

# **General Terms and Conditions<sup>1</sup> (T&Cs) of Ludwig Polsterer Vereinigte Walzmühlen Ges.m.b.H.**



## **I. Scope:**

These General Terms & Conditions (“T&Cs”) shall apply to all – also future – contracts, offers, deliveries and other services of Ludwig Polsterer Vereinigte Walzmühlen Ges.m.b.H. (“LUPO”). LUPO reserves the right to make unilateral changes to the T&Cs. The valid version of the T&Cs at the time of concluding the contract is fundamentally relevant. The T&Cs shall also apply if LUPO takes actions to fulfil the contract in the knowledge of terms of the Customer that contradict or deviate from the T&Cs. Any agreements between the customer and LUPO that differ from these T&Cs must be made in writing.

## **II. Contract conclusion:**

Offers, price lists and such like from LUPO are non-binding and shall only constitute an offer for the customer to place an order if they have not been expressly specified as binding. By placing an order, the customer declares its contract offer to be binding. Unless otherwise agreed in the order, LUPO can accept an order within fourteen days by confirming it in writing or fulfilling it (e.g. by sending or handing over the goods). LUPO sales representatives are not authorised to conclude contracts on LUPO’s behalf.

## **III. Prices:**

Unless otherwise agreed, all prices are ex works or delivery warehouse and stated in euros (EXW / Incoterms 2010, including standard LUPO packaging) plus statutory VAT.

LUPO expressly reserves the right, after being notified by the customer in a timely manner and before executing the delivery or performance, to adjust the prices to reflect general price-relevant or cost-relevant changes in circumstances that lie outside of LUPO’s sphere. In the event of price increases of more than 20%, the customer may withdraw from the contract by providing a written declaration within 10 days from notification to the exclusion of other claims and rights.

## **IV. Delivery and performance**

Delivery and performance dates are non-binding for LUPO if they have not been expressly agreed. LUPO’s obligation to deliver and perform services is subject to it receiving its own deliveries in a timely manner and all approvals required under export control law being issued.

In the event of force majeure, LUP can, without prejudice to other rights and claims, demand an extension to delivery and performance deadlines/dates, reduce the quantitative and/or qualitative selection rate, or withdraw from the contract in whole or in part, without the Customer being able to derive any claims or rights from this. Force majeure in the sense of these T&Cs exists if LUPO is not responsible for the event and its consequences could also not have been avoided with a more careful approach. Examples include events such as war, riots, lockouts or strikes, trade restrictions (e.g. embargos), breakdowns/transport disruptions, refusals to deliver from pre-suppliers, lack of raw materials (e.g. bad harvest) or delayed allocation, as well as epidemics/pandemics, radioactive chemical or biological contamination or ionising radiation, regardless of whether such events and/or their consequences affect LUPO directly or indirectly.

The Customer is obligated to accept partial services or deliveries if this is not unreasonable in the individual case. If the Customer is in default of acceptance or fails to fulfil its obligation to cooperate, or there is a delay in

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<sup>1</sup> This is an English translation of the “Allgemeine Geschäftsbedingungen (AGB) der Ludwig Polsterer Vereinigte Walzmühlen Ges.m.b.H.“. In the event of discrepancies between the two versions, the German version shall prevail.

delivery/performance due to reasons outside of LUPPO's control, LUPPO shall be entitled to demand compensation for the resulting damages including additional costs (e.g. storage costs) in the form of flat-rate compensation of 0.5% of the relevant net order price for each commenced week. LUPPO's right to claim additional damages and/or other claims from LUPPO shall remain unaffected by this.

If "approximate amounts" are agreed, the Customer cannot make any claims or derive any rights for higher or lower volumes up to a maximum of ten percent and for weight losses during transport; the dispatch weight is the determining weight.

