

General Business Conditions

Valid starting from January 1st, 2002

1. General information

These general delivery and payment conditions are the basis for all deliveries and services of the LENNERTS & PARTNER GmbH. For deviating or additional agreements – especially contradictory business conditions – an explicit approval of the LENNERTS & PARTNER GmbH is necessary. For silence or missing contradiction the LENNERTS & PARTNER GmbH also does not accept in parts any conditions of the buyer. All orders as well as possible special promises need a written order confirmation of the LENNERTS & PARTNER GmbH. It is only possible to relinquish on this form on the basis of written agreements.

2. Conclusion of a contract

The quotations of the LENNERTS & PARTNER GmbH are not binding and without obligation. A contract will only be realized with written order confirmation of the LENNERTS & PARTNER GmbH. If the contract is not performed due to reasons caused by the buyer, the LENNERTS & PARTNER GmbH is allowed to invoice 15 % of the contract value.

3. Delivery and risk assignment

Delivery dates and periods are binding if they have been defined as binding by the buyer and the LENNERTS & PARTNER GmbH in a special case. Otherwise all delivery dates and periods are not binding. If a period cannot be kept due to unforeseen events which are out of the LENNERTS & PARTNER's influence sphere, so the period prolongs accordingly.

If the LENNERTS & PARTNER GmbH comes in default, the buyer is authorized to appoint in written form an adequate respite under penalty of rejection and to withdraw at an ineffective end from the contract regarding delivery and service where the LENNERTS & PARTNER GmbH is in default. Part deliveries and services by the LENNERTS & PARTNER GmbH are allowed. If the buyer withdraws he is only allowed to withdraw for already made part deliveries if he can prove the removal of the interest in the part delivery. Claims for damages of the buyer because of delay or impossibility are excluded; this does not apply as far as a legal representative or a leading employee of the LENNERTS & PARTNER GmbH acted intentionally or gross negligently, however, also in this case the liability of the LENNERTS & PARTNER GmbH with regard to businessmen is limited to the recovery of the foreseen damage.

Delivery and dispatch are made on account and risk of the buyer, the risk is passed to the buyer as soon as goods leave the stock of the LENNERTS & PARTNER GmbH.

Technical specifications are subject to alterations by the producer. The LENNERTS & PARTNER GmbH is also authorized to supply other products than the ordered ones, if the technical specification is the same or differs only slightly provided that the price is the same or only insignificant higher for goods which are specified of higher technical quality.

All products of the LENNERTS & PARTNER GmbH are only sold on condition that the buyer accepts binding the „General Conditions“ of the LENNERTS & PARTNER GmbH.

The contract partners accept that there is a copyright of the producer on the software programmes to be supplied. The following terms are valid for its surrender:

With delivery and payment of the software program there is no property on the program, but only a right of use on the program. The programs remain property of the producer. The use of a program is only allowed to be made on one computer (one installation).

If the computer system where the program is installed does not work, the program may be used on an alternative system.

A reproduction of the programs in total or in extracts on same or other data media is not allowed to the buyer. Reproductions are excepted which are made by the buyer for save purposes on his own. These reproductions may not be given to a third party. The buyer is obliged neither to pass on the programs of the LENNERTS & PARTNER GmbH as well as the original data media to a third party nor to make it available in another form. Third parties in this sense are also subsidiaries. The reproduction of the program in total or in extracts for multiple use within the buyer's factory on several computer systems is not allowed.

A breach of this clause allows the LENNERTS & PARTNER GmbH in the case of contravention to demand a penalty from the buyer amounting to the fivefold price of the program passed on.

Changes of the programs as well as a connection with other programs is only allowed to the buyer if the producer agrees to.

All claims on copyright as well as claims on damages against the buyer remain unaffected from it.

If the buyer has purchased the program or the program media for resale, so he is not allowed to reproduce the program in total or in parts, also not for data save purposes.

The reseller is only allowed to pass on the programs to a third party if this one has obliged in written form both to the reseller and the LENNERTS & PARTNER GmbH to accept these existing General Conditions of the LENNERTS & PARTNER GmbH. The penalty for breach by a third party that has to be paid to the LENNERTS & PARTNER GmbH amounts to EUR 2,500.00 and to the reseller in the amount of EUR 2,500.00 or proportional in this relation.

4. Copyrights

The producer informs the buyer that copyright is not transferable in total or in parts according to §29 clause 2 of the copyright law. Consequently the producer can neither transfer the user rights nor the copyright authorizations to another one.

Under consideration of the legal regulations the producer informs the buyer that on copyrighted products only the right can be granted to use the product on single or all kinds of use.

The producer agrees to grant the buyer a right of use according to copyright requirements.

The producer informs the buyer that the grant of the right of use has to be made by a written contract and it will have to be made so that the kind of the right of use to be granted has to be defined (licence).

