

General Terms and Conditions of Purchase of the LHD Group

Status 01100315

§ 1 Validity

(1) The following General Terms and Conditions of Purchase apply for purchases of a German company of the LHD Group (purchaser) from a company in the sense of § 310 Sub § 1 BGB /German Civil Code/ (seller). (2) Unless their validity is expressly agreed to in writing, the purchaser does not recognize terms and conditions of the seller which countermand or deviate from the general terms and conditions of purchase of the purchaser. These General Terms and Conditions of Purchase apply also in the case that the purchaser, in the knowledge of the countermanding terms and conditions or such deviating from the general terms and conditions of purchase of the seller accepts a delivery from the seller without reservation or performs a contractually agreed service without reservation.

§ 2 Business Development; Term of Acceptance

(1) Independent of whether or not a contract is concluded, expenses on the part of the seller for visits, drafts, samples, patterns, cost estimates, offers, etc., in the course of the development of business do not constitute an obligation to pay costs or any other obligation on the part of the purchaser. (2) The purchaser is bound to his own offer for a term of two weeks.

§ 3 Maintenance of Secrecy; Documents

(1) The purchaser and the seller agree to maintain secrecy in regard to information in regard to the other party to the extent that there is a legitimate interest in the maintenance of the secrecy of such. (2) The purchase retains the proprietary right, copyright and any industrial property rights in the documents. (3) The seller is only entitled to pass on such documents (including copies made of such) to third parties when and to what extent the purchaser has agreed in advance in writing to the transfer. This applies also to documents which are not expressly designated as being subject to the maintenance of secrecy. (4) Documents already received are to be returned by the seller to the purchaser immediately when and in as far as a contract is not concluded. (5) § 4 applies exclusively to the purchaser in regard to data protection.

§ 4 Data Protection

The purchaser will work in compliance with the current data protection regulations (and, in particular, with the Federal Data Protection Act). Information can be obtained by referring to the internet page of the LHD Group at: <http://www.lhd-online.de/datenschutz.html>.

§ 5 Prices; Transfer of Risks; Terms of Payment

(1) The price specified in the order is binding. Unless otherwise specified expressly in written agreement, costs and the transfer of risks are effected in accordance with the Incoterm Delivery Duty Paid. (DDP) assuming as basis the delivery address supplied by the purchaser; the price includes packing and legally applicable value added tax. The purchaser is entitled, at his own choice, to return the packing free of charge to the seller or, at his own cost, to have this disposed of. (2) Invoices and other documents used in the business traffic with the purchaser, can only be processed by the purchaser when these – according to the information specified in the order by the purchaser – the order number/processing number (BS No.) specified there, the order date and the address of the seller are specified; the seller is responsible for all consequences arising from non-compliance with this obligation unless it can be proved that he is not responsible for such omission. (3) Unless otherwise specified, the purchaser will pay the purchase price within 14 days at a cash discount of 2% or within 45 days net, each applicable from the date of the receipt of the invoice. (4) The purchaser is entitled to rights of setoff or rights of retention to the legally permissible extent. (5) The purchaser is entitled, to set off all claims against the seller, including those which other companies of the LHD Group hold against the claims of the seller. (6) The seller is only entitled to offset or to the retention of claims to the extent that his claims are undisputed or have been found to be legally valid.

§ 6 Delivery Date; Contractual Penalty

(1) The delivery date specified in the order is binding. (2) In the event that circumstances arise or of which the seller becomes aware which lead to the fact that the agreed delivery date cannot be adhered to, the seller is obliged to inform the purchaser immediately of such. The purchaser is not obliged to accept performance prior to the agreed time of delivery. (3) In the event of delay in delivery the seller is obliged to pay a contractual penalty for each day of workday of the delay of an amount of 0.1% of the order sum, up to a maximum of 5% of the sum of the order in total. The purchaser can claim the penalty up to the last payment. Further legal claims remain unaffected; § 340 Sub § 2 BGB applies in relation to claims for indemnity.