Goods are sent by LUPPO uninsured and at the risk and expense of the Customer. LUPPO can select the transport route and means of transport. The risk is transferred to the Customer when the goods are handed over to the carrier, freight forwarder or other entity responsible for shipment; this is also the case if the goods are delivered by LUPPO itself. Transport damages and losses are to be reported to LUPPO immediately together with a confirmation of the loss and/or damage from the transporter. The damaged goods are to remain at the disposal of LUPPO.

Transport packaging/means that were temporarily loaned shall remain the ownership of LUPPO and are to be returned to LUPPO without delay at the Customer's cost and risk. The Customer shall bear the disposal costs for the packaging material (containers).

Returns will be accepted subject to prior written authorisation.

#### **V. Payment terms, offsetting ban, right to refuse performance:**

All amounts owed to LUPPO are due for payment without deductions after invoicing. The date on which money or unconditional credit is received on LUPPO's account shall determine the timeliness of payments. If there is a delay in making partial payments, the remaining outstanding amount shall be due for payment immediately (acceleration clause).

LUPPO is not obligated to accept payments by cheque or bill of exchange; in any event, the acceptance of cheques and bills of exchange are only considered to be conditional payment. The customer shall bear any costs associated with using a cheque or bill of exchange.

Turnover bonuses are only offset against goods deliveries and not outstanding receivables. Notwithstanding any contrary provisions or allocations from the Customer, LUPPO is entitled to offset payments against outstanding receivables from the Customer at its own discretion. The customer is only entitled to the right of offsetting or retention or the right to refuse performance for receivables from the same legal relationship that have been legally established or recognised in writing by LUPPO.

LUPPO can unilaterally defer or suspend contract performance at any time and/or make it subject to the Customer providing sufficient security or an appropriate advance payment, particularly if (i) there are outstanding receivables from the Customer or (ii) LUPPO becomes aware of circumstances that significantly impair the Customer's ability to pay or creditworthiness or (iii) proper and/or timely handover by the Customer is not guaranteed. This shall not entitle the Customer to make any claims.

#### **VI. Ownership:**

Until the Customer has settled all amounts due to LUPPO, and in particular made all payments (invoice amounts, interest, costs, reminder fees, etc.), the goods shall remain the sole property of LUPPO ("Reserved Goods"), even if payment has already been received for individual parts. Up until this point, the Customer may only resell, process and/or combine goods that are not expressly intended for resale, processing or combining with the written authorisation of LUPPO or in line with the following provisions.

If the Reserved Goods are combined/processed with movable items from the Customer to form a whole item ("New Item"), and if the Customer's movable item is to be regarded as the main item, the Customer shall hereby already transfer to LUPPO (co-)ownership of the New Item created by the combination/processing in the ratio of

the value of the Reserved Goods to the value of the other item at the time of combining/processing. If the Reserved Goods are combined, mixed or blended with movable items from a third party in such a way that the third party's item is to be regarded as the main item, the Customer shall already transfer the claims/receivables towards the third party to LUPO and LUPO shall accept the assignment. The New Item created by the combination and the (co-)ownership rights to the New Item that are to be transferred, as well as the assigned claims/receivables, shall serve to secure LUPO's receivables in the same way as the Reserved Goods themselves.

The Customer is entitled to resell under reservation of title the Reserved Goods or New Item in the ordinary course of business while maintaining LUPO's retention of title (further retention of title) or against advance assignment of the Customer's receivables from the buyer (extended retention of title). In the event of resale of the Reserved Goods, the Customer already agrees to transfer any receivables arising from the resale, particularly those from its customers/clients, as payment of its receivables due to LUPO, without this requiring subsequent separate explanations; the transfer extends to amounts outstanding in relation to existing current account relationships or upon the termination of such relationships between the Customer and its clients. If the Reserved Goods are resold together with other items without an individual price being agreed for the Reserved Goods, the Customer shall transfer to LUPO, with priority over other receivables, the part of the asking price that corresponds to the value of the Reserved Goods as per LUPO's invoice.

