

**General terms and conditions  
of Burg Lichtenfels GmbH & Co. KG  
(valid as of october 2004)**

**1. Scope**

- 1.1 The „General terms and conditions“ are valid for any delivery by Burg Lichtenfels GmbH & Co. KG (called “supplier” below) exclusively. Conditions of the customer, which conflict with, diverge from and/or add information to the suppliers’ terms of delivery, will not be accepted, even if the supplier does not contradict or the customer declares to order at his own terms only. Conditions of the customer, which conflict with, diverge from and/or add information to suppliers’ terms of delivery, become valid with the suppliers’ explicit written permittance. The terms of delivery of the supplier are still valid if he executes a delivery unreservedly although being aware of the customers’ contradictory or diverging conditions.
- 1.2 Any agreement made by supplier and customer concerning the execution of this contract have to be written down therein. Viva voce collateral agreements or verbal promises by non-proxy representatives of the supplier as well as changes or additions to the contract already signed are only valid when confirmed by the supplier in writing.
- 1.3 These general terms and conditions are only valid with entrepreneurs according to german law § 310 BGB.
- 1.4 The general terms and conditions are also valid for any future economic relationship with the customer even if not mentioned explicitly when concluding the contract.

**2. Offer, acceptance**

- 2.1 General offers of the supplier are subject to alteration without notice. To validate orders and declarations of acceptance they need to be confirmed in writing by the supplier. If an order by the customer, additions, changes or viva voce collateral agreements may be treated according to german law § 145 BGB, the supplier may accept it within 10 working days.
- 2.2 The supplier reserves proprietary and copyright to pictures, drawings, calculations and other documents, these must not be forwarded to third parties. Especially forwarding of documents marked as strictly confidential needs the explicit written permittance of the supplier.
- 2.3 Documents related to the offer as drawings, pictures, measures, weights or other functional data are only approximately, if not declared as exactly binding or confirmed in writing afterwards.

- 2.4 Offers by the supplier become invalid after 20 days (date of letter/e-mail/telex) unless declared differently in the offer. After this period the supplier is no longer bound to the offer.

- 2.5 If the customer intends to accept the suppliers offer, he is obliged to react within 20 days. His declaration of acceptance has to reach the supplier within this period.

**3. Price, delay, set-off**

- 3.1 As long as the order is not confirmed differently, prices are ex works. Unless otherwise agreed upon, prices do not include duty, fees, freight, packing and insurance.
- 3.2 The suppliers prices do not include VAT, if applicable it will be declared separately with the actual legal rate at the day, the invoice is issued.
- 3.3 Extra deliveries and service are charged additionally.
- 3.4 Discounts need to be agreed upon in writing.
- 3.5 Unless the order is not confirmed differently, the purchase price is due at the day the invoice is issued. In case of default of payment the supplier may charge interest for delay exceeding the actual base rate of the ECB by 8 percentage points.

**4. Set-off**

- 4.1 Even if the customer asserts a claim on defect or debts he is only allowed counting up, retaining or lowering, if the claim is legally confirmed, undisputed or accepted by the supplier.

**5. Period of delivery and service**

- 5.1 After the customer has submitted all necessary documents, permittances, releases, after having paid the sum agreed upon on account and after all technical questions have been solved, the period of delivery starts with confirmation of the order.
- 5.2 The deadline is met if the product left the factory or if readiness to be shipped is declared before end of period.
- 5.3 The supplier is bound to a date or period of delivery only, if affirmed in writing by himself or any representative entitled.
- 5.4 The supplier is not bound to a confirmed date or period of delivery in case of inevitable events such as labour actions, especially strike and legal lock-out, war and comparable circumstances, energy breakdown or breakdown of data transmission and any other trouble or effects on which he has no influence, even if they occur during an already

