

**GENERAL TERMS AND CONDITIONS OF PURCHASE  
OF LOHBERGER GmbH**

Valid from Dez 2022

**1. GENERAL**

1.1 The term Lohberger, hereafter LOHBERGER, shall also include all subsidiaries from the Lohberger Group, including in particular Lohberger Lechner GmbH.

1.2 Orders placed by LOHBERGER shall be governed exclusively by these Terms and Conditions of Purchase. This shall also be the case if delivery is accepted by LOHBERGER or payment is made despite being aware of any terms and conditions of the SUPPLIER that run contrary to or depart from these Terms and Conditions of Purchase. Exceptions to these Terms and Conditions of Purchase shall only take effect if confirmed in writing by LOHBERGER. Any exceptions confirmed shall only apply under the specific individual circumstances and shall not otherwise have effect in future.

1.3 These Terms and Conditions of Purchase shall replace all previous Terms and Conditions of Purchase and shall constitute an integral part of each LOHBERGER partner agreement / Terms and Conditions of Purchase or may be replaced exclusively by any such document.

**2. ORDERS**

2.1 Any order placed by LOHBERGER shall constitute exclusively an offer to conclude a contract of sale or a contract for works and services and must be confirmed by the SUPPLIER within two working days in Austria by order confirmation submitted by email or (Web-based) EDI. If the SUPPLIER starts work on the order before such confirmation has been sent, the order shall be deemed to have been accepted in accordance with the information contained in it. Irrespective of whether any such order confirmation is transmitted, LOHBERGER orders shall also be deemed to have been accepted unless the SUPPLIER objects to them by email within two working days in Austria of receipt. Acceptance shall only be possible in accordance with the terms and conditions indicated in the order.

2.2 Orders shall only be binding if they are issued on LOHBERGER order paper and transmitted by LOHBERGER purchasing staff by email or (Web-based) EDI. Any orders placed orally, by telephone or by fax shall be invalid, and the same shall apply for orders or order amendments originating from other LOHBERGER staff, field sales staff or customers, which must be forwarded by the SUPPLIER directly to a LOHBERGER purchasing staff member, and may only be processed by the SUPPLIER following receipt of an order or order correction issued in accordance with clause 2.2 by a LOHBERGER purchasing staff member. A list of authorised LOHBERGER purchasing staff members may be requested by the SUPPLIER at any time from LOHBERGER.

2.3 The complete order number, the LOHBERGER items numbers and the date of the order must be indicated in all written documents, dispatch notices, delivery notes, waybills, invoices etc. relating to orders.

2.4 The delivery of excess quantities or shortfalls shall only be permitted with the prior approval of a LOHBERGER purchasing staff member sent by email. In the event of the unauthorised delivery of an excess quantity, LOHBERGER may refuse to accept the goods or return them at the cost and risk of the SUPPLIER.

2.5 The SUPPLIER shall not be entitled to arrange for performance by a third party without the prior approval of LOHBERGER sent by email.

2.6 LOHBERGER reserves ownership and copyright over offer documentation (diagrams, calculations and other technical data). Offer documentation may not be made accessible to third parties without the express prior approval of LOHBERGER sent by email. This documentation shall be returned to LOHBERGER unsolicited and irrevocably erased from all data carriers after the order has been processed, and otherwise at the latest upon termination of the business relationship.

2.7 LOHBERGER shall be informed in writing without undue delay in the event of any direct or indirect change to its ownership (company structure). Should this occur, LOHBERGER shall be entitled to terminate any outstanding orders within four weeks of notification and no compensation shall be payable.

**3. PRICES, PAYMENT TERMS**

3.1 Unless agreed otherwise, the prices indicated in the order shall constitute fixed prices. Taxes, customs duties and other taxes, with the exception of value added tax, shall be borne by the SUPPLIER.

3.2 Following receipt of delivery, unless agreed otherwise payment shall be made either within 30 days of receipt of the invoice with a discount of 3% or within 45 days at the full amount. LOHBERGER shall have a right to offset and rights of retention according to law.

3.3 All invoices must refer to the underlying orders and state the full order number, the supplier code and the delivery note reference as well as the date of delivery and the agreed payment terms. In the event that this information is incorrect or

missing, the invoice shall be returned to the SUPPLIER and shall only be deemed to have been received following the submission of a new invoice containing the data required.

3.6 Default interest shall only be payable with our express written approval, and its amount shall be capped at the level of statutory default interest.

