General Standard Terms and Conditions of
LUBING Maschinenfabrik, Ludwig Bening GmbH & Co. KG

§ 1 General

1. Solely the following terms and conditions of delivery and payment (hereinafter referred to as the "Terms and Conditions") including any amendments shall be applicable to all deliveries and performances in the commercial intercourse with entrepreneurs within the meaning of § 14 German Civil Code (hereinafter referred to as the "Contract Partner(s)"). Any terms and conditions to the contrary, in particular any terms and conditions of purchase, shall not be applicable unless explicitly recognized by us in writing. This shall equally apply if the delivery is made by us without reservation upon the Contract Partner having objected to the applicability of our Terms and Conditions.
2. Depending on the field of business these General Terms and Conditions shall be supplemented by special terms and conditions.
3. By placing an order the Contract Partner declares his approval that our Terms and Conditions shall be applicable to our complete – even to any future – business relationship with him.
4. Any oral promises made by our representatives and staff as well as any other agreements – in particular any modifications of these present Terms and Conditions – shall not be applicable unless confirmed by us in writing.

§ 2 Quotation, Conclusion of Contract

1. Our offers and quotations shall always be without engagement unless something to the contrary has been agreed upon in writing.
2. For the acceptance of the order, the order volume, and the time of delivery our written order confirmation shall be exclusively authoritative. The correct and timely self-delivery shall be reserved. We shall forthwith inform the Contract Partner about any non-availability of the object of delivery and in case of rescission we shall forthwith reimburse the Contract Partner for the appropriate consideration.
3. Irrespective of the respective data carrier's form, any illustrations, indications of weights and dimensions, technical data, etc. with respect to our goods shall apply as customary approximate values only, unless they have explicitly been stated to be binding by us in our order confirmation.
4. Any objections against our order confirmations have to be made forthwith in writing latest, however, within eight days after the date of issue.

§ 3 Prices

1. Unless something to the contrary has been indicated we shall be bound to the prices stated in our quotations for 30 days upon the date of quotation. Authoritative shall be the prices in euro stated in the order confirmation plus the respectively applicable VAT. Any additional deliveries and performances such as for instance any testing and processing works as well as any modifications made for the Contract Partner shall be charged separately.
2. Our prices shall be valid ex works/stock excluding packacking, freight and customs duties, however plus the VAT rate as legally applicable on the day of the delivery or performance.
3. Should there be a significant change of the wage, material or energy costs, each contractual party shall be entitled to request a reasonable adjustment of the price taking these factors into account.

§ 4 Delivery and Performance, Reservation of the Right of Modification

1. Unless something to the contrary has been agreed upon our deliveries shall be ex works.
2. The approximate dates stated by us for deliveries and performances shall not be legally binding. Any fixed dates shall be confirmed as such by us in writing. A delivery time shall be deemed adhered to as long as the object of delivery has left our stock before the expiry of such delivery time or the Contract Partner has been informed aobut the object's readiness for dispatch, respectively.
3. Any partial deliveries and performances shall be admissible within the scope of what is customary and can be charged separately. Any partial deliveries or partial performances shall exceptionally be inadmissible if they are untolerable for the Contract Partner.
4. Is a non-binding delivery or performance date exceeded bymore than 6 weeks the Contract Partner shall be entitled to request delivery or performance within a reasonable time in writing from us. Should we fail to make the delivery and performance by the end of the period of grace, the Contract Partner shall be entitled to rescind the contract by written notice. Any damages caused by default or any damages for non-performance may only be requested by the Contract Partner insofar as they are due to our intentional or gross negligent failure to comply with our duties.
5. We shall not be liable for any delivery or performance delays due to Force Majeure and other incidents that significantly impede delivery for us or that make delivery impossible for us – in particular including industrial conflicts, operational breakdowns, energy supply problems, riots, government measures, failure to supply of our suppliers, transport interruptions, etc. – even in case of bindingly agreed deadlines and dates. In these cases we shall be obliged to forthwith inform the Contract Partner about such default of delivery or performance as well as about the prospective duration of such default. In such cases the deadlines and dates shall be extended by the duration of such default plus an appropriate starting time. Such unforeseeable incidents shall also entitle us to partly or completely rescind the contract. Any damages of the Contract Partner shall be excluded unless they have been caused by our intentional or gross negligent failure to comply with our duties.
6. Our delivery or performance duties can only be complied with under the proviso that our Contract Partner has timely and duely complied with his contractual duties, in particular with his payment obligations.
7. Should there be a postponement of delivery upon the Contract Partner's request, he shall bear any thus incurring additional costs and he shall assume the risk of accidental loss or of accidental deterioation of the goods that are subject of this delivery from the time of the notification regarding their readiness for dispatch. Any goods which have been reported to be ready for dispatch according to the provisions of the contract shall forthwith be called off for otherwise we shall be entitled to dispatch them at the purchaser's costs and risk or to put them in storage at our own discretion and to invoice them immediately.
8. Explicit reservation is made for any constructional modifications and deviations from the indications given in the brochures and catalogues even after dispatch of the order confirmation as long as these do not mean a change of the price and/or the significant performance features or the delivery time and as long as such modifiations/deviations are reasonably tolerable for the Cotnract Partner.
9. The Contract Partner's obligation to inspect and make complaints in respect of a defect pursuant to §377 Commercial Code shall correspondingly also apply to our deliveries and performances beyond the scope of the Law on the International Sale of Goods.