- existing delay. Periods and deadlines are hereby extended in a suitable manner. The same rule shall apply to delivery or service not executed in time or duty by sub-suppliers. Delay in delivery does not dispense the customer from his obligation to accept the shipment. If the delay becomes no longer acceptable for either the customer or the supplier, each party may withdraw from the contract in writing.
- 5.5 If the supplier himself caused the delay, the customer may decrease the total invoice sum by 3 % for each whole week of delay, but limited to 15 % of the invoice value of that part of the total delivery or service, which can not be used in time or according to the contract because of the delay. The supplier may prove that the damage is particularly lower or no damage occurred at all. The decrease rate is therefore adapted correspondingly. Unless the delay is caused intentionally or by gross negligence or the contract is substantially affected, further claims are out of question.
- 5.6 After the supplier has come in default, the customer may warn to withdraw and state a suitable respite, after which he may withdraw from the contract if delivery has still not taken place. The customer may only claim for damages by non-fulfilment to the prospective amount, if the default is caused intentionally or by gross negligence or any substantial breach of duty.
- 5.7 Liability is not limited according to 4. and 5. if a fixed deal among full traders is agreed upon or the customer can prove that because of the default caused by the supplier fulfilment of the contract is of no use for him.
- 5.8 Meeting obligations of delivery requires that on the other hand the customer has met his obligations in time and duty already.
- 5.9 In case the customer delays acceptance of the shipment or neglects to cooperate in any other way, the supplier may charge the damage caused thereby including any expenses.
- 5.10 Further more the supplier reserves the right to deliver and render service partly and to charge correspondingly, if considering the interest of the supplier acceptable for the customer.
- 6. Place of fulfilment, risk transition**
- 6.1 Unless the confirmation of the order states something different, delivery ex works is agreed upon. Risk passes to the customer with the consignment being shipped even if delivery is executed partly or the supplier took over additional service as e. g. freight expenses or transportation and set-up.
- 6.2 If delay in shipping is caused by the customer, risk passes to the customer at the day products are ready to be shipped. The supplier is obliged to effect an insurance chosen by the customer at the customers charge. In case of 5.9 risk passes to the customer at the point of time he comes in default.
- 6.3 Transportation and other packing material according to german packing decree is not taken back, pallets excluded. The customer is obliged to dispose packing material at his own charge.
- 6.4 On demand of the customer the supplier will cover delivery by transportation insurance at the charge of the customer.
- 7. Warranty**
- 7.1 Warranty claims of the customer require that the customer met his obligations according to german law § 377, 378 HGB.
- 7.2 The customer has to indicate defects in writing and as detailed as possible. In case of defect the supplier may up to his choice either cure the defect or exchange the product. In case of exchange the customer has to return the defective product and replace the value of having used the item. If even exchange fails, the customer may withdraw from the contract or lower the price. If the customer decides to withdraw from the contract, he has to return the defective product and replace the value of having used the item.
- 7.3 Claims on warranty for material defects are limited on a period of 12 months after delivery.
- 7.4 Unless anything else is stated below further claims of the customer for any legal reasons are excluded. Therefore the supplier is not liable for damages occurred at any matter else than the product delivered, especially he is not liable for lost profit or other damaged means.
- 7.5 Limitation of liability as above is invalid in case of intention or gross negligence, including intention or gross negligence of the suppliers' representatives or agents. Furthermore it is invalid if the customer claims on non-fulfilment because of lack of a promised feature according to german law § 463, 480, chapter 2 BGB.
- 7.6 Unless the supplier neglects contractual duties intentionally liability is limited to the contract typical and foreseeable damage.
- 7.7 Warranty period is 12 months from risk transition on. If the customer is a consumer according to german law BGB, warranty period is 24 months from risk transition on. This period is a statutory period of limitation and is also valid for claims on defect resulting damage unless caused by civil wrong.
- 7.8 Guarantee period for units delivered by the supplier is 24 months from risk transition on. Guarantee

period for wearing parts as e. g. ventilators, cable and hard disks is limited to 6 months. The guarantee claim of the customer expires immediately if he changes or damages the unit.

