

## 1. Validity of these terms and conditions

These terms and conditions shall apply to all purchase agreements and contracts for work, services and materials in which we are the supplier, to the exclusion of any conditions of purchase or other general terms and conditions of business set forth by the customer. They shall not be applied. Should one of the provisions in these general terms and conditions be or become inoperative, the relevant statutory provision shall apply in its stead; under no circumstances shall the provision in question be replaced by terms and conditions of the customer.

We shall be entitled, after due notification, to make unilateral changes to our terms and conditions applicable to future business relations with the customer. The customer shall be required to make the relevant arrangements with us in individual cases where separate agreements are needed for international cross-border deliveries in the interests of compliance with the safety regulations of the respective countries. If, as a result, our services give rise to items subject to value added tax in the European Union (except Germany), the buyer of these services shall meet the value added tax obligations on our behalf at its expense.

The purchaser shall be solely responsible for the obtaining of any relevant permits and for compliance with the relevant regulations all the way through to the end consumer.

## 2. Severability clause

Should one or more clauses of the contract which we have entered into with the customer be or become inoperative for reasons outside the scope of the German General Terms and Conditions Act (AGBG), this shall not affect the validity of the other provisions of the contract. The inoperative provision shall be replaced by such valid provision as is based on the German General Terms and Conditions Act (AGBG) and as comes closest to the intended purpose. The same shall apply to any loophole in the contract.

## 3. Prices

Our prices shall be subject to statutory value added tax at the applicable rate. All deliveries shall be ex works, 12489 Berlin, Justus-von-Liebig-Str. 3. As a general principle, Lum shall instruct an authorised and reliable forwarding agent with shipments and shall charge an additional administration fee of 100 euro if the customer should request a different forwarder. The costs of postage and packaging shall generally be invoiced in case of deliveries and servicing/repair work. The additional costs for an express delivery requested by the customer shall be borne by the latter in every case.

We reserve the right to charge an extra 25 euro for small consignments of goods worth less than € 100.00. If the statutory rate of value added tax should increase between conclusion of contract and actual delivery, any gross purchase price which may have been agreed shall increase accordingly. If the customer purchases the goods from us at list price and if the list price increases between conclusion of contract and actual delivery, and if there is at least three months between conclusion of contract and actual delivery, the agreed purchase price shall increase accordingly.



Any advance payments which have been agreed must also be taken into account in respect of the increased purchase price. If the price agreement is not based on the list price then we shall be entitled to make subsequent adjustments to the price, within reason, if there is a significant increase in the cost factors for the goods or for other agreed services. If any such price adjustment should result in a substantial price increase then the customer shall be entitled to withdraw from the contract.

#### **4. Dispatch**

We shall arrange the shipment to the customer on the latter's behalf and at the latter's risk. This shall also apply if we bear the transportation costs on the basis of individual agreements and/or insure the shipment or install the item on the customer's premises.

The buyer must take immediate delivery of an item declared ready for dispatch in conformity with the contract. Otherwise we shall be entitled to choose either to dispatch or store the item at the expense and risk of the customer and to invoice the customer for it after granting an extension of time of one week.

Consignments must be checked immediately on their delivery by the freight carrier, and in the presence of the delivery person representing the freight carrier, for damage to the packaging and for indicators of damage in transit.

Any loss or damage sustained in transit must be recorded by the customer on the freight bill with a conditional acceptance notice and reported to the carrier immediately in writing. Any action which needs to be taken by the customer in preservation of rights must be taken by the customer immediately.

Any loss or damage incurred by the transportation process must be reported to us in writing within one week. Any damage or loss incurred by the transportation process shall not release the customer from the obligation to pay the purchase price in full. The customer hereby assigns to us in advance any claims against third parties based on damage or loss sustained in transit. We hereby accept the assignment. This assignment and any transit insurance benefits shall ensue on account of performance.

#### **5. Delivery and delivery period**

The delivery date stated in the order confirmation shall be calculated with reference to all known facts. If these should change by the end of the delivery period through no fault of our own, or if other events beyond our control should prevent delivery from being made on time, the delivery period shall be extended by an appropriate amount of time. The customer shall be informed promptly about any changes to the delivery time.

