

# General Terms of Purchase of Lutze Fördertechnik GmbH & Co. KG

## § 1 GENERAL INFORMATION

(1) These General Terms of Purchase (hereinafter referred to as "Terms of Purchase") shall apply exclusively to our commissions and purchase orders, including all future commissions and purchase orders (hereinafter referred to as "orders"). They represent an essential part of the order. Our contractual partner (hereinafter referred to as the "Supplier") acknowledges the Terms of Purchase by accepting the order.

(2) The involvement of any contradictory general terms of the Supplier is hereby expressly excluded. Such terms shall not be considered accepted, even in the event of execution of delivery.

(3) Our Terms of Purchase shall only apply in respect of commercial undertakings (§ 14 (1) BGB [German Civil Code]) and legal entities under public law or special assets under public law within the meaning of § 310 (1) BGB.

## § 2 ORDER

(1) If our orders are placed by employees without corresponding authority, they shall require our written confirmation in order to be legally effective.

(2) The Supplier shall highlight any deviations from our order or query, or specifications, a quality directive or a tender in its offer or confirmation, specifying details of the individual deviations. Such deviations shall only be considered agreed if we have provided express confirmation.

(3) Oral side agreements, subsequent contractual changes and promises or commitments of any kind agreed with employees without corresponding authority shall require our written confirmation in order to be effective.

(4) All documents, samples, models and electronic media and films, for example as required for printing, (hereinafter referred to as "documents") that we give to the Supplier to facilitate processing of the order shall remain under our ownership and must be returned upon delivery/acceptance of the good or service at the latest. The Supplier shall not allow third parties to view the documents without our express prior consent. This shall also apply to documents that the Supplier produces or has produced in our name and/or within the scope of completing the order.

## § 3 DELIVERY, ASSUMPTION OF RISK

(1) The Supplier shall deliver and/or complete the good or service – including the parts procured from sub-suppliers – "free domicile" by the agreed date or within the agreed period. In this respect, the point of receipt of the good or service by us or by our nominated recipient shall be decisive. If a delivery or completion period has been agreed, this shall begin on the date of the written order. The agreed periods and deadlines represent an essential part of the contract.

(2) At the first sign that the Supplier may be unable to fully or partially comply with an agreed deadline or period, it shall inform us immediately, citing the reasons and expected duration of the delay, regardless of the underlying cause. Should the Supplier fail to provide timely notification as per the previous sentence, it shall not be able to refer to the cause of the delay in its relations with us.

(3) If performance is not rendered on time, we may grant an appropriate grace period, taking into account our operational needs. Once this period has expired, we shall be entitled to – at our choice – fully or partially cancel the contract, procure a replacement from a third party, claim damages instead of performance, or insist on subsequent delivery. We can only claim damages in the event of liability on the part of the Supplier. Should we insist on subsequent delivery, this shall not affect our right to claim for damage caused by the delay, or assert any of our other rights. Acceptance of partial deliveries shall not prevent assertion of the mentioned rights for the rest of the delivery. In the event of premature delivery, we reserve the right to return goods at the seller's cost. If they are not returned, we shall store the goods at the cost and risk of the seller until the agreed delivery date. Premature delivery of goods shall not affect the payment term, which shall be based on the agreed delivery date.

(4) In the case of general and call orders, our rights under Item 3 above shall apply to each partial delivery.

(5) The ordered goods shall be delivered free of charge, directly to the specified shipping address. If deviating agreements have been made, the cheapest shipping method shall be chosen. Each consignment must be accompanied by a delivery note containing the order number, order date and gross and net weight of the consignment. A dispatch notification, including the order number and order date, must be sent to our specified factory address on the day of delivery, separate from the goods. Goods must be delivered to our receiving department within the normal opening hours of the relevant warehouse at the delivery address. The Supplier undertakes to find out the opening hours of the unloading point before making delivery.

(6) For purchase contracts, the risk of an accidental loss or an accidental deterioration of the goods shall only pass to us upon arrival at our specified receiving address. In the case of contracts for work, risk shall not be transferred before acceptance.

(7) In the case of delivery/shipping of goods not destined for Germany, the Supplier shall provide us with the export certificate required for taxation purposes.

## § 4 QUALITY CONTROL, DOCUMENTATION

(1) The Supplier undertakes to ensure that the delivery made to us is of perfect quality, and to check it once more directly before dispatch.