§ 5 Payment Terms

1. Any payments shall always be made in accordance with their respective due dates or otherwise within 30 days after date of invoice net into the respectively indicated bank account.
2. The credit term stated on our invoice shall be deemed to be the contractually agreed due date. In case of such term of payment being exceeded, the Contract Partner will automatically be in default without a reminder being required. In the case of default we shall be entitled to request default interest at the lending interest rate customary in banking practice, at least, however, the legally applicable default interests pursuant to § 288 of the German Civil Code. Any further claims due to payment delay shall remain unaffected hereof.
   Bills of exchange shall only be accepted by us on the basis of a separate written agreement. Any banking, discounting and collection charges shall be borne by the Contract Partner.
3. In case of a delayed payment we shall be entitled to suspend the fulfilment of our obligations till receipt of payments upon written notification to the Contract Partner.
4. Should we become aware of any circumstances after conclusion of contract that are suitable to reduce the Contract Partner's creditworthiness we shall be entitled to refuse performance and to fix a reasonable time for the Contract Partner during which he shall be obliged to pay concurrently against delivery or to provide for security. Should the Contract Partner refuse to do so or should the fixed deadline expire without payment, we shall be entitled to rescind the contract and to request damage for non-performance.
5. The Contract Partner shall not be entitled to retain the purchase price for any possible counter-claims which are not based on this contractual relationship. A set-off right shall not exist unless with undisputed or legally established counter-claims.

§ 6 Retention of Title

1. Any delivered goods (reserved goods) shall remain our property up to complete payment of all our claims resulting from such business relationship, i.e. even any future relationship, irrespective of the legal ground, even if payment for specially indicated claims are made. In case of current account the reserved property shall be considered as security for our balance claim.
2. The Contract Partner shall not be allowed to resell the reserved goods unless within the scope of the regular commercial intercourse and as long as he is not in default, however, on the proviso that his customers are not allowed to set off the claims from the resale against any counter-claims. The Contract Partner shall not be entitled to make any other dispositions regarding the reserved goods, in particular with respect to their transfer by way of security or to their hypothecation.
3. Any claims resulting from the resale of the reserved goods shall be assigned to us already now by way of security until complete payment of our claims (Fig. 1) . We accept this assignment by way of security already now.
4. The Contract Partner shall be entitled to collect any claims from the resale until such right is revoked by us which shall be admissible at any time. Any sales proceeds collected from the resale of our reserved goods shall directly become our property to the amount of our respective share of invoice. The Contract Partner shall be obliged to keep our share in the sales proceeds separately from his assets and on a trust basis for us. The proceeds kept on a trust basis shall be forthwith delivered to us, latest, however, upon the underlying invoice claims becoming due. Our authority to collect the claim assigned to us on our own in case of non-compliance with the payment terms shall remain unaffected hereof. Upon our request the Contract Partner shall be obliged to inform his customers about the assignment to us and provide us with any information required to assert the claim. In case of execution measures against our security interests being levied by any third parties the reseller shall be obliged to inform such third party about our security interests and give notice to us without delay.
5. In case of a default in payment on the side of the Contract Partner we shall be entitled to require delivery of the reserved goods at the Partner's costs even without rescission of contract after having set a reasonable period of grace.
6. The Contract Partner's right to resell and to collect any claims resulting from this shall automatically lapse without a period of grace having to be set if the preconditions are present under which the Contract Partner could make a petition for the commencement of insolvency proceedings. The same shall equally apply to the unsuccessful expiration of a period set by us pursuant to Figure V.5.. In case of the Contract Partner's right for resale having lapsed we shall be entitled to request the reserved goods to be returned to us at the Contract Partner's costs. Any additional freight costs, shipping and other expenses as well as any possibly occuring deterioration of the goods shall in any case be compensated to us by the Contract Partner.
7. Any treatment and processing of the reserved goods shall be carried out for us as the manufacturer in the meaning of § 950 German Civil Code without creating any commitment for us. Should the reserved goods be inseparably mixed or processed with other subject matters not owned by us, we shall acquire co-ownership in the new subject in proportion of the invoice value of our goods to the invoice value of such other goods used. Any processed goods or our co-ownership shares in them, respectively, shall be deemed to be reserved goods within the meaning of Figure 1. above. - 5.
8. If the value of the securities provided to us exceeds our claims not only temporarily by more than in total 20%, we shall return securities in an appropriate amount at our choice upon request.

