

## **Conditions of Purchase – Lugstein Ges.m.b.H.**

**Last update: january / 2005**

### **I. Standard Conditions**

1. The legal relations between Lugstein and the supplier comply with the following conditions of purchase and apply to all orders from Lugstein unless alternate stipulations are agreed upon in writing.
2. The acceptance of the order suspends all possible delivery conditions which may appear in the order confirmation of the supplier but which may not correspond to the conditions given in this document. A separate appeal against these terms of delivery is not required.

### **II. Purchase Order**

1. Delivery contracts (order and receipt) and delivery schedules, including alterations and amendments, must be made in writing. Delivery schedules and orders can be made using telecommunication. The supplier is required to send an official order confirmation in single copy for every order received.
2. If the supplier fails to send a written confirmation of the order within two weeks of receipt, Lugstein is released from its obligations.
3. Within reasonable bounds, Lugstein may require changes to the design and construction of the delivery items. The effects of such changes, specifically in price and delivery deadline, are to be determined amicably. Changes given orally or by telephone must be followed up with a written confirmation.
4. Prices: If the relevant prices are not mentioned when the merchandise is ordered, then the prices given in the supplier confirmation are only valid upon receipt of a written acceptance by Lugstein. Prices may not be increased due to currency fluctuations.
5. Price changes: Possible price changes after written confirmation of the order are unacceptable and can be implemented only with the explicit written consent of Lugstein.
6. Spare parts: The supplier guarantees the availability of spare parts for the delivery items for a period of no less than 15 years after production of the delivery items is discontinued.

### **III. Payment**

1. Payment will be made with the following terms:  
Payment subject to 3% discount.  
Lugstein has the option to pay the full price in 90 days.
2. For early deliveries, payment will be due according to the agreed upon delivery date, rather than the actual delivery date.
3. Payment will be made by bank transfer.
4. For incomplete deliveries as well as any other counterclaims, Lugstein may withhold payment until satisfactory completion of the delivery or resolution of the claim.
5. The supplier may neither assign a claim to a third party nor authorize a third party to collect without the written consent of Lugstein.
6. The invoice will be sent to Lugstein in single copy. It must include the supplier number, order number and date, additional purchaser data (i.e. account information, article numbers), number and date of the bill of delivery, and the quantity of merchandise included in the price.
7. It is deemed agreed that all payments shall be made subject to and taking into full account any and all counterclaims from Lugstein.

### **IV Notice of Defects**

1. Lugstein is released from its duty to inspect the goods upon delivery and give notice of defects. Lugstein will send a written notice to the supplier of defects in quality, quantity, and dimensions of the delivery as soon as such defects are discovered. Lugstein reserves the right to give delayed notice of defects in delivered goods. The supplier waives any pleas of belated notice of defects in accordance with § 377 f. HGB.

### **V. Delivery dates and deadlines / Terms or delivery**

1. Agreed upon dates and deadlines are fixed dates. Adherence to the delivery dates and deadlines is determined by the arrival time of the merchandise at Lugstein.
2. The relevant clauses of the most recent addition of Incoterms apply.
3. Packaging: Details of packaging will be given in a separate agreement. Failure to adhere to packaging specifications will result in a cash settlement for Lugstein equivalent to the actual costs, but no less than 150 Euros per occurrence.

**VI. Delayed deliveries**

1. The supplier will compensate Lugstein for all damages caused by delayed delivery, specifically for the increased costs of urgent shipments, resulting from missed deadlines due to the late delivery of supplies.
2. Failure of the supplier to meet the agreed upon delivery deadline gives Lugstein the right to nullify the contract without giving a grace period.

**VII. Force majeure**

1. Strikes and lockouts, shutdowns, minimized production and similar cases, resulting in decreased consumption, will be considered as Force majeure und release both parties – for the duration of the disturbance – from the contract obligations.

**VIII. Quality and Documentation**

1. Lugstein retains the right to inspect the supplier and its production at any time, and the supplier must provide opportunity for such inspections. Lugstein retains the right to reject defective parts during the production process. The actual costs of the inspection will be assumed by the supplier. The personal costs of the inspection will be covered by Lugstein. The completed inspections do not in any way release the supplier from its full responsibility and warranty. The inspections include the list of subcontractors, Test reports, and possible merchandise samples as evidence.
2. The names of possible subcontractors involved with the order completion must be disclosed to Lugstein upon request. Lugstein retains the right to perform supplier audits on location.
3. Special provisions for purchased parts: Unless other provisions are encountered in the technical delivery terms, the supplier will perform an acceptance test of the delivery lot in accordance with AQL 1.00, Test level II (according to DIN 400890 or ÖNORM A 6649). Drawing dimensions with tolerance specifications, and likewise drawing dimensions marked as test dimensions, are to be recorded. These reports are part of the delivery and must be furnished no later than the delivery deadline, unless other arrangements have been agreed upon.
4. Lugstein must consent to all deviations before delivery. Lugstein retains the right to perform spot checks on incoming deliveries in accordance with the job instructions. If the required criteria have not been fulfilled, Lugsten may reject the delivery at the cost of the supplier.
5. Before implementing assignment, procedural, production, and design changes, as well as a change of manufacturing location, the supplier must carry out inspections concerning the compliance with design requirements and specifications. A new initial sample inspection and test is emphatically stipulated. All details of planned changes must be communicated in advance. All costs arising due to failure to adhere to these requirements will be borne by the supplier.

