

# **GENERAL TERMS AND CONDITIONS OF PURCHASE**

**of**

## **Lumpi-Berndorf Draht- und Seilwerk GmbH**

Version of July 2008

### **1. GENERAL PROVISIONS**

- 1.1 The terms and conditions of purchase below shall apply to all orders of Lumpi-Berndorf Draht- und Seilwerk GmbH - hereinafter also referred to as LUMPI-BERNDORF or PURCHASER - to the extent not otherwise expressly stipulated in the order in writing. The application of the General Terms and Conditions of the SUPPLIER shall be excluded, even if LUMPI-BERNDORF did not expressly object to such terms and conditions of the SUPPLIER. Any Terms and Conditions of the SUPPLIER shall only apply once they have been approved in writing by LUMPI-BERNDORF. There are no exceptions to this provision.
- 1.2 These General Terms and Conditions of Purchase form an integral part of any procurement transaction of LUMPI-BERNDORF. Upon acceptance of the order by the SUPPLIER at the latest, LUMPI-BERNDORF's Terms and Conditions of Purchase shall be deemed to have been accepted irrevocably.
- 1.3 Should individual provisions of these Terms and Conditions of Purchase be ineffective or unenforceable, this shall not affect the other provisions in any way. In such a case, the ineffective or unenforceable provision shall be replaced by a provision coming as close as possible to the economic intent of the ineffective or unenforceable provision.
- 1.4 In all SUPPLIER's documents, the relevant purchase order number and item number of LUMPI-BERNDORF must be stated. Communications, invoices etc. not containing these special data may lead to delays in order processing and in individual cases, LUMPI-BERNDORF may treat such communications, invoices, etc. as legally ineffective and/or without binding effect.
- 1.5 The SUPPLIER must treat each procurement transaction confidentially. Communications to third parties relating to the orders - in particular naming LUMPI-BERNDORF as a reference - require LUMPI-BERNDORF's prior express consent in writing.

- 1.6 These Terms and Conditions of Purchase are legally effective only in transactions with merchants.

## **2. OFFERS**

- 2.1 Offers, cost estimates, plans, cost schedules etc. submitted to LUMPI-BERNDORF as well as any preparatory work and expenses in connection thereto shall be free of charge for LUMPI-BERNDORF in any case and without exception. This shall also apply in case LUMPI-BERNDORF sent an enquiry or the documents stated above were prepared by LUMPI-BERNDORF for other reasons. The SUPPLIER must process any enquiries from Lumpi-Berndorf accurately and as early as in the phase of submission of offers, point out any possible difficulties in realising the order and/or possible technical problems. LUMPI-BERNDORF will not return any offer documents. Samples provided by the SUPPLIER shall be deemed to have been provided free of charge.
- 2.2 Unless otherwise agreed upon, the SUPPLIER is bound by an offer made for a duration of not less than four weeks after receipt of such offer by LUMPI-BERNDORF. Other indications in the offer are not binding for LUMPI-BERNDORF. In individual cases, a longer period of commitment can be agreed upon. The SUPPLIER's offers do not constitute an entitlement to a subsequent order even if the offer is made upon LUMPI-BERNDORF's request.

## **3. ORDER**

- 3.1 Orders from LUMPI-BERNDORF as well as any changes or amendments must be in writing to be legally effective. The same shall apply to sub-agreements and any other supplementary agreements. Oral orders (e.g. placed via telephone) shall not be legally effective until they are subsequently confirmed in writing by LUMPI-BERNDORF.
- 3.2 Unless LUMPI-BERNDORF waives a written order confirmation in any individual case, a binding legal transaction shall only be deemed to have been concluded if the SUPPLIER issues a congruent order confirmation immediately, however no later than within fourteen (14) days, which must be received by LUMPI-BERNDORF. After the lapse of such period, LUMPI-BERNDORF is not bound by the order anymore.

