

# General Terms and Conditions (GTC) of LANCOM Systems GmbH, Wuerselen regarding Deliveries and Services

## 1. Scope

- (1) Our terms and conditions of sale and delivery shall apply exclusively. We shall not recognize such terms and conditions of our customers that are in opposition to or differ from ours unless we have expressly confirmed our agreement to their validity in writing. Our conditions of sale and delivery shall also apply should we make deliveries to the customer without reservation while being aware of any terms and conditions of business of our customers that are in opposition to or differ from ours. Taking receipt of deliveries or part deliveries by the customer shall apply by default as acceptance of our conditions of sale and delivery.
- (2) All agreements made between us and the customer for the purpose of the execution of this contract shall be made in writing.
- (3) Our conditions of sale and delivery shall apply only in respect to companies in terms of von § 310 para. 1 German Civil Code (BGB) as well as in respect to corporate bodies under public law or public fund assets.
- (4) Our conditions of sale and delivery shall also apply to all future business transactions with the customer.

## 2. Conclusion of the Contract

- (1) If the order must be qualified as an offer in accordance with § 145 BGB, we can accept this offer within a period of 2 weeks.
- (2) All information contained in brochures or similar documents and information provided in connection with an offer such as images, drawings, descriptions, dimensions, weight, performance and consumption data, statements made in connection with the suitability of devices for new technologies, shall be deemed to be roughly approximate to the extent that they are not expressly confirmed as being binding by us. The characteristics of the item being purchased shall only be guaranteed if they have been agreed upon in writing. Minor variations in the description of the offer shall be deemed to be acceptable and shall not affect the conclusion of the contract as far as the variation is not unreasonable for the customer. This applies in particular to alterations and changes that are made to facilitate technological progress.
- (3) We reserve the right to ownership and the copyright to images, drawings, calculations and other documents. This also applies for those written documents that are identified as "confidential". The customer is required to obtain our express written agreement before their dissemination to third parties.

## 3. Software use

- (1) To the extent software is included in the scope of delivery, the customer shall be granted a non-exclusive right to use the delivered software including its documentation in accordance with the terms of the contract.
- (2) The customer may only duplicate and use the software in the legally permissible scope (§§ 69 a et. seq. German Copyright Act) The customer agrees to not remove or change manufacturers' instructions – in particular copyright annotations – without our express prior consent.
- (3) All other rights to the software and documentation, including the copies, shall remain with us or with the software manufacturer. The granting of sublicenses is not permissible.

## 4. Prices

- (1) Our deliveries and services shall be performed in accordance with the price list valid at the time of the conclusion of the contract.
- (2) To the extent not otherwise indicated in our order confirmation, our prices shall apply ex-works with the exception of packing material for dispatch, which shall be invoiced separately.
- (3) The legally applicable VAT is not included in our prices and shall be specifically included in the invoice at the amount in force upon the day of invoicing.
- (4) Installation, training or other supplementary services shall not be included within the price unless otherwise agreed. We reserve the right to carry out reasonable increases in prices should increases in costs arise, in particular from collective bargaining or material price costs. Proof thereof shall be supplied to the customer upon request.
- (6) The deduction of cash discount shall require special written agreement.
- (7) To the extent not otherwise indicated in the order confirmation, the purchase price (net) (without deductions) shall be due within 14 (fourteen) days of the invoice date. The statutory rules regarding the consequences of default in payment shall apply.
- (8) The customer shall only be entitled to object to our invoice within 30 days following receipt of the invoice. We will notify the customer thereof in the invoice.
- (9) The right to offset shall only be granted to the customer if his claims are established by a court of law, uncontested or are recognized by us. He shall furthermore only be entitled to rights of retention to the extent his counterclaim is based on the same contractual agreement. He shall furthermore only be entitled to rights of retention to the extent his counterclaim is based on the same contractual agreement.

