

## § 1 General Provisions, Application

(1) All supplies, services and quotations provided by LIFTKET Hoffmann GmbH (hereinafter also referred to as "the Supplier") shall exclusively be based on the present General Terms and Conditions of Delivery. They are an integral part of all contracts concluded between the Supplier and other Parties (hereinafter also referred to as "the Client") with regard to supplies and services offered by the Supplier. Upon receipt of supplies and/or services by the Client at the latest, these General Terms and Conditions shall be deemed accepted by the Client. They shall also be applicable to all future supplies, services or quotations to the Client, even if they have not been agreed upon separately again. They shall not be applicable if the Client is not an entrepreneur within the meaning of the German Civil Code [Bürgerliches Gesetzbuch] ("BGB"), a legal person under public law and a special fund under public law.

(2) The terms and conditions of the Client or any third party shall not apply, even if the Supplier does not separately object to their applicability in an individual case. Even if the Supplier makes reference to a letter that contains or refers to the Client's or a third party's terms and conditions, this shall not constitute an agreement with the applicability of those terms and conditions.

## § 2 Quotation and Contract Conclusion

(1) Any quotations submitted by the Supplier shall be subject to confirmation and non-binding, unless they are expressly identified as being binding or contain a specific term of acceptance. The Supplier may accept purchase orders within fourteen days after receipt. The Client's purchase orders shall always require a written order confirmation for the conclusion of a contract.

(2) The written contract, including these General Terms and Conditions of Delivery, shall exclusively be relevant for the legal relationships between the Client and the Supplier. This contract shall specify all covenants between the contractual parties as regards the subject matter of the contract. Any commitments made by the Supplier orally before the conclusion of this contract shall not be legally binding; oral agreements between the contractual parties shall be superseded by the written contract, unless they expressly imply that they have continuing binding effect. Section 2 para. (3), last sentence, shall be applicable as regards compliance with the written form requirement.

**(3) Any amendments to and modifications of executed contracts including these General Terms and Conditions of Delivery require to be made in writing to be effective. With the exception of managing directors and authorised signatories [Prokuristen], the Supplier's employees are not entitled to make deviating oral agreements or grant guarantees.** As regards compliance with the written form requirement, transmission by telecommunication shall be sufficient; an e-mail that is not provided with a qualified electronic signature in accordance with the German Signatures Act [Signaturgesetz] shall only be deemed to satisfy the written form requirement if a copy of the signed statement is attached to it.

(4) Any information provided by the Supplier regarding the supplies or services (e.g. weights, dimensions, utility values, capacity/resilience, tolerances and other technical data), as well as Supplier's representations of the same (e.g. drawings and illustrations) shall only be applicable approximately, unless exact conformance is critical for their use regarding the contractually intended purpose. Such information does not represent guaranteed characteristics, but only descriptions or identifications of the relevant supplies or services. Customary deviations and deviations that occur due to legal regulations or constitute technical improvements, as well as the replacement of components by equivalent parts are admissible if they do not impair the usability for the contractually intended purpose.

(5) The Supplier reserves the title and/or copyright to all quotations and cost estimates submitted by the Supplier, as well as to all drawings, illustrations, calculations, software, brochures, catalogues, models, tools and other documents and devices made available to the Client. The Client must not make these items (per se or their contents) available to third parties, disclose them publicly, use or reproduce them and/or have them used or reproduced by third parties without the Supplier's express approval. Upon the Supplier's request, the Client must return these items completely to the Supplier and destroy any copies made, if they are no longer required by the Client in the ordinary course of its business, or if negotiations do not lead to the conclusion of a contract. Excepted from this is the storage of data made available electronically for customary data backup purposes. To the extent documentation and/or software is included in the scope of supplies, the Client shall receive a non-exclusive, non-sublicensable right of use that is only transferable in unamended form and only together with the delivery item and that is restricted to the installation, commissioning, operation and maintenance of the delivery item. Such documentation and/or software must not be copied or reproduced without the Supplier's written approval.

