

## General Terms and Conditions – Sale –

### 1. General

- 1.1 The following General Terms and Conditions apply a) directly to all relationships pertaining to sales contracts and b) when applied accordingly, also to all other legal relationships between LUHNS GmbH, Wanheimer Straße 408, 47055 Duisburg, Germany (hereinafter "Seller") and contractors, corporate bodies under public law and special funds under public law as well as consumers (hereinafter "Buyer"). Contractor constitutes every natural or legal person or incorporated partnership which upon the formation of a legal transaction acts in accordance with exercising its intended business activities or professional self-employment; consumer constitutes such natural person with whom we enter a business relation without being able to assign the status of business activity or professional self-employment to the same.
- 1.2 Opposing or different General Terms and Conditions of the Buyer do not form part of the contract even if the Seller performs a contract without having expressly objected to such Terms and Conditions.

### 2. Initiation and Formation of Contract, Offers, Placing of Orders

- 2.1 The Seller's offers are non-binding.
- 2.2 Upon placing an order for goods or services the Buyer bindingly declares its intention to purchase the ordered goods or services. We are entitled to accept the contractual offer represented by the order within two weeks following receipt. Such acceptance can either be declared in writing or through the delivery of goods or performance of services on our behalf.
- 2.3 The Buyer is obliged to immediately verify the Seller's declaration of acceptance/confirmation of order. Possible differences to Buyer's order must be immediately reprimanded. If this is not done, the contents of the contract comply with the contents of the Seller's declaration of accep-

tance/confirmation of order. If no formal declaration of acceptance/confirmation of order is issued, the above applies correspondingly to the invoice for down payment, or final invoice.

- 2.4 Clauses supplementing the description of the goods, such as "circa", "as previously supplied", "as before" or similar additions mentioned in the Seller's offers refer exclusively to the quality or quantity of the goods, but not to the price.
- 2.5 In other respects the promises regarding a specific feature or suitability of the goods for a specific purpose as well as the assumption of a warranty is only binding if confirmed in writing by the Seller.
- 2.6 Deviations in quantity of either plus or minus 10% due to safety-related or technical reasons are deemed to be in conformity with contractual stipulations. Such deviations in quantity are fully taken into account of the invoice total.

### 3. Purchase Price, Payment, Default, Offsetting, Retention, Assignment

- 3.1 Provided that the effective formation of contract requires mutual consent between the contracting parties regarding payment, pricing as quoted in our price list on the day of the contract's formation apply if the contracting parties have agreed to the payment of the services we are to render, but not the amount of payment. All prices are quoted ex works.
- 3.2 (a) As a rule, the purchase price is subject to the statutory rate of value added tax applicable at the moment of the formation of the contract if and to the extent that turnover tax liability or turnover tax itemisation is relevant in the individual case. To the extent that in the above case the statutory value added tax increases during the period between the formation of the contract and invoicing, the Buyer shall pay the increased turnover tax if the agreed delivery period exceeds four months.