§ 7 Liability for Defects

1. Our Contract Partner shall be entitled to our deliveries and performances being free of any material defects and of any deficiencies in title. Unless something to the contrary has been agreed upon we shall be liable for any possible occuring defects according to the legal provisions.
2. For any material defects caused by inappropriate or improper use, incorrect assembly or initiation by our Contract Partner or any third parties, or by usual wear or faulty or negligent treatment we shall be liable neither for the consequences of any improperly effected modifications nor for the consequences of any repairs made by the Partner or any third party without our approval. The same shall equally apply to any defects only insignificantly decreasing the value or fitness of the goods or being the cause for the goods having been sold at reduced prices already.
3. The Contract Partner shall be obliged to file his complaints in respect of any obvious defecst of the goods forthwith after receipt of the goods at their place of destination in writing, in case of non-obvious defects the Contract Partner shall make his complaint forthwith upon discovery of such defects in writing.
4. In case of a justified and timely complaint for defects we shall make a subsequent improvement to the goods subject to the complaint or we shall supply unobjectionable substitute goods. Any expenses incurring for the purpose of the subsequent performance shall be borne by the Contract Partner insofar as they have increased due to the circumstance that the deliveries or performances are to be delivered to a place different from the Contract Partner's place of business, unless such delivery is in accordance with the contract provisions.
5. For any parts delivered and installed as replacement parts as well as for any repairs the warranty period shall be 1 year from the date of delivery / installation.

§ 8 Product Liability

For any damages incurred due to a product in a defective condition we shall be liable according to the provisions of the Product Liability Act.

§ 9 Limitations on Liability

1. Any liability for damages that have not occured at the object of delivery shall be excluded. The same shall equally apply to any consequential damages, unless they have been caused by our intentional or negligent non-compliance with our duties or if the quality guarantees explicitly also include the risk of consequential damages. The damage claim resulting from the non-compliance with significant contractual obligations shall, however, be limited to the foreseeable contract-typical damage. The exclusion of liability shall not apply where we are liable pursuant to the Product Liability Act for personal and material damages to privately used subject matters in case of defects of the object of delivery. Furthermore, the exclusion of limitation shall not apply to the liability for any damages due to injuries of life, body, or health caused by an intentional or negligent breach of duty committed by one of our legal representatives or one of our vicarious agents.
2. In case of third party products any further claims shall explicitly be excluded in particular those due to a product fault falling within the manufacturer's liability. Insofar, we shall assign to the Contract Partner all claims which we might have against the respective manufacturer and/or supplier.
3. Insofar as our liability is excluded this shall equally apply to our vicarious agents.

§ 10 Other Provisions

1. Place of performance and place of jurisdiction for both contractual parties shall be the place of business of our factory, as long as a fully qualified merchant, a juristic person of public law, or special funds under public law are concerned. Irrespective of the above we shall also be entitled to file an action against the Contract Partner at his general place of jurisdiction.
2. For the contractual relationship German law shall exclusively apply.
3. The appliation of the UNSales Convention on Contracts for the International Sale of Goods dated April 11th, 1980 [CISG] shall be excluded.
4. The Contract Partner agrees that we process and use the Contract Partner's personal data collected by us within the scope of or in connection with our business relationship to the extent admissible pursuant to the Federal Data Protection Act.
5. Should any of the provision in these present Terms and Conditions or any provision from the scope of our other contractual agreements be or become invalid this shall not affect the validity of this provision / agreement in any other respect. In this case the contractual parties shall be obliged to replace such invalid provision by a provision that comes economically as close as possible to the original provision.