



## General Terms and Conditions of Purchase

of

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

### Preliminary remark:

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

### **§ 1**

#### **General, Scope**

- (1) For all our current and future orders and contracts entered into, the following General Terms and Conditions of Purchase shall apply exclusively. By tendering a quote, confirming an order, accepting or executing an order, Supplier shall be subject to these General Terms and Conditions of Purchase, provided that we have made Supplier aware of these in connection with a bid invitation, an inquiry, an order, or at the beginning of an on-going business relationship. Supplier's General Terms and Conditions as well as conditions deviating from our order documents or from these General Terms and Conditions of Purchase shall only apply if and to the extent we have expressly acknowledged and accepted them in writing. This shall also apply if Supplier refers to Supplier's General Terms and Conditions in Supplier's offer or in the order confirmation. Any modification of the Terms and Conditions shall require our written confirmation to be effective. We herewith expressly reject contradicting Terms and Conditions. They also shall not be recognised even if we do not expressly object to them again after receipt. Supplier accepts the exclusive applicability of our General Terms and Conditions of Purchase upon acceptance, no later than upon execution of the order, even if Supplier refers to Supplier's own Terms and Conditions. Acceptance of the deliveries and services or paying for them shall not constitute approval of Supplier's Terms and Conditions. To the extent that declarations in accordance with these Terms and Conditions of Purchase must be made in writing, this requirement shall also be satisfied by text form in accordance with § 126b German Civil Code (BGB – Bürgerliches Gesetzbuch).
- (2) All other agreements made between us and Supplier regarding the execution of a contract must be in writing.
- (3) As agreed, our General Terms and Conditions of Purchase shall apply also to all future business transactions with Supplier.



## § 2

### **Quote, Quotation Documents**

- (1) Supplier's quotes shall be non-binding for us and free of charge.
- (2) Only written orders placed by us shall be legally binding. Verbal agreements shall be valid if they have been confirmed by us in writing.
- (4) Orders must be confirmed immediately by Supplier, via signature, in writing. We reserve the right to withdraw the order if we do not receive the confirmation within 14 days.
- (5) In its quote, Supplier must adhere to the inquiry or request for quote with respect to quantity, characteristics and design and, in case of a deviation, shall have to expressly point it out in writing. This shall, in particular, apply in case of deviations with respect to the quantity offered. Otherwise supplier will forfeit its claim for additional remuneration.
- (6) The product-specific processing is very time-consuming so that, between the offer and acceptance of the offer, three months may pass until the point in time of acceptance of the offer due to the specifics of the delivery objects. Due to these special circumstances, Supplier shall be bound six months by the quotation Supplier provided. If differences arise with respect to quantity, dimensions or weight of the delivered goods, the values determined by our incoming goods inspection shall prevail. We reserve the right to accept excess or shortfall deliveries.

## § 3

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

- (1) The price listed in the order shall be binding and is deemed to include any and all ancillary costs. Unless something different has been agreed upon in writing, the price shall include delivery "free domicile", meaning free to the incoming goods area of Lübke & Vogt GmbH & Co KG or an expressly agreed upon other place of use, and shall also include packaging, insurance, etc. If something different has been agreed upon, the freight and packaging costs shall be advanced by Supplier and shall be listed separately on the invoices. Changes due to any subsequently occurring increases in costs, taxes, etc. shall be excluded. If the price was not yet specified upon placing the order, we shall be informed of it no later than with the order confirmation. If we do not object within ten workdays, this price shall be considered to have been approved by us. If a price has been agreed upon ex works or ex warehouse, Client shall only assume the most favourable freight costs.
- (2) The statutory turnover tax is not included in the price. The turnover tax shall be listed separately on the supplier's invoices.



- (3) We can only process invoices if they – in accordance with the specifications stated in our order – state the order number and article number specified therein; Supplier shall be liable for any and all consequences arising from non-compliance with this requirement. The invoice shall be submitted separately in duplicate immediately after delivery was received, taking into consideration the statutory requirements with respect to the invoice's content. Monthly invoices shall also be submitted no later than on the 5th day of the month after the delivery.
- (4) Unless something else has been agreed upon in writing, we then shall pay the purchase price in case of receipt of invoice on the 1st to 15th of the month at the end of the month with 3% discount or on the 15th of the following month net, and in case of receipt of invoice on the 16th to 31st of the month on the 15th of the following month with 3% discount or at the end of the following month net.
- (5) To the extent allowed under the law, we shall have offsetting and retention rights.
- (7) Supplier shall be entitled to assign its claims to third parties or have its claims collected by third parties only with our written approval. A partial assignment by the supplier shall be excluded.