- 3.2 (b) We are entitled to demand down payments equal to the value of the partial performance rendered on our behalf.
- 3.3 If the agreed delivery period exceeds four months, the Seller reserves the right to adequately adjust the price based on the changes to its original cost including cost of material and labour, as well as, if necessary, the cost of transport; the same applies should customs or duties which apply to the delivery and which are for the account of the Seller, increase. If the price increases disproportionately in comparison with the cost of living index, the increase in price is limited to the price reached by the market.
- 3.4 In the absence of express divergent agreements the purchase price is due and payable immediately and without deduction, rated as from the moment of the arrival of the goods at and delivery of invoice to the Buyer, depending on which event occurs later. The same applies to partial performances. A possibly agreed discount can only be deducted if the respective payment is credited to the Seller before the end of the discount period and the Buyer is not in default of paying other receivables of the Seller at the moment of payment. A discount is only granted for the net amount, i.e. in particular not for costs, freight, etc. This does not affect Item 3.8.
- 3.5 If payment has been agreed in a currency other than EURO (foreign currency) with the contractor, the payable purchase price in foreign currency increases at the moment of drafting the invoice so that the shown invoice total corresponds to the counter value in EURO as calculated on the grounds of the owed foreign currency at the decisive moment on which the price was agreed.
- 3.6 Bills and cheques are only accepted following an express agreement and only on account of performance. They are only considered payment if redeemed. Discounts, bill charges, stamp duty on bills of exchange and other dues are for the account of the Buyer upon expiration of the agreed term of payment.
- 3.7. The customer is in default of payment upon expiration of the 7<sup>th</sup> day following receipt of the goods, however no later than upon expiration of the last day of a payment deadline granted to the same.
- 3.8 The Seller is entitled, in case of a mutual commercial transaction, to demand due interest as of the due date in the amount of 8% above the respective basic rate of interest. It is for the Buyer to prove that the actual damage we incurred is in fact lower or does not apply. The Seller, however, in the event of mutual commercial transactions, may demand at least the statutory rate of due interest. The enforcement of default interest is not affected.
- 3.9 (a) The Buyer may only offset against Seller's claims with undisputed or final and absolute claims.
- 3.9 (b) Letter (a) applies accordingly to the exercise of rights of retention by the Buyer if the Buyer is a contractor.
- 3.10 The Buyer is not entitled to exercise a right of retention against Seller's claims from a contract for a claim originating from another claim that does not originate from this contract.
- 3.11 The trader's right of retention of the Seller pursuant to Section 369 of the German Commercial Code [*HGB - Handelsgesetzbuch*] does not apply to the Buyer.
- 3.12 If there are valid doubts as to the Buyer's solvency or creditworthiness and if the Buyer, in spite of the respective request, is not willing to effect an advance payment or provide a suitable collateral, the Seller, if the Seller has not performed as such so far, is entitled to demand cash payment prior to any possible further delivery. This applies in particular to agreed but not yet performed follow-up business.
- 3.13 The Seller reserves the right to use payments to settle the oldest due invoice item plus the accrued default interest and costs, in the following order: costs, interest, principal claim.
- 3.14 The Buyer may not assign its claims against the Seller to third parties regardless of the stipulations of Section 354a of the German Commercial Code.
- 3.15 The Seller is entitled to assign claims resulting from the terms of business.
- 3.16 The decisive weight determined for the calculation is performed at the Seller's point of dispatch.
- 3.17 In cases of default the Seller is entitled to demand default interest a) for invoices made out in EURO or for participating EURO currencies in the amount of 5% points above the respective one-month Euro Interbank Offered Rate applicable at the moment of the respective occurrence of default and b) for invoices in another currency in the amount of 5% points above the discount rate of the most sovereign banking institute of the country whose currency was invoiced and applicable at such moment, however at least in the amount of 6% points per annum. The enforcement of further claims for damages caused by default is not affected, nei-



ther are the statutory rights to claim compensation for non-performance as well as rescission of contract.

- 3.18 Upon default, all claims from all contractual relationships between the parties are due with immediate effect, unless the default refers to immaterial parts of the claims only.