Delays in delivery due to disruptions in operations for which we are not responsible, official measures or force majeure shall entail an extension of the delivery period. Force majeure shall also apply in case of industrial disputes, including strike action and lawful lockout stoppages at our suppliers, dispatch companies or forwarding companies. The customer may not claim damages in this case.

We shall be entitled to make part deliveries insofar as they are not below a reasonable minimum. The customer shall be required to check and confirm the delivery note. We must be given immediate written notification of any objections. Otherwise the confirmed delivery quantity shall be deemed to have been acknowledged.

## **6. Payment, set-off and rights of retention**

Payments shall be due strictly net by the deadline stated on the invoice. The payment obligation shall be discharged on the day on which we are in receipt of the remittance or on which our bank is in receipt of the remittance. All payments must be made by bank transfer and incur no expenses or charges for us. In case of late payment we shall be entitled to charge an overdue fine of 15 euro and interest at the rate we are charged to service a bank loan, but at a minimum of eight percentage points above the annual base rate set by the European Central Bank and published by the Deutsche Bundesbank in the Federal Gazette.

We reserve the right to claim interest counting from the due date (section 353 of the German Commercial Code (HGB)) in the same amount and to claim further damages caused by default as well as our statutory rights.

The option of set-off shall only be open to the customer if the latter's counterclaims are undisputed, recognised by declaratory judgement or acknowledged by us. The customer may not exercise a right of retention concerning claims which are based on another contractual relationship. Nor may rights of retention be exercised concerning claims which are based on the same contractual relationship if said claims are disputed and not recognised by declaratory judgement.

If circumstances exist which, in our judgement, give reason to doubt the creditworthiness of the customer, we shall be entitled to demand security by way of payment in advance for deliveries still outstanding, allowing at least one week, and only effecting delivery versus such security or versus payment.

## **7. Reservation of title and right of lien**

The delivered goods (goods subject to reservation of title) shall remain our property until such time as all receivables owing to us from the business relationship with the customer and existing at the time of the conclusion of the relevant contract have been met in full.

In the case of a current account, the goods subject to reservation of title shall serve as collateral for our outstanding balance claim. The customer shall not be entitled to give our goods subject to reservation of title to third parties in pledge or to assign them as collateral nor shall the customer be entitled to assign or pledge the rights to the goods subject to reservation of title.

If the goods subject to reservation of title are garnished or seized by third parties, with assertion of rights of lien, such as landlord's lien, and if our security interests are prejudiced in any other way then we are to be given immediate notification along with the relevant documents. The costs of any intervention on our part shall be borne by the customer, unless said costs are to be recuperated from the relevant third party. If the customer acquires the goods subject to reservation of title in order to sell them on, the latter shall only be entitled to sell them in the regular course of business. If the goods

subject to reservation of title are not intended for resale, they may not be sold on without our prior consent while we retain title to said goods.

Resale shall also be prohibited if the accruing claim is included as part of prior restraints on the part of the customer to the benefit of third parties. The claims arising from a sale of goods subject to reservation of title are hereby assigned to us, along with all ancillary rights and liens, with effect from the time of their origin. We hereby accept the assignment.

If goods subject to reservation of title are sold with other goods, the portion which we invoiced the customer for the goods subject to reservation of title shall be the amount assigned. We shall have prior claim on all assignments. If the customer includes the claims from a resale of goods subject to reservation of title in an existing current account relationship with its buyers then the respective outstanding balance claims and the final balance claim shall be assigned to us insofar as individual (part) claims are contained therein which would have been assigned under the above terms if they had not been destined for the current account.

As long as the customer discharges its payment obligations to us, the customer may collect the claims from the resale of goods subject to reservation of title in the regular course of business. The assignment of the claims shall be excluded.

This shall not apply if the assignment is for the collection of receivables by way of factoring if, at the same time, the obligation of the factor is constituted to reciprocate directly to us in the amount of our portion of the receivables as long as claims exist on our part against the customer. In the case of default of payment on the part of the customer of more than one month, the cessation of payment on the part of the customer, an attachment of goods subject to reservation of title, or a petition to open insolvency proceedings or judicial or extrajudicial composition proceedings against the assets of the customer, the customer shall no longer have the right to resell the goods subject to reservation of title or the right to collect the receivables.