- 7.9 The parties agree that with the actual state of engineering trouble-free performance of hardware, software and firmware can not be content of the contract. They explicitly do not agree that program features of the software chosen by the customer meet his requirements or work together in the constellation of his choice. Furthermore mistakes of EDP security systems can not be totally excluded at the actual state of engineering. In case a third party manages to enter the customers data web it is not necessarily to be seen as a fault of the security system as its aim is agreed upon only to render entering the data web by third parties more difficult.
- 7.10 In case the suppliers' complaint is justified, the customer states a suitable respite for fulfilment. The customer decides if he wants whether the defect to be cured or delivery of a new trouble-free unit. The supplier on the other hand may reject the customers' choice if it leads to unreasonable expenses and the other way of fulfilment is of no serious disadvantage for the customer. The supplier may refuse reparation at all if it leads to unreasonable expenses.
- 7.11 To execute reparation for the same or a directly related defect the supplier may try twice within the period stated by the customer. In case the second attempt failed, the customer may withdraw from the contract or lower the price. If reparation is refused at all as stated above the customer may lower or withdraw immediately. Withdrawal for insignificant reasons is excluded.
- 7.12 In case the customers' complaint turns out to be unfounded as there is no defect at all or the supplier is not liable for the defect in question, the customer has to reimburse the supplier for any expenses arising thereby, if he acted intentionally or by gross negligence.

## 8. Liability

- 8.1 Customers' claims for damages are excluded, except damages by injury of life, body or health, in case the supplier caused the injury or other damages neglecting proper care intentionally or by gross negligence. Lack of proper care by the suppliers' representatives or agents is being treated correspondingly. In case the supplier is liable for lack of proper care, the customer may withdraw from the contract meeting legal requirements unless the trouble is caused by defect of the product which binds the customer to his rights according to 7. of these general terms and conditions.
- 8.2 If the company is being claimed on for warranty or liability joint guilt of the customer has to be considered appropriately, especially in case of

inadequate indication of defects or inadequate data back-up.

## 9. Total liability

- 9.1 A further liability for claim on damages than stated in §§ 7.4 to 7.6 is excluded without consideration of the legal background. This refers especially to claims for reasons of fault on conclusion of the contract, positive default or on tortious liability according to german law § 823 BGB.
- 9.2 The provision of 9.1 does not repeal legal liability by german law on product liability. Unless liability is limited by 7.6 for claims on product liability according to german law § 823 BGB, the suppliers liability is limited to reparation of the insurance. If the insurance does not pay or does not pay the total amount, the suppliers liability is limited to the amount of EUR 3.500.00,00.
- 9.3 Also the provision of 9.1 is invalid in case of initial or defendable inability. As far as the suppliers' liability is limited or excluded, the same is valid for personal liability of his clerks, employees, assistants, representatives and agents and other third parties in charge.

## 10. Reservation of title, securing

- 10.1 All products delivered remain property of the supplier until all invoices by the contract in questions are paid correctly. The customer may resell the products of which the supplier still has reserved title within regular business operations. The customer transmits hereby in advance all outstanding debts arising by this transaction to the supplier at the amount of the respective invoice (incl. VAT). Regardless of this assignment the supplier keeps the right to call in his demands. In case the customer acts contrary to the contract, especially if he delays payment, the supplier is entitled to take back the products, which does not mean withdrawal from the contract automatically unless he declared withdrawal explicitly in writing. Seizure of products by the supplier always means withdrawal from the contract. After taking back the products the supplier may turn them to account, the net profit thereof expenses deducted is to be counted up with the customers' liabilities.
- 10.2 The customer is obliged to take adequate care of the products, especially insure them sufficiently at his own charge against damage by fire, water or theft at nominal value. If maintenance or inspection becomes necessary, the customer has to execute them at his own charge and in time.
- 10.3 In case of seizure or other operations of third parties the customer has to indicate the reservation of title to the third party and immediately inform the supplier in writing, that he can institute proceedings according to german law § 771 ZPO. If the third

party is unable to refund the suppliers judicial and extrajudicial expenses, the customer is liable for the suppliers arising loss.

