

# General Terms and Conditions (T&C) for Deliveries and Services

Applicable in business transactions with entrepreneurs in the performance of their commercial or independent professional activity, with legal entities under public law and special funds under public law.

## 1. General information

- 1.1. Our General Terms and Conditions (T&C) for Deliveries and Services apply exclusively. We do not accept any general terms and conditions of the customer that contradict, supplement or deviate from our General Terms and Conditions unless we have expressly accepted their validity in writing. Our T&C are also applicable if we perform the delivery to the customer without reservation or provide a work service or service or other deliverable (collectively 'performance(s)' or 'service(s)') for the customer without reservation knowing that such conflicting, additional or deviating terms and conditions of the customer exist.
- 1.2. Our T&C are also applicable to all future deliveries and performances to the customer until a newer version of our T&C comes into effect.
- 1.3. Additions to these T&C in the form of individual contracts as well as deviations from these T&C are subject to our express consent to be effective.
- 1.4. The terms 'seller', 'we', 'us', 'our', etc. as used in these T&C refer to LUBCON Service + Systems GmbH.

## 2. Offers and order placement

- 2.1. Our offers are subject to change and non-binding, unless we state otherwise.
- 2.2. An order only becomes binding when we confirm it in writing within two weeks of the order date or when we execute an order. An order confirmation created using automatic equipment, which does not include a signature and name, will be deemed to be issued in writing. In as far as the order confirmation contains obvious mistakes, clerical or arithmetic errors, it is not binding for us.

## 3. Cancellation of the contract, force majeure

- 3.1. We may cancel the contract if the customer fails to fulfil its payment obligations to us or to a company affiliated with us within the meaning of §§ 15 et seqq. of the German Stock Corporation Act (AktG, *Aktiengesetz*) and if such failure persists even after unsuccessful expiry of a reasonable grace period. Otherwise, our and/or the customer's statutory cancellation rights remain unaffected. Further claims or rights on our part also remain unaffected.
- 3.2. If an external event occurs that has no operational connection and cannot be averted even with the utmost care that could reasonably be expected, including, but not limited to, natural disasters, war, terror, sabotage, labour disputes, shortages of raw materials and energy, non-delivery or insufficient delivery by upstream suppliers, transport and loading disruptions, production disruptions, disruptions caused by cyberattacks, fire and explosion damage or governmental orders ('force majeure'), the parties will be released from their performance obligations for the duration and to the extent of their effect. The parties are obliged to inform each other immediately in writing within the

scope of what is reasonable. In as far as we are released from the obligation to deliver or perform, we will refund any advance payments made by the customer.

- 3.3. If the restriction due to force majeure lasts longer than three months, we are entitled – without prejudice to our other rights – to cancel the contract as a whole or in part.

## 4. Liability

- 4.1. Our liability for damage or loss arising from the breach of a guarantee or from injury to life, limb or health is unlimited. The same applies to intent and gross negligence or in as far as we have assumed a sourcing risk. We are only liable for slight negligence if material obligations are breached which arise from the nature of the contract and which are of particular importance for the fulfilment of the purpose of the contract. In the event of a breach of such obligations, default and impossibility, our liability is limited to such damage or loss as must typically be expected to occur within the scope of this contract. Mandatory statutory liability for product defects remains unaffected.
- 4.2. To the extent to which our liability is excluded or limited, this also applies to personal liability on the part of our employees, representatives or agents.

