

General Terms and Conditions (T&Cs) of LANCOM Systems GmbH, Würselen

1. Scope

(1) LANCOM provides customised network and cloud solutions for its customers. The range of services in this context encompasses purchased goods and services, as well as contracts for works. The following terms and conditions apply to all agreements that business customers ("Customers") enter into with LANCOM. The respective product and service-specific contractual terms and – where relevant – any performance specifications and terms of use. The Customer's terms and conditions shall not apply, if these are not explicitly repudiated. The receipt of deliveries or partial deliveries by the Customer shall in any case constitute acknowledgement of our Terms and Conditions of Sale and Delivery.

(2) All agreements made between us and the customer in relation to the performance of this agreement shall be set down in writing.

2. Conclusion of contract

(1) Where a customer submits a valid offer, we may accept this offer within a period of 2 weeks.

(2) The information contained in catalogues or similar documents (such as images, drawings, descriptions, data concerning dimensions, weight, performance and consumption, information concerning the usability of devices in connection with new technologies), and provided along with the offer, shall only be deemed to be approximate information, unless it is explicitly indicated as binding. Product characteristics are assured only if these have been agreed in writing. Minor deviations from the description contained in the offer shall be deemed accepted, and do not affect the fulfilment of the agreement, insofar as any variance is not untenable to the Customer. This particularly applies in the event of changes and improvements made for the purpose of technical progress.

(3) We retain the ownership rights and copyright in any images, drawings, calculations and other such documentation. This also applies to such written documentation labelled 'confidential'. The Customer must have our explicit written consent before it may provide any other party with such documents.

3. Use of software

(1) If software is included in the scope of delivery, the Customer is granted a non-exclusive right to use the software and the accompanying documentation for the intended specified purpose.

(2) The Customer may only copy and use the software within the legally permissible scope (Sections 69a et seqq. German Copyright Act ("UrhG")). The Customer undertakes not to remove any manufacturer information – especially copyright notices – or to change them unless it has our prior, explicit consent.

(3) All other rights in the software and the documentation, including copies thereof, shall remain with us or the software manufacturer. The granting of sub-licenses is prohibited.

4. Prices

(1) Unless otherwise explicitly agreed, our supplies and services are made in return for the prices set out in the price list valid at the time of the conclusion of contract.

(2) Unless otherwise stated in the order confirmation, our prices are quoted ex works.

(3) Our prices do not include statutory VAT; this shall be separately indicated in the invoice at the statutory rate applicable on the day of billing.

(4) Unless otherwise agreed, any installation, training and other such services are not included in the price.

(5) We reserve the right to increase our prices appropriately, if our costs increase following the conclusion of the contract, especially as a result of collective wage agreements or increases in the prices of materials. We shall provide the Customer with proof of this, if requested.

(6) The deduction of cash discounts requires a separate written agreement.

(7) Unless otherwise provided for in the order confirmation, the purchase price is payable without deduction within 14 (fourteen) days following the date of invoice. The legal provisions on the consequences of delayed payments shall apply.

(8) The Customer may raise justified objections to our invoices, only within 30 days of receiving the invoice. A notice to this effect will be set out in the Customer's invoice.

(9) The Customer shall only have a right of set-off, if its counter-claims are undisputed, have been acknowledged by us, have been confirmed by way of a final court judgement. It is only entitled, moreover, to exercise any right of retention provided its counterclaim is based on the same contractual arrangement.

5. Delivery period

(1) If a time period has been agreed for the delivery of a product or the implementation of a system, this time period shall commence with the Customer's receipt of the order confirmation, however not until the delivery of documentation agreed with and to be provided by the Customer, such as specific documents, approvals and releases, or the receipt of any agreed down payment.

(2) Compliance with the delivery period is conditional on the accurate and timely delivery of materials etc. by our own sub-suppliers. We will notify the Customer of any likely delays as soon as possible.

(3) The delivery time is fulfilled, if, prior to its expiry, the object of the delivery has left our warehouse, or readiness for shipment has been announced. Where a formal acceptance procedure is required, then – except in cases of a justified refusal of acceptance – the relevant date is the date of the acceptance, or alternatively, the date of the notification of readiness to accept.

(4) Partial deliveries are permissible, provided these are tenable to the Customer.

(5) If the Customer is in default of acceptance or is culpable of breaching any of other duties of cooperation, we shall be entitled to claim compensation for any losses we incur, including any additional expenses. All other claims and rights reserved.

