



## General Terms and Conditions of Sale

of

**Lübke & Vogt GmbH & Co. KG**, Hüstener Straße 43-45, 59846 Sundern

### Preliminary remark:

The general terms and conditions of sale of Lübke & Vogt GmbH & Co. KG are explained below:

### **§ 1**

#### **General, Scope**

- (1) Our Terms and Conditions of Sale shall apply exclusively; contradicting conditions or conditions of Customer that deviate from our Terms and Conditions of Sale will not be accepted by us unless we have expressly agreed to their applicability in writing. Our Terms and Conditions of Sale shall also apply when we perform deliveries without objection while being aware of contradicting conditions or Terms and Conditions of Sale of Customer that differ from ours.
- (2) Our written offer shall be decisive for the content and scope of deliveries and services and, if we issue an order confirmation, our written order confirmation.
- (3) Our Terms and Conditions of Sale shall only apply with respect to business people in the legal sense and with respect to legal entities under special public law.
- (4) Our Terms and Conditions of Sale shall also apply to all future business with Customer. The following Terms and Conditions shall supersede Customer's Terms and Conditions that differ in content. Customer's waiver of the applicability of any of their own Terms and Conditions shall also not be invalidated by to our silence or our performance. A deviation from the following Terms and Conditions in an individual case requires our written confirmation.
- (5) All technical data in our catalogues and other sales materials, lists and drawings as well as weight, measurement and mixing information has been carefully prepared, however, in case of any errors we reserve the right to later corrections. The information regarding raw materials refers to the basic characteristics of the raw elastomers. The resulting characteristics of the materials and mixtures used for an order may differ from the basic characteristics stated in the sales documents.
- (6) Information regarding the characteristics of our products are those chemical or physical descriptions determined in the laboratory (e.g. hardness, elasticity, chemical resistance, etc.) without any guarantees as to the specific applicability. It shall be Customer's responsibility to check whether our product and/or the materials used for it are suitable for Customer's specified purpose. The recipes and details of the



elastomer compound we use for manufacturing the products shall remain our sole property and at our sole disposal.

- (7) Forms/Tools shall be created at our form/tool construction facility and shall be billed to Customer, in part proportionally, or at full cost. Unless agreed upon otherwise separately and individually, Customer shall not acquire an entitlement or right to the form/tool itself through a partial or full financing; rather, we reserve unlimited ownership and intellectual property rights of commercial exploitation. Forms/tools provided to us by customers will be treated with professional care; any damage we may cause to them will be fixed free of charge. If, however, for any reason, ownership is transferred to Customer, it shall be agreed upon already now that we are entitled to their possession and that the forms/tools may only be demanded turned over by Customer if we are not able to deliver, do not provide the requested quality, increase the price far above market level, are in arrears with the delivery multiple times at a considerable scope, or if bankruptcy proceedings have been started that cannot be permanently averted, and if Customer has fulfilled its contractual obligations, in particular with respect to all payment obligations. We shall have the right of retention to the extent allowed under the law. We shall assure that the forms/tools used on our technically sophisticated production systems for the production of our products comply with the respective technical design and quality requirements for the products to be manufactured. Forms/tools further developed by us to improve quality or efficiency of the products or manufacturing processes or to optimise them shall also be forms/tools within the meaning of these General Terms and Conditions of Sale or of individual agreements with Customer. Customer shall acquire rights to these further developed forms/tools if we are – upon our request – compensated for the expenses for the further development.

## § 2

### Quote, Quotation Documents

- (1) If the order is to be qualified as a quote in accordance with § 145 German Federal Civil Code (BGB – Bürgerliches Gesetzbuch), we shall have the right to accept it within four weeks.
- (2) We reserve property rights and intellectual property rights in depictions, drawings, calculations and other documents; they must not be made available to third parties. This shall, in particular, apply to such written documents that are labelled "confidential"; prior to passing them on to any third party, Customer shall require our express written approval. Quotes shall only be valid if in text form. The prices stated shall apply subject to the condition that the order data on which the quote tendered was based remain unchanged.
- (3) We shall prepare first samples and first sample test reports only upon express written agreement in text form, billed at cost.
- (4) For products ordered by Customer based on drawings or samples, Customer shall be obliged to check for possible property rights of third parties and to not infringe upon them. If, due to a breach of this obligation, a third party is prohibiting production by claiming a property right belonging to said third party, or if the product cannot be used due to a violation of the property right, we shall be entitled – without having to verify the legal status and to the exclusion of any compensation to Customer, no



matter on what legal grounds – to stop production and delivery until the facts of the matter have been clarified and to demand compensation from Customer, in the amount of at least 15% of the invoice total for the product ordered. Both parties to the contract shall have the right to prove higher or lower damages.

