

LIPCO GmbH

General Business Terms

1. Applicability of our General Business Terms

- 1.1 Business transactions between ourselves and our customers shall be solely subject to the following General Business Terms for the duration of the business relationship, even in respect of future orders, unless the content of an order confirmation issued by us differs from these General Business Terms, or unless we have agreed – in writing, via telex or telefax - to our customer amending our General Business Terms or the terms of our order confirmation. The issuing of an order or, at the latest, acceptance of delivery will be deemed to constitute acceptance of these General Business Terms.
- 1.2 We herewith already oppose any deviating terms contained in the customer's purchase order forms or purchase order letter. We shall not be bound by such terms even if we do not expressly oppose them in each individual case, and even if we execute delivery after receipt of purchase terms which differ from our General Business Terms.
- 1.3 All contracts with our clients will only take effect after we have issued our order confirmation in writing, via telex or telefax; this order confirmation may be issued simultaneously with the invoice. Until then, our quotations shall be non-binding and subject to change without notice, unless we have designated such quotations as binding for a specific period.
- 1.4 There is no order confirmation requirement when ordering spare parts. In such cases, the customer shall be bound by his purchase offer for a period of three weeks after we receive it. The purchase offer shall be deemed to have been accepted unless we reject it within that period.
- 1.5 All agreements reached between ourselves and the purchaser for the purpose of performing this contract shall be recorded in writing in this contract.

2. Delivery terms, delivery scope

- 2.1 Prices are contained in our order confirmations. If there is no order confirmation, prices shall derive from the price lists on which the transaction is based, or from quotations. Prices shall be deemed to be in EURO, loaded ex shipping point, excluding customary packaging, and excluding the applicable level of VAT, and shall only apply to the individual case in question.
- 2.2 The agreed prices are based on the currently applicable purchase prices, wage and salary scales, customs duties and freight costs to which we are subject. We reserve the right to amend our prices accordingly if, following contract conclusion, cost increases should occur, and especially if there should be increases relating to the above-mentioned cost factors. We will verify such increases to our customers on request.

- 2.3 If a delivery price has been agreed, and if delivery should be delayed for reasons for which we are not responsible, our commitment shall end one month after the latest agreed delivery date. The above provisions shall apply analogously in such a case.
- 2.4 The customer shall bear insurance costs. We will only take out transport insurance if expressly requested by the customer, and only on the customer's account.
- 2.5 Partial deliveries are permitted.
- 2.6 A stated delivery period shall start on the date when the order is fully clarified and, if the customer is required to provide technical documentation, materials, auxiliary materials or tools, or if the customer is required to pay a deposit, on the date when these have been received by us.
- If an agreed delivery period or delivery deadline is exceeded for reasons for which we are responsible (the period will be deemed to have been observed once we have notified shipping readiness or once the goods have left the shipping point), the customer may repudiate the contract after setting a two-week grace period.
- If a delivery period is not agreed, the customer may set a two-week grace period, at the earliest, six weeks after receipt of his purchase order or, in the case of an order confirmation, one month after dispatch of the order confirmation, and may repudiate the contract following expiry of the above grace period.

3. Transfer of risk and default in performance

- 3.1 Delivery is agreed ex-works unless otherwise specified in the order confirmation.
- 3.2 We shall be deemed to have met our delivery obligations as soon as the goods have been consigned in an orderly manner to the post office, railway, carrier or shipper, or have been loaded onto our own or our customer's vehicles. This also applies to partial deliveries.
- 3.3 If the production or delivery of the goods ordered is temporarily rendered disproportionately difficult or impossible, for example in cases of force majeure or in the event of official measures, operating breakdowns or strikes for which neither we nor our suppliers are responsible, we shall be released from the delivery obligation for duration of the hindrance and its after-effects.

