

**CONDITIONS OF PURCHASE****Valid with effect from 01.12.2005****1. General**

The legal relationships between the supplier and LOEWE OPTA GmbH – hereafter referred to as the customer – shall be dependent on these conditions and any other agreements; these, together with amendments and additions thereto, have to be made in writing. Other general terms and conditions shall also be inapplicable if they have not been expressly contradicted in each specific case.

**2. Order**

- 2.1 Supply agreements (orders and acceptances) and supply requisitions, together with amendments and additions thereto, have to be made in writing. Orders, supply requisitions and any amendments and additions thereto, may also be made by remote data transmission or by machine-readable media. Requirements determined by electronic data processing/production planning and control and orders printed out from these shall be valid with a machine signature.
- 2.2 Should the supplier not accept the order within a period of three weeks of receipt, the customer shall be entitled to cancel. Supply requisitions shall become binding when the supplier does not reject them within two weeks of receipt at the latest.
- 2.3 Within the bounds of reasonableness for the supplier, the customer may demand changes to the delivery item in terms of design and finish. The consequences of this, particularly with respect to additional and reduced costs and delivery dates, have to be resolved jointly in an appropriate manner.

2.4 Should the supplier infringe the requirements accepted on confirmation of the order or should he fail to satisfy them to their full extent, the customer shall be entitled to withdraw from the agreement. The same shall apply if bankruptcy proceedings or judicial or out-of-court insolvency proceedings are filed in relation to the assets of the supplier.

### **3. Prices**

Prices have to be quoted solely exclusive of value added tax; value added tax have to be shown separately. Prices shall be fixed prices and shall apply without subsequent claims and limiting conditions free to the receiving office specified by the customer and shall include packaging costs.

### **4. Dispatch, packaging, proof of origin**

4.1 Deliveries shall be made on the account of and at the risk of the supplier, DDP (Kronach) in accordance with valid Incoterms 2000.

4.2 Unless otherwise agreed, the goods to be supplied have to be packed in a merchantable and proper manner or, at the request of the customer, provided with special packaging in accordance with his instructions. The supplier shall be liable for any damage caused as a result of defective packaging.

4.3 The customer may return the packaging to the supplier. Separately agreed packaging costs have to be credited to the customer upon return of the packaging.

4.4 The packaging material used by the supplier have to be procured and identified in such a way that it can be disposed of in accordance with the statutory regulations currently in force without additional expense.

4.5 Reusable and returnable packaging provided by the supplier have to be clearly marked by the supplier. The customer shall assume no responsibility for the condition of returned reusable packaging.

- 4.6 The customer may specify the mode of dispatch and the carrier, to which the supplier shall be bound.
- 4.7 Packing slips and delivery notes quoting the order number of the customer and corresponding to requested order dates must always be enclosed with each consignment. Partial or remainder deliveries have to be labelled as such.
- 4.8 Insofar as the goods manufactured by the supplier for the customer are required for export, the supplier shall be required, using a form specified by the customer or by the public authorities, to make a written declaration concerning the customs origin of the delivery items. This declaration have to be forwarded to the customer at the latest with the first delivery.
- 4.9 The origin of newly included delivery items or a change of origin have to be indicated to the customer immediately and without solicitation. The supplier shall be liable for all injuries incurred by the customer as a result of improper or delayed production of the supplier declaration. Where required, the supplier must provide proof of his details pertaining to the origin of the goods by means of an information sheet certified by his customs office.

## **5. Delivery dates and periods, delayed performance and acts of God**

- 5.1 Agreed dates and periods shall be binding. The critical factor determining compliance with the delivery date or the delivery period shall be the date of the receipt of the merchandise at the premises of the customer. If "Delivery free of charge to receiving office" is not agreed, the supplier must keep the merchandise ready in good time, taking into consideration the normal time for loading and dispatch.
- 5.2 The delivery date quoted in the order confirmation shall only be binding if it does not differ from the delivery date specified in the order. If it is impossible to keep up to the delivery date specified by the customer, the supplier must forward this information without delay, giving reasons. If a new delivery date is accepted by the customer in writing, this shall be final.