## 5. Delivery and performance time

- 5.1. Delivery and performance times (deadlines and dates) must be agreed in writing to be effective. Delivery and performance times are non-binding unless we have previously designated them as binding in writing.
- 5.2. The delivery or performance time commences with the conclusion of the contract, but not before complete provision of the documents, authorisations and approvals to be procured by the customer, clarification of all technical questions and receipt of an agreed down payment or, in the case of a foreign transaction, after receipt of full payment. With regard to a delivery or performance date, the delivery or performance date will be postponed appropriately if the customer fails to provide the documents and authorisations to be procured by it in good time, if it fails to issue approvals in good time, if all technical questions are not fully clarified in good time or if the agreed down payment or, in the case of a foreign transaction, full payment is not received by us. Compliance with the delivery or performance time is subject to the timely and proper fulfilment of the customer's other obligations.
- 5.3. The delivery or performance time is deemed to have been met if, in the case of deliveries, the goods have left our premises by the end of the delivery or performance time or we have notified the customer that the goods are ready for collection or dispatch or, in the case of performances, we have commenced the provision of the service by the end of the delivery or performance time. Compliance with the delivery or performance time is subject to our proper, in particular timely, receipt of internal deliveries, unless we are responsible for the reason for failure to properly receive internal deliveries. We are entitled to cancel the contract in the event of failure to properly receive internal deliveries. We will inform the customer immediately if we exercise our right of cancellation and will refund any advance payments made by the customer.

5.4. In the event of a delay in delivery or performance, the customer is entitled to cancel the contract after unsuccessful expiry of a reasonable grace period set by the customer after the delay in delivery or performance has occurred.

## **6. Delivery, transfer of risk and acceptance of deliveries**

6.1. Delivery, including the transfer of risk, takes place on an FCA basis (INCOTERMS in the version applicable at the time of conclusion of the contract), unless otherwise agreed in these T&C or otherwise in writing.

6.2. If the parties have agreed in writing to carry out an acceptance procedure for a delivery, the risk of accidental loss and accidental deterioration of the goods will pass to the customer upon acceptance, notwithstanding section 6.1 above. The provisions of section 7 of these T&C apply accordingly and additionally if acceptance has been agreed to, in as far as no provisions on acceptance are contained in section 6 of these T&C.

6.3. In the event that dispatch and/or delivery and/or any agreed acceptance is delayed for reasons for which the customer is responsible or in the event that the customer is in default of acceptance for other reasons, the risk in such cases will pass to the customer upon default of acceptance.

6.4. The goods must be accepted by the customer without prejudice to its claims for defects even if insignificant defects exist.

## **7. Transfer of risk and acceptance of work services**

7.1. In the case of work services, the customer is obliged to accept the work services unless acceptance is not possible due to the nature of the work. Unless otherwise agreed in writing, acceptance takes place formally by signing an acceptance report. In particular, formal acceptance will be deemed to have taken place if we have set the customer a reasonable deadline for acceptance after completion of the work service and the customer has not refused acceptance within this deadline, stating at least one defect. Furthermore, a situation where the customer uses or resells the work service or where the customer waives acceptance will be deemed equivalent to written acceptance.

7.2. Each party is entitled to demand partial acceptance.

7.3. Acceptance may not be refused due to insignificant defects.

7.4. The customer is obliged to reimburse us for any costs we incur as a result of unsuccessful acceptance attempts, unless the customer is not responsible for such unsuccessful acceptance attempt. Any further claims which we may have remain unaffected.

7.5. In the case of work services, the risk of accidental loss and accidental deterioration will pass to the customer upon acceptance.

## **8. Contract manufacturing**

8.1. In the event of a written agreement for us to process the customer's goods ('contract manufacturing'), the customer must provide us with such goods in good time at its own expense ('goods provided'). For this purpose, the customer will deliver the goods to be processed to the delivery address specified by us. Delivery, including the transfer of risk of the goods provided, takes place on a DDP basis (INCOTERMS in the version applicable at the time of conclusion of the contract), unless otherwise agreed in writing.

8.2. The customer selects, at its own expense, packaging that is suitable in each case for delivery of the goods provided

to us. This requires that we can use the packaging for return shipment of the processed goods. Unless otherwise agreed in writing, the goods will be delivered to us as bulk goods without use of small packaging.

8.3. The customer will only provide us with such goods

- that can be processed directly by us, in particular goods that are clean, rust-free, chip-free, dry, free of wax, grease, oil, silicone, hardening residues, substances that interfere with the wetting of paint, adhesive or mixed-in foreign bodies as well as goods that are pore-sealed and demagnetised and
- that correspond in terms of type, quality and also otherwise to the goods provided to us within the scope of the respective sampling, in as far as sampling has taken place.