Customer shall already now hold us harmless of any and all claims for damages or other compensation of third parties, especially from the holders of rights, upon first request. Included in the scope of the damages shall also be such costs as we may incur due to having to defend against claims of third parties.

- (5) Our information regarding the subject matter of the delivery or service (e.g. weights, dimensions, functional values, resilience, tolerances, technical data and process, as well as our depictions of the same (e.g. drawings and illustrations) shall only count as approximations, unless usability for the contractually intended purpose requires an exact adherence. They shall not be guaranteed characteristics but rather descriptions or features of the delivery or service. Deviations that are standard in the trade and deviations that occur due to statutory requirements or represent technical, in particular production technology improvements, as well as the replacement of components or forms/tools with equivalent parts or equivalent production techniques shall be allowed unless they negatively impact the usability for the contractually intended purpose.

### § 3

#### **Prices, Terms and Conditions of Payment**

- (1) Unless the order confirmation specified something else, our prices shall be net prices in euro, ex-works, incl. the packaging typically used for our products, plus the value added tax applicable at the date of delivery. Requested special packaging or small packages shall be billed to Customer at cost. The prices shall each be applicable only to the contractually agreed upon quantity and design. If Customer requests changes that require higher processing than what the contract or typical production process is based on, we shall reserve the right to a reasonable adjustment of the prices.

We reserve the right to increase our prices if – after the contract has been signed – in particular if due to bargaining agreements, increases in the prices of materials, especially increases in the prices of raw materials or increases in costs of energy occur. Upon Customer's request, which shall require text form, we shall provide documented proof of this.

- (2) The statutory value-added tax is not included in our prices; it will be specified separately on the invoice in the statutory amount applicable on the day the invoice is issued.
- (3) The deduction of discounts that deviate from the regulation defined below in Article 3.4 shall require a special listing – in text form – in the order, order confirmation or invoice.
- (4) Unless specified differently in the order confirmation, the purchase price shall be due cash (without deduction) free of transaction charges and shall be payable to our payment office, and be payable as follows:

- In case of cash payment within 14 days, customer shall be entitled to a 2% discount.



- In case of payment within 30 days from the invoice date, the invoice amount shall be due net (without any deduction).
- Invoices with a net invoice amount of up to EUR 50.00 shall be due immediately without deduction.

If Customer is in default, we shall be entitled to claim interest on arrears in the amount of 9% above the statutory base interest rate p.a. If we are able to provide proof of higher damages due to this default, we shall be entitled to claim those. Customer, however, shall have the right to prove to us that we did not incur damages or did incur significantly lower damages as a result of the default.

- (5) Customer shall be entitled to offsetting rights only if Customer's counterclaims are uncontested or have been judicially determined. The same shall apply to the right of retention, unless they are based on the same contractual relationship. Credit memos are expressly granted for the purpose of offsetting. There shall be no claim to the payment outright.
- (6) For orders – except for samples – a minimum order value of EUR 500.00 shall apply.
- (7) In case of doubt regarding Customer's ability to pay, we reserve the right to demand advance payments or that securities be provided. If we obtain knowledge that an attachment could not be enforced at the customer's or if we receive any indication of a financial collapse of Customer, we shall be entitled to withdraw from the contract subject to a charge for the expenses incurred.