§ 7 Documents; Ownership

(1) The seller is obliged to include the order number specified by the purchaser on all delivery documents and shipping notes; in the event that he fails to comply with this, then any delays resulting in the processing are not the responsibility of the purchaser. (2) The purchaser does not recognize any extension or reservation of proprietary rights on the part of the seller.

§ 8 Warranty for Defects; General Liability on the Part of the Seller

(1) Legal conditions apply. (2) Acceptance is undertaken on condition that there be an examination to ascertain freedom from defect, and, in particular, check of correctness, completeness and suitability. We are entitled to examine the subject matter of the contract in as far and as soon as this is appropriate in the general course of business. Defects discovered by us will be notified immediately on discovery. To this effect, the supplier waives the plea of late notification of the defect. (3) Independent of the foregoing § (2) the customer is entitled to legal claims to their full extent in the case of a defect. In particular, the purchaser is entitled to demand from the seller, according to his own choice, remedy of the defect or delivery of a new article. The Purchaser expressly retains the right to compensation for damage, including compensation for damage instead of performance in the case of every degree of fault and to the full extent involved. (4) In the event that the seller is in delay with the remedy of damages or delivery of new article or if he seriously and finally refuses to provide remedy of the defect or delivery of a new article, the purchaser is entitled to carry out the remedy of the defect or the replacement of the article or to have this carried out by a third party at the cost of the seller. This also applies in the event of urgency and the seller cannot be reached in time or for other pertinent reasons the purchaser cannot be reasonably expected to wait. The seller is to be informed immediately of this being undertaken by the purchaser himself or, respectively, of having this be undertaken by a third party. (5) The deadline for the warranty for defects amounts to 36 months, dating from the date of transfer of risk in accordance with § 5 (1). (6) In all other aspects, the seller is liable for each degree of fault and to the full extent according to the legal regulations applicable.

§ 9 Product Liability; Release; Liability Insurance Coverage

(1) In as far as the seller is liable for product damage, the cause lies in his field of control and organization and he himself is liable in relation to third parties, he is, on immediate request, liable to hold the purchaser free claims for compensation by third parties. (2) Within the scope of his liability for cases of damage in the sense of Sub § (1) the seller is also liable for the reimbursement of any expenses in accordance with §§ 830, 840, 426 BGB, which arise from or are in connection with a recall action carried out by the purchaser. The purchaser will inform the seller in regard to content and scope of the measures to be carried out in as far as this is possible and justified and afford him the opportunity of commenting on such. Other legal claims remain unaffected by such. (3) The seller agrees to maintain a product liability insurance with coverage of 5 million EURO per damage to person/object and to provide the purchaser with evidence of such in suitable form. Any further reaching claims for damages on the part of the purchaser remain unaffected by such.

§ 10 Proprietary Rights

(1) The seller warrants that in connection with his delivery no rights of third parties are violated within the state in which the purchaser has his place of business. (2) In the event that the a claim is asserted against the purchaser by a third party in regard to such rights the seller agrees to hold the purchaser free from such claims at first written request. The purchaser is not authorized without the approval of the seller to enter into any agreement with a third party and, in particular, to conclude any form of settlement. (3) The duty of indemnification on the part of the seller refers to all costs which the purchaser has of necessity from or in connection with the assertion of a claim by a third party. (4) The statutory limitation period amounts to 36 months from the date of the transfer of risk in accordance with § 5 (1).

§ 11 Advertising

The seller may only use his status as official supplier of the purchaser for advertising purposes or publish such in any form to the extent that the purchaser has already issued his written approval to such.

§ 12 Form of Statements

(1) Statements and advertisements of legal relevance which the seller makes to the purchaser or to a third party must be effected in written form. (2) Oral approvals given by representatives or other assisting persons of the purchaser are only then effective when confirmed in writing by the purchaser.

§ 13 Legal Venue; Place of Execution; applicable Law

(1) In the event that the seller is a merchant, a legal entity under public law or a public-law special fund, legal venue is exclusively Cologne, Germany. However, the purchaser is also authorized to bring an action at his general legal venue. (2) The law of the Federal Republic of Germany is applicable, excluding the CISG.