LUPO can withdraw authorisation to resell the Reserved Goods or New Item and authorisation to collect the assigned receivables in the event of a delay or suspension of payment by the Customer, and in the event that insolvency proceedings are initiated in relation to the Customer's assets, or in other cases of impaired creditworthiness and trustworthiness of the Customer. Until the authorisation is revoked, the Customer is entitled to collect the assigned receivables from the resale; the Customer is, however, not authorised to dispose of them in any other way. At LUPO's request, the Customer must notify its customer/client about the assignment and hand over to LUPO all the documents required to assert its rights towards its customer/client (e.g. invoices) and provide all necessary information. The Customer shall bear all costs of the collection and any interventions. In any case, the Customer must make a corresponding note about the assignment in its books and on its invoices.

The Reserved Goods or New Item may neither be pledged to third parties nor assigned as security. The Customer must notify LUPO in writing without delay if, and to the extent that, third party access is granted to the Reserved Goods and/or New Item. The customer must inform LUPO immediately in writing if, and to the extent that, third parties access the goods subject to retention of title or the new item. The Customer undertakes to notify LUPO without delay of any seizures or other legal or actual impairment or threat to the Reserved Goods or New Item or other securities in LUPO's favour.

In the event of payment delay or other not insignificant behaviour by the Customer that is contrary to the terms of the contract, and if the contract is annulled, the Customer already grants its consent to LUPO removing the Reserved Goods from the Customer and – if LUPO is the sole owner – removing the New Item or arranging for it to be removed. If it is removed, withdrawal from the contract is only to be considered if LUPO expressly declares this. For performing this measure, and for performing a general inspection of the Reserved Goods or New Item, the Customer shall grant LUPO or third parties commissioned by LUPO access at any time.

If, according to the law in the country in which the Reserved Goods or New Item are located, or to which the Reserved Goods or New Item are taken before the purchase price has been paid in full, an agreement on retention of title is not permitted or not in the selected form, the Customer undertakes to carry out all legal acts and take part in such acts that are necessary to agree valid retention of title in the sense of these T&Cs or to grant LUPO a legal status that is as similar as possible.

Documents, samples, advertising means and the like provided by LUPO shall remain the property of LUPO. Until this is revoked, the Customer is authorised to pass these on as part of its normal business operations while maintaining LUPO's ownership.

#### **VII. Guarantee:**

LUPO shall guarantee that deliveries from LUPO are in an unopened condition and, for prescribed storage conditions and processing instructions that are specified on the labels, compliance with the provisions of Austrian

Food Law. Only the common characteristics linked to the nature of the goods themselves are covered by the guarantee.

In particular, LUPPO shall not assume any guarantee for the suitability of the goods for the customer's intended purpose. Recommended goods and product descriptions from LUPPO or the manufacturer, samples and prototypes or earlier deliveries from LUPPO are non-binding and do not constitute any expressly guaranteed characteristics. Guaranteed characteristics (as per Section 922 (1) of the Austrian Civil Code - ABGB) are only those characteristics that are expressly designated as such by LUPPO.

Deliveries/services from LUPPO are to be examined carefully any without delay. Any defects identified must be immediately notified in writing, and within five days at the latest, with a precise description of the goods (in particular delivery note number, delivery note date, batch number etc.) and stating the nature and extent of the defect, otherwise the right to make a claim will be lost. To identify possible defects, the Customer undertakes to enable LUPPO to perform detailed reviews including inspecting and viewing the documents etc. Excluded from the guarantee and any other liability are such defects that can be traced back to negligent, inappropriate or incorrect storage, use or processing of the goods by the Customer or third parties assigned to it.

Guarantee claims from the Customer shall lapse within six months from handover of the goods to the Customer, or in the event of delay in acceptance from when the goods are ready for delivery. However, they shall lapse upon expiry of the best before data (BBD). The Customer must prove that the defect existed at the time of handover. The application of Section 924 ABGB and Section 933b ABGB is expressly excluded.