The SUPPLIER's confirmation of order must contain accurate data on the price, delivery period and other terms of delivery. Should such data be missing entirely or partially or should the order confirmation not correspond to the contents of the preceding order, no contract shall be concluded.

- 3.3 The SUPPLIER shall not be entitled to transfer the order to third parties in whole or in part without LUMPI-BERNDORF's prior written consent. Should the SUPPLIER intend to use upstream suppliers or sub-suppliers or other sub-contractors, it must in any case inform LUMPI-BERNDORF thereof in advance.
- 3.4 All letters, partial or final invoices and all order-related documents prepared in connection with the processing of the offer and order procedure must contain the complete order number of LUMPI-BERNDORF. LUMPI-BERNDORF may treat communications and other documents marked incorrectly or erroneously as not received.
- 3.5 In case the SUPPLIER provided samples, their technical execution and their quality features shall be deemed to be a basis for the contract, unless LUMPI-BERNDORF requires different execution or quality features. Such samples shall remain with LUMPI-BERNDORF free of charge and there is no obligation to return them to the SUPPLIER.

#### **4. PRICES**

- 4.1 The prices agreed upon shall be fixed prices. Exchange rate and currency fluctuations as well as bank fees shall be at the expense of the SUPPLIER without exception. Subsequent price and quantity changes are inadmissible without LUMPI-BERNDORF's prior written approval and do not constitute an entitlement to additional invoicing.
- 4.2 The fixed price agreed upon shall cover any expenses incurred to the SUPPLIER in connection with the fulfilment of the contract. This shall be particularly true of transport costs, insurance, packaging, taxes, customs fees and duties in connection with the deliveries and services of the SUPPLIER at or to the destination. However, LUMPI-BERNDORF only has to pay those costs which were expressly stated in the order as a payment obligation of LUMPI-BERNDORF.

To the extent the order of LUMPI-BERNDORF contains no provision to the contrary, the prices shall be DDP (delivered duty paid) in accordance with the INCOTERMS as amended. Unless otherwise agreed upon in writing, the price shall be deemed to include packaging.

- 4.3 Should prices and terms and conditions not already be contained in the order but be stipulated by the SUPPLIER at a later time, they shall not be effective unless they are accepted in writing by LUMPI-BERNDORF.

## 5. INVOICES

- 5.1 Invoices must be addressed to the entity named in the order, expressly stating VAT as well as stipulating the order number of LUMPI-BERNDORF and the order date. Invoices must be sent by mail. Invoice copies and partial as well as final invoices must be marked accordingly.
- 5.2 Unless otherwise agreed upon in writing, LUMPI-BERNDORF shall pay invoices net within sixty (60) days. The term of payment shall commence once the order was fulfilled completely and without defects and when the invoice is received.
- 5.3 Invoices must be prepared in a clear and comprehensible manner and may only refer to one order from LUMPI-BERNDORF each. Invoices containing factual or calculatory errors requiring contacting the SUPPLIER shall not be due until the matter is clarified and/or corrected. Non-comprehensible invoices or invoices with severe errors can be returned to the SUPPLIER within the term of payment and the term of payment shall not commence until a correct invoice in accordance with the contractual provisions is received.
- 5.4 In case of incomplete or defective performance, LUMPI-BERNDORF shall be entitled - subject to further legal remedies in accordance with warranty and damages provisions - to plea the defence of non-performance of contract and to retain the payment of the invoice entirely or partially until proper performance of the contract by the SUPPLIER, without losing the right to any discounts, rebates or similar reliefs.
- 5.5 LUMPI-BERNDORF shall have the right to set off its own claims against the claims of the SUPPLIER, even if LUMPI-BERNDORF's claims are not yet due. In this context, the SUPPLIER shall irrevocably waive any *exceptio compensationis*.

