

# Leobersdorfer Maschinenfabrik GmbH

## Suedbahnstrasse 28, 2544 Leobersdorf, Austria

### TERMS AND CONDITIONS OF PURCHASE, LEOBERSDORFER MASCHINENFABRIK GmbH ("LMF")

All our future purchase orders (orders) shall be exclusively subject to the following Terms and Conditions of Purchase; if any provisions are missing, the law shall apply exclusively. Deviating terms and conditions of sale and delivery of the contractor ("Contractor") shall only be valid if we expressly agree to them in writing. Upon acceptance and execution of our orders the Contractor accepts our Terms and Conditions of Purchase.

#### 1. OFFER

The Contractor shall accurately adapt quantities and quality to our inquiry and specifically highlight any deviations. Offers, plans, test records for technical devices and the like shall always be prepared for us free of charge.

#### 2. ORDER

Our orders as well as amendments, modifications or deviations of any kind shall be made in writing. Oral orders or orders placed by phone as well as amendments, modifications or deviations of any kind shall only become binding on us upon subsequent written confirmation. The order date shall be the date our order is posted. However, if the order is placed orally or by phone, the order date shall be the date our order confirmation is posted.

#### 3. ACKNOWLEDGEMENT OF ORDER

(1) Our order shall be immediately acknowledged in writing. If we do not receive an acknowledgement of order within three working days of the date of the order, the contract shall in any case be deemed concluded as stated in our order; the course of the mail shall not be included in that period. Any deviations from our orders shall be highlighted clearly and shall, in addition, only be valid if we expressly agree to them by letter or by fax; unconditional delivery of goods shall not be considered such an agreement.

(2) Upon conclusion of the contract the Contractor guarantees proper execution of our order in the correct quantities.

#### 4. DELIVERY PERIOD

Agreed dates and periods shall be binding. Receipt of the goods by us or the recipient advised by us shall be decisive for observance of the delivery date or delivery period. The period of delivery or performance shall commence on the order date. If no period is agreed, delivery or performance shall be made immediately. In the case of an impending delay in delivery or performance we shall be immediately notified in writing with the reasons for and the presumed duration of the delay having to be stated. However, periods of delivery or performance shall only be extended if we expressly agree thereto in writing. Delivery or performance prior to the date agreed shall only be permitted with our consent. In any case we shall not suffer any disadvantage from such early delivery or performance; in particular, the payment period (Clause 13) shall not commence prior to the date agreed and the risk shall not pass prior to the date agreed. If the customer (Customer) postpones the dispatch date, the Contractor shall store the goods for a minimum period of three months at his risk and cost. Furthermore, we shall be entitled, after prior notice to inspect the Contractor's production plant, to inform ourselves of the status of the work commissioned and to accept the shipment at the Contractor's plant.

#### 5. DELIVERY, SHIPPING AND TAKING DELIVERY

We shall not accept deliveries on the basis of cash on delivery. DDP to the "point of destination" as defined in the INCOTERMS 2020 as amended shall apply. In terms of quantity goods shall be taken delivery of upon arrival at the delivery address; however, in terms of quality delivery shall only be taken upon processing and/or use. In the case of delivery of technical plant and equipment our operating staff shall be trained free of charge. In the case of delivery of plant and equipment that have to be assembled by a third party or by us the necessary assembly plans (including all connections, foundations, if any, and the like) shall be enclosed with the acknowledgement of order. Any and all data sheets, assembly and processing information and/or information about particularities of the material and the product shall be enclosed with the shipment. The operating rules and instructions shall be executed in two copies both in German and English, unless otherwise specified in the text of the order. Direct deliveries to our customers shall be effected in our name with neutral packaging and neutral shipping documents. A copy of the shipping documents shall be made available to us.

#### 6. PACKAGING, GOODS

Goods shall be packed properly. In any case, the Contractor shall bear the risk and cost of packaging. In addition, the Contractor is obliged to observe the relevant laws (such as the Austrian Packaging Regulation [Verpackungsverordnung]); packaging material which does not comply with the statutory provisions shall be disposed of at the Contractor's cost and risk.

Unless special regulations apply, goods shall be packed in a customary, appropriate and proper way. ULDs and packaging material shall become our property. Return shipments shall be made at the Contractor's risk and cost.

