtime III	Normal time I	Overtime III	
Saturday	Overtime III	Overtime II	Overtime III	
Sunday / public holiday	Overtime III			

Qualification	Hourly rate Normal time (I)	Hourly rate Overtime (II)	Hourly rate Overtime (III)
Director / Project manager	€ 185	€ 275	€ 370
Mechanical Engineer	€ 115	€ 175	€ 230
Electrical Engineer	€ 115	€ 175	€ 230
Instrumentation Engineer	€ 115	€ 175	€ 230
PLC Engineer	€ 150	€ 225	€ 300
Technical / Process Specialist	€ 150	€ 225	€ 300
Burner specialist	€ 150	€ 225	€ 300
Valve technician	€ 115	€ 175	€ 230
Additional charges			
Traveling time	100% of qualification rate		

Daily allowance	For services outside the office, we charge a daily allowance per person per day (9 hours) of 109 € / day (max daily allowance per person). For working time / travel time from less than 9 hours, € 12 will be charged per hour and per person.
Accommodation	The accommodation for our staff will be booked by Leverage Incorporated NV. The journey from the hotel to the facility / construction site and back is part of the working hours. The actual accommodation costs (only net amount) will be charged. There are no additional costs for the organization.
Travel expenses	Travel costs for the journey to the place of work and the return journey (for example: train ticket, air ticket, bus ride, rental car in addition to the fuel bill and parking costs, taxi and airport fees, etc.) will be charged according to real costs. If the journey is made with a company vehicle, we charge € 1,45 per kilometre (including all tolls for bridges & tunnels, environmental vignettes, tolls of any kind). If parking costs are incurred, these will also be charged.
Terms of payment	All prices are net prices in EURO and do not include VAT, any local taxes, custom fees and import taxes. If import taxes and custom fees must be paid, we charge the net amounts to the client.

**Rates valid from 01.01.2023 up to 31.12.2023**

**Force Majeure:** any exceptional situation or event beyond the Parties' control which prevents either of them from executing any of their obligations under the Contract, insofar not attributable to error or negligence on their behalf. Such circumstances include: war or imminent war, mobilization, insurrection, martial law, fire, accidents, natural disasters, lack of or illness of personnel, temporary operational failure, reduction or change of production, lack of raw materials, impeding statutory provisions or orders issued by the government, strikes and lock-outs, impeding measures taken by any governmental body, as well as the absence of any permit to be obtained from the government.

## **2. INCORPORATION OF TERMS AND ORDER OF PRECEDENCE**

**2.1** These Terms form an integral part of every Contract concluded between L-inc and its Customers. L-inc rejects any Terms and Conditions from third parties, including those of L-inc's Customers, suppliers and/or partners, including those attached to invoices or referred to therein.

**2.2** In the event that (parts of) a Contract contain(s) provisions which are conflicting with present Terms, the provisions of the Contract will supersede over the conflicting

provisions in the Terms insofar as they explicitly refer to the provisions in the Terms from which they intend to deviate.

### **3. PROPOSAL, ORDER and CONTRACT**

- 3.1** A Proposal is a non-binding document produced by L-inc based on the demands/specifications/measurements as communicated by the Customer, which serves as an estimate of costs and which shall be considered as an invitation to the Customer to place an Order or conclude a Contract with L-inc. Proposals are valid up until 90 days after their issue date.
- 3.2** A Contract will come into being if and to such an extent as L-inc accepts and Order from the Customer in writing or if an Order is being executed by L-inc.
- 3.3** All sizes, weights and/or other designations or specifications of the Goods are quoted by L-inc with due care, although L-inc cannot warrant that there will be no deviations thereof. In case of deviation from the Order, L-inc guaranties that the provided Goods will be of equal or better quality. Samples, drawings or models shown to the Customer are mere indications of the properties of the Goods.

