

Standard Terms and Conditions for Galvanization Services performed by Lufthansa Technik AG

O. Definitions and Abbreviations

The following terms, expressions and abbreviations used in these Standard Terms and Conditions shall have the following meanings:

Confidential Information Any Information that was provided verbally or in written form by one of the parties to the other party in the course of and within the scope of the Customer Agreement.

Customer An Entrepreneur that concludes or intends to conclude a Customer Agreement.
Customer Agreement A contract between LHT and the Customer under which LHT agrees to perform the Service on one or more Service Object(s) in return for payment by the Customer.

Entrepreneur A natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its trade, business or profession, in accordance with the definition in Article 14 German Civil Code.

LHT Lufthansa Technik AG.

Place of Performance Has the meaning set forth in Article 4.

Service A galvanization process or any other chemical process for the purpose of surface coating as further indicated in the Customer Agreement to be performed by LHT.

Service Object Any Object delivered to LHT by the Customer in relation to which the Service is to be performed by LHT.

Subcontractor Any person, legal or natural, other than employees of LHT, engaged by LHT to support LHT in the performance of its obligations under the Customer Agreement.

Vicarious Agents LHT's personnel and other persons, e. g. Subcontractors, whom LHT assigns to support LHT in the performance of its obligations under the Customer Agreement.

1. Scope and Exclusive Validity of these Terms and Conditions

1.1 These Standard Terms and Conditions shall exclusively apply to all Customer Agreements, unless LHT expressly waives the applicability in written form, and only as far as LHT and the Customer have not agreed on any other terms and conditions provided by LHT.

1.2 The Customer's standard terms and conditions shall not become an integral part of the Customer Agreement, even if LHT has not expressly rejected their applicability. Further, if LHT replies to any communication of the Customer that refers to the Customer's standard terms and conditions or any other set of terms and conditions (each being "Other Terms and Conditions"), such reply shall not constitute an acceptance of such Other Terms and Conditions, nor shall it result in the acceptance of such Other Terms and Conditions.

2. Conclusion of Customer Agreement

2.1 Any offer submitted by LHT shall be non-binding.

2.2 Within the limits of Section 13 of this Customer Agreement the customer shall not disclose offers submitted by LHT to third parties, unless LHT has given its prior consent to such disclosure.

2.3 Orders submitted by the Customer are binding.

2.4 The Customer Agreement is concluded once LHT has submitted an order confirmation to the Customer in writing (letter, fax or e-mail).

3. Scope of Service

3.1 The scope of the Service requested shall be stated in the order placed by the Customer and, if agreed, shall be confirmed in the order confirmation submitted by LHT.

3.2 LHT is entitled, without the prior consent of the Customer but at the Customer's expense, to perform additional services that LHT may consider necessary for the proper performance of the Service if (i) the Customer's prior consent cannot be obtained without causing a delay in the completion of the services and (ii) the price for the additional services does not exceed ten percent of the value of the original order. If expressly ordered by the Customer and/or indicated in the offer submitted by LHT, LHT will perform the Service in accordance with the Lufthansa Technik Quality Manual and Procedures as approved by the German Airworthiness Authority (LBA).

4. Place of Performance

The Place of Performance of the Service shall be the LHT service facility site in Hamburg, Germany.

5. Delivery

5.1 The delivery of each Service Object to the Place of Performance of the Service shall be at the Customer's risk and expense, unless otherwise agreed in the Customer Agreement.

5.2 The Customer shall provide LHT with a sample of the Service Object at least six weeks prior to the performance of the Service, unless it has been expressly agreed upon otherwise in the Customer Agreement.

5.3 The Customer shall further provide LHT with a written delivery order at the time of the delivery of the Service Objects indicating the exact amount of the Service Objects delivered

6. Redelivery Dates

6.1 Redelivery dates indicated by LHT are provisional, non-binding, and shall serve as general information only unless they have been explicitly declared in writing as binding by a person authorized to represent LHT.

6.2 If LHT becomes aware that it is likely that redelivery will occur materially later than the date LHT had indicated as a provisional, non-binding redelivery date, LHT will notify the Customer within a reasonable time.

6.3 In the event the redelivery date has not been explicitly declared as binding but such provisional, non-binding redelivery date has been exceeded, the Customer may request LHT to perform the Service within a fixed period (being a minimum of two weeks) after the provisional, non-binding redelivery date, provided such period is a reasonable time in all the circumstances.

7. Redelivery

7.1 Redelivery of the Service Object shall be effected ex works (EXW, Incoterms 2000) the Place of Performance excluding packing material.