Unless expressly agreed otherwise, the INCOTERMS 2020 as amended shall apply to the passing of transportation cost and a fixed price shall apply to pricing. Domestic prices shall be net prices exclusive of value-added tax. Title shall pass simultaneously with the risk as provided for in the INCOTERMS 2020 as amended.

#### 7. DEFAULT, RESCISSION AND CONTRACTUAL PENALTY

(1) In the case that the acknowledgement of order (Clause 3) or the delivery (goods, services and documentation) or delivery of all shipment (partial service) is delayed or if the delivery (goods, services and documentation) is in violation of the contract we shall be entitled, notwithstanding any other claims, to rescind the contract in whole or in part either immediately or by granting a reasonable grace period or to demand performance at another date, without any claim against us arising for the Contractor, or to insist on performance of the contract. We shall be entitled to the same rights in the case that the Contractor becomes incapable of acting. Incapacity to act shall mean liquidation, bankruptcy, dismissal of a petition for bankruptcy for lack of assets, composition and failure to appoint authorised representatives for more than one week.

(2) In the case of delay we shall be entitled, irrespective of whether we rescind the contract or insist on performance, to claim a contractual penalty of 1% of the total contract value for every commenced week and/or claim a(n) (additional) contractual penalty of 0.5% of the total contract value for every commenced week for delayed provision of documentation, in total a maximum of 10% of the total contract value. We shall always be entitled to claim additional penalties in addition to additional damages and irrespective of the amount of the contract value, even if we accept the delayed delivery or performance. We shall also be entitled to contractual penalties if the delay was not the Contractor's fault. However, if the delay is due to force majeure, the Contractor shall be released from his obligation to pay a contractual penalty and damages for as long as such force majeure exists, provided that he immediately notifies us of such circumstances. Force majeure means inevitable events such as acts of God of any kind, including but not limited to storm, earthquake, floods, volcanic eruptions, fire, traffic accidents, kidnapping/taking of hostages, war, riot, civil war, revolution, terrorism, sabotage, strikes and nuclear/reactor accidents.

#### 8. PASSING OF RISK

In any case the risk shall only pass to us if and when the Contractor has delivered the complete shipment (goods, services and documentation) to our authorised staff (Clause 5), the shipment (goods, services and documentation) has been inspected at the agreed place of delivery and accepted as being in order and if and when the Contractor has properly fulfilled all ancillary obligations, such as provision of necessary test records, descriptions/specifications, instructions and the like.

#### 9. WARRANTY AND GUARANTEE

(1) The Contractor's deliveries and services shall comply with applicable law and the general and special standards applicable in Austria, such as standards for protection of staff, environmental protection and in the field of safety engineering, but also with the accepted rules of science and technology; in particular, always the state-of-the-art version shall be delivered. The quality of deliveries and services shall be of such a standard that we can fulfil the quality standard ISO 9001, which we have undertaken to comply with. Furthermore, the regulations on carriage of dangerous goods and on hazardous wastes as well as special regulations on storage and operation shall be observed; in this respect the Contractor shall also be obliged vis-à-vis us to exercise due care and inform us.

(2) The Contractor guarantees that the quality and workmanship of the deliveries ordered (goods, services and documentation) is impeccable and expressly represents that they are free from any defects during the entire warranty and guarantee period. This period shall be a period of two years, subject to longer statutory or contractual periods. In the case of defects in quality this period shall not commence before processing or use or putting into operation and not later than three years after the risk passed (Clause 8).

(3) The Contractor waives the plea of late notice of defects; payments shall be deemed no waiver of notice of defects. In the case of a notice of defects or a complaint we shall have the right to withhold the relevant price in full. If there is no reason to assume due to spot checks that the entire shipment (goods, services and documentation) is defective, the entire invoice with which the defective shipment (goods, services and documentation) was invoiced shall not become due.

(4) We shall have the right to choose between reduction in the price, free-of-charge improvement and, to the extent the statutory requirements are fulfilled, reduction in the price and free-of-charge replacement and, in the case of defects which are no minor defects, to rescind the contract in whole or in part ("cancellation of contract"). At our request, the Contractor shall immediately improve defective goods or replace them with goods that are free of defects at his own risk and cost. If improvement or replacement is being requested, the warranty / guarantee period shall commence to run anew. If it is necessary to grant a grace period, a grace period of 14 days shall be deemed reasonable. We shall be entitled to repair defects at the Contractor's cost without granting a grace period and this shall not impair our claims in any way.