### **4. PRICE AND PRICE VALIDITY**

- 4.1** All prices quoted by L-inc are expressed in EURO and are VAT exclusive.
- 4.2** All quoted prices are based on project realisation during regular working hours and do not include waiting time, overtime or services provided on weekends and holidays. Overtime and non-standard working times will be invoiced at the rates mentioned in the Proposal or Contract, or L-incs Service Tariffs.
- 4.3** Unless expressly agreed otherwise, costs relating to packaging and dispatch, as well as all taxes, duties or costs relating to import and export, certification, inspection and transportation shall be passed on and charged to the Customer.
- 4.4** Any change of the indicators that may affect the price and the surplus costs incurred by L-inc, among which the wages, the reduction of the hours of employment, the price of raw materials, the exchange rates, the duties/taxes for import and export, insurance premiums, freight and other duties or taxes, shall be charged to the Customer.
- 4.5** Changes in material and energy costs are charged to the Customer using the dynamic pricing model as described below:

$$P = p \{a + b (S/s) + c (I/i)\}$$

P = new price

p = original price as per agreed quotation

a = the percentage of the price which does not qualify for revision ( $a \geq 0,20$ )

b= the percentage of labour costs in the total price

S = the new wage index (the month preceding the cessation of work)

s = the original wage index (the month preceding the date of the offer)

c= the percentage of the material costs in the total price

I = the new material index (the month preceding the end of the works)

i = the original material index (the month preceding the date of the quotation)

$$a + b + c = 1$$

## **5. PAYMENTS AND INVOICING**

- 5.1** The Customer shall pay the Price in accordance with the payment schedule set forth in the Proposal or Contract. If the Proposal or Contract doesn't contain a payment schedule, L-inc shall submit its invoices to the Customer in accordance with customary practices of the trade.
- 5.2** Invoices are payable within 30 days of their issue date.
- 5.3** L-inc has the right to charge the Customer a late fee of 10% on the due amount in case of delayed payments. In such an event, L-inc also has the right to charge compensatory interests of 12% on the due amount up until the date of actual payment.
- 5.4** If the Customer doesn't agree with an invoice or parts thereof, reclamations need to be made within 15 days after receipt of the invoice and in writing. Failure to do so within this term will constitute the irrevocable acceptance of the invoice by the Customer.
- 5.5** Payments made without reserve will be considered as acceptance of the Goods/System by the Customer and constitute the waiver to invoke any breach of contractual obligations by L-inc.
- 5.6** Any failure to comply with the terms of payment set out in the Proposal or Contract gives L-inc, in addition to any other available remedies, automatically and without prior notice the right to suspend all further performance until the Customer has complied.
- 5.7** In addition to what is set forth in art. 5.3, any cost, attorney's fees, (extra)judicial costs or court costs incurred by L-inc in obtaining payment of due and unpaid invoices will be recovered from the Customer.

## **6. RESERVATION OF OWNERSHIP**

- 6.1** The right of ownership of the Goods, notwithstanding the actual delivery, will only pass to the Customer after the latter has paid in full everything he owes or will owe L-inc, including the purchase price, possible surpluses, interests, taxes, service fees and costs possibly owed by virtue of these Terms.
- 6.2** Before the right of ownership is passed onto the Customer, the Customer shall not rent the Goods out to third parties, sell them or make them available for use to third parties in any way. The Customer shall not pledge the Goods to third parties, or otherwise encumber them for the benefit of third parties.
- 6.3** The Customer shall only be entitled to sell the Goods, of which L-inc still has the right of ownership, to third parties or deliver them, when L-inc has expressly approved to this in writing.
- 6.4** If and for long as L-inc had the ownership of the Goods, the Customer will notify L-inc in writing and without any delay of any confiscation or claim exercised by third parties on the Goods.
- 6.5** In the event of any type of insolvency procedure, receivership, dissolution, liquidation or bankruptcy, the Customer will immediately inform the receiver, the administrator or the trustee, of the rights of ownership of L-inc.

