

§1 Validity

(1) All deliveries, services or offers made by LUKA GmbH (hereinafter referred to as „Seller“) are based exclusively on these General Terms and Conditions of Delivery. These are deemed to form an integral part of all contracts concluded by the Seller with its contractual partners (hereinafter also referred to as “Buyer“) covering the deliveries and services offered by the Seller. They also apply to future deliveries, services and offers made to the Buyer even if not separately agreed upon anew.

(2) Terms and conditions of the Buyer or third parties shall not apply, even if the Seller does not expressly object to their application in individual cases. Even if the Seller refers to any written communication that may contain or refer to the terms and conditions of the Buyer or a third party, this does not constitute any consent to such terms and conditions.

§2 Offers and Conclusion of Contracts

(1) Unless explicitly identified as binding or containing a specific deadline for acceptance, all quotations made by the Seller are subject to change and non-binding. The Seller may accept orders or commissions within fourteen days after their receipt.

(2) The legal relationship between the Seller and Buyer is solely governed by the written purchase contract including these General Terms and Conditions of Delivery. This represents all understandings concerning the subject of the agreement between the contracting parties. Verbal assurances given by the Seller prior to conclusion of this contract are legally non-binding and verbal understandings between the contracting parties are replaced by the written contract provided that they are not expressly defined as a continuing component thereof.

(3) All amendments and modifications to the agreements made, including these General Terms and Conditions of Delivery, need to be made in writing in order to render the same valid and effective. With the exception of executives or authorized signatories, the Buyer's employees are not entitled to make any verbal agreements differing from these. Means of telecommunication are deemed to suffice to meet the requirements of such written form, in particular by fax or email, provided that a copy of the signed declaration is sent on.

(4) Details and representations provided by the Seller with regard to the subject of delivery or service (e.g. weights, dimensions, functional values, load capacities, tolerances, technical data, etc.) as well as the Seller's descriptions of the same (e.g. drawings and illustrations) are deemed to be mere approximations in each case unless applicability thereof requires precise conformity for the purpose contractually envisaged. They shall not be construed as guaranteed characteristics, but merely as descriptions or designations of the relevant delivery or service. Divergences customary within the trade ensuing from statutory provisions or constituting technical improvements as well as the replacement of components by parts of equivalent nature shall be permissible as long as they do not impair usability for the contractually intended purpose.

(5) The Seller shall retain the ownership or copyright in respect of all offers and cost estimates issued by the Seller as well as of all drawings, illustrations, calculations, brochures, catalogues, models, tools and other auxiliary materials, including documentation, made available to the Buyer. Without the express approval of the Seller, the Buyer shall not be permitted to make the aforementioned items accessible to third parties, either in form or content, to disclose the same, to allow them to be utilized by the Buyer himself or by third parties or to reproduce the same in any way. The Buyer shall return the said objects in their entirety to the Seller on the latter's request and destroy all or any copies made of the documentation if no longer needed in the regular course of business or if negotiations fail to lead to the conclusion of a contract.

(6) Following the acceptance of a purchase order changes to product specifications and/or the properties of products, etc. shall be communicated to the Seller in writing 1 week at the latest after the Buyer has gained knowledge of any such necessary changes and 6 weeks at the latest prior to the contractually stipulated delivery date.

§3 Prices and Payment

(1) The prices apply to the scope of services and delivery specified in the respective confirmations of order. Additional or special services as well as costs in respect of tools for custom manufactured items are charged separately. Prices are quoted in Euros ex works plus packaging and statutory value added tax; export deliveries require customs duties, fees and public charges to be paid in addition.

(2) Where the stipulated prices are based upon the Seller's list prices and where delivery is not to be made until more than four months after conclusion of the contract, the Seller's list prices valid at the time of delivery shall apply if having been reasonably raised by only 3 per cent at the most.

(3) Unless otherwise agreed in writing, invoiced amounts are payable within thirty days without deductions of any kind. The ruling factor applicable to the date of payment is the date on which such payment is received by the Seller. Cheques shall only count as payment after having been cleared.

(4) Offsetting of Buyer's counterclaims or the withholding of payments against such claims is only permitted if such counterclaims are undisputed or have been established under law.

(5) The Seller shall be entitled to insist on prepayment in respect of deliveries or services still outstanding or to insist on the provision of security where, following conclusion of the contract, the Seller becomes aware of circumstances that are liable to impair the Buyer's credit standing to any substantial extent and which might appear to jeopardize payment of the Seller's pending claims by the Buyer resulting from the relevant contractual relationship.