#### **§ 4**

##### **Technical delivery quality**

- (1) The manufacturing of small moulded rubber parts constitutes a mass production with a potential for a mixing of parts or production lots.  
Additionally, the circumstances of the external transport as well as the pouring and handling processes may lead to unintended bonding, blending, tip formations, or contaminations.  
Despite the process-oriented management of the production and continuous improvement of the manufacturing processes, there is a residual probability of products within a manufacturing lot that not complying with the specifications remains, such as foreign bodies, cominglings, damages, deformations.  
For this reason, after consultation or order placement, the manufacturing process can be completed via a manual or automated sorting which reduces the number of potential parts with deviations and/or foreign bodies.
- (2) The zero-errors strategy is a stated and joint objective. It does not constitute a promise that ppm = 0 can be achieved or will be guaranteed.  
Agreements with respect to the geometrical design and quality of moulded rubber parts should be developed in close cooperation with Customer already during the product's concept phase.  
The cooperation shall encompass the exchange of all necessary information regarding the function and the installation of the moulded rubber parts.  
In the event of identified errors, a close and timely cooperation is necessary in order to minimise the cost of preventative and remedial measures.



Even camera sorting systems for bulk goods are – at the current state of technology – neither capable of detecting and sorting all specified characteristics of a moulded rubber part, nor of detecting deviations/errors with 100% accuracy.

The characteristics to be taken into consideration in a 100% inspection must be coordinated.

- (3) For moulded rubber parts, the state of technology for achievable ppm figure with respect to a single characteristic is:
- unsorted: 200 ppm  
500 ppm (with respect to foreign bodies)
  - manually sorted: 100 ppm
  - automatically sorted: 10 ppm
- (4) Since we cannot regulatngly intervene in our manufacturing process and also do not have a wandering process, we neither perform statistical process control (SPC) nor do we use control-card-technology.

## **§ 5**

### **Delivery Schedule and Terms and Conditions of Delivery**

- (1) The start of the delivery schedule stated by us or agreed upon with us presupposes that all technical questions have been addressed, all documents to be supplied by Customer have been delivered, all necessary permits and releases have been obtained by the customer, especially with respect to drawings, as well as the adherence to the agreed upon Terms and Conditions of Payment and the fulfilment of the other acts of cooperation by the Customer.
- (2) The adherence to our obligation to deliver presupposes the timely and proper fulfilment of the obligations of Customer. Another prerequisite is the sufficient availability and proper delivery by our suppliers of the raw materials needed for the manufacturing of the product to be delivered. The right to objection by claiming a non-fulfilled contract shall remain reserved.

If the non-adherence to delivery schedules is due to force majeure, e. g. strike, lock-out, fire, natural disaster, etc., the deadlines shall be reasonably extended. Such a reasonable extension of the delivery deadlines shall also apply if we do not receive our deliveries on time, e.g. raw materials or other materials necessary for the production process, or if select substances of these become prohibited by law.

- (3) If Customer is defaulting on acceptance or if Customer culpably violates other duties of cooperation, we shall be entitled to demand compensation of any resulting damages including any possible extra expenses. We reserve the right assert further claims. If the delivery or shipment is postponed upon Customer's request, we shall be entitled to bill Customer a storage fee in the amount of 0.5% of the invoice total for each month started, up to a maximum of 5% of the invoice total, 10 days after notifying customer that the goods are ready for shipment. Both parties to the contract shall have the right to prove higher or lower expenses.



- (4) If the prerequisites in Article 5.3 exist, the risk of accidental loss or accidental deterioration of the goods shall pass to Customer at the moment Customer defaults on acceptance or payment.
- (5) In accordance with the statutory regulations, we shall be liable to the extent that the underlying purchasing contract is a fixed date transaction within the meaning of § 286 Par. 2 No. 4 BGB or of § 376 German Commercial Code (HGB – Handelsgesetzbuch). In accordance with the statutory regulations, we shall also be liable if Customer, due to a delayed delivery due to our fault, is entitled to claim that Customer's interest in the continued fulfilment of the contract has ended.
- (6) In accordance with the statutory regulations, we shall be also liable if the delayed delivery is due to a wilful or grossly negligent breach of contract for which we are responsible; culpability of our representatives or vicarious agents shall be attributed to us. If the default in delivery is not due to a deliberate breach of contract for which we are responsible, our liability shall be limited to the foreseeable, typically occurring damages.
- (7) We shall also be liable in accordance with statutory provisions, insofar as the delay in delivery that was our fault is based on a culpable breach of a material contractual obligation; in this case, however, the liability for damages shall be limited to the foreseeable, typically occurring damages.
- (8) We shall be entitled to make partial deliveries within a reasonable scope. Deviations in dimensions, weight, technical design, manufacturing and quantity of the goods to be delivered shall be allowed within customary, product-specific tolerances. Modifications that serve technical advancement and improvement of our products shall also be permitted.