(6) Insofar as the conditions set out in paragraph (5) are fulfilled, the risk of accidental loss or deterioration of the purchased goods passes to the Customer at the time in which it enters in default of acceptance or payment.

(7) In the event of a delay to the delivery caused by our grossly negligent breach of contract, our liability to pay compensation shall be limited to foreseeable damage typical for this type of agreement.

6. Transfer of risk

(1) Risk passes to the Customer once the object of the delivery has left our warehouse, including where partial deliveries are performed, or if we have assumed other obligations, such as absorbing the costs of shipment or delivery and set-up.

(2) If the delivery or acceptance fails or is delayed due to circumstances for which we are not responsible, the risk shall pass to the Customer on the day that readiness to deliver or acceptance is announced.

7. Warranty

(1) The Customer's warranty claims are conditional upon it having duly performed its duties of inspection and the raising objections as per Section 377 German Commercial Code [Handelsgesetzbuch, "HGB"]. All claims against us are subject to the condition that the defect is reproducible, or can be demonstrated through automatically generated output.

(2) Insofar as the purchase item contains a defect, the Customer shall be entitled to demand subsequent performance. We shall have the choice of providing subsequent performance by either eliminating the defect or by delivery of a fault-free item. We shall acquire ownership of substituted items. In the case of a fault elimination, the associated costs shall be reimbursed to the extent these have not been increased due to the purchased item having been relocated to a place other than the place of performance.

(3) The Customer shall be obliged to afford us the opportunity to inspect and examine the defective purchased item.

(4) If subsequent performance fails, the Customer shall be entitled to rescind the agreement or demand a diminution of price; the choice shall rest with it.

8. Liability

(1) If we infringe material contractual obligations ('cardinal obligations'), our liability to pay compensation shall be limited to foreseeable losses typical for this type of contract. We accept no liability for the breach of insignificant contractual obligations caused by our ordinary negligence.

(2) We shall only accept liability for data loss, if this was caused by our (at the very least) ordinary negligence, and prior to this the Customer has ensured that this data can be reconstructed at reasonable expense, from data

material made available in a machine-readable form. As part of its obligation to minimise damages, the Customer has a duty to regularly perform data backup procedures, including reasonable additional safeguards to prevent the loss of data in the event of a presumed software error.

(3) The limitation period for claims for defects (warranty period) is 12 months.

(4) The aforementioned limitation on liability shall not apply to causing death or personal injury, nor to any deliberate or grossly negligent breach of duty on the part of LANCOM or its statutory representatives or vicarious agents.

(5) Liability under the provisions of the Product Liability Act remains unaffected.

9. Right of return

If a right of return has been agreed for specific products, in order to exercise this option the goods must be handled carefully and be completely returned to us in a flawless condition, in the original packaging by the date agreed for this purpose. In the case of a consignment, the Customer shall securely pack the goods and insure them at its own cost.

10. Retention of title

(1) LANCOM reserves ownership in all objects of delivery until the fulfilment of all its claims against the Customer established by way of the business relationship.

(2) The Customer is permitted to reprocess or transfer the object of the delivery ("Processing Work"). This Processing Work is performed on behalf of LANCOM; however, if the value of the object of the delivery belonging to LANCOM is less than the value of the goods not delivered by LANCOM and/or the product of the Processing Work, then LANCOM shall acquire co-ownership in the new goods, this being the value (gross invoice value) of the processed goods proportional to the value of the other processed goods and/or the Processing Work at the time the processing is performed. In the event that, according to the preceding conditions, LANCOM does not acquire any ownership in the new goods, LANCOM and the Customer agree that the Customer shall assign LANCOM co-ownership in the new goods, this being the value (gross invoice value) of the processed goods proportional to the value of the other processed goods and/or the Processing Work at the time the processing is performed. The preceding sentence correspondingly applies in the event of the inextricable mixing or combination of the object of delivery with other goods not belonging to LANCOM. Insofar as LANCOM achieves ownership or co-ownership in accordance with the preceding provisions, the Customer is responsible for safekeeping the relevant goods on behalf of LANCOM, applying the standard of care of a diligent businessman.

(3) At the time of the resale of the object of the delivery or the new goods, by way of precaution the Customer here and now assigns to LANCOM its claims and accessory claims against its buyer established by way of the resale. No additional special declarations are necessary. The assignment likewise applies to any outstanding account balances. However, the assignment is only valid up to that sum equal to the price of the object of the delivery as invoiced by LANCOM. The portion of the receivables assigned to LANCOM must be settled as a priority.