The customer must bear any additional expenses arising from the breach of the above obligation. Claims for defects arising as a result of a breach of the above obligation are excluded. Any further claims remain unaffected.

8.4. We do not perform incoming goods inspections on goods provided. In particular, we do not inspect goods provided to determine whether they fulfil the requirements of section 8.3. of these T&C.

8.5. We process such goods in accordance with the contractual agreements. Unless otherwise agreed in writing, the subsequent return delivery of the processed goods will be made using the same packaging as was used to deliver the goods to be processed. Return delivery from us to the customer, including the transfer of risk, takes place on an FCA basis (INCOTERMS in the version applicable at the time of conclusion of the contract), unless otherwise agreed in writing.

8.6. In as far as contract manufacturing is considered work services, the provisions for work services in these T&C apply also.

## **9. Maintenance, troubleshooting**

9.1. If maintenance has been agreed to, we will service the maintenance item once. If recurring maintenance has been agreed to, maintenance will be carried out once a year unless another maintenance interval has been agreed to. Maintenance consists of checking the functions of the maintenance item.

9.2. If it is agreed that the customer will send the maintenance item to the address specified by us, the costs and risk of the outward and return shipment will be borne by the customer. If it is agreed that we will carry out the maintenance services on site at the customer's premises, maintenance will be carried out during normal business hours subject to prior arrangement with the customer. The customer will grant us free access to the maintenance items on the agreed date.

9.3. We will carry out maintenance services in a professional manner and under our own entrepreneurial responsibility.

9.4. We are not required to make any improvements to the maintenance items.

9.5. Use of the maintenance items is not possible while maintenance is being carried out.

9.6. The customer must inform us in good time before the service provision commences of any unusual irregularities or malfunctions identified during operation of the maintenance items.

9.7. If recurring maintenance and no other contract term have been agreed to, the contract term is two years ('initial term'). After expiry of the initial term, the contract will be automati-

cally extended by 12 months in each case unless it is terminated in writing with 3 months' notice to the end of a contract year. The parties' right to terminate this contract for cause is not affected by the foregoing. Notice of termination must be given in writing.

- 9.8. If troubleshooting has been agreed to, we will endeavour to rectify the fault in the maintenance items within a reasonable period of time following the customer's request to this effect. The customer may not operate the maintenance item affected by the fault until the fault has been rectified, unless we have issued our express written consent to operation of the maintenance item. Troubleshooting on site at the customer's premises is carried out during normal business hours. The response time for fault reports is two working days (Monday to Friday, excluding public holidays at our registered office) and commences when we receive the fault report. The response time is met if we contact the customer within the response time, for instance, to exchange information, analyse errors or arrange an appointment. The above maintenance regulations are analogously applicable to troubleshooting.
- 9.9. In as far as maintenance or troubleshooting operations is considered work services, the provisions for work services in these T&C apply also.

## 10. Quality specification, authorisations

- 10.1. To the best of our knowledge, the analysis data and details of other quality features reflect the current state of knowledge and our development. Samples and specimens provided to the customer prior to conclusion of the contract are only approximate and only correspond to the current average quality of the goods or performances. If certain parameters are listed in the product specifications, data sheets or other contractual documents on the basis of the samples and specimens, such parameters are binding and conclusive. They are conclusive even if the samples or specimens have other parameters in addition to those listed in the product specifications, data sheets and other contractual documents.
- 10.2. The customer is responsible for compliance with safety and environmental regulations in conjunction with the purchase, storage and use of the goods after delivery. We have no obligation in relation to the customer to obtain any official authorisations.