## **§ 6**

### **Transfer of Risk, Packaging Costs**

- (1) Unless the order confirmation specifies otherwise, the delivery shall be agreed upon ex works.
- (2) The return of packaging materials shall be subject to special agreements.
- (3) If requested by Customer, we will obtain transport insurance for the delivery; the costs caused by it shall be borne by Customer.
- (4) Customer shall be required to name one or more persons within a reasonable period before delivery of the goods who are authorised by Customer to accept the goods and the accompanying documents, and to sign the delivery papers and accompanying documents on behalf of Customer. This shall apply in particular if the goods are delivered to a location other than Customer's place of business. If such information is not provided, those persons who actually accepted the goods shall be deemed authorised to accept the goods and to sign the transfer papers (delivery note and other accompanying papers).
- (5) If none of the people named by Customer are present at the agreed upon time at the specified location or if this person or other persons are not willing to accept the goods, Customer shall be in default of



acceptance, with the consequence that the risk transfers to Customer. Furthermore, Customer shall bear the extra costs arising from a renewed delivery.

(6) Customer shall not be entitled to reject deliveries due to minor defects.

## § 7

### **Liability for Defects**

(1) Customer's defects rights presuppose that Customer properly fulfilled its inspection and complaint obligations owed in accordance with § 377 HGB.

(2) If the purchased good does have a defect, Customer shall – at its discretion – be entitled to remedy of this in form of a correction of the defect or via delivery of a new defect-free item. We agree to bear the expenditures necessary for the purpose of inspection and secondary fulfilment, in particular transport, travel, work, and materials costs as well as the expenditures for the removal of the defective item and the installation or attachment of the re-worked or delivered defect-free item, if a defect is actually present. If the expenditures increase because the delivery subject was subsequently moved to a location other than Customer's subsidiary, Customer shall bear the additional costs incurred thereby, unless the move corresponds to its intended use. This shall apply accordingly to Customer's rights of recourse in accordance with § 445a BGB, provided the last contract in the supply chain is not a sale of consumer goods.

The costs of installation and de-installation shall be borne by us only if the item was – in accordance with its type and its intended purpose – installed in another item or attached to another item and if we are liable for the defect that is causative for the assertion of the claims for subsequent performance.

Any existing warranty claims against us shall expire in case any cost-incurring or product-changing remedial measures were arranged without our approval in text form.

(3) If the secondary fulfilment fails, Customer – at its discretion – shall have the right to demand withdrawal or reduction.

(4) We shall be liable in accordance with the statutory provisions insofar as Customer asserts claims for damages that are based on intent or gross negligence, including intent or gross negligence of our representatives or vicarious agents. Unless we are accused of being in deliberate breach of contract, our liability for damages shall be limited to the foreseeable, typically occurring damage.

(5) In accordance with the statutory provisions, we shall be liable if we culpably violated a material contractual obligation; however, even in this case, the liability for damages shall be limited to the foreseeable, typically occurring damages.

(6) Liability for culpable injury to life, limb or health shall remain unaffected; this shall also apply to mandatory liability in accordance with the German Product Liability Act (Produkthaftungsgesetz).

(7) To the extent not otherwise specified above, any liability shall be excluded.



- (8) The period of limitation for claims for defects shall be 12 months from the date of the transfer of risk. The same shall apply to Customer's claims for compensation for expenses in accordance with § 445a BGB (Seller's recourse), provided the last contract in the supply chain is not a sale of consumer goods.

## **§ 8**

### **Joint and Several Liability**

- (1) Liability for damages other than that provided in Article 7. shall be excluded – regardless of the legal nature of the claim asserted. This shall in particular apply to claims for damages arising from negligence when entering into the contract, damages because of other breaches of obligations, or damages because of tortious claims for compensation for material damages in accordance with § 823 BGB.
- (2) The limitation pursuant to Par. 8.1 shall also apply, if Customer demands compensation of useless expenses instead of performance / compensation for damages.
- (3) Insofar as liability for damages against us is excluded or limited, this shall also apply with respect to the personal liability for damages of our employees, workers, collaborators, representatives and vicarious agents.