§4 Delivery and Deadlines

(1) Deliveries are executed ex works.

(2) All scheduled deadlines and dates quoted by the Seller in respect of deliveries and services are deemed to be approximations unless a fixed period or a fixed date has been expressly promised or agreed upon, in which case the period to run is deemed to commence on that date on which the Seller is in receipt of all the requisite information and details from the Buyer in respect of execution, product properties or features, design, modifications, etc. of the delivery item. If dispatch by a forwarder has been agreed upon, dates and deadlines refer to the time of surrender to the forwarder, freight carrier or other third party commissioned to carry out dispatch.

(3) Without prejudice to its rights arising from default on the part of the Buyer, the Seller shall be entitled to demand an extension of periods for deliveries or performance of services or a postponement of the delivery and service deadlines for as long as the Buyer fails to fulfill its contractual obligations towards the Seller.

(4) The Seller shall not be liable for impossibility of delivery or for delays in delivery caused by force majeure or other events unforeseeable at the time of concluding the contract (e.g. breakdowns of any kind in business operations, difficulties in the procurement of materials or energy supplies, transport delays, strikes, legitimate lockouts, shortages of labour, energy or raw materials, difficulties in procuring necessary official permits from authorities and official measures as well as non-delivery or unpunctual delivery by suppliers) for which the Seller cannot be held responsible. Where such events make it essentially difficult or impossible for the Seller to execute delivery or to provide services and such hindrance is not only of temporary duration, the Seller shall be entitled to withdraw from the contract. Where hindrances are of a temporary nature, deadlines in respect of delivery or service shall be extended by the period of such hindrance plus a reasonable start-up period. If, as a result of the delay, the Buyer cannot reasonably be expected to accept deliveries or services, the Buyer shall be eligible to withdraw from the contract by giving the Seller immediate notice in writing.

(5) The Seller shall only be entitled to make partial deliveries if

- such partial delivery is usable for the Buyer within the scope of the contractually intended use;
- delivery of the remaining ordered goods is assured and;
- the Buyer does not incur any considerable additional work or additional costs (unless the Seller agrees to assume such costs).

(6) Should the Seller fall behind with any delivery or service or in the event of it becoming impossible for the Seller to execute such delivery or service, regardless for what reason, then the Seller's liability for compensation of damages shall be limited in accordance with Section § 7 of these General Terms and Conditions of Delivery.

§5 Place of Performance, Dispatch, Packaging, Passing of Risk, Formal Acceptance

(1) Unless anything to the contrary is stipulated, the place of performance in respect of all obligations resulting from the contractual relationship is Engelskirchen. If the Seller is also responsible for installation, the place of performance is deemed to be that place in which such installation is to be carried out.

(2) The mode of dispatch and packaging are subject to the due discretion of the Seller.

(3) Risk passes to the Buyer at the latest on surrender of the delivery item to the forwarder, freight carrier or other third party commissioned to carry out dispatch, commencement of the loading process being the determining factor. This shall also apply to partial deliveries or cases where the Seller has agreed to provide additional services (e.g. dispatch or installation). Should dispatch or surrender of the goods be delayed due to circumstances for which the Buyer is responsible, then the risk shall pass to the Buyer on that day on which the delivery item is ready for dispatch and the Seller has notified the Buyer thereof.

(4) Storage costs arising following the passing of risk shall be borne by the Buyer. If the goods are stored by the Seller, storage costs shall amount to 0.25% of the invoice amount in respect of the delivery items due to be stored per week of elapsed time. Rights are reserved to assert claims and to furnish evidence in respect of higher or lower storage costs.

(5) The consignment will only be insured against theft, damage due to breakages, transport, fire and water or other insurable risks at the express request of the Buyer and at Buyer's cost.

(6) Where formal acceptance is necessary, the purchased item is deemed to have been formally accepted if

- delivery and – if the Seller is responsible for installation – installation has undergone completion;
- the Seller notifies the Buyer thereof, drawing attention to formal acceptance in accordance with this Section § 5 (6) and has ordered the Buyer to proceed with formal acceptance
- 12 working days have elapsed since delivery or installation or if the Buyer has started making use of the purchased item (e.g. the equipment supplied has been put into operation or structural changes have been made to the same) and in that case six working days have elapsed since delivery or installation; and
- the Buyer has failed to declare formal acceptance within this period for reasons other than any defect reported to the Seller rendering the use of the purchased item impossible or considerably impairing its use.