- 5.3 The supplier shall have an obligation to the customer to replace damage caused by delayed performance in the event of non-scheduled delivery. In cases of slight negligence, the compensation shall be limited to additional freight costs, re-equipment costs and, following an abortive extension or if interest lapses in the delivery, to the additional expenditure incurred on covering purchases. In determining the amount of compensation, the financial state of the supplier, the type, extent and length of the business association and, where applicable also, the value of the proportion of supply allotted to the supplier must reasonably be taken into account in good faith.
- 5.4 If the delivery dates are exceeded, the supplier, without further reminder, shall be in default. In such a case the customer is entitled, in granting a brief extension, to impose a contract penalty of 0.5% per week or part of week – up to a maximum of 5% of the order value.
- 5.5 The customer hereby reserves the right to refuse early deliveries – more than seven calendar days before the delivery date – or to charge the supplier the appropriate storage and handling costs.
- 5.6 Acts of God, industrial action, civil unrest, official measures and other unforeseeable, unavoidable and serious incidents shall exempt the contract parties from their duties of performance for the duration of the disturbance and the extent of its effect. This shall apply likewise if these events occur at a time when the contract party concerned is in default. The contract parties shall be obliged, within the bounds of reasonableness, to provide the required information without delay and to adjust their obligations to the altered circumstances in good faith.

## **6. Invoicing and payment**

- 6.1 Following dispatch of the goods, an invoice have to be issued for each order separately, quoting the complete order number. Valued added tax have to be shown separately in the invoice. Invoices which have not been drawn up correctly shall be regarded as not having been issued.

- 6.2 The critical date determining the beginning of payment periods shall be the date of receipt of a properly prepared invoice if the merchandise has already been received, otherwise the actual delivery date. If the delivery is received before the agreed delivery date, the critical date determining the beginning of the payment period shall be the agreed delivery date.
- 6.3 Payments have to be made in the middle of the month following the delivery less 3% discount or within 90 days net. In the event of defective delivery the customer have to be entitled to withhold a proportionate amount of payment until such time as due performance has been rendered.
- 6.4 Payments shall not signify acknowledgement that the delivery is as stipulated in the contract and free from defects.
- 6.5 In the case of the acceptance of early deliveries, the due date shall depend on the agreed delivery date.
- 6.6 Payment have to be made by transfer or cheque.
- 6.7 Without the prior written consent of the customer, which must not be refused unreasonably, the supplier shall not be entitled to assign his outstanding debts to the customer or to have them collected by a third party. Should extended reservation of ownership exist, consent shall be regarded as having been granted.

## **7. Acceptance and notice of defects**

- 7.1 As soon as the defects have been ascertained in accordance with the facts of proper business procedure, deficiencies in the delivery have to be reported by the customer to the supplier immediately and in writing. In this respect the supplier shall waive objection to a delayed formal complaint with the exception of §§ 377, 378 HGB, insofar as it is not a matter of obvious external damage to the merchandise discovered during faulty construction.

- 7.2 Even if the delivery has already been paid for, the customer shall be entitled to demand a replacement free of cost and expense in the event of material, workmanship and design defects, even after the expiry of the agreed time limit for lodging complaints.
- 7.3 A formal complaint shall be regarded as having been lodged in good time if it is made following the using or processing of the delivered merchandise and also following a complaint by the purchaser of a finished product.
- 7.4 Where quantity deliveries are concerned, in general no sample testing is carried out and the merchandise is processed untested. Quality characteristics and target values for delivery quality (ppm) and reliability (fit) have to be specified by the customer when the order is placed and have to be safeguarded by the supplier.

## **8. Warranty and liability**

- 8.1 In relation to his deliveries, the supplier have to comply with the recognized rules of engineering, the safety regulations and the agreed technical data. Changes to the delivery item shall require the prior written consent of the customer.
- 8.2 For all deliveries, the vendor shall assume liability for defects in accordance with the statutory regulations. The warranty shall end following the expiry of 24 months since the structural components or equipment were placed in circulation with the delivered merchandise, but at the latest following the expiry of 30 months since delivery to the customer. In addition to this the customer shall have the option, even without observing a complaint period, of demanding the rectification of the defect or the delivery of merchandise free from defects at the expense of the supplier. Likewise, the costs of returned goods shall always be chargeable to the supplier. The costs of legitimate returns, replacement deliveries, including by a third party, and for services provided, shall be chargeable solely to the supplier.

Should there be an extension of the warranty period in the future under new EU law, this shall apply accordingly.

