

# General Terms and Conditions of Purchase of LUPA Präzisionsfedern GmbH



February 2023

## 1 Application

**1.1** All deliveries, services and offers of our suppliers (also "Seller") shall be made exclusively on the basis of these Terms and Conditions of Purchase. These are an integral part of all contracts which we conclude with our suppliers for the deliveries or services offered by them. These Terms and Conditions of Purchase shall apply in particular to contracts for the sale and/or delivery of movable goods ("Goods"), irrespective of whether the Seller/Supplier manufactures the Goods itself or purchases them from suppliers (§§ 433, 650 of the German Civil Code). They shall also apply to all future deliveries, services or offers to the Customer, even if they are not separately agreed again.

**1.2** These Terms and Conditions of Purchase shall apply exclusively. Deviating, conflicting or supplementary Terms and Conditions of the Seller shall only become part of the contract if and to the extent that we have expressly consented to their application in writing. This requirement of consent shall apply in any case, for example even if the Seller refers to its Terms and Conditions within the scope of the order confirmation and we do not expressly object thereto.

**1.3** Legally relevant declarations and notifications by the Seller with regard to the contract (e.g. setting of deadlines, reminders, withdrawal) must be made in writing. Written form within the meaning of these Terms and Conditions of Purchase includes written and text form (e.g. letter, e-mail, fax). Legal formal requirements and further proof, in particular in the case of doubts about the legitimacy of the person making the declaration, shall remain unaffected.

## 2 Offer, Acceptance

**2.1** Insofar as our offers do not expressly contain a binding period, we shall be bound by them for one week after the date of the offer. The receipt of the declaration of acceptance by us shall be decisive for timely acceptance.

**2.2** A delayed acceptance shall be deemed a new offer and shall require acceptance by us.

**2.3** We shall be entitled to change the time and place of delivery as well as the type of packaging at any time by written notice with a period of at least at least 5 working days before the agreed delivery date. The same applies to changes in product specifications, insofar as these can be implemented within the framework of the supplier's normal production process without significant additional effort, whereby in these cases the notification period in accordance with the previous sentence is at least 7 working days. We shall reimburse the supplier for any proven and

reasonable additional costs incurred as a result of the change. If such changes result in delivery delays which cannot be avoided in the supplier's normal production and business operations with reasonable efforts, the originally agreed delivery date shall be postponed accordingly. The supplier shall notify us in writing of the additional costs or delays in delivery to be expected from him on careful assessment in good time before the delivery date, but at least within 3 working days of receipt of our notification in accordance with sentence 1.

**2.4** We are entitled to withdraw from the contract at any time by written declaration stating the reason if **2.4.1** we are no longer able to use the ordered products in our business operations or are only able to use them at considerable expense due to circumstances for which the supplier is responsible and which occurred after the conclusion of the contract (e.g. non-compliance with legal requirements) or

**2.4.2** the financial circumstances of the supplier deteriorate after conclusion of the contract to such an extent that delivery in accordance with the contract cannot be expected.

## 3 Prices, Payment

**3.1** The price stated in the order is binding.

**3.2** In the absence of any written agreement to the contrary, the price includes delivery and transport to the shipping address stated in the contract, including packaging.

**3.3** Insofar as the price does not include packaging according to the agreement made and the remuneration for the packaging - which is not only provided on loan - is not expressly determined, this is to be charged at the proven cost price. At our request, the supplier shall take back the packaging at its own expense.

**3.4** Unless otherwise agreed, we shall pay the purchase price within 14 days of delivery of the goods and receipt of the invoice with a 3% discount or within 30 days net. The receipt of our transfer order at our bank shall be sufficient for the timeliness of the payments owed by us.

**3.5** All order confirmations, delivery documents and invoices shall state our order number, the article number, delivery quantity and delivery address. If one or more of these details are missing and this delays the processing by us in the normal course of business, the payment periods specified in paragraph 4 shall be extended by the period of the delay.

**3.6** We do not owe any interest on arrears. The statutory provisions shall apply to default in payment.

**3.7** We shall be entitled to rights of offset and

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retention as well as the defense of non-performance of the contract to the extent provided by law. In particular, we are entitled to withhold payments due as long as we are still entitled to claims against the Seller arising from incomplete or defective performance.

**3.8** The Seller shall have a right of set-off or retention only in respect of counterclaims which have been established by declaratory judgment or are undisputed.

## 4 Delivery, passing of risk

**4.1** The delivery time (delivery date or period) stated by us in the order or otherwise applicable according to these Terms and Conditions of Purchase shall be binding. Early deliveries are only permissible by agreement.

**4.2** Without our prior written consent, the Seller shall not be entitled to have the performance owed by it rendered by third parties (e.g. subcontractors). The Seller shall bear the procurement risk for its services unless otherwise agreed in individual cases (e.g. limitation to stock).