#### 4. Delivery, Passing of Risk

- 4.1 Unless a delivery period has been expressly confirmed by the Seller, the delivery can not be demanded until eight weeks after the formation of the contract. Any possibly agreed delivery period commences after the receipt of all necessary documents as well as the Buyer's agreed advance payment being received by the Seller (permits, approvals, etc.).
- 4.2. If the Buyer was given a fixed delivery period, then such period is deemed observed if the contractual item pursuant to Item 3.1 has been supplied to the Buyer until the expiration of such period.
- 4.3 The delivery is performed through the provision of the goods at the Seller's head office, exclusive of packaging, transport, insurance. Upon collection from the point of delivery, it is for the Buyer or the Buyer's authorised representatives to load the vehicle and observe the statutory regulations regarding the transportation of hazardous goods.
- 4.4 If a dispatch of the goods has been agreed in the individual case, the Seller shall always ship the goods at the request of the Buyer pursuant to Section 447 of the German Civil Code [*BGB – Bürgerliches Gesetzbuch*] at the Buyer's risk and cost. The same applies to packaging and to any increases in freight rates, possible additional costs due to diversions, storage, etc. that arise after the formation of the contract, unless carriage-paid delivery was expressly agreed in writing.
- 4.5 To the degree that employees of the Seller, in cases of Items 3.1 and 4.3, 4.4 assist in the loading and unloading outside of the contractually agreed scope of performance, such employees act on the sole order of the Buyer. Any damage inflicted on the goods or other damage caused during this is therefore at the expense of the Buyer.
- 4.6 (a) The risk passes no later than upon delivery of the supplied parts to the carrier at the point stated in Item 4.3 even if partial deliveries are performed or the Seller assumed other additional services, such as dispatch, delivery and installation. Upon the Buyer's request the Seller may insure the consignment against theft, breakage and damage

caused during transport and by fire and water as well as other insurable risks, whereby the Seller acts insofar only as the agent.

- 4.6 (b) In the event of default of acceptance the goods will be stored at the expense and at the risk of the Buyer without further notification/reminder.
- 4.6 (c) Upon default of acceptance of the Buyer the purchase price is due immediately.
- 4.7 Partial deliveries are permissible provided this is acceptable for the Buyer taking into consideration the interests of both parties.
- 4.8 (a) Packaging, unless disposable, remains the property of the Seller. The Buyer is obliged to immediately return the packaging. If the Buyer is in default of its obligation to return the packaging, the Seller is entitled to demand compensation for loss of use in the amount of 1% of the cost price per day. This applies in particular to multi-use containers. The Buyer has the option to prove that damage in the enforced amount was not incurred, or only to a lower degree. In cases of damage or lost parts (especially supporting rods) the Buyer is obliged to supply replacements. Disposable packaging becomes the property of the Buyer and is not accepted if returned. Packaging is not issued by item, but exclusively with regard to transport and production. The larger dimension of the unit always determines the length of packaging.
- 4.8 (b) If in the individual case transport has been agreed by the Seller at Seller's risk and cost, the Buyer shall ensure in cases of delivery by tank lorry and detachable tanks the perfect technical condition of the Buyer's tanks or other storage containers and shall arrange the connection between the filling points to its uptake system at its own responsibility. The Seller is merely obliged to accurately operate the vehicle's inherent facilities. (b) In addition to (a) the transport by tank lorry requires that the Buyer, at its own responsibility, ensures the fastest discharge and return to the Seller or to the stated address. In the event of a prolonged standing time at the Buyer's factory for which the Buyer is responsible, the arising rental charge for the tank lorry is at the expense of the Buyer.
- 4.9 The unobjected acceptance of the consignment by the carrier is deemed proof of the flawless quality of the packaging and proper loading, unless the Buyer provides proof that the packaging was defective upon handing of the consignment to the carrier, or that loading was not carried out properly. The contractor shall inspect the packaging for visual



damage and indicate any damage on the delivery note. The contractor shall inform the Seller of damage caused during transport even in the event of non-damaged packaging within six days in writing.