- 8.3 In cases of particular urgency or if the supplier fails on his obligations, the customer shall be entitled to undertake replacement of the damaged parts himself or to make rectification at the expense of the supplier or to have this carried out by a third party without the supplier thereby being relieved of his warranty obligations or the customer losing his warranty claims. Any costs arising shall be borne by the supplier.
- 8.4 Immediately following their detection, the customer can lodge a complaint regarding defects which were brought forward during the processing or using of the delivered goods, notwithstanding that this may occur beyond the statutory time limits.
- 8.5 The supplier shall undertake to comply with all protective laws and other safety regulations relevant to the delivery items, such as demands of the Factory Inspectorate, VDE (Association of German Electrical Engineers) regulations for electrical parts, accident prevention regulations of the trade associations. Likewise, the latest applicable versions of the relevant environmental protection regulations in force – in particular the Ordinance covering hazardous working materials – and the occupational medicine regulations have to be taken into account where the delivery is concerned. The supplier shall be responsible for compliance, even in relation to the purchasers of the customer. He must indemnify the customer from all public and private law claims arising from infringements of these regulations.

Without solicitation, the supplier must include in the delivery all necessary test certificates and records.

- 8.6 Should the scope of the order not comply with the relevant regulations, it have to be amended accordingly by the supplier without charge. Faulty protective parts must be delivered subsequently and installed without charge.

- 8.7 With regard to the quality assurance procedures for his deliveries to be followed by the supplier, the relevant valid quality assurance guideline for deliveries of the customer shall apply.
- 8.8 Where first-time orders are concerned or in the event of changes in the execution of orders, before final production the number of specimens requested by the customer – clearly identified as such – have to be delivered to the customer. Only following written approval of the specimens by the customer shall the order be deemed to be finally placed. The customer shall reject defective items and items in other ways deviating from his or otherwise applicable regulations. Irrespective of this, the supplier must continually check the quality of the delivery items. The contract parties shall inform each other regarding the possibilities of quality improvement.
- 8.9 If the type and scope together with the test materials and methods have not been agreed between the supplier and the customer, the customer shall be entitled, at the request of the supplier, to discuss the tests with him in detail within the bounds of his knowledge, experience and capabilities, in order to ascertain the required level of test technology.
- 8.10 No warranty claims shall arise if the fault can be attributed to the violation of operating, maintenance and installation instructions, unsuitable or improper use, faulty or careless handling and natural wear and tear along with interventions on the delivery item carried out by the customer or by third parties.
- 8.11 If the same merchandise is delivered in a defective condition on a further occasion, following a written caution where there has been a further defective delivery and also for non-performance of the total delivery, the customer is entitled to withdraw from the contract.
- 8.12 The parts to be replaced by the supplier have to be made available to him by the customer on demand, at his expense and without delay.

- 8.13 If, despite compliance with the obligation under the terms of Point 7.2 (notice of defects) the fault is only discovered after the commencement of faulty construction, the customer can demand compensation for additional expenditure over and above the arrangement in Points 8.2 and 8.3.
- 8.14 If goods affected by defects are returned for rectification, the costs of these deliveries shall be charged to the supplier.
- 8.15 The supplier shall be liable for the delivered merchandise under the terms of the Product Liability Act.

## **9. Drawings**

- 9.1 Drawings, sketches, samples, models and documents together with reproductions of the same which have been handed over by the customer for completion of the order are and remain the property of the customer and must be marked as such. They have to, in the same way as the ordered merchandise itself, solely be used for carrying out the order. The copyright and confidentiality notes have to be complied with, the above-mentioned items which have not been conclusively listed may be made available to third parties only following the express prior written consent of the customer. This also applies to parts which have been produced using accompanying tools and devices. Companies related to the supplier are also third parties.
- 9.2 Parts and drawings, samples, tools and suchlike referred to in Point 9.1, have to be given back on demand at any reasonable time to the customer. Copies may only be produced and retained within the framework of product liability documentation.
- 9.3 Contraventions shall impose an obligation for compensation and entitle the customer to withdraw from all contracts. Any intellectual property is also property.

9.4 The supplier shall have an obligation towards the customer to check the coherence of drawings, models, samples and other technical documents forwarded.