## 5. Delivery period

- (1) The delivery period shall result from the agreements of the parties to the contract. Our compliance therewith presumes that all commercial and technical questions have been clarified between the parties to the contract and the customer has fulfilled all obligations incumbent upon him, such as the procurement of the necessary certificates or permits or making a down payment. If this is not the case, the delivery period shall be reasonably extended. This shall not apply to the extent we are responsible for the delay.
- (2) Compliance with the delivery period is subject to correct and timely delivery of materials to us from our suppliers. We shall disclose emerging delays as soon as is possible.
- (3) The delivery period is complied with if the object of delivery has left our warehouse by its expiration or notice of readiness for shipping has been given. To the extent acceptance must occur, the acceptance deadline is decisive, except in the event of justified rejection. As an alternative, a notification of readiness for acceptance shall be decisive.
- (4) Partial deliveries are permissible to the extent reasonable for the customer.
- (5) Should the customer be in default of acceptance or fail to meet other operational obligations we shall be entitled to claim such damages experienced including any increased expenditures. The right to additional claims or rights remains reserved.
- (6) As far as the requirements of para. (5) are present, the risk of accidental loss or accidental impairment of the object of purchase shall be transferred to the customer at that point in time when he has defaulted in acceptance or payment.
- (6) We are liable in accordance with the statutory provisions, to the extent the underlying contract is a firm deal in the context of § 286 para. 2 No. 4 BGB or § 376 German Commercial Code (HGB). We are also liable in accordance with the statutory provisions to the extent the customer is entitled to assert that his interests in the continued fulfillment of the contract has been discontinued as a result of a delay in delivery for which we are responsible.
- (7) In the event of a delay in delivery which is not based on a deliberate breach of contract for which we are responsible, our liability for damages is limited to foreseeable damage typically occurring.

## 6. Transfer of the risk

- (1) The risk transfers to the customer when the object of delivery has left our warehouse, and even if partial deliveries are made or we have taken over other services, e.g. the shipping costs or delivery and setup. (2) If shipping or acceptance is delayed or omitted as a result of circumstances that cannot be imputed to us, risk shall transfer to the customer from the date of notification of readiness for shipping or acceptance.
- (3) We agree to procure insurance policies required by the customer at his cost.

## 7. Liability for defects

- (1) The warranty claims of the customer presuppose that he has fulfilled his examination and complaint obligations in accordance with §§ 377, 378 HGB.

- (2) To the extent a defect is present in the object of purchase, the customer is entitled to demand supplementary performance. Supplementary performance shall occur at our option, either through remediation of defects or through delivery of defect-free items. Replaced items become our property. In the event of the remediation of defects, only the necessary expenditures will be compensated, in as far as they have not been increased in that the object of purchase has been brought to a location different than the place of performance.
- (3) The customer shall be obliged to grant us access to the defective goods for the purposes of inspection and examination.
- (4) If supplementary performance fails, then the customer is entitled - at his option - to demand rescission or abatement.
- (5) We are liable in accordance with the statutory provisions as far as customer asserts claims for damages that are based on willful intent or gross negligence, including the willful intent or gross negligence of our representatives or vicarious agents. To the extent that we are not accused of a willfully intentional breach of contract, the liability for damages is limited to the foreseeable damage typically occurring.
- (6) We are liable in accordance with the statutory provisions to the extent we culpably breach a material contractual obligation; in this instance, however, the damage is limited to the foreseeable damage typically occurring.
- (7) To the extent the customer is entitled to a claim to compensation for the damage instead of the service, our liability is also limited within the context of para. (4) to compensation of the foreseeable damage typically occurring.
- (8) Liability as a consequence of culpable injury to life, physical injury or damage to health remains unaffected; this applies equally to compulsory liability under product liability law.
- (9) The liability for loss of data is limited to the typical expense of restoration, which would have occurred in the regular preparation of backup copies commensurate with the risks, unless one of the prerequisites in accordance with para. (5) sentence 1, para. (6) 1st half or para. (8) is present.
- (10) In the absence of any provision contrary to the above liability is precluded.
- (11) The statute of limitations for defect claims is 12 months, calculated from the transfer of the risk.
- (12) The statute of limitations in the event of a delivery recourse in accordance with §§ 478, 479 BGB shall remain unaffected; it equals five years, calculated from delivery of the defective item.

## 8. Joint and several liability

- (1) More extensive liability for damages that is foreseen in clause 7 - irrespective of the legal nature of the claim asserted – is precluded. This applies in particular for damage claims from fault at the conclusion of the contract, due to other breaches of duty or due to tortious claims to compensation of property damage in accordance with § 823 BGB.
- (2) The limitation under para. (1) also applies if instead of a claim for damages, the client demands compensation for useless expenses rather than the performance of services.
- (3) To the extent our damage compensation liability is precluded or limited this shall also apply in respect to the personal liability of our employees, representatives or vicarious agents.