7.2 No later than one week after (i) LHT has notified the Customer that the Service has been completed or (ii) the date of termination of the Customer Agreement, the Customer shall collect the Service Object at the Place of Performance.

7.3 Customer may request that LHT supports Customer in arranging for shipment of the Maintenance Object to another place as the one specified in Article 7.1 above. Any shipment arrangements made by LHT shall be in the name and on behalf of Customer. The Customer shall bear all shipping cost including cost for packing material.

7.4 If the Customer fails to comply with Article 7.2 within one week after having received notice, the Customer shall compensate LHT for any expenses it incurs in connection with the storage of the Service Object. The compensation shall include a fee of 1 percent of the total invoice amount per every month of storage, limited to a total of 5 percent of the total invoice amount, notwithstanding any further claims for damages and for compensation of expenses, unless the Customer can prove that LHT's actual damage is smaller than this amount.

8. Warranty

8.1 The warranty period for the Service is one year from the date of redelivery.

8.2 All warranty claims against LHT for any defect will be excluded if the underlying defect has not been communicated by the Customer to LHT within two weeks after the discovery of the defect.

8.3 LHT hereby advises the Customer that due to the specific nature of the Service certain visual variations in quality of the final surface quality of the Service Object in regard to previously supplied samples are technically unavoidable and are in the nature of the Service. Such reasonable variations do not constitute a defect of the Service.

8.4 The Customer must assure that the Service Object is suitable for surface treatment as indicated in the Customer Agreement. The Service Object must be free from cast rind, form sand, scale, oil carbon, burned-in grease, welding slag, graphite, coats of paint, pores, blowholes, cracks, laminations and other abnormalities, and all threadings of the Service Object must be sufficiently under-cut. If the Service Object does not comply with these requirements, LHT is not liable for any resulting defects.

8.5 To the extent the Customer requests a certain minimum thickness of the coating, the Customer must indicate such request prior to the performance of the Service.

8.6 If the Service Object contains hollows, corrosion at such hollows is to be expected after the performance of the Service due to condensed moisture and corrosion caused by friction. LHT will not perform any treatment on hollows of the Service Object, unless it has been expressly otherwise agreed upon in the Customer Agreement. If such treatment in regard to hollows is not agreed upon, LHT shall not be liable for such corrosion. LHT shall further not be liable for corrosion that occurs due to discharge of moisture from double layers or other inaccessible hollows of the Service Object. In the event the Customer provides LHT with packaging material and requests LHT to use such packaging material for the redelivery of the Service Object, LHT shall not be liable for corrosion arising from wrongful packaging after the performance of the Service.

8.7 The Customer acknowledges that the process of analyzing a Service Object with regard to its suitability for hydrogen de-embrittlement is complex, cost-intensive and time-consuming. Therefore, in the event the Customer wishes the Service Object to be so treated, LHT will not analyze the Service Object with regard to its suitability for such treatment. LHT's warranty in this regard is limited to the professional performance of such Service. LHT shall not be responsible for any defects or damage that the Service Object may suffer as a result of the performance of such treatment, unless the Customer can establish that the defect does not result from the previous condition of the Service Object.

8.8 If upon the request of the Customer, LHT provides the Customer free of charge with internal documents in regard to short-time tests or other chemical and/or mechanical examinations of the Service Object, measurement reports and/or examination certifications, LHT does not warrant the accuracy and/or the completeness of such examinations, reports and certificates.

8.9 LHT shall not be liable for defects if the Service Object has been re-shaped after redelivery, even if such re-shaping of a sample of the Service Object was successfully performed without any chipping of the coating or other such damages, unless the Customer can establish that the defect does not result from such action. The same applies if the Service Object is exposed to extraordinary wear or is used under extreme climatic conditions.

8.10 LHT shall not be liable for any defects of the Service if the Service Object has been altered and/or repaired during the warranty period by persons other than LHT or its Vicarious Agents, unless the Customer can establish that the resulting defect does not result from such action.

8.11 If the Service Object consists of small and/or mass parts, LHT shall not be liable for a total loss of up to 3 percent of the total amount of the delivered Service Objects, unless it has been expressly agreed upon to the contrary in the Customer Agreement.

8.12 The previous Articles shall not affect any other limitations of LHT's liability, or restrictions of the Customer's rights and claims against LHT in these Standard Terms and Conditions and/or under applicable law.

9. Limitation of Liability

9.1 LHT's liability for damages in case of minor negligence (so-called "leichte Fahrlässigkeit") of LHT, its statutory representatives and Vicarious Agents shall be excluded, provided these do not concern any material contractual obligations (so-called "Kardinalspflichten"), damages arising from injury to life, limb or health or from violation of a guarantee and as far as there are no claims under the Product Liability Act.