## **10. Tools and models**

10.1 Provided that the order involves producing or accepting outside tools, models and suchlike at the expense of the customer, it shall be deemed to be agreed that these tools and models are the property of the customer.

10.2 The supplier is obliged to take into safekeeping and maintain the tools and models properly and without charge, inclusive of adequate insurance against fire, water and theft and to enable the customer to verify the same.

10.3 If the customers' sole ownership of these items comes to an end due to processing, combination or blending, the customer shall become the sole owner of the new article.

10.4 Should the customer request the return of the tools and models, the supplier shall not be entitled to the right of dissent and the right of retention.

10.5 No parts may be produced from the tools for third parties without express written consent.

10.6 Acceptance is determined by the agreements reached.

## **11. Nondisclosure**

11.1 The contract parties swear to treat all details which are not obvious, commercial and technical and which become known to them through the business relationship, as commercial secrets.

11.2 Drawings, models, templates, samples and similar items may not be entrusted to the care of unauthorised third parties or otherwise made available. The

duplication of such items shall only be permissible in the context of operating requirements and copyright regulations.

11.3 Subcontractors must commit their selves to these regulations.

11.4 The contract parties may only advertise with their business contacts with prior written consent.

## **12. Free supply of materials**

Materials supplied remain the property of the customer. The supplier shall renounce acquisition of ownership under the terms of 946 ff. BGB (German Civil Code). Where processing takes place, the customer shall become the owner of the newly manufactured products. The materials supplied have to be stored openly and separately as the property of the customer, be adequately insured against fire, water and theft at the expense of the supplier and may only be used in accordance with the terms of the contract.

## **13. Industrial property rights**

13.1 The supplier shall be liable for all claims arising during the use of the delivery items from the infringement of industrial property rights and industrial property right applications (industrial property rights) and copyrights.

13.2 The supplier shall indemnify the customer and his purchasers from all claims arising from the use of such industrial property rights and copyrights.

13.3 This shall not apply as far as the supplier has produced the delivery items in accordance with drawings and models handed over by the customer or in accordance with other equivalent specifications or particulars of the customer and does not know, or in connection with the products developed by him does not have to know, that industrial property rights are thereby being infringed.

- 13.4 Upon inquiry by the customer, the supplier shall notify him of the use of his own published and unpublished industrial property rights and of those which have been licensed and of applications for industrial property rights on the delivery item.

## 14. EDIFACT

- 14.1 The introduction of an EDI link (Electronic Data Exchange) shall not render this general conditions inoperative.
- 14.2 The conclusion of a separate EDI contract is required.
- 14.3 Before the beginning of a data exchange, there shall be a requirement to fix modalities once only for the various business transactions and for the technical procedure. In particular, a rule shall be required for amendments and for data transmitted erroneously. The electronically transmitted data shall be deemed as having been received by the supplier as soon as it is stored in error-free form with the network carrier in such a way that it can be called up on the initiative of the supplier. Upon receipt by the supplier it has the same legal validity as data transmitted in other ways.
- 14.4 Data transmitted by EDI shall be deemed as having been approved by the customer; a signature shall only be given in business transactions sent by paper fax. Fax communications via computer are valid without a signature.

## 15. Environmental impact

"List of banned substances – UM 003" is an integral part of supply contracts. Enclosure or, in addition, internet download at [www.loewe.de](http://www.loewe.de).

Supplier is obliged to keep this list of banned substances and to acknowledge it on a LOEWE questionnaire which will be provided to the supplier.

If, in particular cases, these list of banned substances can not be kept, ingredients have to be specified explicitly on the LOEWE questionnaire.

In any case, RoHS-Conformity in accordance with ElektroG, dated 24th march 2005, has to be kept.

## **16. Applicable law**

The relationship between the customer and the contractor are subject exclusively to the law of the Federal Republic of Germany.

## **17. Place of fulfilment**

The place of fulfilment for deliveries and performances shall be the place of performance specified in the order and the dispatch address; for payments it shall be exclusively Kronach.

## **18. Place of jurisdiction**

Coburg shall be deemed to be the place of jurisdiction for both parties.

## **19. Partial invalidity**

Should individual terms of this body of conditions be or become completely or partially invalid, this shall not affect the legal validity of the remaining terms and of a closed contract.

Enclosure: UM 003

LOEWE OPTA GmbH, Industriestr. 11, D 96317 Kronach