§6 Warranty, Material Defects

(1) The warranty period shall be one year commencing with delivery or, if formal acceptance is required one year from such formal acceptance, and only applies to the delivery item in its unaltered state.

(2) The delivered items must be carefully inspected immediately on delivery to the Buyer or to any third party designated by the Buyer. They are deemed to have been approved by the Buyer unless the Seller has received written notification of obvious defects or other defects identifiable on immediate careful inspection within 7 working days of delivery. With regard to other defects, the delivery items are deemed to have been approved by the Buyer unless the Seller has received written notification of such defects within 7 working days of the defect having become evident; if the defect was detected by the Buyer under normal use at an earlier point of time, then such earlier point of time shall be the determining factor governing the commencement of the deadline period for notices of defects. If so requested by the Seller, a delivery item subject to complaint shall be returned freight prepaid to the Seller. If the notice of defects is justified, the Seller will reimburse the costs of the cheapest method of dispatch; this does not apply if such expenditures increase due to the delivery item being located at an address other than that stipulated for the intended use.

(3) In the case of material defects affecting any delivered item, the Seller – acting upon Seller's own discretion and within a reasonable period – shall be obliged and entitled to choose between repair and replacement of the product thus affected. In the event of failure, i.e. repair or replacement being impossible or unreasonable, or in the case of refusal or unreasonable delay, the Buyer may withdraw from the contract or claim a commensurate reduction of the purchase price.

(4) If the Seller is to blame for a defect, the Buyer shall have the right to request compensation under certain conditions defined in Section § 7. Warranty on the part of the Seller is excluded if the Buyer is to blame for a defect, e.g. due to incorrect information concerning execution, design, product properties or features of the delivery item.

(5) If defects are in components from other manufacturers or in components from suppliers to the Seller which cannot be remedied by the Seller for reasons pertaining to licensing law or on factual grounds, the Seller, acting upon Seller's own discretion, will assert its warranty claims against such manufacturers and suppliers on behalf of and for the account of the Buyer or assign such claims to the Buyer. In the case of such defects, warranty claims against the Seller under other conditions and in accordance with these General Terms and Conditions of Delivery only apply if legal enforcement of the aforementioned claims against the manufacturer and supplier having proved unsuccessful or being futile, for example due to insolvency. While such litigation is pending, limitation of the relevant warranty claims asserted by the Buyer against the Seller shall be barred.

(6) The warranty becomes void if the Buyer or any third party modifies the delivery item without the approval of the Seller or impairs the characteristics of the delivery item through conversions or installations. In all cases the Buyer is required to bear the additional costs of remedying defects caused by any such modification.

(7) The supply of used products agreed with the Buyer in individual cases shall exclude all and any warranty for material defects.

§7 Liability for Culpable Damages

(1) Liability for damages on the part of the Seller, irrespective of legal grounds, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, infringement of duties in contract negotiations and liability in tort – to the extent that this involves culpability – is limited in accordance with this Section § 7.

(2) The Seller shall not be liable in cases of simple negligence committed by its officers, statutory representatives, employees or other vicarious agents unless due to infringement of essential contractual obligations. Such essential contractual obligations are the obligation to deliver and install the delivered item in a timely manner, free from defects that might impair its function or usage more than just insignificantly as well as duties of consultation, protection and due care designed to enable to Buyer to use the delivery item in the contractually stipulated manner or whose purpose it is to protect the life and limb of the Buyer's personnel or the Buyer's property from substantial damage.

(3) Insofar as the Seller is liable on merits for damages pursuant to Section §7(2), such liability is limited to damages that, at the time of concluding the contract, the Seller anticipated or must have anticipated as a possible consequence of contractual breach or which the Seller should have foreseen when applying normal care and attention. Moreover, indirect and consequential damage resulting from defects revealed by the delivered item is only eligible for compensation if such damage is typically to be expected where use of the delivery proceeds for the intended purpose.

(4) In the case of simple negligence, the Seller's obligation to effect compensation for material damage and other pecuniary losses arising therefrom is limited to the amount insured by the current insurance coverage in respect of product liability insurance or third-party insurance even if involving infringement of essential contractual obligations.

(5) The foregoing exclusions and limitations of liability apply to the same extent to the Seller's officers, statutory representatives, employees or other vicarious agents of the Seller.

