

# General Terms of Delivery and Sales of LUTZE Conveying Deutschland GmbH

## § 1 General information - scope

(1) Our General Terms of Delivery and Sale ("**Terms of Delivery**") shall apply exclusively; we shall not recognise any contradictory general terms of our contractual partner (the "**Orderer**") or general terms which deviate from our Terms of Delivery unless we have explicitly approved their validity.

Our Terms of Delivery shall also apply exclusively if we carry out the delivery to the Orderer without reservation in the knowledge of contradictory terms and conditions of the Orderer or terms and conditions which deviate from our Terms of Delivery.

(2) Our Terms of Delivery shall only apply towards entrepreneurs (§ 14 Par. 1 BGB [German Civil Code]) and legal entities under public law or special assets under public law within the meaning of § 310 Par. 1 BGB.

(3) Our Terms of Delivery shall also apply to all future business with the Orderers from ongoing business relationships.

## § 2 Offer – offer documents – conclusion of contracts

(1) Our offer is without obligation insofar as not explicitly otherwise declared by us.

(2) Insofar as an offer should not be without obligation contrary to § 2 Par. 1 offers shall have a validity of 10 workdays. If not shown otherwise the acceptance deadline is to be calculated from the date of our offer.

(3) Offers of the Orderer are binding for 14 days.

(4) We reserve the property rights and copyrights to diagrams, drawings, samples, calculations and other documents – also in an electronic or other non-physical form; they may not be made accessible to third parties. The Orderer requires our explicit consent before their forwarding to third parties. This shall in particular apply to such written documents, which are described as "confidential". Documents which belong to our offers are then to be returned to us upon request and in any case if the order is not placed with us.

(5) All drawings and calculations shall be deemed as non-binding until the final order. All liability claims are insofar excluded.

(6) Orders are to be placed with us in writing. Orders placed with us are, insofar as we have not submitted any binding offer, only binding if we have confirmed these in writing. Oral agreements with our field service employees or sales agents are, insofar as they acted without a power of attorney, only legally binding, if we have confirmed these in writing.

(7) Insofar as not otherwise agreed the contents of our order confirmation shall be decisive for the contents of the contract, in particular the scope and time of the delivery.

(8) In case of call orders we are entitled to procure the material for the whole order and to produce the total order quantity immediately. Possible requests for changes of the Orderer can accordingly no longer be taken into consideration after the order has been placed, unless this was explicitly agreed. Partial deliveries to a reasonable extent are permitted.

## § 3 Prices – terms of payment

(1) Insofar as not otherwise derived from the order confirmation or the contractual relationship our prices shall apply "ex works" (Incoterms 2011), plus packaging costs in an amount which is customary for the market and costs for possible assembly services.

(2) Re-usable special packaging such as wooden and steel drums, steel frames, Europallets and iron cores will be credited with the freight-free return to us in a usable condition with 2/3 of the amount charged to the Orderer for this.

(3) In case of delivery by our own vehicles a reasonable and customary market transport cost share is charged, insofar as this is not opposed by a contractual regulation concerning the place of performance. We reserve the right to summarise orders in order to reduce transport costs.

(4) All price details are deemed net without value added tax, which is to be additionally remunerated by the Orderer.

(5) Insofar as not otherwise agreed we are entitled, with delivery dates of more than six weeks after the date of the order confirmation to adjust the price according to actually incurred cost increases, such as e.g. of wage, material, energy and/or transport costs and to charge these to the Orderer, in total however a maximum of five per cent of the delivery value.

(6) We can also charge the Orderer the additional costs incurred by change requests of the Orderer if we have approved the changes.

(7) Insofar as not otherwise agreed the price is due and payable net cash (without deduction) directly after receipt of the delivered goods or with contracts for work and services after its acceptance or fictitious acceptance and receipt of invoice.