#### **4. DELIVERY DEADLINES**

4.1 The relevant delivery location and the relevant delivery deadline shall be as stated in the LOHBERGER order. The delivery deadlines indicated shall refer exclusively to the time of arrival of the order at the delivery location.

4.2 The SUPPLIER is obliged to comply with the delivery deadlines indicated and to inform the relevant LOHBERGER purchasing staff promptly in the event that any delivery difficulties should arise. The SUPPLIER shall likewise report promptly any temporary extension to delivery times, for instance due to company holiday periods.

4.3 Deliveries may only be made more than one working day in Austria before the delivery deadline applicable in accordance with clause 4.1 with the prior approval of a LOHBERGER purchasing staff member. Unless such approval is granted, LOHBERGER reserves the right to return the goods at the cost and risk of the SUPPLIER or to store them at the cost and risk of the SUPPLIER until the delivery deadline applicable in accordance with clause 4.1. In the event that early delivery is accepted, the due date for payment shall be determined in accordance with the delivery deadline applicable in accordance with clause 4.1.

#### **5. DELAYED DELIVERY**

5.1 The delivery deadlines applicable to any LOHBERGER order in accordance with clause 4.1 are binding, and failure to respect them shall result in default without any requirement for a reminder. If a delivery or performance is rejected (objection to defects) on the grounds that it is not compliant with the order, delivery or performance shall be deemed not to have been made until the specifications required under contract have been fulfilled.

5.2 If a delivery deadline applicable in accordance with clause 4.1 is not complied with, the SUPPLIER shall be obliged to compensate LOHBERGER for any losses arising as a result of the delayed delivery, and thus any actual additional costs arising due to delayed delivery, in addition to lost profit. The corresponding amount shall be invoiced by LOHBERGER.

5.3 The acceptance of a delayed delivery or performance shall not imply a waiver of any additional claims arising due to the delay. Losses arising as a result of the delayed delivery shall be payable in the event not only of a delay in delivery of goods, but also of a delay in the transmission of any necessary documents (documentation, shipping and customs papers etc.). LOHBERGER shall be entitled to impose default penalties, even if delivery has been accepted in full or in part and/or if the delivery has been paid for without reservation.

#### **6. TRANSFER OF RISK, RESERVATION OF TITLE BY THE SUPPLIER**

6.1 Ownership of the goods supplied shall pass to LOHBERGER upon delivery; any claims by the SUPPLIER to reservation of title will not be accepted.

6.2 Unless expressly stated otherwise in the order, delivery shall occur FCA to the delivery address indicated in the order without any charge for packaging. The SUPPLIER shall organise transportation and shall indicate the costs as a separate item in the invoice. Risk shall only transfer at the place of destination stated in the order, even if specified otherwise for FCA under the Incoterms 2020.

6.3 For orders with direct delivery to the LOHBERGER end customer, the SUPPLIER undertakes to send the relevant copy of the delivery note, including the signed delivery receipt, without being asked and free of charge on the day the delivery is delivered to the LOHBERGER end customer via e-mail to the following e-mail address: [logistik@lohberger.com](mailto:logistik@lohberger.com).

Invoices in this context, which are issued by the supplier to Lohberger before the copy of the delivery note including the signed delivery receipt has been sent, are valid as of the day on which the copy of the delivery note and the signed delivery receipt were submitted in full. The payment and discount periods agreed between the supplier and Lohberger only begin when the copy of the delivery note and signed delivery receipt have been received in full.

#### **7. QUALITY AND DOCUMENTATION**

7.1 The SUPPLIER shall operate a quality management system according to DIN EN ISO 9001 and/or DIN EN IS 14001 or a higher quality standard in order to ensure the ongoing monitoring of the production/delivery process of the goods that are to be supplied to LOHBERGER, and shall develop, manufacture/market and examine them according to the requirements of the quality management system. If the SUPPLIER does not have any quality management system according to DIN EN ISO 9001 and/or DIN EN ISO 14001, the SUPPLIER expressly undertakes to allow an audit to be carried out at any time by LOHBERGER or a company instructed by LOHBERGER of the quality management system in place at the relevant time.

In addition, SUPPLIER undertakes to comply with all national legal requirements relating to environmental management.

7.2 The SUPPLIER undertakes to incorporate its own suppliers and where appropriate its development partners responsible for the production of or quality assurance for the agreed goods/services into its quality management system and to satisfy itself of the quality of input supplies.