**IX. Warranty**

1. The supplier guarantees that the delivered merchandise shall be free from defects in material, workmanship and design.
2. Defective parts must be replaced by the supplier at no cost, or the value of the defective part must be refunded. In case of objection, Lugstein retains the right to deduct the value from the current invoice. The supplier assumes liability for immediate costs arising for Lugstein due to a defective delivery, specifically for defects discovered during the manufacturing process as well as in the case of Lugstein's own remedial work made necessary by the urgency of any given situation.
3. The warranty begins anew with the delivery of spare parts or the removal of defects. Lugstein's acceptance or approval of presented design drawings does not release the supplier from its warranty obligations.
4. The freight costs for the rejected parts and the replacement parts will be borne by the supplier.
5. In the event of a second defective or incomplete delivery, the purchaser has the right, after a written acceptance of such delivery, to cancel the contract.
6. If the defect is discovered after the beginning of the manufacturing process, despite adherence to the obligation of article IV (Notice of Defects), the warranty still applies.
7. The parts to be replaced must be promptly returned to the supplier upon request and at the supplier's cost.
8. The warranty shall remain in effect for 36 months from the initial registration date of the vehicle and respectively the assembly date of the spare parts.
9. Unless stated otherwise in the above conditions, the legal warranty regulations also apply.
10. Reductions in the length of the legal warranty periods will be explicitly rejected by Lugstein. A basic principle and condition of the order is that the warranty, entitlement to compensation for damages by the supplier, and the product liability of the supplier for the delivered merchandise remains valid for the duration of our warranties to our customers for the end product.

**X. Compensation and product liability**

1. The supplier is required, regardless of its degree of guilt, to compensate for damages Lugstein suffers as the immediate result of a defective delivery, disregard of official safety regulations, or any other reason determined to be the fault of the supplier. The

supplier is especially liable for consequential harm caused by a defect and pure financial losses.

2. The legal liability for damages comes into force when the supplier is either wilfully or negligently responsible for the losses it has caused.
3. In the event that Lugstein is liable under strict liability according to any national law (e.g. the Product Liability Act) or foreign law, then the supplier shall assume this liability and shall hold Lugstein free and harmless of any claims raised by third parties even in the event that there is no wilful or negligent responsibility on the part of the supplier.
4. The supplier is fully liable for all costs incurred by Lugstein for mitigation of damages and defensive measures against damages (i.e. product recall); in accordance with these conditions of purchase.

## **XI. Trademark rights**

1. The supplier is liable for claims arising due to the violation of trademark rights, occurring as a result of the conventional usage of the delivered merchandise.
2. The supplier will hold Lugstein and its consumers free and harmless from any claims arising from the enforcement of trademark rights, and fully compensate both parties for resulting damages.
3. These conditions do not apply if the supplier has produced the merchandise in accordance to drawings, models, or comparable descriptions or data provided by the purchaser and does not or cannot know that the items produced will violate trademark rights.
4. If the supplier is not liable in accordance with article 3, then Lugstein will hold the supplier free and harmless from all third party claims.
5. Both parties to the contract obligate themselves to inform one another without delay from arising infringement risks and alleged infringement accidents and to give each party the opportunity to resolve the problem amicably.
6. The supplier will, upon Lugstein's request, provide information about the usage of published and unpublished proprietary and licensed trademarks and trademark registrations of the delivery items.
7. Exclusivity: If the ordered merchandise is comprised of parts designed by Lugstein, the supplier obligates itself to deliver such parts exclusively to Lugstein. Likewise, the supplier obligates itself to neither mention nor display such items in its catalogues.

**XII. Use of production means and confidential information from Lugstein.**

1. Models, matrices, templates, samples, tools and other production means, as well as confidential information, provided to the supplier by the purchaser, may not be used for deliveries to third parties without the prior written consent of Lugstein.

**XIII. General Conditions**

1. If one contracting party stops payment and bankruptcy proceedings of his assets or a legal or non legal proceeding of a similar nature has been filed, then the other party can withdraw from the unfulfilled portion of the contract.
2. Should a clause of these conditions and the affected further agreements be or become invalid, the validity of the rest of the contract will not be affected. The contracting parties obligate themselves to replace the invalid clause with a comparable regulation which will not hinder the commercial success of the partnership.
3. Lugstein does not recognize the reservation of proprietary rights of the supplier.
4. These conditions are governed exclusively by Austrian law.
5. The place of delivery is the headquarters of Lugstein.
6. The agreed upon place of jurisdiction is Ried im Innkreis.
7. The supplier gives his explicit consent to the exchange of data regarding its partnership with Lugstein.
8. These conditions of purchase, updated in March/2004, completely replace all previous conditions of purchase from Lugstein. All previous conditions are hereby nullified.

Signature (company seal)

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Supplier