(6) Unless otherwise explicitly set out in writing in the contract, the supplies and/or services shall comply with the relevant technical standards and safety regulations applicable in the Federal Republic of Germany, and not with any potentially deviating standards or regulations applicable at the place of use of the supplies and/or the services.

## § 3 Prices and Payment

(1) The prices shall apply to the scope of supplies and services indicated in the relevant order confirmation. Additional or special services shall be invoiced separately. Prices are quoted in EURO ex works plus packaging and statutory VAT. In the case of export deliveries, the Client shall pay any customs duties, fees and other public charges directly.

(2) If the delivery is to be made later than four months after the conclusion of the contract, the Supplier may increase the agreed contract price reasonably, taking into account material, staff and/or energy cost increases that may have occurred in the meantime.

(3) Unless otherwise agreed in writing, invoices shall be issued upon provision of supplies for delivery at the Supplier's works and shall be payable within fourteen (14) days without any deduction. Should the Client does not pay by the due date, any outstanding amounts shall bear interest at 5 % p.a. as from the due date; the Supplier reserves the right to claim higher interest and further damage in case of default. Subject to any higher damage, the Client shall pay to the Supplier an amount of € 5.00, each, for the second and any further appropriate reminder.

(4) Setting off with Client's counter claims or the retention of payments due to such claims is admissible only if such counter claims are undisputed or recognised by declaratory judgement, or if they result from the same order for which the relevant delivery has been made.

(5) The Supplier shall be entitled to deliver or perform outstanding supplies or services only against prior payment or against provision of security, if facts that are likely to materially impair the Client's creditworthiness and may put at risk payment of the Supplier's outstanding receivables by the Client from the relevant contractual relationship (including other single orders covered by the same framework contract) become known to the Supplier after the conclusion of the contract.

#### **§ 4 Delivery and Delivery Term**

(1) Deliveries shall be made ex works (Supplier's factory).

(2) Delivery terms and deadlines anticipated by the Supplier shall always be approximate, unless a fixed term or deadline has been confirmed or agreed upon in writing. Even if delivery and/or performance deadlines are determined according to calendar, they shall not be fixed dates. If shipment was agreed, the delivery terms and deadlines shall refer to the date of transfer to the freight forwarder, carrier or other third party commissioned with the transport. Supplier's delivery and/or performance in due time on our part requires that all commercial and technical issues have been clarified between the Client and the Supplier.

(3) Without prejudice to the Supplier's rights from the Client's default - the Supplier may request a reasonable extension of delivery and performance terms or a postponement of delivery and performance deadlines from the Client, at least by the period during which the Client fails to meet its contractual obligations vis-à-vis the Supplier.

(4) The Supplier shall not be liable for the impossibility of delivery or performance, or for delays in delivery or performance, if this is due to by force majeure or other events that were not foreseeable at the time of the conclusion of the contract (e.g. operational disruptions by machine failure; difficulties in material or energy procurement; transport delays; strikes; lawful lockouts; labour, energy or raw material shortage; difficulties in the procurement of necessary official authorisations; official measures or the omitted, incorrect or late delivery by contractors; traffic accidents; other accidents; unacceptable weather conditions) and that are beyond the Supplier's responsibility. If such events significantly impede or render impossible the Supplier's delivery or performance, and if such impediment is not merely temporary in nature, the Supplier shall be entitled to withdraw from the contract. In the event of impediments of a temporary nature, the delivery and performance terms or deadlines shall be extended by the duration of the relevant impediment, plus an appropriate resumption period. If the Client cannot reasonably be expected to accept the delivery or service due to such a delay, the Client may withdraw from the contract by immediate written notification to the Supplier.

(5) The Supplier shall be entitled to make partial deliveries if these can reasonably be accepted by the Client.

(6) Should the Supplier be in default of delivery or performance, the Supplier's liability shall be limited to 5 % of the net contract price for the object of delivery and/or the performance in default. This shall not apply in the case of wilful intent or gross negligence on the part of the Supplier.