9.2 To the extent LHT is liable in accordance with Article 9.1, LHT's liability shall be further limited as follows: LHT shall not be liable for non-foreseeable damages which are not typical for Services of the kind constituting the Service under the relevant Customer Agreement and which are neither based upon a violation of a guarantee, nor upon malicious or willful acts (or upon malicious or willful acts of LHT's statutory representatives or its Vicarious Agents), nor are caused by injury to life, limb or health, nor are damages to be compensated in accordance with the Product Liability Act.

10. Prices and Payments

10.1 Prices for the Service(s) are set forth in the Customer Agreement.

10.2 All prices are quoted as net prices. Any tax (including, but not limited to, value added tax), duty, fee or other public charges whatsoever imposed on the invoiced prices shall be borne by the Customer or shall be refunded by the Customer to LHT. In the event any such tax or duty is recoverable, LHT shall use reasonable efforts to recover such tax or duty paid.

10.3 LHT shall issue an invoice after redelivery of the Service Object according to Article 7 and the Customer shall pay within ten days from receipt of LHT's invoice.

10.4 The Customer agrees that any dispute with regard to a payment obligation and any claim for reimbursement shall be made within one month after receipt of the invoice as per Article 10.5. The Customer shall be precluded as to any disputes or claims not made within this period.

10.5 The Customer shall make payment in the contractually agreed currency. Any payment made in any currency other than the contractually agreed currency shall be exchanged at the exchange rate on the date the payment is credited to LHT's account. The Customer remains liable for any shortfall to the amount owed resulting from such exchange.

10.6 The Customer shall not be entitled to set off any claims against LHT's claims, unless such claims are determined in its favour by the final decision of a competent court or are undisputed. The Customer may only exercise a right of retention if its counterclaim has been determined in its favour by the final decision of a competent court or is undisputed.

11. Reservation of Property Rights

Title to all Material supplied by LHT under the Customer Agreement shall remain with LHT until complete payment of all amounts due under the Customer Agreement.

12. Lien and Right of Retention

12.1 In the event that the Customer fails to comply with its payment obligations under the Customer Agreement, LHT has by virtue of the Service performed a contractual right of retention and a contractual lien with respect to the Service Object in its custody as well as with respect to other items of the Customer in LHT's custody to secure any claims of LHT against the Customer out of or in connection with the Customer Agreement as well as to secure any claims of affiliates of LHT against the Customer. These rights as well as a set-off right may also be claimed for Services performed or Material supplied previously. The right of retention and the lien as well as a right to set off any claims of LHT due against the Customer with claims of the Customer against LHT may also be applied with respect to claims resulting from a contractual relationship of the Customer and Deutsche Lufthansa AG and/or any of its affiliates.

12.2 LHT shall also have the right to cease any ongoing Service without notice until all payments due under the Customer Agreement or any other contractual relationship of the Customer and LHT or the Customer and Deutsche Lufthansa AG and/or any of its affiliates have been made.

13. Confidentiality

13.1 Both parties shall, for the term of the Customer Agreement and for five years after its termination, maintain the confidential nature of Confidential Information, unless the other party has given its express written consent to its disclosure.

13.2 Sec. 13.1 does not apply to Confidential Information (i) that is according to the Customer Agreement objectively assigned to be disclosed by the receiving party to any third party, (ii) that was made known to the receiving party by a third party without an obligation to maintain its confidentiality and without violation of legal requirements or regulatory directives, (iii) that is in the public domain as of the execution of this Customer Agreement, or enters the public domain thereafter without breach of this confidentiality provision, or (iv) that must be disclosed due to a legal obligation or a directive from a court or a regulatory authority. To the extent it is permissible and possible, the party so required to disclose Confidential Information must inform the other party prior to the disclosure and give that party the opportunity to legally challenge the disclosure requirement.

14. Applicable Law and Venue

14.1 These Standard Terms and Conditions shall be deemed to be subject to, and have been made under, and shall be construed and interpreted in accordance with, the laws of Germany without regard to its laws on conflicts of laws. The Convention on the International Sale of Goods (CISG) shall not apply.

14.2 The parties agree upon the exclusive jurisdiction of the courts of Hamburg, Germany, with respect to all claims, causes of action and disputes arising out of these Standard Terms and Conditions and/or the Customer Agreement.

15. Amendments

Any amendments to these Standard Terms and Conditions including this clause as well as to the Customer Agreement need to be agreed upon between LHT and the Customer in writing.