#### **§ 4**

#### **Delivery schedule, Execution**

- (1) Each and every order shall be confirmed immediately, to include the specified binding delivery schedule. The delivery schedule stated in the order shall be binding. The delivery schedule shall start with the date Supplier is in receipt of the order. Upon expiration of the delivery deadline, Supplier shall be in default without this requiring a reminder. The receipt of the goods at the unloading area and/or incoming goods area specified by us shall be authoritative with respect to the adherence to delivery dates or delivery deadlines.
- (2) Adherence to the agreed upon delivery deadline is an absolute must. In particular, the reservation of timely self-delivery shall also be excluded.
- (3) In case of a default on delivery, we shall be entitled to claim a surcharge in the amount of 1% of the value of the delivery per week started as lump sum damages due to delay; however, no more than 5%; we reserve the right to make further claims. Supplier shall have the right to prove to us that no or considerably lower damages were caused due to the delay. In case of Supplier's default, we shall – upon fruitless expiration of a reasonable grace period set by us – be entitled to have the delivery that was not yet performed – performed by a third party at Contractor's expense.
- (4) If Supplier is unable to adhere to a delivery deadline due to force majeure, Supplier shall notify us of this immediately upon gaining knowledge of the impediment. In this case, we shall be entitled to either extend the delivery deadline or, if our interest in the delivery is significantly lowered as a result thereof, to withdraw from the contract in whole or in part, and to claim damages, as may be applicable. Supplier shall not have the right to derive any claims from this. In particular, Supplier shall not be entitled to withdraw from the contract or apply price increases at its own discretion in cases of force majeure or similar.



- (5) If initial samples are requested by us, Supplier shall only be allowed to start series production upon written acceptance of the sample and release for series production.
- (6) We shall be entitled to demand subsequent changes in the quality of the delivery or service within the scope of Supplier's technical capabilities. Technical changes and their impact on prices, delivery schedule or other conditions shall be in writing.
- (7) If there are urgent business reasons our company encounters, e.g. due to force majeure, fire, flooding, discontinuation of a product, etc., we shall be entitled to withdraw from the contract with a payment of a reparation in the amount of 5% of the agreed upon price of the goods not yet delivered of the respective order, without incurring any additional costs.

## **§ 5**

### **Shipping, Transfer of Risk, Documents**

- (1) Unless something else has been agreed upon in writing, delivery shall be made free to the delivery address / delivery place of use specified in the order.
- (2) The risk shall not transfer to us until the goods have been received by us. Supplier shall be liable for any and all damages, demurrage charges, etc.
- (3) Supplier shall be required to include a bill of lading with each and every shipment, and to specify our order number and our article number exactly on all shipping papers and delivery notes; If Supplier fails to do so, Supplier shall be liable for any and all delays caused by this.
- (4) Partial deliveries shall only be allowed upon written agreement; otherwise we shall be entitled to refuse acceptance. In any case, partial deliveries shall not be considered separate transactions and shall be marked in writing.
- (5) Transport insurance shall be assumed by Supplier.

## **§ 6**

### **Quality, Liability for Defects, Product Liability**

- (1) Supplier shall guarantee that any and all services – to the extent applicable to the specific subject of delivery – comply with the relevant statutory provisions, rules and regulations of the authorities and trade associations, in particular with respect to selection of material, processing and functionality. If, in individual cases, deviations from the regulations become necessary, Supplier shall obtain our written approval for this. Supplier's liability for defects shall not be limited by this approval. If there are any concerns regarding the type of execution requested by us, Supplier shall communicate this immediately in writing.



- (2) We shall notify supplier of obvious defects of the delivery if such defects can be identified in the course of conducting normal business. In deviation from § 377 German Commercial Code (HGB), we shall not be required to perform an incoming goods inspection if a quality assurance agreement was concluded with Supplier. We will check for quantity, identity and obvious transport damages to the delivery. An incoming goods inspection performed by us shall not relieve Supplier of its responsibilities. In any and all cases in which an error rate had been agreed upon with Supplier and if it was exceeded, we shall be entitled to return the whole shipment at Supplier's expense and risk. If there is no separate agreement regarding the error rate, we shall be entitled to return a shipment if a shipment's error rate exceeds 0.05% of the respective shipment's quantity.
- (3) In case of defects, we shall have full recourse to statutory warranty claims. At our discretion, we shall be entitled to demand remedy from Supplier in form of correction of defect or replacement delivery. Supplier shall bear the expenses necessary for this, in particular transport, travel, work and material costs.
- (4) The right to claims for damages, especially of damages for non-performance shall expressly remain reserved; in particular, Supplier must reimburse us for any and all damages, including consequential damages, that arise from the existence of a defect. We shall be entitled, at Supplier's expense, to take care of the correction of the defect ourselves if there is imminent danger, or if a special urgency exists otherwise.
- (5) If a customer or another third-party asserts claims against us due to a product defect – no matter for which legal reason –, Supplier shall agree to hold us harmless of such claims upon first request, to the extent Supplier is responsible for the defect.
- (6) Supplier shall be liable for assuring that goods, samples and brands supplied by Supplier are free from third parties' rights of any and all kind, and that industrial rights of third parties, in particular patents and copyrights, are not violated. Furthermore, Supplier shall be liable for the supplied goods' compliance with all statutory regulations and regulatory requirements. In case of violation of civil rights or provisions of public law, Supplier shall hold us harmless of any and all claims for damages by third parties.
- (7) Upon request, Supplier shall provide proof of sufficient liability, product liability, and/or recall cost insurance.