## **7. DELIVERY**

- 7.1 The stated moment of delivery is based on normal sub-supplier delivery times and regular working schedules. Unless otherwise agreed upon, no delivery shall take place on public holidays, weekends or during the annual Belgian summer leave season ('Bouwverlof').
- 7.2 If L-inc cannot comply with its obligations towards the Customer due to force majeure, those obligations are suspended for as long as the force majeure lasts. Insofar as the Contract has not been (fully) executed, it may be terminated in writing, in full or in part, without L-inc being liable for any damages, if the force majeure lasts for more than 6 months.

## **8. TRANSPORTATION AND STORAGE**

- 8.1 Unless otherwise specified, prices shown in the Proposal shall be deemed to apply to Equipment delivered ex-works, unpacked. Transportation costs are borne by the Customer, unless indicated otherwise in the Proposal or Contract. If the Customer has not indicated a method of transportation, L-inc shall determine the most suitable method of transportation.
- 8.2 The Customer is entitled to inspect the Goods at a reasonable time before shipment. The Customer shall notify L-inc of the specific Goods he wishes to inspect, within thirty days after start of the Contract. All costs and expenses of such an inspection, except those related to L-inc's personnel costs, will be borne by the Customer.
- 8.3 If Customer is unable or unwilling to accept physical delivery of the Goods at the time specified in the time schedule or Contract, L-inc may store the Goods at Customer's cost and risk. In such an event, the Goods shall be deemed delivered on the date of storage for purposes of payment, ownership, risk and insurance.
- 8.4 Unless otherwise stated, the Customer shall promptly unpack and inspect the Goods upon delivery. L-inc had the right to be present at such an inspection, at L-inc's discretion.
- 8.5 The Customer must notify L-inc within 15 days after delivery of any missing, damaged or defective Goods.
- 8.6 Quoted prices do not include the cost of long-term storage of Goods. L-inc reserves the right to charge the Customer storage costs when the Goods are stored longer than agreed upon in the Contract or Proposal.

## **9. WARRANTIES**

- 9.1 L-inc warrants the Goods to be free from defects up until 18 months after delivery or 12 months after first use of the Goods, whichever occurs first. Rectified or replaced Goods shall be re-warranted for an additional 12 months. In any case, L-inc's warranties end 24 months after delivery.
- 9.2 Vendor-supplied items will carry the standard vendors' warranties, which will be transferred to the Customer.
- 9.3 Any Goods that are defective within the above mentioned warranty periods will be replaced on EXW basis (Incoterms 2020), or repaired by L-inc.
- 9.4 No warranty can be given for consumables such as fuses, bulbs, temperature elements, refractory, insulation, paint etc. L-inc cannot be held liable for ordinary

wear-and-tear of the Goods, unintended use, misuse, abuse or improper storage, installation, maintenance, operation or repairs of the Goods by the Customer.

- 9.5 When Goods are to be repaired by L-inc, the Customer will return these Goods to L-inc's workshop. The Customer will also organise transportation back to Customer site. Local dismantling and reassembly will be executed by the Customer.

## **10. AGGREGATE LIABILITY**

- 10.1 L-inc's aggregate liability shall in no event exceed 10% of the Contract Price, irrespective of the base or nature of the liability.
- 10.2 L-inc cannot be held liable for any indirect, incidental and/or consequential damages and/or losses of any kind in contract or in tort, including the loss of use, data, profit or income, business, anticipated savings, reputation as well as financing costs or increase in operating costs.