(7) Should delivery or performance become impossible for the Supplier, for any reason whatsoever, the Supplier's liability for damages shall be limited in accordance with § 8 of these General Terms and Conditions.

(8) The application of § 348 HGB [German Commercial Code] shall be excluded.

#### **§ 5 Place of Performance, Shipment, Packaging, Transfer of Risk, Acceptance**

(1) The place of performance for all obligations under the contractual relationship shall be Wurzen, Germany, unless provided for otherwise.

(2) The shipping and the packaging method shall be in the Supplier's due discretion.

(3) The risk shall be transferred to the freight forwarder, carrier or other third party commissioned with the transport no later than upon handover of the delivery item (with the beginning of the loading process being relevant). This shall also be applicable to partial deliveries, or if the Supplier has agreed upon further services (e.g. shipment). If the shipment or delivery is delayed as a result of a circumstance whose cause lies with Client, the risk shall be transferred to the Client from the day on which the delivery item is ready for shipment and the Supplier has notified this to the Client.

(4) Storage costs incurred after the transfer of risk shall be borne by the Client. In the event of storage by the Supplier, storage costs shall amount to 1 % of the contract price of the delivery items to be stored per each completed week. The assertion and the provision of evidence of additional or lower storage costs remain reserved.

(5) The consignment shall only be insured by the Supplier against theft, breakage, transport, fire and water damage or other insurable risks upon the Client's explicit request and at the Client's expense.

(6) If an acceptance procedure is required, the delivery item shall be deemed accepted, if

- delivery is completed;
- the Supplier has notified this to the Client with reference to assumed acceptance pursuant to this § 5 (6) and has requested acceptance from the Client;
- twelve (12) working days have passed since delivery, or if the Client has commenced using the delivery item (e.g. has commissioned the plant delivered) and six (6) working days have passed since delivery in this case; and
- the Client has omitted to accept the delivery item within this period for a reason other than of a deficiency that has been notified to the Supplier and that makes using the delivery item impossible or affects such use considerably.

## § 6 Liability for defects

(1) As regards claims for defects it is necessary that the Client has properly met its obligations of inspection and rejection pursuant to §§ 377, 381 HGB . The delivery items must be inspected carefully without undue delay after delivery to the Client or to a third party designated by the Client. They shall be considered to be approved by the Client concerning obvious defects or other defects that would have been identifiable if there had been a careful inspection without undue delay if the Supplier does not receive a written notice of defects within seven working days after delivery.

(2) Other defects shall be notified by the Client within seven working days upon identification of the relevant defect; in case a defect could have been identified by the Client at an earlier date, however, this earlier date shall be decisive for the commencement of the complaint period. The notice of defect must comprise a description of the defect or its symptom(s), the Supplier's order confirmation number, as well as the serial number of the delivery item concerned. Otherwise, no claims for defects shall exist.

(3) Claims for defects have a limitation period of 12 months upon delivery of the delivery item or, if acceptance is required, upon acceptance by the Client. As regards claims for damages in the case of wilful intent or gross negligence, as well as in the case of injury to life, the body or health due to an intentional or negligent violation of duty by the Supplier or its agents, the statutory limitation period shall apply. If longer periods are mandatory according to § 438 para. 1 no. 2 BGB (building structures and components for structures), § 445b para. 1 BGB (right of recourse), and § 634a para. 1 BGB (construction defects), those periods shall be applicable. Before any delivery item is returned, the Supplier's approval shall be obtained. Returns not approved by the Supplier shall be rejected at the Client cost. In the case of supplementary performance, the limitation period shall not start again.

(4) All parts of the delivery item that turn out to have been defective due to circumstances existing at the time of risk transfer already, shall be remedied or replaced by the Supplier at its choice subject to a timely notice of defects. The Supplier shall always be granted the opportunity to remedy within an adequate period; otherwise Supplier shall be exempt from liability for resulting consequences. Rights of recourse shall remain unaffected without limitation by the aforementioned provision. Any parts replaced shall become the property of the Supplier and shall immediately be handed over to Supplier.