## 11. Warranty claims

- 11.1. The following applies to the delivery of goods:
- The goods are free of defects if they meet the requirements that the customer and we have agreed to (subjective requirements), i.e., the goods have the agreed quality, the goods are suitable for use as assumed under the contract and the goods are handed over with the agreed accessories and instructions (including assembly and installation instructions). Objective requirements (including, but not limited to, ordinary use, the quality that is customary for items of the same type or customary accessories) are not relevant.
  - Obvious defects (recognised or recognisable during proper incoming goods inspections), i.e., legal or material defects, excess, short or incorrect delivery, must be reported to us in writing immediately, but at the latest within 14 days of delivery (and any agreed acceptance) of the goods. Defects that are not recognisable during proper incoming goods inspection must be reported to us in writing as soon as they are detected. The customer must describe the defects in its written notification to us. The customer must ensure

that any rights of recourse against the carrier are safeguarded.

- 11.2. The following applies to contract manufacturing:

In the event of a complaint about the goods processed, the customer must immediately provide us with sufficient quantities of the rejected goods for inspection. The customer and we will mutually agree on whether we will collect the rejected goods from the customer for inspection or whether the customer will deliver the rejected goods to the address specified by us. At our request, we are also entitled to inspect the rejected goods at the customer's premises during normal business hours, while safeguarding the customer's business and trade secrets. In the event of defects, the costs of the inspection, including the costs of return shipment, will be borne by us.

- 11.3. The following applies to work services (including contract manufacturing):

If the customer accepts a defective work service despite being aware of the defect, it is only entitled to subsequent performance, self-help, cancellation of the contract and price reduction if it has reserved its rights due to the defect at the time of acceptance.

- 11.4. The following provisions are applicable both to the delivery of goods and to work services (including contract manufacturing):

- We must be given the opportunity to take all necessary measures to examine the complaint on site.
- In the event of justified complaints, we are entitled, at our discretion, to either remedy the defect (in the case of delivery and work service) or supply the customer with a defect-free item (in the case of delivery) or to provide the work service again (in the case of work service) ('subsequent performance'). In the event that a subsequent performance attempt fails or is unreasonable for the customer, the customer may, in accordance with the law, either cancel the contract or reduce the price or demand compensation for damage, loss or expenses.
- The customer must comply with the specifications, instructions, guidelines and conditions in the product information, technical information, assembly and operating instructions and other documents relating to the individual goods, in particular carry out and provide evidence of proper maintenance and use of recommended components. Claims for defects arising as a result of a breach of this obligation are excluded.
- The limitation period for the customer's claims for defects is one year. This does not apply to deliveries if the last contract in the supply chain is a purchase of consumer goods (end customer is a consumer) and we are not just the supplier. The limitation period of one year applies also to claims arising from tort based on a defect in the goods. The limitation period of one year does not apply to our unlimited liability for damage or loss arising from a breach of a guarantee or from injury to life, body or health, for intent and gross negligence and for product defects or in as far as we have assumed a sourcing risk. If the defective goods have been used for a building in accordance with their normal use and have caused the building's defectiveness (for deliveries) or if it is a defect in a building (for deliveries and work services) or if it is a defect in a work whose success consists in the provision of planning and supervision services for a building (for work services), the limitation period is five years. The limitation period for deliveries without agreed acceptance commences with the delivery of the goods. In the case of deliveries with agreed

acceptance and work services, the limitation period commences upon acceptance.

## 12. Unauthorised use

- 12.1. Our goods may not be used in aircraft/spacecraft and/or parts thereof without our prior express consent, unless our goods are completely removed before the aircraft/spacecraft is put into operation.
- 12.2. Our goods may not be used in conjunction with the primary cycle in the nuclear energy sector.
- 12.3. In the event of use contrary to the requirements laid down in paragraph 1 and/or paragraph 2, the customer must immediately indemnify us against any resulting damage or loss and related expenses (including legal costs), unless the customer is not responsible for use contrary to the specifications in paragraph 1 or paragraph 2. Any further claims which we may have remain unaffected.