- 4.10 (a) If deliveries of the Seller are carried out in returnable containers which the Seller procured, they must be returned to the Seller emptied and in an impeccable condition at the expense and risk of the Buyer no later than within 30 days following arrival at the Buyer. If the Buyer does not comply with this obligation, the Seller may charge the Buyer an appropriate rental fee for the period beyond 30 days and following the unsuccessful passing of the additional period may demand their return, offsetting the above fees against the replacement price. The attached marks must not be removed. Returnable packaging must not be swapped or filled with other material.
- 4.10 (b) The Buyer is responsible for depreciation, substitution and loss irrespective of fault. The use as storage container or forwarding to third parties is not permissible.
- 4.11 If and to the degree that the parties apply trade terms to the respective individual agreement, their interpretation is subject to such version of the INCOTERMS which applies at the moment of signing the individual agreement even to the extent they contradict the contents of Item 4.
- 4.12 The Buyer is responsible for compliance with statutory and official regulations pertaining to the import, delivery, storage and use of goods supplied by the Seller in the destination country or the destination as well as the transit countries of the delivery; the Buyer is equally responsible for the procurement of the necessary import and transit documents (customs, etc.) unless these must be obtained exclusively for statutory reasons by the Seller.
- 4.13 Reservation subject to the Seller obtaining correct and timely supplies remains.
- 4.14 If in the exceptional case it is agreed that the Seller bears customs and import duties of the destination country or of transit countries, any increases of such duties arising between the acceptance of the order and the delivery of the goods are for the account of the Buyer.

## 5. Reservation of Title

- 5.1 The title to the purchased goods only passes to the contractor if the contractor has fulfilled all its liabilities resulting from the business relationship with the Seller, including

collateral claims, compensation claims and redeemed cheques and bills. If the Buyer is a consumer, the title passes to the same once the consumer has settled the Seller's claim from this transaction. If such fulfilment has occurred, the reservation of title to goods purchased prior to that does not re-surge even if the Seller is entitled to new claims resulting from the renewed delivery of goods.

- 5.2 The reservation of title is upheld even if individual Seller's claims are included in a current invoice and a new balance is struck and accepted.
- 5.3. The acceptance of returned goods subject to reservation of ownership only constitutes a rescission of contract if the Seller expressly declared this in writing. If the Seller rescinds the contract the Seller may demand an appropriate compensation for the duration of allowing the use of the goods.
- 5.4 The contractor is entitled to resell the goods in the ordinary course of business. The contractor already assigns all claims to us in the amount of the invoice total which the contractor acquires against a third party from the resale. We assume such assignment. Following the assignment the contractor is entitled to collect the claim. We reserve the right to collect the claim ourselves as soon as the contractor does not correctly meet with its payment obligations and is in default of payment. The same applies with regard to a claim of the contractor resulting from the processing of the goods subject to reservation of ownership. The contractor is not entitled to any other disposals than those named; the contractor may in particular not pledge the goods subject to reservation of ownership or transfer them by way of security. The treatment and processing of the goods by the contractor are in the name and on behalf of us. If the goods are blended with items that do not belong to us, we acquire co-ownership in such new item in proportion of the value of the goods which we supplied with the other processed items. The same applies if the goods are blended with other items for which we do not own the title.
- 5.5 (a) As long as the Buyer properly meets its obligations towards the Seller the Buyer is entitled to reuse the goods subject to reservation of ownership in the ordinary course of business. However, this does not apply if and to the extent that the Buyer agreed with its buyers to prohibit to assign the purchase price. The Buyer is not entitled to pledge, transfer by way of security or otherwise en-