(5) At the Supplier's request, a delivery item objected must be returned freight paid to Supplier. If a claim for defect is justified, the Supplier will reimburse the cost of the least expensive transport option. If expenses incurred for the purpose of supplementary performance, e.g. transportation cost, increase due to the fact that the delivery item is located at a place different from the place of intended use, any resulting extra cost shall be borne by the Client. The place of an intended resale is not the place of intended use if this was not notified to the Supplier upon conclusion of the contract.

(6) Liability for defects is especially excluded:

- for parts whose repair or replacement is required due to normal wear (wear parts);
- for unsuitable or improper use, incorrect installation and/or commissioning of the delivery item by the Client or third parties;
- for incorrect or negligent treatment of the delivery item;
- for improper maintenance of the delivery item;
- for the use of unsuitable consumables;
- for damage caused by repair or other work performed by third parties if this was not explicitly approved by the Supplier.

(7) Liability for defects shall expire if the Client modifies the delivery item or has it modified by a third party without the Supplier's consent, and thereby makes it impossible or unacceptable for the Supplier to rectify defects. In any case, the Client must bear any additional costs for the rectification of defects, if such extra costs are incurred by a modification.

(8) Should the Client or a third party remedy defects improperly, the Supplier shall not be liable for any consequences. The same shall apply to modifications of the delivery item made without the Supplier's prior consent.

(9) Only if remedial measures fail, the Client shall be entitled to reduce the purchase price or, if not construction work is the object of defect liability withdraw from the contract, at Client's choice. These Client's rights shall explicitly be reserved in this case. The grace period to be set to the Supplier by the Client before exercising such rights must be set in writing. Withdrawal is only possible in the case of a violation of a material obligation by the Supplier, which has to be proven by the Client. Withdrawal is excluded if construction works are the object of defect liability. The Client shall not be entitled to remedy defects itself and request compensation for expenses incurred. § 8 shall be applicable as regards claims for damages.

(10) Guarantee is expressly not assumed in any way. If, however, durability guarantee was granted by the Supplier, the limitation period for claims based on this shall be 6 months, starting from the occurrence of the defect, however no later than from the end of the guarantee of durability.

(11) In the case of a sale of used products, defect liability shall be excluded.

## § 7 Property Rights

(1) In accordance with this § 7, the Supplier shall only be responsible for the delivery item being free from third-party industrial property rights or copyrights in the Federal Republic of Germany or, if a place of delivery outside of Germany was agreed upon, in the country of destination. Each contractual party shall immediately notify the other contractual party in writing, if claims for the infringement of such rights are asserted against it.

(2) Should the delivery item infringe a third party's industrial property right or copyright, the Supplier shall either modify or exchange the delivery item at the Supplier's choice and expense, in such a way that third-party rights are no longer infringed, but the delivery item continues to fulfil the contractually agreed functions or procure the right of use to the Client through the conclusion of a licence agreement. Should the Supplier not be successful in this respect within an appropriate period, the Client shall be entitled to withdraw from the contract or reduce the purchase price appropriately. Any claims for damages on the part of the Client shall be subject to the restrictions of § 8.

(3) In the event of legal infringements through other manufacturers' delivery items delivered by the Supplier, the Supplier shall assert its claims against those manufacturers and upstream suppliers for the Client's account or assign these claims to the Client at the Supplier's choice. Claims against the Supplier in these cases in accordance with this § 7 shall exist only if the judicial enforcement of the above-mentioned claims against manufacturers and upstream suppliers was unsuccessful or is without any prospect of success, for example due to insolvency.

## § 8 Liability for Damages for Fault

(1) The Supplier's liability for damages, for any legal reason whatever, in particular due to impossibility, defective or incorrect delivery, breach of contract, infringement of duties in contractual negotiations and tort, shall be restricted in accordance with this § 8 in so far as it is at fault in all cases. As regards the Supplier's liability for damage caused by delay, § 4 para. 6 shall apply in the case of simple negligence by the Supplier; otherwise, the provisions of this § 8 shall be applicable, too.