**4.3** Delivery shall be made "free domicile" within Germany to the place specified in the order. If the place of destination is not specified and nothing else has been agreed, the delivery shall be made to our registered office in Feurenmoos 10, 78739 Hardt. The respective place of destination is also the place of performance for the delivery and any subsequent performance.

**4.4** The supplier is obliged to inform us immediately in writing if circumstances occur or become apparent according to which the delivery time cannot be met.

**4.5** If the day on which the delivery must be made at the latest can be determined on the basis of the contract, the supplier shall be in default on expiry of this day without this requiring a reminder from us.

**4.6** In the event of a delay in delivery, we shall be entitled to the statutory claims without limitation, whereby we shall only be entitled to exercise a right of withdrawal or assert claims for damages in lieu of performance after the fruitless expiry of a reasonable grace period.

**4.7** If the Seller is in default, we may - in addition to further statutory claims - demand lump-sum compensation for our damage caused by default in the amount of 1% of the net price per completed calendar week, but in total not more than 5% of the net price of the goods delivered late. We reserve the right to prove that higher damages have been incurred. The seller reserves the right to prove that no damage at all or only significantly less damage has been incurred. The contractual penalty shall be

set off against the default damage to be compensated by the supplier.

**4.8** The supplier is not entitled to make partial deliveries without our prior written consent.

**4.9** Even if shipment has been agreed, the risk shall only pass to us when the goods are handed over to us at the agreed destination.

## 5 Retention of Title

**5.1** We reserve the title or copyright to orders placed by us, orders as well as drawings, illustrations, calculations, descriptions and other documents made available to the supplier. The supplier may neither make them accessible to third parties nor use or reproduce them himself or through third parties without our express consent. He must return these documents to us in full at our request if they are no longer required by him in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. In this case, any copies made by the supplier must be destroyed; the only exceptions to this are storage within the scope of statutory storage obligations and the storage of data for backup purposes within the scope of normal data backup.

**5.2** Tools and models which we make available to the supplier or which are manufactured for contractual purposes and are charged to us separately by the supplier remain our property or pass into our ownership. The supplier shall identify them as our property, store them carefully, protect them to a reasonable extent against damage of any kind and use them only for the purposes of the contract. In the absence of an agreement to the contrary, the contracting parties shall each bear half of the costs of their maintenance and repair. However, insofar as these costs are attributable to defects in the items manufactured by the supplier or to improper use on the part of the supplier, its employees or other vicarious agents, they shall be borne solely by the supplier. The supplier shall notify us immediately of any damage to these tools and models which is not merely insignificant. Upon request, he shall be obliged to return them to us in proper condition if they are no longer required by him for the performance of the contracts concluded with us.

**5.3** The transfer of ownership of the goods to us shall be unconditional and without regard to the payment of the price. If, however, in an individual case we accept an offer of the seller to transfer title conditional on payment of the purchase price, the seller's retention of title shall expire at the latest upon payment of the purchase price for the goods delivered. We shall remain authorized to resell the



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goods in the ordinary course of business even before payment of the purchase price with advance assignment of the claim arising therefrom (alternatively validity of the simple reservation of title extended to the resale). This excludes all other forms of retention of title, in particular the extended retention of title, the passed-on retention of title and the retention of title extended to further processing.

## 6 Liability, Warranty

**6.1** In the event of defects, we reserve all rights and remedies for non-conformity provided by applicable law.

**6.2** We are not obliged to inspect the goods or make special enquiries about any defects upon conclusion of the contract. Partially deviating from § 442 para. 1 sentence 2 of the German Civil Code, we shall therefore also be entitled without restriction to claims for defects if the defect remained unknown to us at the time of conclusion of the contract due to gross negligence.

**6.3** The statutory provisions (§§ 377, 381 German Commercial Code) shall apply to the commercial duty to examine and give notification of defects with the following proviso: Our duty to examine shall be limited to defects which become apparent during our incoming goods inspection by means of external examination including the delivery documents (e.g. transport damage, wrong and short deliveries) or which are recognizable during our quality control by means of random sampling. Insofar as acceptance has been agreed, there shall be no obligation to inspect. In all other respects, it shall depend on the extent to which an inspection is feasible in the ordinary course of business, taking into account the circumstances of the individual case. Our obligation to give notification of defects discovered later remains unaffected.

**6.4** Deviations in quality and quantity shall be deemed to have been notified in good time if we notify the supplier of them within 5 working days of receipt of the goods by us.

**6.5** We do not waive warranty claims by accepting or approving samples or specimens submitted.

**6.6** Upon receipt of our written notification of defects by the supplier, the limitation period for warranty claims shall be suspended until the supplier rejects our claims or declares the defect eliminated or otherwise refuses to continue negotiations on our claims. In the event of replacement delivery and rectification of defects, the warranty period for replaced and rectified parts shall begin again unless we had to assume from the supplier's conduct that the supplier did not consider itself obliged to

undertake the measure but only undertook the replacement delivery or rectification of defects as a gesture of goodwill or for similar reasons.