(6) Insofar as the Seller provides technical information or consultancy services and such information or advice is not within the agreed scope of the contractual obligations, this is done free of charge and to the exclusion of all liability.

(7) The restrictions in this Section §7 shall not apply to the Seller's liability for willful conduct, guaranteed characteristics, injury to life, limb or health or under the Product Liability Act.

§8 Retention of Title

(1) The following agreed retention of title is intended to secure all current and future claims of the Seller against the Buyer arising from the supply and business relations between the contracting parties.

(2) The goods supplied by the Seller to the Buyer shall remain the property of the Seller until full payment has been made of all secured claims. The goods as well as all other products supplied in lieu of the same in accordance with the following provisions and covered by retention of title are hereinafter referred to as "retained goods".

(3) The Buyer shall maintain custody over the retained goods free of charge on behalf of the Seller.

(4) The Buyer shall be entitled to process and resell the retained goods in the ordinary course of business until any enforcement event takes place (Paragraph 9). Pledges and collateral assignments are inadmissible.

(5) Should the retained goods be processed by the Buyer it is agreed that such processing be done on behalf of and for the account of the Seller as manufacturer, with the Seller acquiring direct ownership of the newly created item or – if processing involves materials provided by several owners or in the event of the value of the processed goods exceeding the value of the retained goods – co-ownership (fractional ownership) of such newly created item in proportion of the value of the retained goods to the value of the newly created item. In the event of no such acquisition of ownership occurring on the part of the Seller, the Buyer herewith assigns its future ownership or co-ownership – in the aforesaid ratio – of the newly created item to the Seller as collateral. In the event of the retained goods being combined or inseparably mingled with any other objects to create a homogeneous product and one of those other objects being regarded as the key component, the Seller – provided such key component belongs to the Seller – hereby transfers to the Buyer co-ownership of the said homogeneous product on a pro rata basis in the ratio stipulated in Sentence 1.

(6) In the event of the retained goods being resold, the Buyer hereby assigns to the Seller as collateral all claims arising therefrom against the acquirer – this proceeding in the case of Seller's co-ownership of the retained goods on a pro rata basis corresponding to the proportion of such co-ownership. The same shall apply to other claims in lieu of the retained goods or otherwise arising in respect of the retained goods, e.g. insurance claims or claims resulting from tort in case of loss or damage. The Seller hereby irrevocably authorizes the Buyer to collect the claims assigned to the Seller in its own name. The Seller may only revoke this authorization in the event of enforcement.

(7) In the event of any third party seizing the retained goods, especially through levy of execution, the Buyer shall draw immediate attention to the Seller's ownership and notify the Seller thereof so as to enable the Seller to enforce Seller's rights of ownership. Should such third party not be in a position to reimburse the Seller with judicial or extrajudicial costs arising in this connection, the Buyer shall be liable towards the Seller in that respect.

(8) The Seller shall, at its own discretion, release the retained goods and any items or claims in lieu of the same if their value exceeds that of the secured claims by more than 50%. The seller shall be responsible for selecting the items to be released in that respect.

(9) In the event of the Seller withdrawing from the contract (enforcement event) due to contractual infringement on the part of the Buyer – in particular default in payment – the Seller shall be entitled to demand return of the reserved goods.

§9 Final Provisions

(1) If the Buyer is a merchant, a corporate body under public law or a special fund under public law, or has no place of general jurisdiction in the Federal Republic of Germany, the legal venue for all and any disputes arising from the business relationship between the Seller and the Buyer shall be Gummersbach or, at the discretion of the Seller, the Buyer's place of business. However, for claims filed against the Seller, Gummersbach is deemed to be the exclusive venue in all such cases. Mandatory statutory provisions on exclusive legal venues remain unaffected by this ruling.

(2) All relations between the Seller and the Buyer are subject to the laws of the Federal Republic of Germany. Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) dated 11 April 1980 is ruled out.

(3) Should the contract or these General Terms and Conditions of Delivery contain any loopholes, those legally effective provisions shall apply which the contracting parties would have agreed upon with respect to the commercial objectives of the contractual agreement and the purpose of these General Terms and Conditions of Delivery had the parties been aware of such regulatory gaps.

Note:

The Buyer acknowledges that the Seller stores data from the contractual relationship in pursuance of Section § 28 of the German Federal Data Protection Act and reserves the right to transmit such data to third parties (e.g. insurance companies) if necessary for fulfilment of the contract.