- cumber the goods subject to reservation of ownership.
- 5.5. (b) The Buyer, in the event of a resale, is obliged to agree to a reservation of title with its customers without disclosing the agreed reservation of title with us (subsequent reservation of title).
- 5.6 The Buyer hereby assigns to the Seller all claims arising from the resale of the goods subject to reservation of ownership against third parties to secure all our claims. If the Buyer sells goods to which the Seller pursuant to Item 5.4 only holds a proportionate title, the Buyer assigns the claims against third parties for the respective partial amount to the Seller, who hereby accepts the same. If the Buyer uses the goods subject to reservation of ownership within the framework of a service (or similar) contract, the Buyer assigns the (service compensation) claim in the amount of the invoice value of the goods contributed by the Seller to the Seller, who hereby accepts the same.
- 5.7 During the ordinary course of business, the Buyer is entitled to collect claims from the reuse of the goods subject to reservation of ownership. If the Seller has a definitive cause for concern that the Buyer does not or will not properly fulfil its obligations towards the Seller, then the Buyer, upon the Seller's request, shall inform its buyers of the assignment, refrain from disposing of the claims, provide the Seller with all necessary information regarding the inventory of goods owned by the Seller as well as the claims assigned to the Seller and deliver the documents required to enforce the assigned claims. The Seller is to be notified immediately of any access by third parties to the goods subject to reservation of ownership and the assigned claims.
- 6. Warranty, Guarantee**
- 6.1. Unless differently agreed by individual contract the Seller shall deliver the object of sale in accordance with the regular product description (catalogue, etc.), if available, otherwise of average quality. Any qualities of the object of sale beyond this are then not owed by the Seller. The Buyer may not derive such obligation in particular from other descriptions of the object of sale made in public statements or in advertising of the Seller or its pre-supplies/manufacturers, unless the Seller expressly confirmed such further quality by individual agreement. Guarantees must be expressly confirmed in writing by the Seller's management.
- 6.2. If the Buyer is a contractor, we will warrant, at our discretion, for defects of the goods either a rectification of defects or substitute delivery. If the Buyer is a consumer the right to choose passes to the Seller upon expiration of a suitable time period stipulated by the Seller to the consumer for the declaration of the choice. The Seller is entitled to refuse the type of chosen rectification of defects if such rectification can only be performed subject to excessive costs and the alternative rectification does not entail any substantial drawbacks. If the rectification fails, the customer, at its discretion, may demand a reduction of remuneration or rescission of the contract. This does not affect the Buyer's right to demand compensation in addition to the statutory rescission, with the exception of limitations for compensation of the Buyer pursuant to Item 7. If the defect consists in the customer having received faulty assembly instructions, the Seller is merely obliged to deliver accurate assembly instructions; this also applies if only the defect of the assembly instructions opposes the proper assembly.
- 6.3 The notification of defects demanded by the statutory obligation of a notification of defects according to Section 377 of the German Commercial Code can only be effectively declared by the contractor if issued in writing. The further statutory requirements of Section 377 of the German Commercial Code are not affected. Irrespective of this, the Buyer's warranty claims are excluded if the Buyer does not report obvious defects in writing within a period of two weeks as from the moment of receipt of goods until posting of notification. With regard to transport damages Item 4.9 is not affected.
- 6.4 The delivery of a defect-free item to fulfil the rectification as a rule is performed concurrently against handing over of the defective item. The Seller is entitled to refuse the substitute delivery if the Buyer has used the defective item for an extensive period. If the Buyer may nevertheless demand a substitute delivery, the Seller is entitled to enforce a compensation for the lost value for the benefit drawn by the Buyer and refuse rectification until payment of the respective amount.
- 6.5 If the Seller performs services in the search for, inspection of and remedy of defects without being obliged to do so, such as e.g. in case an unjustified notification of defect was pronounced, the Buyer shall reimburse such costs to the Seller that arise as a result of this.



- 6.6 Any additional expenses in remedying the defects must also be reimbursed which the Seller incurred as a result of the Buyer not properly complying with its duties to cooperate. The performance of a search for, inspection of and remedy of defects does not constitute the recognition of the defect by the Seller.
- 6.7 Expenses in relation to the defects which the Buyer incurs because the Buyer transported the goods to a place other than the location stipulated in the contract of sale are for the Buyer's account.
- 6.8 The statute of limitations for warranty claims of the Buyer is one year; in cases in which the warranty is based on the sale of an item to be used according to its intended application for a building and which caused its defectiveness, is five years. The statute of limitations always commences upon delivery of the sold item.
- 6.9 This does not affect Section 479 of the German Civil Code.
- 6.10 The Buyer forfeits its warranty claims if in spite of being aware of a defect the item is fitted or processed or resold.