- 5.6 In case LUMPI-BERNDORF effects a payment, this shall not constitute an acceptance of the completeness and/or faultlessness of the delivery or service and shall therefore not represent any type of waiver of any claims from warranty, guarantee, damages etc. LUMPI-BERNDORF is entitled to.
- 5.7 The supplier shall not be entitled to assign to any third party - in whole or in part - any order-related claim to remuneration. Such assignment shall require LUMPI-BERNDORF's prior written consent.

## **6. DELIVERY, PACKAGING, SHIPPING**

- 6.1 The delivery must correspond exactly to the respective order size in terms of execution, volume and quality. All order refs and order numbers must be stated on any documents relating to an order from LUMPI-BERNDORF (confirmations of order, delivery notes, freight bills, invoices etc.). Partial deliveries - to the extent accepted by LUMPI-BERNDORF - must be marked as such.
- 6.2 The SUPPLIER has the obligation to present all movement certificates, properly issued certificates of origin if required as well as any other goods-related certificates and documents according to Austrian and any relevant EU laws and regulations in a timely and proper manner. The SUPPLIER must completely indemnify and hold harmless LUMPI-BERNDORF for any disadvantages and losses LUMPI-BERNDORF may suffer due to the non-compliance of shipment regulations and/or the non-presentation of the certificates and documents stated above by the SUPPLIER. It shall be expressly agreed upon that the SUPPLIER must comply with all relevant standards common for orders of the type placed.
- 6.3 The dates and terms of delivery as well as the quantities agreed upon must be adhered to in due time and completely and may not be under-cut or exceeded. Unless expressly agreed upon in writing, LUMPI-BERNDORF shall not have any obligation to accept partial deliveries. The SUPPLIER shall have the obligation to inform us in writing of any possible future delay in delivery immediately upon detection, irrespective of the reason therefor, in order to enable us to make alternative arrangements. Such information in advance shall not release the SUPPLIER from its obligation to fulfil the contract within the stipulated time or to pay damages. Without prejudice thereto, in case the agreed upon dates and times of deliv-

ery are not adhered to and a delay occurs, LUMPI-BERNDORF shall be entitled to invoice and/or withhold liquidated damages amounting to 5 % of the gross order value not subject to judicial discretion for each started week of the delay. LUMPI-BERNDORF reserves the right to assert any additional actually incurred damage caused by the delay.

6.4 In case of a delay in delivery and after the lapse of a reasonable grace period granted by LUMPI-BERNDORF, LUMPI-BERNDORF shall also be entitled to rescind the legal transaction and to purchase the goods from third parties in replacement for the performance not executed at the SUPPLIER's expense.

6.5 In case of delay, the SUPPLIER shall be liable for any damage or additional costs incurring in this context as well as for any other disadvantages caused by the delay.

## **7. FORCE MAJEURE / INSOLVENCY**

7.1 Should LUMPI-BERNDORF be prevented from fulfilling the contract due to the occurrence of Force Majeure, LUMPI-BERNDORF shall be entitled to rescind the contract in full or in part or to request the fulfilment of contract at a later time without any additional claims accruing to the SUPPLIER from such delay or modification of order.

7.2 In case composition or bankruptcy proceedings are commenced against the assets of the SUPPLIER or in case the initiation of insolvency proceedings is rejected for lack of assets, LUMPI-BERNDORF shall be entitled to rescind the concluded legal transaction with immediate effect. LUMPI-BERNDORF expressly reserves the right to assert damages due to a non-fulfilment of the contract.

The legal consequences of section 7.2 shall also apply to situations in which the timely, complete fulfilment of contract free from defects in terms of quality and quantity seems at risk for reasons attributable to the SUPPLIER.

## **8. RISK ASSUMPTION AND RESERVATION OF TITLE**

8.1 All goods and services shall become LUMPI-BERNDORF's property without reservation once they are delivered and accepted. Any SUPPLIER's reservations of title require LUMPI-BERNDORF's express written recognition, otherwise they are legally ineffective.

