

**General Terms and Conditions of Sale**  
of  
Lumpi-Berndorf Draht- und Seilwerk GmbH  
(hereinafter referred to as: „Lumpi-Berndorf“)

**1. Scope**

1.1. These general terms and conditions (“Conditions”) shall apply to all legal transactions, current and future, between Lumpi-Berndorf and third parties (“Purchaser”), i.e. for the delivery of goods and analogously also for the provision of services.

1.2. Deviations from these Conditions shall only be effective upon written acknowledgement by Lumpi-Berndorf. The validity of Purchaser’s terms and conditions shall be excluded.

**2. Offer**

2.1 Lumpi-Berndorf’s offers are without engagement.

2.2 Documents related to offers and projects may not be copied or made accessible to third parties without Lumpi-Berndorf’s consent. They can be re-called at any time and must be returned to Lumpi-Berndorf immediately if the order is placed with a third party.

**3. Conclusion of Contract**

3.1 The contract is deemed to be concluded if Lumpi-Berndorf sends a written order confirmation and/or effects delivery following receipt of an order.

3.2 Data contained in catalogues, leaflets etc. as well as other written or oral statements shall only be binding if expressly referred to in the order confirmation.

3.3 Subsequent changes and amendments to the contract must be confirmed by Lumpi-Berndorf in writing in order to be valid.

**4. Prices**

4.1 All prices are ex works and/or ex Lumpi-Berndorf’s warehouse, excl. packaging, loading and VAT. Fees, taxes or other levies charged in connection with the shipment, if any, shall be borne by the Purchaser. If shipment with delivery has been agreed upon, delivery and transport insurance - if desired by the Purchaser - shall be invoiced separately, however, unloading and stowing away shall not be included. We only take back packaging if this was expressly agreed upon.

4.2 In case of an order deviating from our over-

all offer, Lumpi-Berndorf reserves the right to a corresponding price modification.

4.3 Prices are based on the costs at the time of our initial price offer. Should these costs increase by the time of delivery, Lumpi-Berndorf shall be entitled to adapt the prices accordingly.

4.4 In case of repair orders, services Lumpi-Berndorf considers appropriate shall be provided and invoiced on the basis of expenses incurred.

This shall also apply to services and additional services, the necessity of which only becomes obvious during execution of the order; however, in this case a separate notice to the Purchaser shall not be required.

4.5 Expenses for the preparation of repair offers or for expert opinions shall be invoiced to the Purchaser.

4.6 Adequate packaging according to usage of trade shall be effected at the Purchaser’s expense.

**5. Delivery**

5.1 The agreed delivery dates are approximate dates and not binding. The Purchaser shall not be entitled to claim any damages due to non-performance or delay in performance. The Purchaser undertakes to accept the goods immediately after completion or upon delivery at the latest, and to diligently examine them for defects immediately after delivery.

5.2 The term of delivery shall begin with the later of the following dates:

- a) date of order confirmation;
- b) date of fulfilment by the Purchaser of all its technical, commercial and other responsibilities;
- c) date on which Lumpi-Berndorf receives an advance payment or security to be effected before delivery of the goods.

5.3 The Purchaser shall be responsible for obtaining all regulatory permissions and other consents by third parties which may be required for the setting up of equipment. If the Purchaser fails to obtain such permissions or consents in time, the term of delivery shall be extended accordingly.

5.4 Lumpi-Berndorf shall be entitled to effect and invoice partial or advance deliveries. In case delivery on call is agreed upon, the goods shall

be deemed called off no later than 30 days after placing the order.

5.5 In case of an unforeseeable or uncontrollable occurrence of force majeure and in case of other unforeseeable and unavoidable circumstances beyond the control of Lumpi-Berndorf (Force Majeure), such as discontinued operations, transport difficulties, armed conflicts, regulatory interventions and prohibitions, delay in transport and customs clearance, transport damage, lack of energy and raw materials, labour disputes as well as loss of a material supplier who is hard to replace and loss and / or shortage of energy, raw materials, fuels and other auxiliary materials for Lumpi-Berndorf's activities and in case of all other production and delivery disturbances, Lumpi-Berndorf shall be entitled to postpone the time of delivery according to the duration of the disturbance or Lumpi-Berndorf shall be entitled to cancel its delivery obligations in part or in full without any claims for compensation. The above mentioned circumstances shall also entitle Lumpi-Berndorf to extend the term of delivery if one or more of its suppliers suffered from one or more of the above-mentioned events of Force Majeure. Should an event of Force Majeure last for longer than six months, each of the parties can terminate the contract and the respective other party shall not be entitled to assert any claims. The contractual parties shall be obliged to inform each other of the beginning and the end of an event of Force Majeure immediately in writing and in a suitable manner.