## 13. Prices

- 13.1. Unless a price has been agreed as a fixed price, invoicing will be based on our prices valid on the date we receive the order.
- 13.2. Price quotations are valid for 30 days, unless otherwise agreed in writing.
- 13.3. Unless otherwise agreed in writing, all prices for deliveries are based on FCA (Free Carrier; INCOTERMS in the version applicable at the time of conclusion of the contract).
- 13.4. Unless expressly otherwise agreed in writing in the contract, we are not obliged to carry out customs clearance or to declare and bear any duties, fees, taxes, customs duties and other charges incurred outside the country in which we have our registered office. We only comply with the weight and measurement systems, packaging, labelling or other marking regulations applicable at the place of delivery known to us.
- 13.5. All prices are net prices excluding applicable value added tax. In as far as value added tax is payable, it will be charged separately at the applicable rate.

## 14. Payment

- 14.1. In Germany, payments are due without any deduction within 30 days of invoicing. In the case of foreign transactions, payment must be made prior to delivery or performance, unless otherwise agreed in writing in advance.
- 14.2. The consequences of late payment are subject to the legal provisions.
- 14.3. Offsetting against us is only permissible with legally established or undisputed claims. The assertion of rights of retention against us is only permissible with claims resulting from the same contractual relationship.
- 14.4. Only agents authorised by us to collect payments are entitled to collect invoice amounts.

## 15. Reservation of title for deliveries

- 15.1. Until payment of the purchase price has been effected in full, we remain the legal owners of the goods supplied. The customer is obliged to treat the reserved goods with care for the duration of the reservation of title.
- 15.2. The customer is only permitted to sell the reserved goods in the ordinary course of business. Otherwise, the customer is not entitled to pledge the reserved goods, to assign them as security or to make any other dispositions that jeopardise our ownership. In the event of seizure or

other interventions by third parties, the customer must notify us immediately in writing and provide all necessary information, inform the third party of our ownership rights and cooperate in our measures to protect the reserved goods. If the third party is not in a position to reimburse us for the judicial and extrajudicial costs of enforcing our ownership rights, the customer is obliged to compensate us for the resulting loss, unless the customer is not responsible for the breach of duty.

- 15.3. The customer hereby assigns to us all claims arising from the resale of the goods together with any ancillary rights, irrespective of whether the reserved goods are resold without, before or after processing. We hereby accept this assignment. If assignment is not permitted, the customer hereby instructs the third-party debtor to make any payments exclusively to us. The customer is revocably authorised to collect the claims assigned to us in trust for us in its own name. The amounts collected must be transferred to us immediately. We can revoke the customer's money collection authorisation and its right to resell the goods for cause, in particular if the customer fails to properly meet its payment obligations to us.
- 15.4. In the event that the customer processes the reserved goods, it must carry out such processing on our behalf without any obligations arising for us. If the goods are processed, combined, mixed or blended with other goods not supplied by us, we are entitled to a co-ownership share in the new item in the ratio of the invoice value of the goods delivered to the other processed goods at the time of processing, combining, mixing or blending. If the customer acquires sole ownership of the item by law, it hereby grants to us co-ownership of the new item in the ratio described above and undertakes to store this item for us free of charge. Paragraphs 1 and 2 apply mutatis mutandis.
- 15.5. If the value of the assignments and securities given to us exceeds our claims by more than 10% in total, we undertake to release corresponding securities of our choice at the customer's request.
- 15.6. In the case of deliveries to other jurisdictions where this reservation of title provision does not have the same securing effect as in the Federal Republic of Germany, the customer hereby grants to us a corresponding security interest. If further measures are required to this effect, the customer will do everything to grant us such a security interest without delay. The customer will co-operate in all measures that are necessary and conducive to the effectiveness and enforceability of such security interests.

## 16. Export controls and embargoes

- 16.1. The customer is aware that all products covered by the provisions of these T&C may be subject to export control regulations (in particular including any applicable embargo or economic sanctions) of the respective exporting country and, if applicable, the US.
- 16.2. In the event of re-export of the product by the customer, the customer is legally responsible for proper classification of the product in accordance with export regulations and for obtaining all necessary export licences.
- 16.3. The buyer may not sell or re-export the goods (including technical assistance and services related to such goods, 'services') directly or indirectly to or for use in Russia, Belarus, the Crimea, Donetsk Oblast, Luhansk regions and any other self-proclaimed republics on the territory of Ukraine. In the event of a breach, we are entitled to (i) terminate the business relationship as a whole or in part with immediate effect, (ii) stop any further deliveries of goods (including the provision of services) with immediate effect, and/or (iii) seek any

other appropriate remedy (including compensation for damage, losses and expenses).