- 10.4 The customer may resell the products within regular business operations. The customer transmits hereby in advance all outstanding debts arising by this transaction against his purchaser or a third party to the supplier at the invoice amount agreed upon (incl. VAT), no matter if the products were resold without or after being subsequently treated. Regardless of this assignment the customer keeps the right to call in his demands. Hereby the suppliers' right to call in the demands himself remains unaffected. The supplier agrees not to call in the demands as long as the customer meets his liability to pay by incoming profits, unless he delays payment, especially it is applied for opening insolvency or composition proceedings or payments are suspended. In that case the supplier can insist on being informed by the customer about all outstanding debts and the corresponding debtors and on being transmitted any data and documents necessary to call in the debts.
- 10.5 Subsequent treatment or transformation of products by the customer is done in the name of the supplier. The customers' legal expectancy of the products delivered remains unaffected by transformation. In case the product delivered is subsequently treated with components not belonging to the supplier, the supplier co-owns the new product in relation of the value of the product delivered to the value of the other components used at the day of treatment. For these new products the same agreements become valid as for products delivered with proviso.
- 10.6 In case the product delivered is subsequently mixed up inseparably with components not belonging to the supplier, the supplier co-owns the new product in relation of the value of the product delivered to the value of the other components mixed up with at the day of treatment. If the components are mixed up in a way, the product delivered remains the essential part the parties agree upon that the customer transfers co-ownership to the supplier. The customer thereby keeps the ownership or co-ownership for the supplier safely.
- 10.7 The customer also assigns the claim to the supplier to secure his demands against him, which arise against a third party from connecting the product delivered to a real estate.
- 10.8 The supplier agrees to release securities due to him on the customers request in case the realizable value of the securities exceeds the demand to be secured by more than 10 %. It is up to the suppliers' choice which security to release.

## **11. Payment**

- 11.1 Any payment has to be effected free of bank charges or other deductions to the account stated in the invoice.
- 11.2 Bills and cheques are only accepted in case of explicit agreement and only for reason of fulfilment. In these cases payment is only settled if the supplier can finally dispose of the amounts. Any charges for bills, cheques or discount are solely to the debit of the customer.
- 11.3 If the supplier gets notice that the customers pecuniary circumstances deteriorate essentially after signment of the contract (e.g. application for opening insolvency proceedings, defaulting mode of payment, disadvantageous credit information, default of payment), he may render outstanding delivery and service against cash in advance only. Periods of delivery and service postponed correspondingly.

## **12. Installation and operation**

- 12.1 If the parties agree that installation is done by the supplier, it is treated as to be finished if the products delivered run according to their specification with the corresponding communication media. Both parties may request acceptance test.
- 12.2 In case the communication media or any other component to be provided by the customer during the period of installation are not connected, available or serviceable the installation is considered to be finished at the products day of delivery. The supplier may charge service according to 3. of these general terms and conditions.
- 12.3 Extra costs arising by the customers request to execute the complete installation during another period than agreed upon will be charged additionally.

## **13. Change in construction and development**

- 13.1 The supplier reserves the right to effect reasonable changes in construction or further development of the products at any time, if it is inevitable for the characteristic of the product or its feature or if the customer is better-off thereby. The supplier is not obliged to effect these changes on products already delivered.

## **14. Protective rights**

- 14.1 The customer is obliged to make every effort to save any of the suppliers' protective rights concerning his products, no matter if they are treated subsequently or resold.

14.2 The customer is obliged to inform the supplier immediately in writing, if he becomes aware of a suppliers product infringing commercial protective rights or copyrights.

**15. Prohibition of claim assignment**

15.1 Assigning the customers complete claims against the supplier to a third party needs to be explicitly confirmed in writing, german law § 354 a HGB remain unaffected.

**16. Practicable law, legal domicile**

16.1 For these general terms and conditions and any legal relationship between supplier and customer law of the Federal Republic of Germany is valid, application of UN trade law is excluded.

16.2 These terms & conditions have been translated from German language. The translation was done in best intentions and knowledge. However, in case of disputes, the German terms & conditions (AGB's) will prevail over the English translation.

16.3 Any disputes arising hereunder will be settled before a competent Korbach court of law. Burg Lichtenfels GmbH & Co KG reserves the right to take legal proceedings against the customer at any other domicile.

**17. Salvadorian clause**

17.1 In case single aspects of these "General terms and conditions" are or become totally or partly invalid the validity of the other agreements remains unaffected. Instead a term is assumed that meets the intended purpose best possible.