## 7 Limitation

**7.1** The mutual claims of the contracting parties shall become statute-barred in accordance with the statutory provisions, unless otherwise stipulated below.

**7.2** Notwithstanding § 438 para. 1 no. 3/§ 634a para. 1 of the German Civil Code, the general limitation period for claims for defects shall be 3 years from the passing of risk. Insofar as acceptance has been agreed, the limitation period shall begin with acceptance. The 3-year limitation period shall also apply accordingly to claims arising from defects of title, whereby the statutory limitation period for claims in rem of third parties for surrender of possession (§ 438 para. 1 no. 1 of the German Civil Code) shall remain unaffected; in addition, claims arising from defects of title shall in no case become time-barred as long as the third party can still assert the right - in particular in the absence of a limitation period - against us.

**7.3** The limitation periods of the law on sales or works, including the above extension, shall apply - to the extent provided by law - to all contractual claims for defects. Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (§§ 195, 199 of the German Civil Code) shall apply to these, unless the application of the limitation periods of the law of sales leads to a longer limitation period in individual cases.

## 8 Product Liability

**8.1** The supplier shall be responsible for all claims asserted by third parties for personal injury or damage to property which are attributable to a defective product supplied by him and shall be obliged to indemnify us against any liability resulting therefrom. If we are obliged to carry out a recall action towards third parties due to a defect in a product supplied by the supplier, the supplier shall bear all costs associated with the recall action. Further legal claims remain unaffected. The above indemnification shall not apply if the claim is based on our intentional or grossly negligent breach of duties.

**8.2** The supplier shall maintain product liability insurance at its own expense with a minimum insurance amount of EUR 10 million per each single Occurrence of personal and property damage, which, unless otherwise agreed in individual cases, need not cover the recall risk or punitive or similar damages.

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The supplier shall send us a copy of the liability policy at any time upon request.

## 9 Intellectual property rights

**9.1** In accordance with the provisions of this paragraph 1, the supplier warrants that the products delivered by him do not infringe any industrial property rights of third parties in countries of the European Union or other countries in which he manufactures the products or has them manufactured. He is obliged to indemnify us against all claims made by third parties against us due to such an infringement of intellectual property rights and to reimburse us for all necessary expenses in connection with this claim. This shall not apply insofar as the supplier proves that it is neither responsible for the infringement of industrial property rights nor should have been aware of the infringement at the time of delivery if it had exercised due commercial care.

**9.2** Our further legal claims due to defects of title of the products delivered to us shall remain unaffected.

## 10 Spare parts

If the supplier sells machines to us, he shall be obliged to keep spare parts for the machines delivered to us in stock for a period of at least 5 years after delivery.

## 11 Confidentially

**11.1** The supplier shall be obliged to keep the terms of the order as well as all information and documents made available to him by us for this purpose (with the exception of publicly accessible information) confidential for a period of 5 years after the date of delivery and to use them only for the execution of the order. He shall return the aforementioned documents to us without delay upon request after the order has been processed or any enquiries relating thereto have been dealt with.

**11.2** Without our prior written consent, the supplier may not refer to the business relationship in advertising material, brochures, etc. and may not exhibit delivery items manufactured for us.

**11.3** The supplier shall oblige his sub-suppliers in accordance with this point 11.

## 12 Assignment

The supplier is not entitled to assign his claims arising from the contractual relationship to third parties. This shall not apply insofar as monetary claims are concerned.

## 13 Compliance with laws

**13.1** In connection with the contractual relationship,

the Supplier is obliged to comply with the relevant statutory provisions applicable to it. This applies in particular to anti-corruption and money laundering laws as well as antitrust, labor and environmental protection regulations.

**13.2** The supplier shall ensure that the products delivered by him comply with all relevant requirements for placing on the market in the European Union and the European Economic Area. Upon request, he shall provide us with evidence of conformity by submitting suitable documents.

**13.3** The supplier shall make reasonable efforts to ensure compliance by its sub-suppliers with the obligations incumbent on the supplier under this point 13.

## 14 Place of performance, jurisdiction, applicable law

**14.1** The place of performance for both parties and the exclusive place of jurisdiction for all disputes arising from the contractual relationship is our registered office in 78739 Hardt.

**14.2** The contracts concluded between us and the supplier are subject to the law of the Federal Republic of Germany to the exclusion of the Convention on Contracts for the International Sale of Goods (UN Sales Convention).

## 15 Severability clauses

Should individual provisions of these Terms and Conditions of Purchase be or become invalid or unenforceable in whole or in part, the validity of the remaining provisions of these Terms and Conditions of Purchase shall not be affected thereby. The invalid or unenforceable provision shall be replaced by a valid and enforceable provision whose effects come as close as possible to the economic objective pursued by the contracting parties with the invalid or unenforceable provision. In the event of legally inadmissible provisions in these Terms and Conditions of Purchase or concluded contracts, the admissible legal provisions which come closest to the inadmissible agreements shall also apply without further agreement and consent of the parties.