(5) The delivery (goods, services and documentation) shall only establish an entitlement to payment if it is exactly in line with the order. In the case of an unjustified excess or short delivery or deviation in quality the Contractor shall reimburse us all expenses incurred by additional control, packaging, return shipment or storage. Return shipments of excess quantities or quantities not ordered shall in any case be made at the Contractor's cost and risk.

#### 10. DAMAGES AND PRODUCT LIABILITY

(1) We shall in any case have the right to undiminished claims for damages and rights of recourse, i.e. also in addition to a contractual penalty. Exclusions of liability and/or an obligation to impose exclusions of liability on

customers shall not be deemed agreed.

(2) In the case that the goods delivered are defective as defined in the Austrian Product Liability Act [Produkthaftungsgesetz] and we are held liable in this respect, the Contractor shall fully indemnify and hold us harmless.

(3) The Contractor shall be obliged to include a complete and easy to understand manual, to keep safe all necessary documents, to closely monitor the product and, if necessary, to recall defective goods at his cost, to immediately surrender manufacturing documents and to render any possible assistance as well as to advise us the name of the manufacturer and/or importer within five (5) days.

#### 11. QUALITY ASSURANCE

The Contractor is obliged to consider for himself and his subcontractors / upstream suppliers the principles of quality management as defined in ISO 9001:2015 when carrying out the deliveries and services.

We shall be entitled to audit the quality management system of the Contractor and his subcontractors for compliance with those standards at dates to be agreed.

#### 12. PROPRIETARY RIGHTS

The agreed price shall include consideration for acquisition of statutory proprietary rights, in particular patents, to the extent that acquisition of such rights is necessary for us to freely use and resell the delivery item. If licences are required, the Contractor shall obtain them. We shall be allowed to use any inventions made by the Contractor in the course of execution of our order free of charge. In the case of a violation of third-party proprietary rights in connection with the delivery or service ordered, the Contractor shall indemnify and hold us harmless.

#### 13. PRICES AND TERMS OF PAYMENT

All prices shall be fixed prices exclusive of VAT. We shall be entitled to deduct a 3% cash discount if we pay within thirty (30) days; otherwise invoices shall be due for payment within ninety (90) days. Subject to our rights laid down in Clause 4, payment periods shall commence on the day of receipt of an invoice that complies with our conditions (above all Clause 14); however, if the risk passes to us only later (Clause 8), payment periods shall commence on the day the risk passes. Payment of invoices shall not be construed as a statement to the effect that the delivery (goods, services and documentation) is free of defects and, thus, as a waiver of any claims and rights to which we are entitled, such as under warranty/guarantee and/or claims for or rights to damages.

#### 14. INVOICING

Invoices shall be sent to our address in duplicate and shall state all order and delivery details. Furthermore, invoices shall be broken down according to orders. In the case of work and assembly work the time records confirmed by us shall be enclosed. Invoices which do not comply with our conditions shall be deemed not issued.

#### 15. TRANSFER OF CONTRACT, ASSIGNMENT OF CLAIMS AND SET-OFF

Orders shall not be passed on to other entrepreneurs for execution, neither in whole nor in part, without our written consent. The Contractor may only assign claims of his vis-à-vis us upon our written consent.

#### 16. DRAWINGS, TOOLS AND MODELS; SECRECY

Drawings, sketches, tools, aids, samples, models and the like which were provided or specifically prepared by us for execution of the order shall remain or become our (intellectual) property already upon their preparation. They shall be returned to us immediately upon delivery (goods, services and documentation) or revocation of the order (rescission of contract). The Contractor shall be obliged to treat as confidential all information given to him in connection with this contract and all other business and trade secrets (such as plans, drawings and other documents and our know-how which is not in the public domain) of which the Contractor has obtained knowledge and he shall impose this obligation on his staff and the undertakings commissioned by him; in particular he shall not pass them on or make them otherwise available to third parties or use them for advertising purposes. The Contractor shall be permitted to make copies or carbon copies of records of whatsoever kind only with our express consent. In the case of a violation of this secrecy obligation we shall be entitled to rescind the contract in whole or in part.