7.3 The SUPPLIER shall keep records concerning the conduct of quality assurance checks, including in particular measurements and test results, which it shall allow LOHBERGER to consult upon request, and shall demonstrate the efficacy of the quality management system upon request. In this regard, the SUPPLIER shall allow LOHBERGER the opportunity to carry out a supplier audit at any time. Upon request, the SUPPLIER shall also enable the logistics chains of any sub-suppliers to be to be audited by LOHBERGER in the same way.

7.4 If during the course of the annual supplier assessment by LOHBERGER an assessment is requested, and in this regard the presentation of an action plan for improving and rectifying any negative findings in the assessment, the SUPPLIER undertakes to state its position regarding the issue and to present and implement a specific action plan.

## 8. OBJECTION TO GOODS

8.1 If LOHBERGER identifies any defects in the goods supplied prior to delivery to customers, this shall be reported to the SUPPLIER by LOHBERGER Quality Assurance by email. The SUPPLIER shall state its position regarding them without undue delay within 24 hours, or otherwise at the latest within 48 hours. The 8-D process shall be applied as a problem solving method. The statement must include the following information:

- number of items, delivery & production lots or batch numbers of the product affected by the discrepancy
- potential consequences in terms of subsequent processing by LOHBERGER or at the facilities of end customers, in the view of the SUPPLIER and based on its experience
- the causes of the defects objected to
- any emergency action taken and planned in order to rectify the error directly
- a specific date by which the planned action will have been concluded
- an indication as to when the next fault-free delivery can be expected
- action that will be taken in order to avoid similar defects with certainty in future
- data and factual parameters for confirming the efficacy of the action taken

8.2 Where reasonable, the SUPPLIER shall be granted the opportunity to separate, rectify or replace any goods affected. Where production processes require extremely rapid intervention and the SUPPLIER does not respond to the claim in accordance with clause 8.1 without undue delay or if the SUPPLIER is unable to do so, LOHBERGER may separate or rectify the goods itself or arrange for a third party to do so or cancel the order and return the goods at the risk of the SUPPLIER. Notice of this shall be given to the SUPPLIER in advance by email. All resulting costs, damages and losses arising for LOHBERGER as a result of the delivery of defective products shall be borne by the SUPPLIER. The SUPPLIER may not infer any discharge for itself from liability for latent defects on account of the separation of defective goods.

8.3 If a rectified product or a replacement delivery is still defective as reported by LOHBERGER, LOHBERGER shall be entitled to cancel any or all orders for the product concerned.

## 9. WARRANTY

9.1 The SUPPLIER shall bear liability for any defects affecting deliverable items and warrants that they will be suitable for the intended purpose following receipt. The product information provided during the course of order processing shall constitute warranted characteristics. The SUPPLIER warrants that the deliverable item, including its construction and production, is compliant with the state of the art, with all internationally applicable product safety rules and also, where applicable, with any samples used as a reference.

9.2 SUPPLIER guarantees that the goods are compliant with the safety and acceptance rules of authorities, professional associations and official bodies in the countries to which the contractual goods concerned are delivered. Where necessary, the SUPPLIER shall obtain the relevant information itself.

9.3 Should any defect or damage come to light within 24 months of delivery of the end product by LOHBERGER to the end customer, up to a maximum of 30 months after delivery to LOHBERGER by the SUPPLIER (date of delivery note), it is agreed that LOHBERGER shall carry out all necessary repairs itself, or arrange for a third party to do so, and that the costs arising as a result, such as the costs of materials, salaries, transportation, travel, removal, assembly or third party damages claims, shall be borne by the SUPPLIER. A new warranty period shall apply in the event of rectification or the delivery of a replacement, starting on the date of delivery to LOHBERGER (date of incoming stamp on the delivery note).

9.4 Should LOHBERGER incur any costs towards its customers on account of goodwill gestures, service campaigns, recalls or similar measures, the SUPPLIER shall be obliged, including after expiry of the warranty periods, to contribute to the costs insofar as the SUPPLIER'S goods were the cause.

9.5 In the event of any series defect (defect rate > 5% of the components available on the market, in terms of the components from a series that are affected by the defect) due to reasons for which the SUPPLIER is at fault, the warranty shall be

unlimited in terms of its duration and scope and LOHBERGER shall in addition be entitled to rectify on a precautionary basis the goods previously delivered. The SUPPLIER shall bear itself any material, salary or other costs arising in this regard. If a defect gives rise to a risk of personal injury or damage to property of particular value, LOHBERGER shall be entitled to take any action that it deems to be necessary, unless the SUPPLIER responds without undue delay to a request to that effect by LOHBERGER.