8.2 The risk assumption shall be subject to the regulations of the underlying INCOTERMS, unless otherwise agreed upon in writing in an individual case.

## **9. WARRANTY**

9.1 The supplier shall grant a warranty for the execution of the delivery and services according to the order as well as for the contractual deliveries and services having all the features expressly specified and otherwise guaranteed as well as generally expected. The supplier shall guarantee compliance with all relevant legal provisions and standards, in particular the standards applicable within the European Communities. The SUPPLIER shall be liable in the same manner for goods and parts and/or services it delivered or processed and for those it did not manufacture itself. Furthermore, the SUPPLIER shall guarantee that the deliveries and services are suitable and fit without restriction for their intended use and/or any further processing and that the delivered goods comply with the applicable safety standards.

9.2 Unless otherwise agreed upon in writing, the warranty period shall be three years. It shall commence once the goods are delivered and accepted according to the contract. The SUPPLIER shall be informed of material defects not already complained about during acceptance immediately upon detection thereof and within the agreed upon warranty period at the latest. The notice of defects obligation in accordance with section 377 of the Enterprises Code shall be expressly waived. To such extent, the SUPPLIER shall waive the defence of a belated notice of defects. After the defects are remedied or a replacement delivery was effected by the SUPPLIER, the agreed upon warranty period shall continue. The warranty period shall be suspended by every written notice of defects.

9.3 In case of defects, LUMPI-BERNDORF is entitled to request in its own discretion correction, exchange, additional delivery, reduction in price or rescission from the SUPPLIER. In urgent cases or in case of the SUPPLIER's tardiness, LUMPI-BERNDORF is entitled, subject to rescission, to effect the correction and/or remedy or defects itself or have it done by third parties, both at the expense of the SUPPLIER. Any costs for correction as well as expenses in connection with the return of defective goods shall be borne by the SUPPLIER.

9.4 In case of defects, LUMPI-BERNDORF shall be entitled to request damages immediately,

instead of correction. Should the SUPPLIER not or only partially comply with LUMPI-BERNDORF's request of correction, exchange, additional delivery, reduction in price or damages within the set grace period, LUMPI-BERNDORF shall have a right of rescission.

9.5 Furthermore, the SUPPLIER shall be liable for the completeness and accuracy of the technical data and warning notices contained in the accompanying documents, certificates or product-related test certificates.

## **10. DAMAGES**

10.1 The SUPPLIER shall be liable for causal damage based on or in connection with the relevant legal transaction, whereas the SUPPLIER is also liable for the slight negligence of its employees as well as its upstream and sub-suppliers or any vicarious agents. The SUPPLIER's liability in particular includes damage from non-performance or delay and also compensation for lost profits.

10.2 In case the SUPPLIER is liable for material defects and defects of title according to its warranty obligation, the SUPPLIER shall also be liable for any damage and other disadvantages caused thereby (consequential harm caused by a defect). This liability shall be a no-fault liability towards LUMPI-BERNDORF; the SUPPLIER shall accept and confirm this.

10.3 The SUPPLIER shall have the obligation to indemnify and hold harmless LUMPI-BERNDORF for any third party warranty claims and claims for damages in connection with deliveries and services in accordance with the contract. The SUPPLIER's liability shall also cover all costs incurred by LUMPI-BERNDORF for the defence against claims asserted against LUMPI-BERNDORF in future. This shall apply in particular to disputes on patent, copyright and trademark rights in connection with the performance of the contract.

## **11. PRODUCT LIABILITY**

11.1 In case of an asserted claim in accordance with the provisions of the Product Liability Act, the SUPPLIER shall have the obligation to indemnify and hold harmless LUMPI-BERNDORF, to the extent the defectiveness of the goods is attributable to the SUPPLIER or its upstream or sub-supplier or its vicarious agents, if any. Moreover, the SUPPLIER shall have the obligation to provide LUMPI-BERNDORF with product-related warning notices,

provisions on use, utilisation and registration etc.