## **11. DEVIATION FROM THE CONTRACT/ORDER, POSTPONEMENT AND CANCELLATION**

- 11.1 Any design changes made by the Customer to the original specification after Contract conclusion, will be analysed and detailed costs for modifications submitted for Customer approval prior to implementation by L-inc.
- 11.2 The Customer had the right to postpone or cancel an order by giving L-inc written notice thereof. L-inc will in such an event cease all of its activities (except those related to the postponement or cancellation) and postpone or terminate all related subcontracts without delay after such postponement or cancellation.
- 11.3 In the event of a project postponement, the Customer shall reimburse L-inc for all costs incurred to postpone the project including but not limited to demobilisation costs, remobilisation costs, subcontract postponement or cancellation, etc....
- 11.4 The maximum duration of postponements is 6 months. L-inc had the right to consider a project as cancelled definitively without prior notice to the Customer after a period of 6 months.
- 11.5 In the event of project cancellation by the Customer, the Customer shall pay the greater of:
- (a) 15 % of total purchase order value or
  - (b) L-inc's costs incurred for this order, as well as costs incurred for the termination of related subcontracts (including cancellation charges actually paid by L-inc to its sub-suppliers and costs incurred in preserving and protecting materials, work in progress, and completed Goods), as well as a cancellation fee of 20% of the estimated loss of profit.
- 11.6 Upon receipt of Customer's payment, the right of ownership of all materials, Goods, work in progress, shall vest in the Customer as-is, where-is.

## **12. FUNCTIONALITY AND ACCEPTANCE OF FULL SYSTEMS**

- 12.1 When the object of the Contract is a fully functioning system, the Customer is obligated to immediately perform an acceptance test of the installed system after being informed by L-inc that the system is ready for a test. If the system is deemed

fully functioning and without defects, the Customer will sign a note of acceptance or a Quality Inspection Report.

If the acceptance test is delayed by the Customer through no fault of L-inc, the system will be considered as accepted 7 days after L-inc's notification that the installation is ready for the test unless otherwise expressly agreed upon by both parties in writing.

**12.2** The system will be considered as accepted by the Customer if the acceptance test cannot be performed within 7 days of L-inc's notification that the system is ready for shipment, for delays by Customer and/or third parties, or created by force majeure.

**12.3** If the Customer accepts the installation without performing an acceptance-test or starts using it, the acceptance is deemed to have taken place, seven working days after the delivery.

### **13. CUSTOMER COMPLAINTS**

**13.1** Possible complaints about defective Goods must be made in writing within seven (7) days after the delivery of the Goods.

**13.2** After the discovery of defects, the Customer must refrain from using, processing, producing or installing the defective Goods. Any further use of suspected defective Goods will be at the Customers risk and responsibility.

**13.3** After receiving a written complaint about defective Goods, L-inc has the right to investigate these Goods. The Customer had a duty to co-operate with L-inc in the investigation in any possible way, e.g. by giving L-inc access to Customer sites, by providing all and any information requested by L-inc, etc. If the Customer doesn't allow L-inc to carry out its investigation or hinders it in any way, the corresponding complaint shall be deemed null and void and no compensation of any kind can be granted.

**13.4** No Goods can be returned to L-inc without its prior consent.

**13.5** No complaint can be made by the Customer when the Customer has failed to perform any of his obligations arising out of the same Contract or Order.

**13.6** Complaints made by the Customer suspend nor cancel the Customer's own obligations, including the obligation to pay.

**13.7** L-incs possible liability resulting from a complaint is in any case limited to what is set forth by clause 10 of these Terms.

**13.8** If and when L-inc performs an intervention/inspection at the Customer site after receiving a Customer complaint and this complaint is deemed invalid, L-inc has the right to charge the Customer for this intervention, to which L-inc's standard Service Tariffs apply.

### **14. CONFIDENTIALITY**

**14.1** All technical and commercial information included in L-inc's Proposal or Contract is deemed Confidential Information and property of L-inc. The Customer shall treat this Confidential Information with the utmost secrecy, and shall take all necessary measures to protect this confidentiality.

**14.2** The following shall not be considered as "Confidential Information":

- Information already available to the Customer, unless the information was supplied as Confidential Information;