## **10. DAMAGES**

10.1 The SUPPLIER shall bear liability irrespective of the extent of its fault for all losses and consequential losses, as well as lost profit and the reimbursement of any costs associated with business interruption, stoppage due to fire, a suspension of production or any other indirect losses. In addition, in the event that a recourse action is brought, it shall bear liability for all losses that LOHBERGER is obliged to compensate to a third party that has suffered loss as a result of a defective deliverable item, including the costs of (judicial) action to enforce the claims.

10.2 LOHBERGER shall bear liability towards the SUPPLIER exclusively in respect of wilful or grossly negligent conduct.

## **11. PRODUCT LIABILITY, RECALL, INSURANCE**

11.1 Product liability is as a general rule not dependent upon fault and may not be limited or excluded in advance between the party liable for the product and the injured party.

11.2 If any action is taken against LOHBERGER, the SUPPLIER shall be obliged, after the statement of claim has been served, to adhere to any judicial action alongside LOHBERGER as an intervener. LOHBERGER shall retain ultimate responsibility for the proceedings. The SUPPLIER shall provide LOHBERGER within the proceedings with all documentation necessary or requested for the purpose of enforcing its rights. The SUPPLIER shall only make any submissions to the court with the prior approval of LOHBERGER.

11.3 In the event that LOHBERGER pays damages to an injured third party, irrespective of whether this occurs pursuant to a court order or under the terms of an out-of-court settlement, the SUPPLIER shall indemnify and hold harmless LOHBERGER.

11.4 The SUPPLIER shall be obliged to monitor its goods on an ongoing basis and to carry out regular risk assessments of its deliverable items. It must report without undue delay to LOHBERGER any functional defects and/or recognisable hazards within deliverable items, the malfunctioning or breakage of which could give rise to a risk of personal injury. This shall also apply *mutatis mutandis* in the event that a deliverable item does not constitute an actual risk but is rather affected by a quality defect and LOHBERGER launches a voluntary recall, in particular where the deliverable item is unsafe or hazardous.

11.5 The SUPPLIER shall be obliged to conclude reasonable business and product liability insurance to cover the order volume and the obligations taken on, of which it shall furnish proof to LOHBERGER upon request.

## **12. CONFIDENTIALITY, DESIGNATION OF THE GOODS AND ADVERTISING**

12.1 The SUPPLIER shall treat in confidence the documentation and data drawn up by LOHBERGER and any other information that may come to its attention within the ambit of the business relationship, which may not be commercially exploited by the SUPPLIER, in identical or amended form, in whole or in part, for any purposes other than those agreed upon, and may not be disclosed to third parties or used for its own commercial purposes or those of another customer except with the written approval of LOHBERGER. This obligation shall also apply to employees of the SUPPLIER.

12.2 The SUPPLIER is obliged to treat sensitively any third party enquiries concerning LOHBERGER products (products based on designs, drawings or information of LOHBERGER or branded with LOHBERGER company references, such as its logo, trade mark or any similar symbol) and shall inform LOHBERGER promptly concerning any such enquiries. Such products may under all circumstances be offered to a third party only with the consent of LOHBERGER granted in writing or by email.

12.3 The SUPPLIER must subject all persons and companies not belonging to its business that provide advice or support to it to the obligations set out in clause 14 and ensure that all persons not belonging to its business with which it has contractual relations also comply with this obligation.

12.4 The duty of confidentiality shall continue to apply after the order has been completed and after the business relationship has been terminated.

12.5 The SUPPLIER shall only be entitled to apply to deliverable items or otherwise to use the trade marks or logos of LOHBERGER with its specific agreement. The SUPPLIER shall under all circumstances be prohibited from supplying to third parties any deliverable items featuring the LOHBERGER logo, including on packaging.

## **13. INDUSTRIAL PROPERTY RIGHTS, OTHER RIGHTS, DATA PROTECTION**



13.1 The SUPPLIER warrants that the usage of its deliverable items as provided for under contract will not infringe any third party industrial property rights, even if the grant of such rights has only been applied for. The SUPPLIER shall hold LOHBERGER and its sub-contractors harmless in respect of all claims resulting from the infringement of any such industrial property rights and undertakes to procure the necessary rights and licences at its own cost. The SUPPLIER shall report without undue delay any violations of industrial property rights or any related risks. Upon request by LOHBERGER, the SUPPLIER shall indicate all industrial property rights that are owned by it or by its sub-suppliers that have been used in the development or production of the deliverable item or that otherwise relate to it.