(8) In the absence of a special agreement with orders in the value of more than EUR 100,000,- the payment is to be made without any deduction on account of the supplier as follows: 1/3 down payment after receipt of the order confirmation, 1/3 as soon as the orderer was informed by us that the main parts are ready for shipment; 1/3 before shipment within 14 days after the passing of risk according to the following regulation in § 6.

(9) The Orderer shall only be entitled to rights to offset if its counter-claims have been determined legal and binding, are undisputed or have been recognised by us. The exercising of a right to retention or right to refuse service by the Orderer is only entitled if the same pre-requisites have been satisfied with counter-claims or with defects to the delivered goods these defects have been determined, have been recognised by us or have at least been made credible by the Orderer (e.g. by written confirmation of an independent, competent person) and in addition its counter-claim is due to the same contractual relationship. We are entitled to the right to offset to an unlimited extent.

(10) Bills of exchange and cheques are only accepted owing to an explicit agreement and only on account of performance. Bill of exchange and cheque costs shall be for the burden of the Orderer.

(11) If we are obliged to make a service in advance and if we become aware of circumstances after the conclusion of the contract, according to which a substantial deterioration of the Orderer's assets can be assumed then we can at our choice either request collateral within a reasonable deadline or step-by-step payment against delivery. If the Orderer does not satisfy this request we are entitled, subject to further statutory rights, to cancel the contract. The services provided for the Orderer until this time are to be reimbursed by the Orderer. The presumption of a substantial deterioration to the assets

of the Orderer exists in particular if it does not redeem bills of exchange or cheques for circumstance for which it is responsible.

## § 4 Delivery time

(1) The start of the delivery time stated by us presumes the clarification of all technical questions and the compliance with the obligations of the Orderer. Insofar as not otherwise agreed or not otherwise derived from the contractual relationship the delivery time stated by us is merely to be understood as an approximate delivery time, customary trade deviations in the delivery date are permitted.

(2) Delays in delivery owing to force majeure or owing to other unforeseeable circumstances, and for which we are not responsible, such as interferences to operation, strikes, lock-out, defects to transport means, difficulties with the procurement of raw materials and in particular insufficient or late supply by our suppliers, shall not lead to our delay. We shall not be responsible for these circumstances either if they occur during an already existing delay. An agreed delivery deadline shall be extended by the duration of the impediment plus a reasonable start-up period. If the impediment lasts for longer than six months we and the Orderer are entitled, after the expiry of the setting of a reasonable final deadline, to cancel the contract with regard to the not yet fulfilled part of the contract.

(3) If the Orderer sets us a reasonable final deadline in the event of our default then it shall only be entitled to cancellation after the unsuccessful expiry of this final deadline unless it concerns a commercial fixed deal or the Orderer can assert that its interest in the fulfilment of the contract has ceased to exist owing to the delay for which we are responsible.

(4) The compliance with our delivery obligation presumes the timely and proper satisfaction of the obligations of the Orderer.

(5) If the Orderer is in default of acceptance or if it breaches other obligations to provide assistance then we are entitled to request compensation for the damages suffered by us, including possible additional expenses. The risk of an accidental loss or an accidental deterioration to the purchase object shall pass to the Orderer at the time at which it is in default of acceptance.

(6) If the delivery time is extended at the request of the Orderer then we can charge the thus ensuing costs to the Orderer.

(7) We are entitled to make partial deliveries insofar as this is not opposed by a recognisable interest of the Orderer.

## § 5 Assembly and repair services

Our General Assembly Terms and Conditions shall apply to the assemblies carried out by us.

## § 6 Passing of risk

(1) Insofar as not otherwise derived from the order confirmation and this is not opposed by any regulation concerning the place of performance delivery is agreed "ex works" (Incoterms 2011). This shall also apply in the event of partial deliveries as well as the transport by our own vehicles.

(2) Insofar as an acceptance is to be carried out this is decisive for the passing of risk unless the Orderer begins to use our service, through which in any case the risk shall pass to it

(3) At the explicit request of the Orderer we will cover transport insurance for the delivery; the costs incurred hereby shall be borne by the Orderer.