- Information received without obligation to confidentiality;
  - Information which has already been released to the public by the rightful owner;
  - Information which consist of general concepts, knowledge and techniques;
  - Information which has been developed by the Customer with regard to the subject of this agreement.
- 14.3** Confidential Information shall solely be used for the purposes it was intended for. The Customer does not have the right to use Confidential Information to his own benefit in any other way.
- 14.4** The Customer will furthermore promptly return or destroy all Confidential Information, including any copies thereof, upon first written request by L-inc, it being agreed that the Customer may keep one copy of the relevant Confidential Information when required for legal and/or regulatory purposes however it being understood that all confidentiality obligations will remain applicable
- 14.5** The Customer recognizes and acknowledges that the Confidential Information is of a special, unique and extraordinary character, disclosure of which cannot be wholly compensated by monetary damages, and that any disclosure or unauthorized use of the Confidential Information, or other breach of this clause 14, shall cause L-inc irreparable injury. The Customer therefore expressly agrees that, in addition to any rights and remedies which L-inc may have under the Contract or at law or in equity, L-inc shall be entitled to seek the remedies of injunction, damages, specific performance and other equitable relief for any threatened or actual breach of Contract and may terminate the Contract immediately after gaining knowledge of the breach by the Customer.
- 14.6** The Distribution of Confidential Information by the Customer is only permitted:
- to Customer's employees and any other personnel working for the Customer, in as much as that distribution is required to achieve the goals for which the Confidential Information was transferred, and taking into account the stipulations of this confidentiality clause, in the event L-inc has given prior written consent, or if the Customer is legally bound to disclose Confidential Information. In this case the Customer shall notify L-inc prior to disclosure.
  - Disclosure of Confidential Information to third parties shall only take place after written consent has been given by L-inc, and after the third party has signed a non-disclosure agreement with the Customer and L-inc, which complies with the stipulations of this confidentiality clause.
- 14.7** The Customer recognizes and acknowledges that the Confidential Information is of a special, unique and extraordinary character, disclosure of which cannot be wholly compensated by monetary damages, and that any disclosure or unauthorized use of the Confidential Information, or other breach of this clause 14, shall cause L-inc irreparable injury. The Customer therefore expressly agrees that, in addition to any rights and remedies which L-inc may have under the Contract or at law or in equity, L-inc shall be entitled to seek the remedies of injunction, damages, specific performance and other equitable relief for any threatened or actual breach of Contract and may terminate the Contract immediately after gaining knowledge of the breach by the Customer.

## **15. INTELLECTUAL PROPERTY RIGHTS (IPR)**

- 15.1 Any design belonging to and/or created by L-inc and/or its sub-contractors/suppliers will remain their property and the IPR will not be transferred to the Customer.
- 15.2 There are no limitations to L-inc's right to independently develop its own technology, products and business strategy and L-inc shall not be obliged to share such technology, products or business strategy with the Customer.
- 15.3 In connection with the execution of the Contract, neither Party shall be precluded from using their general knowledge, skills, experience and any ideas, concepts, methodologies, processes and know-how that are developed, acquired or used in the execution of the Contract, except to the extent this would result in a breach of such Party's confidentiality undertakings under the Contractor the other Party's IPR.

## 16. CONTRACT LANGUAGE

Linc's Proposal/Contract is based on all communications, documents, drawings and calculations being submitted in the English language. Translation of the operation and maintenance manual into another language will be billed at actual cost + 15%.

## 17. DOCUMENTATION

All documentation and drawings will be supplied in accordance with L-inc's standards. Two sets of each document will be provided in English. For each additional set of documents, a fixed price of € 750,00 will be invoiced.

## 18. INVALID PROVISIONS

If any term or provision of the Contract or the Terms is found invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, such term or provision shall not affect the other terms or provisions of the Contract as a whole and such term or provision shall be deemed restated to the extent necessary, in the court's opinion, to render such term or provision enforceable with a similar economic effect. Upon such modification, the rights and obligations of the Parties shall be construed and enforced in accordance with such modification, preserving to the fullest permissible extent the intent and agreements of the Parties set forth.

## 19. DISPUTES

- 19.1 Any differences, questions or disputes arising between L-inc and the Customer shall be settled by an amicable effort by the parties. An attempt to arrive to a settlement of any such difference, question or dispute shall be deemed to have failed as soon as one of the parties so notifies the other party concerned in writing.
- 19.2 All disputes for which no amicable solution can be reached will be subject to the exclusive judgment of the competent Courts of Gent, afd. Kortrijk (Belgium) and Belgian law will be applied exclusively.