## **§ 9**

### **Securing Retention of Title**

- (1) We shall retain the title to the purchased item until we have received all payments due us from the business relationship with Customer. To the extent that we agree with Customer on payment of the purchase price owed on the basis of the check/note payment procedure, the retention shall also extend to the redemption of the note from Customer, accepted by us, and shall not be eliminated by the crediting of the check we received. If Customer breaches the terms of the Contract, in particular by being in default of payment, we shall be entitled to garnish the purchased goods. The garnishment of the goods to be sold shall constitute a withdrawal from the Contract. Upon garnishment of the purchased goods, we shall be entitled to reutilise them; after the deduction of reasonable utilisation costs, the proceeds from the sale shall be offset against Customer's liabilities.
- (2) Customer agrees to handle the purchased goods with care; in particular, Customer shall be required to insure them at their original value at its own expense against fire, water and theft. Where maintenance and inspection work are required, Customer shall have it performed timely at its own expense.
- (3) In case of attachments or other encroachments by third parties, Customer shall notify us immediately in text form so that we can file a lawsuit in accordance with § 771 German Code of Civil Procedure (ZPO – Zivilprozessordnung). If the third party is not able to reimburse us for the judicial and extra-judicial costs of such a lawsuit in accordance with § 771 ZPO, Customer shall be liable for any losses we incur.
- (4) Customer shall be entitled to resell the purchased goods in the ordinary course of business; Customer shall, however, already now assign to us all accounts receivables in the amount of the final invoice amount (incl. VAT) of our account receivable that accrues to him against purchasers or third parties on



resale, and independently of whether the purchased goods were resold without it or after processing it. Customer shall remain authorised to collect this account receivable even after assignment. Our authorisation to collect the debt ourselves shall remain unaffected by this. However, we agree not to collect the accounts receivable as long as Customer complies with its payment obligations from the collected proceeds, does not default in payment and, in particular, no petition for the institution of insolvency or composition proceedings is filed or cessations of payment exist. But if this is the case, we shall be entitled to claim that Customer inform us about assigned receivables and the debtor of same, provide us with all information required for collection, hand over the pertinent documents and inform the debtor (third party) of the assignment. The claim already ceded to us in advance shall also apply to the acknowledged balance, as well as, in the case of an insolvency of Customer, to the then existing causal balance.

- (5) The processing or transformation of the goods sold shall always be done by Customer for us. If the purchased goods are processed together with other items not belonging to us, we shall consequently acquire co-ownership of the new object in proportion to the value of the purchased goods (invoice total, incl. VAT) to the other processed items at the time at which processing took place. Incidentally, for the object resulting from the processing, the same shall apply as for the goods sold under reservation.
- (6) If the purchased goods are combined with other objects not belonging to us such that they cannot be separated from one another, we then shall acquire joint ownership of the new object in proportion to the value of the purchased goods (invoice total, incl. VAT) to the other processed items at the time at which combining took place. If the combining occurs such that Customer's object is regarded as the principal item, then it is deemed agreed that Customer shall transfer co-ownership to us proportionally. Customer shall keep safe the thusly created sole ownership or co-ownership for us.
- (7) Customer shall assign to us, as security for our claims against Customer, all claims which arise against a third party from combining the purchased good with a piece of real property.
- (8) We undertake to release the securities due to us at Customer's request insofar as the realisable value of our securities exceeds the secured accounts receivable by more than 10%; the selection of the securities to be released shall be at our discretion.

## **§ 10**

### **Palce of Jurisdiction, Place of Performance**

- (1) If Customer has merchant status, the court, which is locally competent for the place of our business, shall have jurisdiction; we shall, however, also be entitled to bring action against Customer at its place of business.
- (2) The laws of the Federal Republic of Germany shall apply; the terms of the UN Convention on Contracts for the International Sale of Goods (CISG) and of intergovernmental agreements shall be excluded.
- (3) Unless our order confirmation specifies something else, the place of fulfilment shall be our place of business.



- (4) In the event that individual provisions of these General Terms and Conditions of Sale are in whole or in part violating mandatory law or are for other reasons invalid or ineffective, this shall not affect the validity of the remaining provisions.
- (5) The German version of these General Terms and Conditions of Sale shall be the authoritative version. In case of translation into other languages, it shall prevail over the other language version and is designed based on German case law.