## 7. Liability, Limitation

In cases of contractual and non-contractual liability the Seller is liable for compensation or reimbursement of futile expenses only in accordance with the following regulations:

- 7.1 The Seller is liable for compensation in the full amount in cases of intent and gross negligence.
- 7.2 If a quality is missing for whose existence the Seller assumed a warranty or which the Buyer assured, the Seller shall only be liable in the amount of the typically foreseeable damage which was to be prevented by the warranty or the assurance, provided that the missing guaranteed/assured quality in itself is not due to intent/gross negligence.
- 7.3 In cases of minor violations of duty our liability is limited to the foreseeable and direct average and typical damage according to the contract and the type of good. This also applies in cases of a minor violation of duty by our statutory representatives or vicarious agents. Towards contractors we are not liable in cases of minor violations of immaterial contractual duties.
- 7.4 The above limitations of liability do not apply to claims of the Buyer from the product liability act and to personal injury of and damage to health or death of the Buyer attributable to us.

- 7.5 Other statutory facts of exclusion of compensation (e.g. Section 281 (1) Sentence 3 of the German Civil Code) are not affected.
- 7.6 For all claims of the Buyer against the Seller for compensation or replacement of futile expenses in cases of contractual or non-contractual liability – except for cases of personal injury, intent and gross negligence, liability according to the product liability act – the statute of limitations is one year.

## 8. Technical Advice, Use and Processing

The written and spoken application-specific advice of the Seller as well as advice through attempts is provided to the best knowledge, however is only to be viewed as non-binding information, even in relation to possible protective rights of third parties, and does not release the Buyer of its own inspection of products supplied by the Seller for suitability for the intended processes and purposes. Application, use and processing of the products are performed outside of the Seller's control options and therefore remain exclusively within the scope of the Buyer's responsibility.

## 9. Secrecy, Data Protection, Protective Rights, Copyrights

- 9.1 The parties undertake to treat all information and confidential details as well business secrets of the respective other contracting partner acquired within the framework of performing the contract confidentially for an unlimited period of time and shall use such information and details only within the framework of performing the contract.
- 9.2 Both contracting parties observe the data protection rules. The business relationship is supported on the Seller's side by a data processing unit. Accordingly the Buyer's data are recorded and stored in an automated file. This is to inform the Buyer of such storing accordingly.
- 9.3 If the Seller supplies purchase items on the grounds of drawings, models or other details of the Buyer, the Buyer assumes the warranty that the production, delivery and use of the goods do not violate industrial property rights and other third-party rights. The Seller is not obliged to perform a respective inspection.
- 9.4 Documents and drawings left to the Buyer as well as structural and other services or design proposals rendered by the Seller may only be used by the Buyer for the agreed purpose.



- 9.5 It is not permissible to offer or supply substitute products in lieu of the Seller's products while pointing out these products, or to associate product designations of the Seller in price lists or similar business documentations, be they protected or not, with the word "substitute", or compare them with the designations of the substitute products.
- 9.6 Furthermore it is not permissible to use Seller's products for manufacturing purposes or processing, Seller's product designations, especially Seller's trademarks on such products or their packaging or the respective printed matter or advertising material without the prior approval of the Seller, particularly to state that they are part of the components. The delivery of products subject to a trademark is not to be deemed as the approval to use this trademark for products manufactured from it.

**10. Place of Fulfilment and Jurisdiction, Choice of Law, Severability Clause, Written Form**

- 10.1 The place of fulfilment for the delivery is the respective point of dispatch; for payments it is Duisburg.
- 10.2 For contracts with traders in terms of the German Commercial Code, the courts of Duisburg shall have exclusive jurisdiction unless compellingly prescribed otherwise by law.
- 10.3 German law applies (in particular the German Civil Code and the German Commercial Code), exempting the UN Sales Convention.
- 10.4 Should individual clauses of these Terms and Conditions be fully or partly invalid or contain a gap, then this does not affect the validity of the remaining clauses or the remaining parts of such clauses.
- 10.5 The decisive version is the German version of these Terms and Conditions. The publication in another language merely serves to facilitate the understanding.
- 10.6 Contractual amendments and supplements must be stipulated in writing to become effective. There are no verbal agreements.