5.6 In case the parties agreed a penalty for delay in delivery upon conclusion of contract, this penalty shall be paid according to the following regulation. A deviation from individual provisions of this regulation shall not affect the applicability of its remaining provisions.

A delay in performance which can be proven to have occurred due to Lumpi-Berndorf's fault shall entitle the Purchaser to claim for every completed week of the delay a penalty amounting to a maximum of 0.5 % but not exceeding a total of 5 % of the value of that part of the relevant total delivery, which cannot be used due to the delay in the delivery of a material part, provided that the Purchaser suffered a damage corresponding to this amount. Any further claims in relation to a delay shall be excluded.

5.7 Depending on the nature of the goods and unless other deviations are stated in the price lists valid at that time, deviations in weight, quantity, running meters etc. of not more than

+/- 10 % (ten percent) shall be allowed. This shall apply to the total delivery as well as to individual partial deliveries. The invoiced price shall be calculated on the basis of the quantity units determined by Lumpi-Berndorf (depending on the product, normally weight - in special cases also quantity, running meter etc.)

5.8 If the Purchaser fails to provide information required for shipment in due time or to collect the goods immediately, this shall be considered a default in taking delivery by the Purchaser with all legal consequences. In this case, Lumpi-Berndorf shall be entitled to ship the goods in its sole discretion without prejudice to any other rights in similar cases, if any. The Purchaser shall not be entitled to assert any claims against Lumpi-Berndorf due to possible additional costs or damage. If, after receipt of a notice by Lumpi-Berndorf or its representative, the Purchaser does not take delivery or the documents acknowledging delivery on the date on which the goods are made available to it according to the contract, it shall be obliged to effect the payments due upon delivery and/or the payments resulting from the delivery of goods.

## **6. Transfer of Risk and Place of Fulfilment**

6.1 Irrespective of the pricing agreed upon for the delivery (such as free of charge, CIF), use and risk shall be transferred to the Purchaser when the goods leave our works and/or warehouse. This shall also apply if delivery is effected within the scope of assembly work or if transport is effected or organised and managed by Lumpi-Berndorf.

6.2 Place of fulfilment for delivery shall be Lumpi-Berndorf's production site. For services rendered, the place of fulfilment shall be the place where the service is rendered. In case of a service or an agreed partial service, the risk shall be transferred to the Purchaser when the service is rendered. Place of fulfilment for payment shall always be Lumpi-Berndorf's seat.

6.3 The Purchaser shall be invoiced with freight costs and the insurances for the goods demanded by the Purchaser. We take into consideration special instructions for loading and shipment of the goods if we consider them reasonable based on our experience. The Purchaser undertakes to assume liability for increased costs and risks in connection therewith, if any.

## **7. Payment**

7.1 Unless other payment terms are agreed upon, 1/3 of the price shall be due upon receipt

of the order confirmation, 1/3 after half of the delivery term has elapsed and the remainder upon delivery. In any case, the VAT stated in the invoice shall be payable no later than 30 days after the date of invoicing.

7.2 In case of partial invoices, the corresponding partial payments shall be due upon receipt of the corresponding invoice. This shall also apply to invoiced amounts resulting from additional deliveries or other agreements exceeding the initial contract price, irrespective of the terms of payment agreed upon for the principal delivery.

7.3 Payments must be effected without any deductions ex appointed paying agent of Lumpi-Berndorf in the agreed currency. We do not accept cheques or bills of exchange except for payment purposes. Any interest and expenses in connection thereto (such as expenses for collection and discount) shall be borne by the Purchaser.

7.4 The Purchaser shall not be entitled to retain or set-off payments due to warranty claims or other counterclaims.

7.5 Payment shall be deemed to be effected on the date on which Lumpi-Berndorf has the amount at its disposal.

7.6 If the Purchaser is in default of an agreed payment or other performance in connection with this or any other business transaction, Lumpi-Berndorf can, notwithstanding any other rights:

- a) postpone fulfilment of its own obligations until payment or other performance is effected and demand an extension of the term of delivery;
- b) accelerate all outstanding payments in connection thereto and any other business transaction and demand default interest for these amounts amounting to 0.6 % per month, starting on the due date unless Lumpi-Berndorf can prove costs in excess thereof.

In any case, Lumpi-Berndorf shall be entitled to demand costs incurred in the run-up to legal proceedings, especially costs incurred in making requests for payment and attorney fees.