## § 7 Acceptance

(1) An acceptance is to be carried out within one week after receipt of our completion report by the Orderer. If this is not carried out for reasons, for which the Orderer is responsible, or if the Orderer accepts the object of delivery and if it does not report any substantial defects within 10 days after its acceptance, the object of delivery shall be deemed as accepted.

(2) The Orderer undertakes to also accept the object of delivery if there are slight defects which only insignificantly impair the use.

## § 8 Claims for defects

The following applies in case of defects to the delivery:

(1) The warranty (*Gewährleistung*) rights (claims for defects) of the Orderer presume that it inspects the delivered object according to § 377 HGB [German Commercial Code] and properly reports defects. Reports have to be made with the specified details of the defects.

(2) Weight, measurement details and technical details in drawings, brochures, diagrams and other documents are, insofar as not explicitly otherwise agreed, are only approximate details and in particular do not represent any guarantees of condition.

(3) We reserve the right to customary trade or technically unavoidable deviations from physical or chemical factors as well as with order quantities depending on the article up to a max. of 10 %. Such deviations are no defects.

(4) All of those parts or services are to be subsequently improved, newly delivered or newly provided by us free of charge at our choice, which feature a defect within the statute-of-limitations insofar as this already existed at the time when the risk was passed.

No warranty is assumed for defects and damages insofar as these were caused by unsuitable or improper use, faulty assembly or putting into operation by the Orderer or third parties, natural wear and tear, faulty or negligent treatment, unsuitable work equipment, replaceable materials, faulty building work, unsuitable building foundation, chemical, electro-chemical or electrical influences, insofar as the damages are not a result of our faults.

(5) If the Orderer unjustifiable and for reasons we are not responsible for reports the existence of a defect for which we are not responsible, then we are entitled to charge the reasonable expenses incurred to us for the remedy or determination of the defect to the Orderer.

(6) Claims of the orderer owing to the expenses which are necessary for the purpose of the supplementary performance (*Nacherfüllung*), in particular transport, route, labour and material costs are excluded, insofar as the expenses are increased by a subsequent transportation of the delivered object to another location than the original place of service (place of performance). We are entitled to charge the Orderer with such additional costs.

(7) Claims of the Orderer for defects of quality shall become statute-barred in 12 months from delivery or, insofar as such is envisaged, from acceptance. However the legal statutes-of-limitations for claims for defects shall apply insofar as these by law are longer than 24 months and nothing to the contrary can be derived from these Terms of Delivery, thus e.g. for objects, which have usually been used for buildings (§ 438 Par. 1 No. 2 b) BGB), for the claim for recourse (§§ 478, 479 BGB) and for buildings and defects to buildings (§§ 634 a Par. 1 No. 2, 438 Par. 1 No. 2 a) BGB) as well as in the event of wilful or grossly negligent cause of defects and with malicious non-disclosure of a defect.

(8) If the duration of the warranty period is assessed according to operating hours in the contract, albeit also only as an alternative, all operating hours from the putting into use of the system shall also count, also insofar as they were run before the normal statute-of-limitations.

(9) Before the Orderer can assert further claims or rights (cancellation, reduction, damages, reimbursement of expenses) we are initially to be given the opportunity for supplementary performance within a reasonable deadline insofar as we have not submitted any guarantee to the contrary. Only in urgent cases of the operational safety and to defend disproportionately high damages, whereby we are to be informed immediately, does the Orderer have the right to remedy the defect itself or to have this remedied by third parties and to request reimbursement of the necessary costs from us. If the supplementary performance fails despite at least two attempts at supplementary performance, if the supplementary performance is impossible, is refused or if it is deemed unreasonable for the Orderer, then the Orderer can cancel the contract or reduce the remuneration (*mindern*). § 9 of these Terms of Delivery shall apply to the assertion of claims for damages by the Orderer.