Depending on the agreement this can be made by granting a simple right of use (simple licence). This allows the applicant to use the work besides the copyright owner or other authorized persons in the given way (§ 31 Clause 2 Copyright law). The owner of a simple right of use knows that he is not allowed to forbid neither the copyright owner nor other persons the use of this work.

When granting an exclusive right of use (exclusive licence) authorising the buyer to use the work excluding all other persons including the copyright owner in a way allowed to him and to grant simple licences (§ 31 Clause 3 Copyright law), the producer not only grants the positive usage authorization but also the defensive right so that the buyer is allowed to forbid all persons, also the copyright owner, to use the work. This exclusive right of use is to be agreed in written form.

The producer informs the buyer that software programs have a copyright protected status and that violation of the copyright can be punishable.

In this connection especially § 2 Copyright law (registered works), § 106 Copyright law (illegal utilization of copyrighted works) and § 108 a) Copyright law (illegal commercial utilization) has to be mentioned. On demand it is possible to allow the buyer to look at the complete text of above mentioned regulations.

As far as the surrendered software programs are not copyrighted, so these programs are a secrecy know-how of the producer. For these programs the buyer accepts the same requirements as for the copyrighted ones.

If there is an infringement of industrial property rights because of using a LENNERTS & PARTNER product the LENNERTS & PARTNER GmbH exempts the buyer from claims for damages of the property right owner, if the buyer immediately informs the LENNERTS & PARTNER GmbH about the claims faced to him, all defense measures including extrajudicial settlement remain reserved to the LENNERTS & PARTNER GmbH and the infringement of industrial property right is not caused by changing a product supplied by the LENNERTS & PARTNER GmbH, by using it in a way not described in publications of the LENNERTS & PARTNER GmbH or used with products not supplied by the LENNERTS & PARTNER GmbH.

Deviations of supplied product and services from the quotation are allowed if they fulfil or include the services of the ordered program.

5. Prices

Deliveries and services are made according to prices and conditions of the written order confirmation. The prices included there are binding. All prices are ex works from the LENNERTS & PARTNER GmbH plus the current sales tax. The costs for packing and freight are carried by the buyer.

6. Terms of payment

As far as there is no different written agreement the invoices of the LENNERTS & PARTNER GmbH are due for payment immediately upon receipt without any discount.

In the commercial business the LENNERTS & PARTNER GmbH is on default of payment allowed to charge interest amounting to 3 % over the minimum lending rate of the Federal Bank of Germany.

For contracts concerning the delivery of systems with a contract value of more than EUR 50,000.—(without value added tax) 50 % of the purchase price are valid with order confirmation, 40 % with delivery and the rest upon installation and information of operational readiness.

For transfers and other cashless payments accepted in case of doubt only on account of performance, the debt discharging effect will not be until there is the absolute credit entry on the account of the LENNERTS & PARTNER GmbH. Bills of exchange are not accepted by the LENNERTS & PARTNER GmbH. At LENNERTS & PARTNER GmbH's choice payments will be credited against existing receivables also if there are other terms of the buyer.

The set-off against the LENNERTS & PARTNER GmbH is only allowed with undisputed or legally established receivables. Between businessmen a right to refuse performance or a right of retention against the LENNERTS & PARTNER GmbH is excluded.

7. Acceptance

The acceptance of the products is made by the successful functional testing. The functional testing is made successfully if diagnostic and testing programmes respectively procedures developed by the LENNERTS & PARTNER GmbH for that purpose do not find faults on the products. As far as the LENNERTS & PARTNER GmbH installs the products according to the agreement the functional testing will be made by the LENNERTS & PARTNER GmbH on installation site after delivery and installation of the products. The buyer is allowed to take part in the functional testing. Once functional testing has been made the LENNERTS & PARTNER GmbH informs the buyer about the operational readiness of the products.

8. Warranty

The LENNERTS & PARTNER GmbH is liable for defects of goods including nonexistence of promised features and deliveries of not conventional goods according to the following terms excluding further requirements, especially of all consequential damages caused by a defect.

Complaints against the LENNERTS & PARTNER GmbH have to be announced by the buyer immediately upon receipt of the goods at the place of destination with concrete description of the fault. However, this does not allow the buyer to hold back the invoice amount. If faults arise the operation has to be stopped immediately. The same goes for repaired or alternatively supplied goods.

The buyer takes responsibility for the selection of the software functions, the use as well as the achieved results.

The LENNERTS & PARTNER GmbH will correct software errors, interfering the normal use in a not only insignificant way, within the warranty period. This will be made at LENNERTS & PARTNER's choice depending on the importance of the error either by delivery of an upgraded software version or by instruction how to clear the error or to evade the effect of the error. The buyer grants the LENNERTS & PARTNER GmbH the required time and opportunity to clear the faults. If this is refused by the buyer so the LENNERTS & PARTNER GmbH is exempt from the warranty. Any warranty does not apply unless a possible error is due to the fact that the buyer or a third party changes, improperly uses or repairs the products without informing the LENNERTS & PARTNER GmbH or products have not been installed, run and maintained according to the instructions of LENNERTS & PARTNER.