## **§ 7**

### **Reservation of Title, Provisioning**

- (1) Upon their transfer to us, after our acceptance, we shall receive immediate and unencumbered full ownership of the goods delivered by Supplier. The same shall apply to the documents Supplier sent along. Through the transfer, Supplier declares that Supplier has full disposition rights and that no rights of third parties exist.



- (2) If we are providing parts for Supplier to use, we reserve title to them. Supplier shall perform processing and conversions for us. If the goods subject to reservation of title 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 our object relative to the other processed items at the time at which processing took place.
- (3) If the goods we are providing 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 goods subject to reservation of title relative to that of the other processed objects at the time at which combining took place. If the combining occurs such that Supplier's object is regarded as the principal item, then it is deemed agreed upon that Supplier shall transfer joint ownership to us proportionally; supplier shall keep safe the sole ownership or joint ownership for us.
- (4) We reserve title to tools; Supplier shall furthermore be required to use the tools exclusively for the manufacturing of the goods we ordered. Supplier shall be required to insure the tools belonging to us – at Supplier's expense – against fire, water and theft at their original value. Supplier shall be required to have any necessary maintenance and inspection work performed in a timely manner at its own expense. Supplier shall notify us immediately of any incidents; if Supplier culpably neglects to do so, claims for damages shall remain unaffected.

## **§ 8**

### **Data Security, Confidentiality, Data Protection and Plagiarism**

- (1) The protection of personal data, in particular employee, customer and supplier data and the security of business data and documents, is of particular importance to Lübke & Vogt. When collecting or processing personal data, the legal and contractual requirements must be observed. Each of our suppliers is obliged to safeguard personal, confidential and internal, non-public information and to protect both these and business documents from access as well as insight by third parties in an appropriate manner. Suppliers shall ensure that the risk of introduction/introduction of counterfeit parts in final products is absolutely minimized. Equal attention shall be paid to the task of detecting counterfeit parts in preliminary products.
- (2) Unless we expressly provide our written consent, Supplier shall agree to keep confidential, not make available to third parties and in particular not use for its own competitive purposes any and all information, documents, drawings, sketches, requirements specification, data, data records, etc. received in the context of the contractual relationship.
- (3) We reserve the intellectual property (copyright) in drawings, specifications, documents, models, etc. provided to Supplier. The creation of copies shall only be permitted insofar as this is required for the manufacturing of the goods we ordered. Supplier shall be required – upon our request, at any time – to surrender the documents received and to destroy any copies made. Supplier shall not have a right of retention.
- (3) Supplier has acknowledged that – in case of violations of the obligation to confidentiality – we shall be entitled to claim damages and that we reserve the right to measures under criminal law.



## §9

### **Place of Performance, Place of Jurisdiction, Choice of Law, Severability Clause**

- (1) Unless our order or order confirmation specifies otherwise, the place of performance for all rights and obligations arising from this legal relationship, which also includes our payments, shall be our company's registered place of business.
- (2) Our registered place of business shall be the place of jurisdiction for any and all disputes arising. Other permissible general or special places of jurisdiction shall also be available to us.
- (3) The law of the Federal Republic of Germany shall apply exclusively. The applicability of the Hague Convention dated 01 July 1964 regarding uniform laws for international purchasing and the United Nations Convention on Contracts for the International Sale of Goods (CISG) dated 11 April 1980 shall be excluded.
- (4) In case of disputes, the German verbiage of these General Terms and Conditions of Purchase shall be authoritative.
- (5) These contractual provisions also shall remain valid if individual clauses should prove to be invalid. The invalid clause of the general contractual provisions shall then be amended or reinterpreted such that the economic purpose intended by the invalid clause is achieved as far as possible. The same approach shall be taken if, in the conduct of the contractual relationship, a gap requiring supplementation results. If the invalidity is based upon a definition of performance or time, the statutorily permissible measure shall take its place. If a provision of these Terms and Conditions of Purchase or of the Contract are ineffective due to compulsory foreign law, Supplier shall – upon request – negotiate with us those contractual amendments and make those declarations towards third parties or government agencies through which the effectiveness of the affected provision and, if this is not possible, its economic content remains assured even based on the foreign law.