We must be informed immediately of any of the above circumstances. We shall require a list of existing goods subject to reservation of title. The goods subject to reservation of title shall be stored separately and returned to us immediately on our request. We shall also be entitled to collect the claims assigned to us. We shall be entitled to dispose freely of the returned goods subject to reservation of title after withdrawal from the contract and after allowing, to no avail, an extension of time pursuant to section 323 of the German Civil Code (BGB).

The customer shall be required to insure the goods subject to reservation of title at its own expense, taking out the usual replacement value cover and adequate cover for fire, storm damage, water damage and theft, and providing us with documentary evidence of the insurance cover on our request. The customer hereby assigns any claims it accrues against the insurance company and/or other third parties in connection with goods subject to reservation of title in the amount of our share of the goods subject to reservation of title. We hereby accept the assignment.

A lien on items placed at our disposal by our customers for the execution of a contract for work and services shall be constituted for all our receivables under the contract. This shall also apply to receivables arising from past and future contracts for work and services between us and the customer.

Insofar as our secured claims are not only temporarily collateralised by more than 110% by goods subject to reservation of title and/or assignment or other security deposits, we shall release security interests of our choosing at the request of the customer up to the above limit. The valuation of the security interests shall be based on the achievable proceeds on realisation of the collateral. Claims shall be valued and, where applicable, discounted according to the principles of orderly bookkeeping.

## **8. Guarantee**

The guarantee shall be limited to equipment, accessories and, in the case of repairs and servicing, to parts which have been replaced and repaired.

The customer shall be required to inspect the goods properly at its expense immediately on their delivery and to give us immediate written notification of any defects, incorrect deliveries or short quantities. Notification must be issued within one week of receipt of the delivery or, where agreed, of the installation by the manufacturer.

Concealed defects must be reported to us in writing immediately on their discovery. The exclusion of warranty is reserved, this shall apply in particular if defects arise due to the fact that the supplied product is not operated or serviced as instructed or due to the fact that spare parts, expendable parts or consumables other than those which we recommend are used. Claims on the warranty shall lapse one year from the passing of risk.

Any guarantee periods granted by us are defects liability periods. Dimensions, specifications and other information about the condition of the delivery item shall be as stated. It is not a matter of the assurance of properties which are the subject of a warranty. Claims on the warranty by the customer shall be limited to rectification or replacement, as we choose.

After sending advance written notification and receiving our confirmation, the customer shall be required to send the product by standard mail at its own expense in its original packaging to us (LUM GmbH Justus-von-Liebig-Strasse 3, 12489 Berlin, Germany). If the warranty claim is approved, the customer shall be credited for the standard carriage costs. If, after a reasonable amount of time has elapsed, the attempts at rectification or the replacement have proved unsuccessful, the customer shall have a right of withdrawal or reduction and shall be entitled to choose which. This right shall be limited to the relevant delivery insofar as such limitation is not unreasonable for the customer in view of the nature of the item.

Further claims, especially claims for damages, shall be subject to limitations, as set out in section 9 on liability. This shall apply in particular to consequential harm caused by defects.

The customer shall be sent a quotation for the repair of products which have been sent in but are not covered by the warranty. Any such products shall be repaired and returned at the expense of the customer in any given case.

## **9. Liability**

No liability shall be accepted to the customer for damages for neglect of contractual duties or noncontractual duties.

The above exclusion shall also extend to compensation for lost profit or for consequential losses. The limitation of liability shall not apply if we or our servants have acted with deliberate intent or gross negligence.

The above exclusions and limitations of liability shall not apply if the damages are covered by the existing business liability insurance. This shall not affect statutory claims under the law on product liability.

#### **10. EU Directive 2002/96/EC**

LUM shall accept the return of any products supplied after 13.08.2005 in accordance with the statutory time limits under EU Directive 2002/96/EC. As a general principle, the last user shall be required to decontaminate the products before their return. A decontamination certificate must be provided with the product. This certificate may be requested by email. Each owner of a product shall be required to pass this information on when selling the product or lending the product out for use.

#### **12. Place of performance and place of jurisdiction**

Berlin shall be the place of payment in respect of the customer's payment obligations. Berlin shall be the place of jurisdiction for any disputes with traders, legal entities under public law and special funds under public law. German law shall be the applicable law.