Notwithstanding any mandatory statutory provisions, LUPPO is authorised as part of the guarantee to fulfil, at its own discretion, the guarantee claim through improvements, replacements or price reductions. The Customer shall grant the necessary time and appropriate opportunity for this supplemental performance. If the Customer refuses this or reduces the time to an inappropriate extent, LUPPO shall be released from the guarantee. Defects in individual, independent parts of a delivery/service shall not authorise the Customer to withdraw from the whole contract. In the event of timely and justified complaints, LUPPO may choose to fulfil its duty through improvements, replacements or price reductions. The Customer shall grant the necessary time and appropriate opportunity for this improvement or replacement.

#### **VIII. Liability:**

Subject to deviating provisions in these T&Cs, LUPPO (including its attributable representatives, employees, vicarious agents of and the like) shall only be liable for losses that arise while fulfilling the contract, outside of the mandatory application of the Product Liability Act (PLA), when and to the extent that LUPPO or its agents can be demonstrated to have been grossly negligent. LUPPO's liability for minor negligence, compensation for lost profits, consequential damages and financial losses, unforeseeable losses, non-typical losses, savings not achieved, interest losses and losses from third party claims against the Customer are excluded, as are claims from the Customer due to the breach of pre-contractual obligations.

Statutory liability under the Product Liability Act shall remain unaffected by this. Any recourse claims from the Customer or attributable third parties from the Customer's sphere under the title of product liability are excluded. If the Customer markets the items delivered by LUPPO outside of the European Economic Area, it undertakes to comply with the obligation to compensate its buyer as per the Product Liability Act (PLA), if this is possible under the applicable laws in the buyer country. In the event of a failure to comply with this obligation, the Customer is obligated to hold LUPPO harmless against all claims of this nature from third parties under the title of product liability.

To the extent permitted by law, LUPPO does not have any kind of duty to protect the actual user of the deliveries/services of LUPPO; LUPPO's intention in the contract is not to enter into agreements with a protective function for third parties as part of the contract concluded with the Customer.

#### **IX. Data protection:**

The Customer is aware that LUPPO records data in agreement with the applicable data protection provisions, processes this data (with the support of automation) and only uses and saves it to the extent necessary for

handling the contract. LUPO also reserves the right to pass on the data to third parties (e.g. insurance companies) if this is necessary for fulfilling the contract. The Customer agrees to LUPO recording its personal data (name and address) in the customer file until it withdraws its consent. In this way, it can be informed about products, innovations and price information from LUPO.

All the data applications used by LUPO are described in the data privacy statement, which can be accessed at any time at <https://www.roesselmehl.at/da-kummts-her/datenschutzerklaerung.html> or requested by sending an e-mail to [office@LUPO.at](mailto:office@LUPO.at).

#### **X. General applicable law, jurisdiction, place of performance:**

Place of performance for all services for the customer and LUPO is the registered office of LUPO, also when the handover takes place in another place in line with the contract.

The Customer undertakes, in regard to the transfer of delivery and the associated services from LUPO to third parties, to comply with all national and international export control provisions, particularly those under Community law, and to hold LUPO harmless in this regard.

If no confidentiality agreement was agreed in the individual case, the Customer undertakes to handle in the strictest confidence all information of which it becomes aware during the course of the contract, as well as information handed over by LUPO that is not generally known or accessible. It also undertakes to store it carefully and protect it from being accessed by unauthorised third parties, and not to use this information for purposes other than those specified in the contract without the express approval of LUPO.

The business relationship between LUPO and the Customer is only subject to Austrian material law, excluding the principles of conflicts of law, particularly those under private law if they refer to the application of foreign law. If Austrian law foresees, where foreign countries are involved, the application of special international substantive standards that also apply in Austria – for example the UN Sales Convention – these shall not be applied.

The sole place of jurisdiction for disputes arising indirectly or directly from the contractual relationship is the competent court in the location of LUPO's registered office. However, LUPO is authorised to apply to any other responsible court under national or international law.