(2) If the test results refer to deliveries made to us, they shall be added to the documentation sent to us as proof of quality. We shall be fully entitled to view the Supplier's records/documents concerning performance rendered to us.

(3) We reserve the right to check the condition of the material and manufacturing processes used by visiting the Supplier's or the Supplier's upstream suppliers' factory during production. The Supplier shall communicate its readiness for a final check 14 days in advance at the latest. The Supplier shall bear the costs of the production check and final check, with the exception of the costs for the staff that we send.

(4) Such checks shall not release the Supplier from its fulfilment and warranty obligations.

## § 5 ACQUISITION OF OWNERSHIP

(1) The ordered good or service shall become our property immediately upon handover.

(2) We may use and/or resell the goods without restriction in the ordinary course of business.

## § 6 PRICES, PAYMENT

(1) All prices are deemed to include packaging and insurance. If the Supplier reduces the prices for relevant deliveries and/or improves conditions in the time between order placement and delivery, the prices and conditions valid on the day of delivery shall apply. Otherwise, the agreed prices shall be considered fixed prices.

(2) Two copies of invoices shall be sent to us – separate from the goods – on the day of delivery, citing the order number and order date. Each order must be invoiced separately. In the case of partial deliveries, the remaining quantity must be specified.

(3) Following delivery and receipt of invoice, payment shall be made within 14 calendar days with a 3% cash discount, or within 90 calendar days net, using the payment method of our choice. We reserve the right to issue acceptance in the case of net payment or cheques/bills of exchange (refinancing). The payment term shall begin as soon as we have received error-free, complete invoices in due form following receipt of the good or service.

(4) We are entitled to offset claims of the Supplier with all claims held by us or a company affiliated with us, or assert rights of retention. Our payments shall not signify acknowledgement of conditions and prices, or waiver of assertion of warranty and/or other claims.

## § 7 RIGHTS BASED ON DEFECTS OF QUALITY

(1) The Supplier guarantees that the goods and services correspond to the documents (drawings, specifications, descriptions, etc.) upon which the order is based or which are attached to the order, and that the manufacture, design and workmanship comply with the state of the art, the statutory and official provisions of the Federal Republic of Germany, the European Community and the country of destination that apply to sale and use, and the technical regulations (in particular DIN standards, DVGW and UW regulations, AVB-Wasser [German ordinance on supply of water]).

(2) If the good or service is faulty, we shall, taking into account the applicable statutory provisions, have the right to demand – at our choice – subsequent improvement or delivery of a defect-free good or service, reduction or cancellation of the contract, or compensation for damages; if applicable,

the Supplier shall have to compensate us for all costs that we occurred in concluding, implementing and rescinding the contract, particularly including storage costs and the costs of return transport and disassembly of the faulty goods. The Supplier shall also be liable for all consequential damage that we suffer due to a faulty good or service, as well as material and wage costs that we wasted before discovering a hidden defect or that we must pay to third parties. Should the Supplier enter into default on remedying the defect as part of supplementary performance, or if the Supplier is not permitted to render supplementary performance as normal due to unreliability, we may – in addition to asserting any further rights – remedy the defect ourselves or have it remedied by a third party, and demand compensation for the required expenses insofar as the Supplier is responsible for the breach of obligation.

(3) We are entitled to report obvious defects in the delivered good or service within two weeks of delivery. We shall report hidden defects that become clear during commissioning, use or processing of the good or service to the Supplier within two weeks of discovery. The same shall apply if a third party reports defects in the good or service.

(4) The warranty period shall be at least 36 months from delivery/acceptance of the good or service, unless the law provides for a longer warranty period. In the event that defects are remedied by means of subsequent improvement, the period for defects identical to the improved defect shall begin again upon remedying of the defect; in the event that defects are remedied by means of subsequent delivery, the period for defects in the delivered good or service shall begin again upon delivery. The regulation of the previous sentence shall apply accordingly for any further supplementary performance.

## § 8 DEFECTS OF TITLE, PROPERTY RIGHTS

(1) The Supplier guarantees that all goods and services are free of rights of third parties and that in using them we, or our buyers, will, not breach any commercial property rights of third parties. Insofar as the Supplier is informed of the countries of destination for its good or service, this shall also apply to property rights in these countries. The Supplier shall be liable for all damage and disadvantages that we suffer due to use, installation or sale of its good or service breaching third-party rights.