## 17. Product liability

- 17.1. The customer will not modify the products, mix them with other products, and in particular will not modify or remove any existing warnings notes regarding the dangers of improper use of the products. In the event of a breach of this obligation, the customer must indemnify us in the internal relationship between us and the customer against third-party product liability claims, unless the customer is not responsible for the modification of the products.
- 17.2. If we are prompted to issue a product recall or warning due to a defect in the products, the customer will co-operate to the best of its ability in the measures that we consider necessary and expedient and will support us in this effort, in particular in determining the necessary customer data. The customer is obliged to bear the costs of the product recall or warning, unless it is not responsible for the product defect according to product liability law principles. Any further claims which we may have remain unaffected.
- 17.3. The customer will notify us immediately of any risks which come to its knowledge during use of the products as well as of any potential product defects.

## 18. Assignment

Any assignment of rights and claims by the customer is subject to our prior written consent. This does not apply to monetary claims.

## 19. Confidentiality

- 19.1. Any business or technical information (including offer documents) made accessible to each other must be kept secret from third parties as long as and in as far as such information is not demonstrably in the public domain, and may only be made available in the receiving party's company to those persons who need to know such information for the purpose of fulfilling the contractual obligations and who are obliged to maintain secrecy accordingly (general confidentiality obligations in employment contracts and the like are sufficient). The confidentiality obligation applies for the duration of the business relationship between us and the customer and for a period of 3 years after termination of the business relationship. Such information may not be reproduced or used for commercial purposes without the prior express consent of the disclosing party in text form in accordance with § 126b of the German Civil Code (BGB, *Bürgerliches Gesetzbuch*). Upon request, any information originating from the disclosing party (including any copies or records made) and items provided on loan must be returned to the disclosing party immediately and in full or destroyed. This does not apply to automatically created backup files and in as far as the receiving party is obliged to retain such files due to legal or official obligations, provided that the receiving party will treat this information confidentially for an unlimited period of time in accordance with the aforementioned provisions and will not use it.
- 19.2. The information referred to in paragraph 1 remains our property. We reserve all rights to such information (including copyrights and the right to register industrial property rights such as patents, registered designs, trademarks, etc.).

## 20. Data protection

- 20.1. The parties are obliged to observe the statutory provisions on data protection, in particular the EU General Data Pro-

tection Regulation ('GDPR') in the performance of the contract and to oblige their employees to comply with these provisions.

- 20.2. The parties process the personal data received (names and contact details of the respective contact persons) exclusively for the performance of the contract and will protect such data by security measures (Art. 32 GDPR) that are adapted to the current state of the art. The parties are obliged to delete such personal data as soon as processing thereof is no longer necessary. Any statutory retention obligations remain unaffected by the foregoing.
- 20.3. If one party processes personal data on behalf of the other party as part of performance of the contract, the customer and we will conclude an agreement on commissioned processing in accordance with Art. 28 GDPR.

## 21. Applicable law, place of jurisdiction, place of performance

- 21.1. The legal relationship between the customer and us is subject exclusively to German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 21.2. If the customer is a merchant within the meaning of the German Commercial Code (HGB, *Handelsgesetzbuch*), a legal entity under public law or a special fund under public law, our registered office is the exclusive place of jurisdiction; however, we are also entitled, at our discretion, to sue the customer at the court of its registered office or branch office or at the court of the place of performance.
- 21.3. The place of performance for the delivery or performances is the place where the goods are to be delivered or the performance is to be provided in accordance with the order. The place of performance for payment is our registered office.

## 22. Language

These T&C are available in German and English. In the event of deviations, the German version has precedence.