(2) The Supplier shall not be liable in the case of simple negligence of its corporate bodies, legal representatives, employees or other vicarious agents, unless violation of essential contractual obligations is concerned. Essential in this regard shall be the obligation to deliver the delivery item in due time; the freedom from defects in title as well as in quality that more than insignificantly impair its functional capability or fitness for use; as well as consultation, protection and duty of care obligations that are intended to enable the Client to use the delivery item as contractually intended, or that aim to achieve the protection of life and limb of the Client's staff, or the protection of the Client's ownership against significant damage.

(3) Should the Supplier be liable for damages on the merits pursuant to § 8 para. 2, such liability shall be limited to damage, which the Supplier could have anticipated as a potential consequence of a breach of contract upon the conclusion of the contract, or which the Supplier ought to have anticipated if it had applied customary care. Indirect damage and consequential damage resulting from defects of the delivery item shall only be eligible for compensation insofar as such damage may typically be expected if the delivery items are used properly.

(4) In the case of liability for simple negligence, the Supplier's obligation to pay compensation for damage to property and resulting further pecuniary losses shall be limited to an amount of EUR 1,000,000.00 for each claim, even if an infringement of material contractual obligations is concerned.

(5) The above-mentioned exclusions and restrictions of liability shall apply to the same extent for the benefit of the Supplier's corporate bodies, legal representatives, employees and other vicarious agents.

(6) If the Supplier provides technical information or consultancy, and such information or consultancy is not part of the contractually agreed scope of services owed by the Supplier, this shall occur free of charge and with exclusion of any liability.

(7) The restrictions of this § 8 shall not apply to the Supplier's liability for wilful conduct, for guaranteed characteristics, if any, for injury to life, limb or health, or under the German Product Liability Act [Produkthaftungsgesetz].

## § 9 Reservation of Ownership

- (1) The purpose of reservation of ownership agreed below shall be provision of security for all of the Supplier's current and future claims against the Client under the delivery relationship between the contractual parties regarding lifting equipment and auxiliary equipment (including current account balance claims from a current account relationship restricted to this delivery relationship).
- (2) The delivery items delivered to the Client by the Supplier shall remain the Supplier's property until the complete payment of all secured claims. The delivery items as well as any goods replacing them and covered by the reservation of ownership in accordance with the provisions below are hereinafter referred to as "Goods subject to reservation of ownership".
- (3) The Client shall store the Goods subject to reservation of ownership safely for Supplier free of charge.
- (4) The Client shall be entitled to process and sell the Goods subject to reservation of ownership in the ordinary course of business until the occurrence of the enforcement event (paragraph 9). Pledging and assignments as security shall be inadmissible.
- (5) If the Goods subject to reservation of ownership are processed by the Client, it is hereby agreed that the processing shall occur on behalf and for the account of the Supplier as the manufacturer, and the Supplier shall directly acquire the ownership or - if the processing is done from several owners' materials or the value of the processed item is higher than the value of the Goods subject to reservation of ownership – the co-ownership (fractional ownership) of the newly created item in proportion to the value of the Goods subject to reservation of ownership to the value of the newly created item. If the Supplier does not acquire any ownership as described above, the Client shall already now assign its future ownership or – in the above proportion – co-ownership of the newly created item as security to the Supplier. If the Goods subject to reservation of ownership are incorporated in or inseparably combined with other goods to form a unit, and one of the other goods is to be regarded as the main component, the Supplier shall transfer the proportional co-ownership of the said unit to the Client in the ratio stated in sentence 1, insofar as the main component is the Supplier's property.
- (6) In the case of a resale of the Goods subject to reservation of ownership, the Client already now hereby assigns the resulting claim against the acquiring party to the Supplier - if the Supplier is the co-owner of the Goods subject to reservation of ownership, the claim shall be assigned in proportion to the co-ownership share. The same shall apply to other claims that replace the Goods subject to reservation of ownership, or arise otherwise in relation to them, e.g. insurance claims or tort claims in the event of loss or destruction. The Supplier revocably authorises the Client to collect in its own name the claims assigned to the Supplier. The Supplier may revoke this collection authorisation only in the enforcement event. In this case, the Client shall be obliged to disclose information on the assigned claims and the relevant debtor(s) upon the Supplier's request, as well as to provide other relevant data required for collecting receivables, and to submit the relevant documents to the Supplier and inform the debtor(s) about the assignment.
- (7) If third parties take hold of the Goods subject to reservation of ownership, in particular through attachment, the Client shall immediately draw their attention to the Supplier's ownership and inform the Supplier about this, so that the Supplier may enforce its ownership rights. If the relevant third party is not in the position to reimburse the judicial and extra-judicial costs incurred in this connection, the Client shall be liable for this to the Supplier.
- (8) The Supplier shall release the Goods subject to reservation of ownership as well as all items or claims replacing these, if their value exceeds the amount of secured claims by more than 10 %. The selection of the items to be released accordingly is in the Supplier's discretion.
- (9) If the Supplier withdraws from the contract (enforcement event) due to the Client's conduct in breach of the contract - in particular default of payment - the Supplier shall be entitled to request the return of the Goods subject to reservation of ownership.
- (10) The Supplier shall be entitled to take possession of the Goods subject to reservation of ownership and dispose of them, if the Client does not fulfil its contractual obligations, in particular if it is in default of payment. Take-back costs incurred by such measures, if any, shall be borne by the Client. This does not constitute a withdrawal from the contract. The Supplier's further rights shall remain unaffected; neither shall any rights of an insolvency administrator be affected in the case of the Client's insolvency.
- (11) The Client shall sufficiently insure the Goods subject to reservation of ownership against the relevant risks, especially such as theft, fire, etc., and this provided that any claims against the insurer with regard to the Goods subject to reservation of ownership shall be assigned to the Supplier. Upon request, the Client shall submit copies of the insurance policies to the Supplier.
- (12) If reservation of title is not possible according to the relevant local laws as applicable to the deliveries, the Supplier shall be entitled to and the Client shall be obliged to grant a corresponding security interest.