(10) The following shall additionally apply to defects of title:

Insofar as not otherwise agreed we are merely obliged to provide the delivery in the country of the place of delivery free of rights of third parties. In the event of an infringement of property rights of third parties for which we are responsible we can at our choice either at our costs obtain a right of use which is sufficient for the agreed or presumed use and grant these to the Orderer, or modify the object of delivery to the extent that the property right is not infringed or exchange the object of delivery insofar as there the agreed or presume use of the object of delivery is not impaired by the Orderer. If this is not possible or deemed unreasonable for us then the Orderer shall be entitled to the statutory claims and rights. § 9 shall apply to claims for damages.

(11) The sale of used objects is carried out under the exclusion of each warranty.

### § 9 Liability for damages

(1) Subject to the regulations in Par. (2) of this § 9 claims for damages, in particular with regard to consequential damages from defects (including missed profit) against us are excluded unless (i) we are responsible for gross negligence or wilful intent or (ii) it concerns the breach of an essential contractual obligation (cardinal obligation), in which case we shall also be liable in case of simple negligence. Insofar as we owe damages according to the afore-mentioned sentence our liability is limited with regard to the amount however to the foreseeable damages which are typical for the contract unless we are responsible for wilful intent.

(2) Notwithstanding the regulations in Par. (1) of this § 9 we shall be liable for damages according to the statutory regulations with claims for damages (i) according to the Product Liability Act, (ii) owing to the injury to life, body or the health and (iii) after the assumption of a guarantee for the existence of a property (guarantee of condition).

(3) A change to the statutory regulations for burden of proof is not associated with the regulations in § 9.

(4) Insofar as our liability is excluded or limited this shall also apply to the personal liability of our employees, workers, representatives and vicarious agents.

(5) Possible claims for damages shall become statute-barred according to the statutory provisions, by no later however than after expiry of one year from knowledge or the grossly negligent lack of knowledge of the Orderer of the reason for the claim. This restriction shall not apply to the claims described in § 8 (7).

### § 10 Reservation of ownership

(1) We reserve the right to the ownership to the delivered object until the receipt of all payments from the buyer relationship with the Orderer.

If a current account relationship exists within the framework of the business relationship we reserve the right to the ownership to the delivered object until the receipt of all payments from recognised balances. The ownership shall not pass to the Orderer with the hand-over of a cheque before the final credit of the cheque amount, with the hand-over of a bill of exchange not before its redemption. In case of a conduct of the Orderer which is in breach of the contract, in particular in case of default of payment after setting reasonable deadline, we are entitled to take the delivered object back. This shall not apply insofar as the Orderer has already applied for insolvency proceedings or such were opened, owing to which an immediate taking back of the delivered objects is not permitted. The cancellation of the contract does not exclude claims for damages against the Orderer. After the delivered object has been taken back we are authorized to sell it, the sales proceeds are to be offset against the liabilities of the Orderer – minus reasonable sales costs. However the sales regulations of the Bankruptcy Code (InsO) shall apply after the opening of insolvency proceedings.

(2) The Orderer undertakes to treat the object of delivery with due care and attention as long as the reservation of title exists; it is in particular obliged to sufficiently insure this at the value as new at its own costs against fire, water and theft damages. Insofar as service and inspection work is necessary the Orderer must carry this out in time at its own costs.

(3) In case of attachments or other interventions of third parties the Orderer has to point out the reservation of title and inform us immediately.

Insofar as the third party is not in the position to reimburse us the in court and out-of-court costs of an action according to § 771 ZPO [Code of Civil Procedure] the Orderer shall be liable for the incurred loss.

(4) The Orderer is entitled to resell the object of delivery in the ordinary course of business, however it shall hereby now already assign us claims in the amount of the final invoice amount (including value added tax) of our claims, to which it is entitled from the resale against its buyers or third parties irrespective of whether the delivered object has been resold without or after processing. The Orderer shall also remain authorized to collect this claim after the assignment.