7.7 Discounts or rebates granted are dependent on full payment in due time.

7.8 Lumpi-Berndorf reserves the title to all goods it delivered until full payment of the invoiced amounts plus interest and expenses. In order to secure Lumpi-Berndorf's purchase price claim, the Purchaser assigns to Lumpi-Berndorf its claims resulting from a resale of goods under retention of title, even if they were processed, rebuilt or mixed, and undertakes to make a cor-

responding note in its business records and on its invoices. Upon request, the Purchaser must inform Lumpi-Berndorf of the assigned claim and of the debtor and provide all details and documents necessary for collection and inform the third party debtor of the assignment. In case of an attachment or other demand, the Purchaser shall be obliged to point out Lumpi-Berndorf's title and to inform Lumpi-Berndorf immediately.

## **8. Warranty and Liability for Defects**

8.1 Unless the Purchaser does not fulfil the agreed payment terms, Lumpi-Berndorf shall be obliged to remedy any defect due to a fault in construction, material or execution existing at the time of delivery affecting the functionality according to the following conditions. No warranty claims can be derived from data contained in catalogues, leaflets, advertising material and written or oral statements which were not included in the contract.

8.2 The warranty period shall be 12 months unless otherwise agreed upon for individual delivery items. This shall also apply to goods and services to be supplied which are fixed to a building or land. The warranty period shall commence at the time of transfer of risk according to article 6.

8.3 The Purchaser shall only be entitled to a warranty claim if it filed a written complaint with respect to the defects incurred. The Purchaser must immediately prove the existence of a defect; it must especially provide Lumpi-Berndorf with its documents and/or data. In case of the existence of a defect subject to a warranty obligation according to article 8.1, Lumpi-Berndorf shall, at its option, rectify the defects of the defective goods and/or the defective part at the place of fulfilment or have the defective goods and/or parts sent to its premises in order to rectify the defects or reduce the purchase price.

8.4 All additional costs incurring in connection with the rectification of defects (such as costs for assembly and disassembly, transport, disposal, travel and travel time) shall be borne by the Purchaser. The Purchaser must provide the necessary assistants, lifting devices, scaffolds and incidentals free of charge for warranty work in the Purchaser's premises. Replaced parts shall become Lumpi-Berndorf's property.

8.5 If a product is manufactured by Lumpi-Berndorf based on construction specifications, drawings, models or other specifications by the Purchaser, Lumpi-Berndorf shall only be liable for the execution of the work according to the

terms.

8.6 All defects resulting from instructions and assembly work not effected by Lumpi-Berndorf, insufficient equipment, non-observance of installation requirements and user guidelines, overstraining of parts exceeding the performance indicated by Lumpi-Berndorf, negligent or unsuitable treatment and use of unsuitable operating materials shall be excluded from the liability for defects. This shall also apply to defects based on materials provided by the Purchaser. Lumpi-Berndorf shall not be liable for damage due to third parties' actions, to atmospheric discharges, overvoltage and chemical influences. The warranty does not include replacements of parts due to normal wear and tear. Lumpi-Berndorf shall not assume any liability for the sale of second-hand goods.

8.7 The warranty shall expire immediately if the Purchaser or a third party Lumpi-Berndorf did not explicitly entitle to do so performs changes or repairs of the delivered goods without Lumpi-Berndorf's written consent.

8.8 In any case, claims based on Article 933b of the Austrian General Civil Code (ABGB) shall become statute-barred upon expiration of the period of time stated in Article 8.2.

8.9 The provisions 8.1 to 8.8 shall apply correspondingly to the liability for other defects based on other legal grounds.

## **9. Termination of Contract**

9.1 Unless otherwise agreed upon, the Purchaser can only terminate the contract in case of a delay in delivery due to Lumpi-Berndorf's gross negligence after unsuccessful lapse of a reasonable grace period set by the Purchaser. The termination must be asserted via registered mail.

9.2 Notwithstanding its other rights, Lumpi-Berndorf shall be entitled to terminate the contract:

- a) if the execution of delivery and/or the commencement or the continuation of the services is rendered impossible or further delayed despite granting a reasonable grace period for reasons within the Purchaser's responsibility;
- b) if concerns with respect to the Purchaser's solvency arose and the purchaser neither effects an advance payment nor provides Lumpi-Berndorf with an adequate security upon Lumpi-Berndorf's request; or
- c) if the extension of the delivery period due to circumstances mentioned in article 5.5 amounts to more than half of the initially agreed

delivery term, however, not less than 6 months.

9.3 The termination can also be effected for the above-mentioned reasons concerning a part of the delivery or services still to be performed.

9.4 If bankruptcy proceedings have been instituted against the assets of one of the contractual parties or if a petition in bankruptcy is dismissed for lack of funds, the respective other contractual party shall be entitled to terminate the contract without granting any grace period.

9.5 In case of a termination of the contract and notwithstanding any claims for damages by Lumpi-Berndorf including costs incurred in the run-up to legal proceedings, services performed or partially performed shall be invoiced and paid in accordance with the contract. This shall also apply to the extent the Purchaser has not yet accepted delivery and/or services as well as for preparation activities performed by Lumpi-Berndorf. Instead, Lumpi-Berndorf shall also be entitled to demand the return of goods already delivered.