4. Non-performance by the customer

- 4.1 If the customer should delay acceptance of the goods, or if he should be in breach of other co-operation duties, we shall be entitled to demand compensation for any losses incurred by us, including any extra expenditure. In such a case the risk of accidental loss or accidental deterioration of the goods shall also be transferred to the customer due to the fact that the customer has delayed acceptance.
- 4.2 If the above pre-conditions are present, or if the customer is in arrears of two weeks or more with regard to his payment obligations or the provision of an agreed security, we shall be entitled, after first setting a two-week grace period, to either repudiate the contract or to demand damage compensation for non-

performance at the level verified, amounting to at least 25% of the contract price. *However, the customer is explicitly allowed to verify that losses were not incurred, or that they were significantly less than the flat rate stated above.*

5. Reservation of title

- 5.1 We shall retain title to the goods delivered until all claims deriving from the business relationship are met, including interest, ancillary claims and the costs of any legal proceedings, including costs relating to any necessary intervention in respect of a levy of execution on the goods by a third party. We must be notified immediately of any execution of a judgement, decree or other enforceable instrument in respect of the goods delivered.
- 5.2 If the customer is in payment arrears, we shall be entitled to demand surrender of the goods to which we have reserved title in the form of a security. Such a demand, or any levy of execution issued by us in respect of the goods delivered, shall not be deemed to constitute repudiation of the contract, nor shall a demand to separately store and designate the goods to which we have reserved title be deemed to constitute repudiation.
- 5.3 The customer is entitled to resell the goods in the ordinary course of business. In that event, however, the customer already assigns to us all claims vis-à-vis his customers deriving from this resale. The customer will take receipt of third-party payments in trust for us, and will immediately pass them on to us in the context of his outstanding obligations to us.
- 5.4 In the event of payment arrears or non performance the customer is obliged, at our request, to notify us of the names of those of his customers vis-à-vis whom he has claims deriving from the sale of our goods, and to notify us of the amounts owed by such customers.
- 5.5 If the realisable value of the securities held by us exceeds our claims by over 20%, we shall be obliged, if so requested by our customer, to release such securities as we may choose in respect of this 20% excess.

6. Payment terms

- 6.1 Payments must be made in accordance with the agreements reached in each individual case.
- 6.2 Unless otherwise specified in the order confirmation, the purchase price shall be due for payment net (without deductions) within thirty days of invoice date.
- 6.3 The exercise of a right of retention is ruled out.
- 6.4 Any offsetting against our delivery claims shall only be permitted if the customer has counter-claims which are not disputed by us, or which have been recognised by declaratory judgement.
- 6.5 If the customer is in payment arrears, we shall not be obliged to deliver goods ordered until all outstanding amounts have been paid in full. In such cases, or in the event of the customer's financial situation deteriorating (e.g. if cheques or bills are protested), or in the event of the business being transferred to a third party or being dissolved, or in the event of the customer's death, we shall be entitled to demand cash in advance for deliveries which have not yet been executed. If the

customer refuses this method of dealing, all outstanding demands shall fall due for immediate payment.

- 6.6 We will only accept bills following prior agreement, taking into account all collection and discount expenses, and they will only be accepted as an advance in payment. Our claims will be deemed to be unmet as long as we are still subject to drawer or endorser liability deriving from a bill issued in connection with the business relationship.

7. Warranty

- 7.1 The customer's warranty rights presuppose that the customer has properly met his inspection and objection obligations pursuant to §§ 377 and 378 of the German Commercial Code.
- 7.2 Notices of defect relating to hidden defects must be issued immediately following discovery, and must be accompanied by a precise description.
- 7.3 The warranty period is one year, starting at the time risk is transferred. This period is a statutory period of limitation, and also applies to claims for compensation relating to damage consequent on the defect, unless claims deriving from prohibited actions are enforced.
- 7.4 If commissioning precedes delivery to the end-customer, the warranty period shall start on the date of first commissioning.
- 7.5 In respect of significant third-party products, our liability shall be limited to assigning our own warranty claims vis-à-vis the supplier of the third-party product.
- 7.6 The warranty shall lapse if the instructions regarding handling or operation contained in the operating manual or elsewhere were not observed, or if the purchaser or a third party altered to the delivery object without our agreement.
- 7.7 A warranty shall only be granted for new equipment.
- 7.8 A warranty shall only be granted in favour of the contract partner. It shall not apply to any third party who subsequently acquires the goods.
- 7.9 In the case of justified and timely notices of defect, the warranty shall exclude any further warranty claims. We shall have the right to choose how the warranty obligations are met. The obligations may be met either by ourselves or by a third party for whom we are responsible, by means of retrospective improvement, replacement of a part or replacement delivery. If we opt for retrospective improvement, we may demand that the defective part or device be sent to the agency responsible for the customer. If we opt to replace a part, or if we opt for a replacement delivery, the replaced part or goods shall be transferred to our ownership. If the customer should issue a notice of defect even in respect of the retrospective improvement, replaced part or replaced goods, and if it is unreasonable to expect the customer to accept a further attempt at retrospective improvement, part replacement or replacement delivery, the customer shall be entitled to demand a diminution of the purchase price or to repudiate the contract.
- 7.10 In the case of justified notices of defect, and in respect of the direct costs incurred due to the improvement or replacement delivery, we shall bear the costs of the replacement part including shipping, as well as appropriate costs associated with removal and installation, and, if thus justifiably required by the individual circumstances, the costs associated with providing the services of our own