## 9. Right of return

Should a right of return be agreed upon for individual products, the fulfillment thereof shall be subject to the goods having been treated carefully and their being returned to us free of cost in full, in perfect condition, and in the original packing by the agreed deadline. When executing such deliveries the customer shall pack the goods securely and have them insured at his expense.

## 10. Retention of ownership

- (1) We reserve the right of ownership to the goods until all payments from the business association with the customer have been received. We are entitled to take back the item sold in the event of actions contrary to the contract by the customer, and in particular relating to any delays in payment. Any seizure of the goods shall constitute rescission of the contract. Following return of the goods we shall be entitled to dispose of them whereby the revenue from such disposal shall be calculated against the customer's obligations - less reasonable disposal costs.
- (2) The customer shall be obliged to handle the goods with due care and shall in particular be obliged to insure them at his expense at the level of their purchase value against damage by fire, water and theft. Any rights from this insurance shall be assigned to us. We shall accept this assignment. Inasmuch as maintenance and inspection work is required the customer must have this performed in a timely manner at his expense.
- (3) The customer is required to inform us immediately in writing so that we can take legal action in accordance with § 771 German Code of Civil Procedure (ZPO) in the event of third parties attaching or otherwise attempting to seize the sold item. Inasmuch as the third party is not in a position to pay the legal and extralegal costs incurred due to legal action in accordance with § 771 ZPO, the customer shall be responsible for such loss that we incur.
- (4) The customer is entitled to sell the goods within the course of normal business but shall assign to us immediately all receivables in the amount of the sum invoiced (including VAT) that arise from his sale to a customer or third party irrespective of whether the goods were resold without or after processing. The customer shall also remain authorized to collect such receivables after assignment. Our right to collect the receivables shall remain unaffected. However, we agree to not collect the receivables if the customer fulfills his payment obligations from such recovered revenue, does not fall behind on his payment and in particular is not subject to a petition for bankruptcy or composition proceedings or suspension of payment. Should this however be the case we shall be entitled to demand that the customer notifies us of the assigned receivables and their debtor, discloses all relevant data required for collection, hands over all appropriate documents and communicates the assignment to the debtors (third parties).
- (5) The processing or alteration of the goods shall be undertaken for us by the customer. Should the goods be processed/intermingled with other items that do not belong to us, we shall be entitled to co-ownership of the new item in the ratio of the object of purchase to the other processed/intermingled items at the time of processing/intermingling. Should the processing/ intermingling be performed in such a manner that the object of the customer be perceived as the principal object it shall be deemed as agreed that customer shall transfer proportionate ownership to us. The customer shall then grant us the sole ownership or joint ownership that has arisen as a result. The same shall apply to the item produced by processing/intermingled as to the goods delivered by us unconditionally.
- (6) The customer shall also assign to us receivables that arise from the sale of real property to any third party as security against our receivables.
- (7) We agree to release at the request of the customer the sureties given to us once the conversion value of our sureties exceeds that of the claims to be secured by more than 10%; the selection of the sureties to be released rests with us.

## 11. Assignment

The assignment of rights and obligations from this legal relationship by the customer shall only be valid if we have previously consented thereto in writing. However, § 354 a HGB shall apply for the assignment of outstanding debts.

## 12. Venue and place of performance

- (1) If the customer is a merchant, legal entity under public law or public fund assets, the venue for all disputes arising directly or indirectly from this contractual agreement or business relationship shall be Aachen. However, each party is also entitled to sue the other party in its general jurisdiction or to bring suit in the way of a temporary injunction.
- (2) Unless otherwise stated in the order confirmation, our place of business shall be the place of performance.

## 13. Legal system and data protection

- (1) The controlling law of the Federal Republic of Germany controlling for the legal relations of domestic parties among themselves shall apply for all legal relations between the customer and us. The applicability of the UN Convention on Contracts for the International Sale of Goods is precluded.
- (2) Order processing shall occur with the help of automatic data processing. The customer hereby grants his express consent to the processing of data that has been disclosed to us within the context of contractual relations and which are necessary for order processing. The customer is furthermore in agreement that we will use the data received from the business relationship with him in the context of Federal Data Protection Act for our own commercial purposes.