(2) All goods and services subject to labelling obligations must be duly labelled. Labelling must also be provided in all shipped copies.

(3) The Supplier shall indemnify us for all claims, damages and other possible disadvantages asserted by third parties due to a breach of the specified rights in conjunction with the good or service or its use. In particular, the Supplier shall provide us or our buyers with assistance in the event of any legal dispute raised against us or our buyers due to such a breach, and enter into such a legal dispute at its own cost upon our request.

(4) Otherwise, the regulations specified under § 7 No. 2 shall apply in the event of defects of quality.

## § 9 TECHNICAL DOCUMENTS, TOOLS, MODELS AND OTHER AIDS

(1) Moulds, samples, models, tools and other production materials or documents that we provide the Supplier with or that the Supplier produces based on our information shall remain under our ownership. The Supplier shall be responsible for checking the technical documents and aids that we supply for usability. The Supplier is not permitted to use any production materials, documents and other aids (hereinafter referred to as "aids") for other purposes, or copy or make them accessible to third parties, without our consent. This shall also apply to aids that the Supplier produces based on our information.

(2) All aids made accessible to the Supplier or produced by the Supplier based on our information shall be returned to us, along with all copies and/or duplicates, immediately and without request as soon as they are no longer required for provision of the good or service.

(3) The Supplier shall treat the order and the associated aids and information as confidential business secrets. It shall be liable for all damage that we suffer as a result of breach of this obligation and our ownership and commercial property rights. The Supplier shall also be liable for damage, deterioration, destruction and loss of the aids.

## § 10 ASSIGNMENT OF CLAIMS

The Supplier may only assign claims against us to a third party with our express prior consent.

## § 11 RESERVATION OF THE RIGHT TO CANCEL

(1) In the event of force majeure, such as war, riots, fire, etc., or other non-temporary barriers to acceptance, e.g. extraordinary interferences to operation including strikes, which we could not foresee, for which we are not responsible, and which cannot be overcome at reasonable expense, we shall be entitled to cancel the contract. The same shall apply if the Supplier's creditworthiness and/or financial solvency deteriorate considerably after conclusion of contract and/or if it is either unwilling or unable to render performance when due.

(2) The Supplier shall not have compensatory and/or other rights against us in the event that we exercise our right to cancel as outlined in the previous item.

## § 12 PRODUCT LIABILITY

If a claim is asserted against us by one of our buyers or a third party due to a product defect, on whatever legal basis, the Supplier undertakes to indemnify us to the extent that the cause of the defect is attributable to it, in particular if it is responsible. In this event, the Supplier shall assume all costs and expenses, including the costs of any legal action taken against us.

## § 13 SERVICE ORDERS

In the case of assembly, repair and other work, the agent shall also

(1) observe the provisions of its professional association and the accident prevention regulations when carrying out all work. It shall be solely responsible and liable for all accidental damage caused by it or its staff. It shall indemnify us for all claims for damages asserted against us in conjunction with the service provided under the contract;

(2) ensure careful and secure storage of all property brought along (e.g. materials, equipment and tools), including that of its staff. We shall not be liable for loss;

(3) ensure that its staff is duly equipped in line with the regulations and directives (protective clothing, etc.), and,

(4) if required for full disbursement of the remuneration, present a valid certificate of exemption from the tax authority. Notwithstanding statutory rights of recourse, the agent shall compensate us for all disadvantages if it or its vicarious agents do not pay employees the prescribed minimum wages.

## § 14 PLACE OF PERFORMANCE, PLACE OF JURISDICTION, APPLICABLE LAW

(1) The place of performance and place of jurisdiction is Einbeck. We are also entitled to file an action against the Supplier at its registered seat.

(2) The law of the Federal Republic of Germany shall apply exclusively. Application of the uniform laws on international purchase of moveable goods and conclusion of international purchase contracts for moveable goods is expressly excluded. In addition, the latest version of Incoterms shall apply unless otherwise agreed.

(3) Should individual provisions of the contract or these Terms of Purchase be or become fully or partially invalid or unenforceable, or be declared invalid by a judicial or official decision, this shall not affect the validity and enforceability of the other provisions of the contract or these Terms.