## § 10 Export Regulations

The Client shall hold the Supplier harmless against any claims, procedures, actions, fines, losses, cost and damage resulting from the Client's non-compliance with export control regulations, and the Client shall indemnify the Supplier for any resulting losses and expenses unless the said non-compliance was not caused by the Client's fault. This provision does not imply to any change to the statutory burden of proof.

## § 11 Final Provisions

(1) If the Client is a merchant, a legal person under public law or a special fund under public law, or if the Client does not have any general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for any and all disputes under the business relationship between the Supplier and the Client shall be Wurzen, Germany or Client's registered office, at the Supplier's discretion. For actions against the Supplier in these cases, however, Wurzen, Germany, shall be the exclusive place of jurisdiction. Mandatory statutory provisions on exclusive places of jurisdiction shall not be affected by this regulation.

(2) The relationships between the Supplier and the Client shall exclusively be governed by the laws of the Federal Republic of Germany. The provisions of private international law that would refer to any law other than that of the Federal Republic of Germany shall be excluded. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall be excluded.

(3) If the contract or the present General Terms and Conditions contain any loopholes, the legally valid regulations that the contractual parties would have agreed in accordance with the economic objectives of the contract and the purpose of these General Terms and Conditions of Delivery if they had known of the loopholes shall apply.

(4) Should any provision(s) of the contract or these General Terms and Conditions be or become invalid in whole or in part, or contain an impermissible deadline, this shall not affect the validity of the remaining provisions. Unless the invalidity results from an infringement of §§ 305 et seq. BGB (Organisation of Contractual Obligations by General Terms and Conditions), the entirely or partially invalid provision shall be replaced by a provision which would have been agreed upon by the contracting parties in accordance with the financial objective of the contract and the purpose of the present General Terms and Conditions if they had been aware of the invalidity. In the case of impermissible deadlines, the statutory requirements shall apply.