Advices and recommendations regarding usability, compatibility and other performance features, as far as it goes beyond the corresponding information of the producer, are only binding for the LENNERTS & PARTNER GmbH if they have been confirmed to the buyer resp. interested party in written form.

Capacity descriptions of the software programs are agreements of the contract and therefore no legal guarantee promise.

The buyer takes the sole responsibility for the selection of the software programs regarding the hardware compatibility and the wanted specifications by the buyer.

The LENNERTS & PARTNER GmbH is also allowed to limit the warranty to the assignment of own existing warranty claims owed to producers, suppliers or authors unless the fault originates from the LENNERTS & PARTNER GmbH area of responsibility.

If rectification or replacement by the LENNERTS & PARTNER GmbH and the settlement out of the warranty claim fail so the buyer can either ask for reduction of purchase price or cancel the contract. Further claims are expressly excluded.

If the buyer has cancelled the contract so he will have to prove the deletion of the programme installed before on his computer.

The guarantee period is according to the legal requirements starting from the receipt of goods with the buyer of the consignee mentioned by the buyer.

9. Reservation of proprietary rights

All delivered goods remain property of the LENNERTS & PARTNER GmbH until settlement of all also disputed claims deriving from the business relationship with the buyer, whatever of which legal reason, including default interest and costs for assertion of rights. The buyer cannot gain the ownership on the supplied goods by installing it on other devices. Each use of the products supplied by the LENNERTS & PARTNER GmbH is made for the LENNERTS & PARTNER GmbH as producer in terms of § 950 German Civil Code BGB, however, without binding the LENNERTS & PARTNER GmbH. The used goods are regarded to be retained goods.

The buyer is only allowed to sell the retained goods in common business transactions against payment or retention of title (minimum in extended form) and only as long as he does not default. Such a sale is made provided that the receivables of the resale devolve to the LENNERTS & PARTNER GmbH according to this clause.

Pledging or security assignment of retained goods is not allowed. If there is a third party access to the retained goods the buyer is obligated to refer to the property of the LENNERTS & PARTNER GmbH and will have to inform the LENNERTS & PARTNER GmbH immediately. By now the buyer assigns as a precaution all entitled claims resulting from resale or further processing together with ancillary rights amounting to the value of the supplied products to the LENNERTS & PARTNER GmbH. The buyer has the revocable authorisation and obligation to collect the assigned receivables. The LENNERTS & PARTNER GmbH can always announce the assignment to the purchasers of the buyer. If the buyer does not meet his payment obligation the LENNERTS & PARTNER GmbH is at any time allowed to take the retained goods without having a cancellation of the contract. The LENNERTS & PARTNER GmbH will release the securities on desire of the buyer insofar as the value exceeds all ensured receivables by more than 20 %.

In no case the buyer is allowed to make assignment of receivables. On demand of the LENNERTS & PARTNER GmbH the buyer is obliged to inform his customers immediately about the assignment and to deliver the information and documents required for the collection.

10. Export regulations

In doubt all products are liable to export authorization also without notice on the part of the LENNERTS & PARTNER GmbH. In case of export of products the buyer will observe the German and foreign export regulations and will inform his customers that in the case of export German and foreign export regulations will apply. The buyer will provide at his own expense all licences as well as export and import papers required for the purchase and resale of products ordered with the LENNERTS & PARTNER GmbH. If deliveries are made duty unpaid at the request of the buyer so he is liable to the LENNERTS & PARTNER GmbH for possible additional demand of the customs officials.

11. Final clause

The buyer is only allowed to give the rights against LENNERTS & PARTNER to a third party after prior written agreement.

The LENNERTS & PARTNER GmbH includes data of all business partners into files and processes them nimmt die Daten sämtlicher Geschäftspartner in Dateien auf und verarbeitet sie, worauf hier gemäß dem Bundesdatenschutzgesetz hingewiesen wird.

Place of performance and court of jurisdiction for all legal relationship between the LENNERTS & PARTNER GmbH and other fully qualified businessmen is 96450 Coburg. However, the LENNERTS & PARTNER GmbH shall be liberty to sue the buyer at the registered office of his head office or subsidiary. As far as legally allowed, the place of jurisdiction Coburg will also be valid for and against business partners of the LENNERTS & PARTNER GmbH not having their place of residence in Germany.

If single requirements of these terms are or become invalid in total or in parts so the rest of the requirements remain valid. The requirements which are invalid in total or in parts have to be replaced in this case by corresponding agreements getting close as much as possible to the economic content of the invalid requirements respectively of the invalid part.

Supplementary agreements have to be made in written form.