13.2 The SUPPLIER and LOHBERGER shall be entitled to disclose technical documentation of the other party where necessary upon request by the authorities. The SUPPLIER shall allow LOHBERGER, by appointment, to consult any documents, instruments, books and records relating to the order concerned and undertakes to retain them for a period of at least 10 years after the last delivery of the deliverable item concerned. In the event that direct cooperation in the business relationship with LOHBERGER gives rise to new inventions or designs, all industrial property rights shall be vested in LOHBERGER.

#### **14. EMPLOYEE CODE OF CONDUCT, SUPPLY CHAIN SECURITY**

14.1. The SUPPLIER shall be obliged to comply with the laws of the relevant applicable legal system(s) as well as the Code of Conduct of LOHBERGER in accordance with clause 14.1. In particular, it shall refrain from any active or passive involvement, either directly or indirectly, in any form of bribery, violations of the basic rights of its employees or child labour. The SUPPLIER shall bear responsibility for compliance with statutory requirements, including in particular those under commercial law and administrative law, on staff deployment, including in particular also the provisions of the Austrian Act on the Combatting of Salary and Social Dumping [*Lohn- und Sozialdumpingbekämpfungsgesetz*, LSD-BG] In the event of the cross-border deployment of its staff, the SUPPLIER shall also abide by and comply with all statutory requirements in the country of deployment. It shall ensure in particular that statutory provisions, along with the terms of any applicable collective employment agreements on remuneration as well as the obligations to pay taxes and social contributions are complied with, that all statutory and commercial law prerequisites and requirements in relation to worker protection are met that only employees who hold any mandatory residence, employment or work permit, whose social insurance contributions are paid and who are insured against accidents are deployed. In the event that any third parties or any other persons designated by such third parties are deployed, the SUPPLIER shall likewise ensure that these requirements are met. Upon request, the SUPPLIER shall furnish LOHBERGER with appropriate written proof also concerning compliance with these obligations by those third parties. The SUPPLIER shall hold LOHBERGER harmless in respect of any claims arising in relation to a breach of duties under clause 14.1 committed by employees or by third parties engaged by employees.

14.2. The SUPPLIER shall comply with environmental protection legislation. In addition, it shall take appropriate action in order to avoid the usage of so-called "conflict minerals" and ensure transparency concerning the origin of the commodities concerned. In addition, it shall ensure that this Code of Conduct is complied with by its own suppliers as far as it is able. The SUPPLIER further undertakes to comply with all statutory and contractual provisions on accident prevention and occupational safety. It shall ensure that no risks arise to the health and safety of the staff deployed by it to provide the services as well as by its direct and indirect sub-contractors or to any other persons authorised to be present within work areas.

14.3 The SUPPLIER shall adopt the necessary organisational instructions and measures, in particular in relation to the protection of property and the security of business partners, staff, IT infrastructure, packaging and transportation in order to guarantee security throughout the supply chain in accordance with the requirements of the relevant internationally recognised initiatives on which the WCO SAFE Framework of Standards is based (e.g. AEO, C-TPAT). It shall protect its supplies and services provided to LOHBERGER or to third parties designated by LOHBERGER against unauthorised access or interference. It shall use exclusively reliable staff for such supplies and services and shall oblige any sub-contractors likewise to take corresponding action.

#### **15. SPARE PARTS**

The SUPPLIER undertakes, upon request, to produce deliverable items in a sufficient quantity for usage as spare parts for a period of at least 10 years after the last delivery of goods.

#### **16. APPLICABLE LAW, JURISDICTION AND ARBITRATION AGREEMENT**

Austrian law shall be exclusively applicable, and the private international law rules on the conflict of laws and the provisions of the UN Convention on Contracts for the International Sale of Goods shall not apply. The Ried im Innkreis Commercial Court shall have exclusive jurisdiction over any disputes arising out of or in relation to this Agreement. It is expressly stipulated that no arbitration agreement has been concluded.

#### **17. FINAL PROVISIONS, SEVERABILITY**

These Terms and Conditions of Purchase may only be amended in writing. In the event that any provision of the contracts or of these Terms and Conditions of Purchase should be invalid, this shall not affect the validity of the remaining provisions.

In such an eventuality, a provision that comes as close as possible to the legal and economic purpose of the invalid provision shall be deemed to have been agreed upon.