employees where necessary. For the rest, the costs shall be borne by the purchaser.

8. Exclusion of damage compensation claims

- 8.1 Damage compensation claims of any kind vis-à-vis ourselves, our legal representatives, our employees and those employed in performing an obligation for which we are vicariously liable shall be ruled out, if such claims are based only on slight negligence, and *not on the breach of a significant contractual obligation. Liability for losses deriving from injury to life, limb or health – regardless of the legal basis therefor - shall remain unaffected hereby. Furthermore, this does not affect damage compensation claims relating to a defect if we maliciously concealed the defect, or if we assumed a guarantee for the condition of the object. The restrictions specified in clause 1 shall not apply to claims deriving from the Federal Republic of Germany's Product Liability Act.*
- 8.2 All damage compensation claims lodged against us, regardless of legal basis and culpability, shall become statute barred at the end of six months following delivery of the goods or, the case of consignment, the end of the four days after we consigned them. *This does not apply in cases of injury to life, limb or health, or in the case of liability deriving from premeditation.*

9. Place of performance, legal venue, concluding provisions

- 9.1 The place of performance for deliveries shall be the relevant shipping point. The place of performance for payments shall be Sasbach.
- 9.2 The court with geographic and substantive jurisdiction over Sasbach shall be the legal venue, even for proceedings relating to cheques, bills and documents, without prejudice to our right to invoke the court with general jurisdiction over our customer's registered office.
- 9.3 If the customer does not have a general legal venue in the Federal Republic of Germany, the legal venue shall be Aachen.
- 9.4 The legal relations between ourselves and our customer shall be governed solely by German law, *precluding the UN Law of Purchase*. This applies both to conclusion and performance of the contract.
- 9.5 If the customer does not belong to the group of people *specified in § 310 of the German Civil Code (entrepreneurs, juristic persons under public law, special funds under public law)*, he shall be governed by the above General Business Terms with the exception of Nos. 3.2, 6.3, 7.1, 7.2, 7.6, 8.2 ;
No. 7.3 shall apply with the proviso that the warranty period shall be two years. However, in that event notices of defect shall be ruled out if we are not notified of the defect
- a) *within 14 days in the case of apparent defects;*
 - b) *within one year in the case of non-apparent defects,*
with the period being calculated from the time of delivery in each case;
- No. 7.7 shall apply with the proviso that a warranty shall be granted for used equipment. In this case, the warranty period shall be only one year and shall start at the time of the transfer of risk;*

No. 7.9 shall apply with the proviso that, on principle, only the purchaser shall have the right of choice with regard to the manner of warranty performance. Only if the purchaser opts for retrospective performance, and the type of retrospective performance selected by the purchaser (rectification of the defect or the delivery of an object free from defects) is only possible at a disproportionate cost, shall the customer be restricted to the other manner of retrospective performance. When assessing proportionality, particular attention should be paid to the value of the item in flawless condition, and to the question of whether the other manner of retrospective performance can be resorted to without significant disadvantages for the purchaser.

The provisions of Nos. 9.1 and 9.2 shall only apply if the customer is a *merchant*.

LIPCO GmbH, Sasbach
Status: *January 2002*