Our authorization to collect the claim ourselves, remains unaffected hereby. We will however not collect the claim as long as the Orderer satisfies its payment obligations from the collected proceeds, is not in default of payment and in particular no application has been filed for the opening of insolvency proceedings or there is a suspension of payment. If this is the case we can request that the Orderer announces the assigned claims and their debtors, provides all details which are necessary for the collection, hands over the associated documents and informs the debtors (third parties) of the assignment. A collection by us is however not possible insofar as this is opposed by the InsO.

Insofar as a current account relationship exists between the Orderer and its buyers according to § 355 HGB [German Commercial Code] the claim assigned to us by the Orderer in advance shall also refer to the recognised balance as well as in the event of the insolvency of the buyer to the then existing balance surplus. However, the sales regulations of the InsO shall apply after the opening of insolvency proceedings.

(5) The processing or conversion or connection of the delivered object by the Orderer is always carried out for us. If the delivered object is processed, converted or connected with other objects which do not belong to us, we shall acquire the co-ownership (*Miteigentum*) to the new object in the ratio of the value of delivered object to the other processed, converted or connected objects at the time of the processing, conversion or connection. The same shall incidentally apply to the object produced hereby as to the objects of delivery under reservation of title.

(6) If the object of delivery is inseparably mixed with other objects which do not belong to us then we shall acquire the co-ownership to the new object in the ratio of the value of the delivered object to the other mixed objects at the time of the mixing. If the mixing is carried out to the extent that the object of the Orderer is to be seen as the main object then it shall be deemed as agreed that the Orderer assigns us pro rata co-ownership. The Orderer shall store the thus produced sole ownership or co-ownership for us.

(7) The Orderer also assigns us for securing our claims against it those claims which are accrued against a third party by the connection of the delivered object with a property.

(8) We undertake to insofar release the collateral items to which we are entitled at the request of the Orderer to the extent that the value of our collateral items exceed the claims, which are to be secured, by more than 20 %; we are responsible for the selection of the collateral items which are to be released.

### § 11 Provisions - tools / production equipment

(1) Insofar as we deliver objects according to drawings, samples, models, forms, (production) equipment or other objects, documents or details (hereinafter collectively: "sample materials"), which were handed over to us by the Orderer, the Orderer shall be liable for the possible infringement of property rights of third parties, which are due to this. The Orderer is, in such a case, obliged to indemnify us from such claims of third parties immediately.

(2) Sample materials provided by the Orderer for the execution of the order are to be delivered by it free the plant stated by us with the agreed – in the absence of the agreement of reasonable – additional quantity for scrap free of charge in time in an impeccable and agreed condition.

(3) Insofar as sample materials are produced or procured by us at the request of the Orderer, the Orderer has to remunerate us the costs incurred for this. With the payment of the purchase price the ownership to the sample materials shall pass to the customer. The hand-over is replaced by the storage by us. The sample materials shall be exclusively used for deliveries to the Orderer for the duration of the business relationship between the Orderer and us. If more than two years have passed since the last order or delivery we are not obliged to the further storage of the sample materials. If the sample materials are no longer required by us then the Orderer has to pick these up at its own costs immediately after the request. Sample materials acquired or produced by us at our own costs are our sole property.

### § 12 Place of jurisdiction – place of performance

(1) The place of jurisdiction is Bochum. We are however also entitled to file an action against the Orderer at the court of its registered seat.

(2) Insofar as not otherwise derived from the order confirmation, the place of performance for both parties is DE-37574 Einbeck.

### § 13 Applicable law, escape clause

(1) The legal relations between the parties are exclusively oriented to German law under the exclusion of the UN Convention on the International Sale of Goods (UNCITRAL/CISG)

(2) Should individual provisions of the contract or these Terms of Delivery be or become invalid this shall have no effect on the validity of the other provisions.

Status: November 2013 – All previous conditions are no longer valid