9.6 Any further consequences of a termination of contract shall be excluded.

## **10. Liability**

10.1 Lumpi-Berndorf shall be liable for damage outside the scope of the product liability law only to the extent such damage can be proven to have occurred due to wilful intent or gross negligence and only in accordance with legal provisions. Liability for slight negligence, compensation for consequential damages and financial loss, unrealised savings, loss of interest and for third party claims against the Purchaser shall be fully excluded.

10.2 Any compensation for damages shall be excluded in case of non-observance of conditions for assembly, commissioning and use (e.g. contained in operating manuals) or official admission requirements, if any.

10.3 If contractual penalties are agreed upon, any further claims due to the corresponding title shall be excluded.

## **11. Assertion of Claims**

Unless otherwise agreed upon in any individual case and unless shorter periods of time are required by legal provisions, the Purchaser must enforce all of its claims by legal action within a period of three years starting from the date of transfer of risk; otherwise all other claims shall become extinct.

## **12. Industrial Property Rights and Copyright**

12.1 If a product is manufactured by Lumpi-Berndorf based on the Purchaser's construction specifications, drawings, models or other specifications, the Purchaser shall indemnify and hold harmless Lumpi-Berndorf for any infringements of property rights.

12.2 Execution-related documents such as plans, sketches and other technical documents as well as samples, catalogues, leaflets, figures and the like shall always remain Lumpi-Berndorf's intellectual property and are subject to the corresponding legal provisions for copying, reproduction, competition etc. Article 2.2 shall also apply to execution-related documents.

12.3 The Purchaser must observe the rights of third parties so that patent rights, brands and registered designs are not infringed, neither by its quality requirements or other requirements nor by the use of plans, models, samples and the like or auxiliary means provided by it. It shall be obliged to indemnify and hold harmless Lumpi-Berndorf for all such claims asserted against Lumpi-Berndorf. Lumpi-Berndorf shall not be responsible or liable for loss or damage of plans, models, samples or similar auxiliary means provided by the Purchaser to the extent that such a responsibility or liability exceeds the reasonable care and maintenance in connection with a fiduciary deposit. Lumpi-Berndorf shall only effect insurance upon the Purchaser's instructions after signature of the order and payment by Purchaser. Lumpi-Berndorf shall be entitled to destroy all plans, models, samples and similar materials not used within a period of one year after receipt of these materials by Lumpi-Berndorf. Plans, sketches and other technical documents as well as samples, catalogues, leaflets, figures and the like provided by Lumpi-Berndorf shall remain Lumpi-Berndorf's property, protected by the applicable legal provisions concerning reproduction, copying, competition etc.

## **13. General Provisions**

Should individual provisions of the contract between the contractual parties or of these Conditions be ineffective, this shall not affect the effectiveness of the remaining provisions. The ineffective provision shall be replaced by an effective provision which comes as close as possible

to the intended objective.

## **14. Applicable Law and Place of Venue**

14.1 It is agreed that the contractual relationship between the contractual parties as well as the relevant contract forming the basis of this contractual relationship (the "Contract") shall be governed by Austrian law. If this Contract is not recognized by the laws of the country of destination of the goods or by the state in which the Purchaser's seat is located (the "Other Law") or if one of the provisions in this Contract is opposed to the Other Law's public order, the Contract shall remain in force and the provisions of this Contract shall be governed by Austrian law insofar as this is allowed according to the Other Law. Should any provision of this Contract become invalid according to the Other Law, this shall not affect the remaining provisions and the invalid provision shall be replaced by a valid provision which comes as close as possible to the invalid provision's intent and which is admissible according to the Other Law. The applicability of the United Nations Convention on Contracts for the International Sale of Goods shall explicitly be excluded.

14.2 The parties expressly agree that all disputes between them shall exclusively be settled by the competent court in Linz, Austria, according to the provisions of the Austrian Code of Civil Procedure.

14.3 If a decision of an Austrian court cannot be enforced in the country of destination of the goods or in the state in which the Purchaser's enforceable assets are located, the parties agree on an ad-hoc arbitral tribunal. All disputes and disagreements between the parties are to be finally settled according to the Rules of Arbitration and Conciliation of the International Chamber of Commerce ("ICC"). The arbitral tribunal shall convene in the city of Linz in Austria, the language of the arbitration proceedings shall be German. The arbitral tribunal shall consist of three arbitrators. The parties must nominate their arbitrators behind closed doors.

14.4 If the arbitral award is not acknowledged in the country of destination of the goods or in the country in which the Purchaser's enforceable assets are located, Lumpi-Berndorf shall be entitled to refer to the courts in the respective country.