11.2 Should the SUPPLIER become aware of circumstances that could constitute a product defect in accordance with the Product Liability Act at a later time, the supplier shall have the obligation of informing LUMPI-BERNDORF thereof immediately.

## **12. GUARANTEE**

To the extent the SUPPLIER gives a guarantee as to product quality, applicability, durability or other features, LUMPI-BERNDORF shall be entitled to these claims under guarantee in addition to the warranty claims, claims for damages and product liability claims stipulated in these Terms and Conditions of Purchase or by law. The content and scope of such claims under guarantee shall be subject to the guarantee given in any individual case.

## **13. DOCUMENTS**

The scope of delivery also includes declarations of conformity and/or manufacturer's declarations as well as instruction and maintenance manuals.

Declarations of conformity and/or manufacturer's declarations, instruction and maintenance manuals must be sent to LUMPI-BERNDORF within a period of fourteen (14) days after confirmation of order.

## **14. ENGINEERING DATA, DRAWINGS, TOOLS**

14.1 Samples, models, drawings, moulds, tools, plans and any other items provided by LUMPI-BERNDORF shall remain the intellectual and the tangible property of LUMPI-BERNDORF. Such documents may only be passed on to third parties with LUMPI-BERNDORF's prior written consent. The SUPPLIER has the duty to maintain secrecy, otherwise it shall be subject to claims for damages.

14.2 The SUPPLIER shall have the obligation to surrender the items stipulated in section 14.1 at any time upon LUMPI-BERNDORF's request. In case insolvency proceedings are initiated or third parties apply for execution proceedings, the SUPPLIER has the obligation to sufficiently mark the items that are not its property and to take all measures to ensure that

LUMPI-BERNDORF's property is not damaged.

## **15. PROPERTY RIGHTS**

The SUPPLIER confirms that the manufacture and delivery of the goods and services according to the contract does not violate third party property rights. To the extent licence rights were required for the manufacture of the product, they were obtained by the SUPPLIER and any costs in connection therewith shall be deemed to be covered by the price agreed upon with LUMPI-BERNDORF.

The SUPPLIER shall have the obligation to indemnify and hold harmless LUMPI-BERNDORF for any disputes from intellectual property right violations in connection with deliveries and services in accordance with the contract. Should the delivered product only be usable in part due to the violation of property rights, the SUPPLIER shall be liable for the damage caused thereby, subject to further claims asserted by LUMPI-BERNDORF.

## **16. DUTY TO OBSERVE SECRECY**

16.1 The SUPPLIER has the obligation to keep strictly confidential any business secrets it becomes aware of in the course of the business relationship with LUMPI-BERNDORF. Any disclosure of information to third parties - including partial disclosures - shall only be permitted with LUMPI-BERNDORF's prior written consent. Furthermore, the SUPPLIER shall be liable for any consequences occurring due to a violation of the duty to keep secrecy caused by its employees.

16.2 The SUPPLIER shall not be entitled to use marks, brands and other company or product labelling of LUMPI-BERNDORF for competition purposes or other publications.

## **17. PLACE OF PERFORMANCE, APPLICABLE LAW AND PLACE OF JURISDICTION**

17.1 The place of performance for delivery and/or services is the delivery address stated in the order, failing which the seat of Lumpi-Berndorf in Binderlandweg 7, 4020 Linz, Austria.

17.2 Austrian substantive law shall apply between the parties exclusively, excluding the United Nations Convention on Contracts for the International Sale of Goods (UN Sales Conven-

tion).

17.3 The SUPPLIER recognises and subjects itself to the competent court at the seat of LUMPI-BERNDORF regarding all disputes in connection or due to the respective legal transaction. However, LUMPI-BERNDORF may assert claims against the supplier before another court, competent for the SUPPLIER as to location and matter in question.