#### 17. DELIVERIES FROM NON-EU COUNTRIES

The Contractor shall be responsible for issuing the movement certificate, which is required for the exemption from customs duties, in a legally binding form and correctly as to its contents; otherwise, the Contractor shall pay for all negative consequences.

#### 18. PLACE OF PERFORMANCE

The place of performance of deliveries and services shall be the delivery address advised by us and/or the place at which the service is to be rendered.

#### 19. HARDWARE AND SOFTWARE

A delivery note including a detailed list of the contents and the complete order identification numbers shall be enclosed with all shipments. All details on export control regulations, customs and intrastat regulations shall be stated on the acknowledgement of order, the delivery note and the invoice item by item. In any case the Contractor shall state the export list number according to the EU Dual Use Regulation or national export control regulations as amended, ECON (according to the U.S. Export Administration Regulations (EAR) as amended), net weight, customs tariff number, country of origin, preferential country of origin documented by delivery (within the EU, supplier's declaration pursuant to customs law, outside the EU: EUR 1 movement certificate or invoice declaration). If the goods are not subject to any export control regulations or if there is no preferential origin, the Contractor shall clearly advise so.

#### 20. PREVENTION OF BRIBERY

Not later than at the time he submits the offer shall the Contractor shall inform us in writing in the event that the Contractor or members of his management were convicted by a court having jurisdiction in a non-appealable manner for bribing officials within the last five years prior to submission of the offer and he shall immediately inform us in writing in the event that the Contractor or members of his management have been charged for bribing officials before a national court at any point in time between submission of the offer and acceptance of the Contractor's deliveries/services.

#### 21. CODE OF CONDUCT FOR THE CONTRACTOR

(1) The Contractor shall be obliged to comply with the laws of the relevant jurisdiction(s). In particular, the Contractor shall neither actively nor passively participate in any form of bribery, violation of fundamental rights of his staff or in child labour. Furthermore, the Contractor shall assume responsibility for health and safety of his staff at work, comply with the laws on environmental protection and ask his suppliers to comply with this code of conduct and support them in this respect to the best possible extent.

(2) If the Contractor negligently violates these obligations, we shall have the right to rescind or terminate the contract notwithstanding any other claims. To the extent that a violation of a duty can be cured, the above right may be exercised only after fruitless expiration of a reasonable period for curing the violation.

#### 22. PLACE OF JURISDICTION AND APPLICABLE LAW

In the case of legal disputes arising out of the contract Austrian substantive law shall be applicable and UN Sales Law (CISG) and the conflict of laws rules shall be excluded. The exclusive place of local jurisdiction shall be Vienna; however, we shall be entitled, at our option, to file suits under the contract also with the court which has subject-matter and local jurisdiction according to the relevant statutory provisions of the country in which the Contractor has its registered office.

#### 23. GENERAL

Any business correspondence shall exclusively be made with our purchasing department and/or with the person in charge. Documents designated for us, such as bills of lading or waybills, wagon labels, railway boxes, parcel dispatch slips, dispatch advices, delivery notes, packing slips, invoices, change notices and the like and the entire correspondence shall always include order number, order date, item and description of the goods as well as the name of the person or the department in charge; for deliveries from abroad you shall in addition include a customs declaration and/or state the customs tariff number or ensure that it will be stated. Deliveries from within the EU shall include the VAT number. The Contractor shall be fully liable vis-à-vis us for disadvantages arising out of non-fulfilment of this obligation. If any provisions of these Terms and Conditions of Purchase are or become ineffective or unenforceable, the validity of the remaining provisions shall not be affected thereby. The ineffective or unenforceable provisions shall rather be replaced by effective and enforceable provisions that legally and financially come as close as possible to the ineffective or unenforceable provisions. Modifications of or amendments to the contract and all statements made between the parties shall be made in writing. This formal requirement shall also apply in the event that the requirement of written form is abolished.

#### 24. DATA PROTECTION

24.1 Buyer shall have the right to store, to communicate, to process and delete person-related data of Buyer in the framework of their business relations according to the rules of DSGVO.  
24.2 The parties shall undertake to keep absolutely confidential vis-à-vis third parties any knowledge obtained in the course of their business relationship.

Effective: 02/2020)

Managing Board: Dr. Yan Tang (CEO), Dr. Günther Ognar, Mag. Gerhard Berger

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