(4) If the Customer combines the object of the delivery or the new goods with real property, without any need for additional special declarations, it shall also assign to LANCOM the claim to payment to which it is entitled for said combination, up to an amount corresponding to the price of the object of the delivery as billed by LANCOM.

(5) Until otherwise revoked, the Customer is authorised to collect the receivables assigned to LANCOM by way of the preceding provisions. The Customer shall promptly pass on to LANCOM the payments made on the assigned receivables, up to the amount of the secured claim. If there is any legitimate interest, especially if the event of any default of payment, cessation of payments, opening of insolvency proceedings, bill of exchange protest or other clear indications that the Customer is overindebted or will become unable to service its debts, LANCOM shall be entitled to revoke Customer's authority to collect debts. LANCOM shall also be entitled, having first issued a warning and granted a reasonable time period (grace period), to disclose the assignment for security, realise the value of the assigned receivables and demand that Customer disclose the security assignment to its own customers.

(6) If there is credible evidence of a legitimate interest, the Customer must provide LANCOM with the information and documentation necessary to enable LANCOM to exercise its rights against the Customers.

(7) During the time that the retention of title exists, the Customer is not permitted to enter into any bailment or collateral security arrangements. The Customer must promptly inform LANCOM of any liens, expropriations or other dispositions or any third-party interference. Resale of the object of the delivery is only permitted to resellers acting in the course of their regular business and only under the condition that the equivalent value of the delivered article is remitted to LANCOM. The Customer must agree with its buyers that the latter shall only acquire ownership once this payment is made.

(8) If the realisable value of all the collateral interests to which LANCOM is entitled, exceeds all the secured claims by more than 10%, if requested by Customer, LANCOM shall release an appropriate portion of this collateral. It shall be assumed that the conditions of the preceding sentence are fulfilled, if the estimated value of the collateral to which LANCOM is entitled, equals or exceeds 150% of the value of the secured claims. LANCOM shall be entitled to choose which collateral should be released.

11. Set-off, assignment, rights of retention

(1) The Customer shall only have a right of set-off, if its counter-claims are undisputed, have been acknowledged by LANCOM, have been confirmed by way of a final court judgement.

(2) Rights established under the contractual relationship with LANCOM may only be assigned following prior written agreement.

(3) The Customer shall only have a right of retention insofar as this is based on the same contractual relationship.

12. Data protection

(1) The Customer's data necessary for the implementation of the business transaction, shall be stored and handled confidentially in accordance with the applicable data protection law provisions. The Customer shall be informed that LANCOM shall process the data received in connection with the contractual relationship, insofar as this is necessary for the orderly execution of orders. Data shall only be passed on to third parties, to affiliated companies and partner companies (e.g. DHL), if this is necessary for the performance of the agreement. In particular, this data shall not be used for the purposes of advertising.

(2) The data provided for the Customer shall only be used for the fulfilment and execution of the order. This includes making data available for delivery purposes, insofar as this is necessary for the delivery of the goods, as well as the passing on of the Customer's data as part of processing the payment.

(3) At the end of the contractual relationship, the Customer's data shall be blocked from further use, and shall be deleted in accordance with the provisions of tax and commercial law. Questions concerning the collection, processing or use of personal data or requests for disclosure, correction, blocking or the deletion of data should be addressed to: LANCOM Systems GmbH, The Data Protection Officer, E-Mail: datenschutz@lancom.de

13. General provisions

(1) All legal relations between the Customer and LANCOM shall be governed by the laws of the Federal Republic of Germany as apply to legal relations between legal parties registered in Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

(2) The legal venue (forum generale) shall be that court with jurisdiction over the place at which LANCOM has its registered address. LANCOM is nevertheless entitled to pursue legal actions against the Customer before that court with jurisdiction over its place of residence. LANCOM's registered address shall also determine the legal venue, if the Customer does not have any general legal venue within Germany or if it relocates its domicile or usual place of residence outside of the jurisdiction of the Federal Republic of Germany. This is also the case if the domicile or usual place of residence is not known at the time that the legal action is raised.

(3) If any provisions of these General Terms and Conditions of Delivery are unenforceable, or become so in the future, the enforceability of the remaining provisions shall not be affected thereby. The contractual parties here and now undertake, insofar as reasonable, to substitute the unenforceable provision with a new provision that most closely fulfils the economic purpose of the unenforceable provision, and which they would have agreed had they known of its unenforceability. The same applies to any gap in the provisions.

(4) Unless otherwise provided for in the order confirmation, the place of performance is our registered business address.