

Shipping & Returns

Contributed by Web Master
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1. PREFACE

The Sales and Delivery Terms and Conditions form an integral part of the Sales Contract between G. LYBEROPOULOS S.A. (hereafter referred to as the Vendor) and any other party (hereafter referred to as the Customer). Contracting parties may only diverge from these conditions based on the written agreement of both parties.

2. TERMS OF DELIVERY

2.1 Unless otherwise agreed the Goods shall be deemed to be sold Ex-works. The time at which the risk shall pass will be fixed in accordance with the International rules of the Interpretation of Trade Terms (latest Incoterms 2000) of the International Chamber of Commerce in force at the date of the formation of the Contract.

2.2 In the event that goods are delivered to the nominated site of the Purchaser for assembly, installation and commission whilst the Vendor is engaged as a subcontractor risk shall pass together with title upon completion and acceptance of same by Purchaser and the payment of all outstanding amounts due to the Vendor in respect of any or all of the Goods supplied under the said contract.

3. DELIVERY

3.1 Unless otherwise agreed, the delivery period shall run from the latest of the following dates:

- a) the date of the formation of the Contract
- b) the date on which the Vendor receives notice of the issue of a valid license where such is necessary for the execution of the Contract.
- c) the date of the receipt by the Vendor of such payment in advance of manufacture as is stipulated in the Contract.

3.2 The Vendor will use its best endeavours to complete its contractual obligations within the period (if any) stated in the contract or in a reasonable time but shall be under no liability in damages or otherwise for failure to do so from any cause whatsoever however arising. In no circumstances shall delay be a ground for cancellation of the contract by the customer.

3.3 Should delay in delivery be caused by any of the circumstances mentioned in Clause 6 or by an act or omission of the Purchaser and whether such cause occurs before or after the time or extended for delivery, there shall be granted subject to the provision of paragraph 4 hereof such extension of the delivery period as is reasonable having regard to all the circumstances of the case.

3.4 If the Purchaser fails to accept delivery on due date, he shall nevertheless make any payment conditional on delivery as if the Goods had been delivered. The Vendor shall arrange for the storage of the Goods at the risk and cost of the Purchaser. If required by the Purchaser the Vendor shall insure the Goods at the cost of the Purchaser. Provided that if the delay in accepting delivery is due to one of the circumstances mentioned in Clause 6 and the Vendor is in a position to store it in his premises without prejudice to his business, the cost of storing the Goods shall not be borne by the Purchaser.

3.5 Unless the failure of the Purchaser is due to any of the circumstances mentioned in Clause 6 the Vendor may require the Purchaser by notice in writing to accept delivery within a reasonable time. If the Purchaser fails for any reason whatever to do so within such time the Vendor shall be entitled by notice in writing to the Purchaser, and without requiring the consent of any Court, to terminate the Contract in respect of such portion of the Goods as is by reason of the failure of the Purchaser aforesaid not delivered and thereupon to recover from the Purchaser any loss suffered by reason of such failure up to an amount not exceeding the price attributable to that portion of the Goods which the Purchaser has failed to accept delivery of.

4. PAYMENT

4.1 Payment shall be made in the manner and at the time or times agreed by the parties but in the absence of such agreement payment will be due upon ordering of the Goods.

4.1.1 When not otherwise stated payment shall be payment in full on the date of order and shall be in Euros unless otherwise agreed.

4.2 If delivery has been made before payment of the whole sum payable under the Contract, the Goods delivered shall, to the extent permitted by the law of the country where the Goods are situated after the delivery, remain the property of the Vendor until such payment has been effected. If such law does not permit the Vendor to remain the property in the Goods, the Vendor shall be entitled to the benefit of such other rights in respect thereof as such law permits him to remain. The Purchaser shall give the Vendor every assistance in taking any measures required to protect the Vendor's right of property or such other rights as aforesaid.

4.3 If the Purchaser delays in making any payment the Vendor may postpone the fulfillment of his own obligations until such payment is made, unless the failure of the Purchaser is due to an act or omission of the Vendor.

4.4 If delay by the Purchaser in making any payment is due to one of the circumstances mentioned in Clause 6 the

Vendor shall not be entitled to any interest on the sum due. Save as aforesaid, if the Purchaser delays in making any payment the Vendor shall be entitled to the payment of interest on the sum due at a rate of 5 percentage points above the base rate of the National Bank of Greece from the date on which such sum became due. If at the end of 3 months the Purchaser shall still have failed to pay the sum due, the Vendor shall be entitled by notice in writing to the Purchaser and without requiring the consent of any Court to terminate the contract and thereupon to recover from the Purchaser the amount of his loss.

5. RETENTION OF TITLE TO GOODS

Notwithstanding the provisions of Clause 4, all contracts will be entered into subject to the following conditions relating to retention of title to the Goods supplied.

5.1 The Vendor reserves the title to any or all of the Goods contained in any contract and wherever stored whether or not the said Goods have been re-sold until such time as all outstanding amounts due to the Vendor in respect of the Goods supplied have been received.

5.2 The Purchaser of any or all of the Goods contained in any contract shall be deemed to be acting as a bailee of the Goods and shall undertake to indemnify the Vendor against loss or damage whilst in his possession and shall store all the Goods there mentioned in good condition until such time as payment is made in full for the Goods at which time title in the Goods shall pass.

5.3 The Purchaser is deemed to occupy a fiduciary position and shall not without the specific agreement of the Vendor pass, attempt to pass or conspire to pass title in any or all of the Goods contained in any contract until title has been ascertained under Clauses 2.2, 5.1 and 5.2. In the event that specific agreement is attained the Purchaser shall occupy a fiduciary position in respect of the proceeds of any such sale and shall agree to fully indemnify the Vendor against any consequential loss suffered as result.

5.4 Any or all Goods contained in any contract shall not at any time save with the specific agreement of the Vendor be defaced, modified or in any other way changed to the extent that it will at all times be possible to identify the Goods referred to above over which the Vendor reserves title.

The Vendor shall at all times during retention of title reserve the right to claim the re-delivery of all or any Goods in any contract at any time prior to the title to the Goods being ascertained in the event that the Purchaser due to insolvency or any other reason not the fault of the Vendor has failed to make full payment for the Goods contained in the said contract.

6. GUARANTEE

6.1 Subject as hereinafter set out, the Vendor undertakes to remedy any defect resulting from faulty design, materials or workmanship for time period not to exceed the manufacturer's warranty.

6.2 This liability is limited to defects that appear during the period of 12 months after the date of delivery.

6.3 A fresh guarantee period of 12 months shall apply, under the same terms and conditions as those applicable to the original Goods to parts supplied in replacement of defective parts or to parts renewed in pursuance of the Clause. The provision shall not apply to the remaining parts of the Goods, the Guarantee Period of which shall be extended only by a period equal to the period during which the Goods are out of action as a result of a defect covered by this Clause. Notwithstanding the stipulations of this Clause, the validity of the Vendor's Guarantee shall not exceed 2 years for any part of the Goods reckoned from the original date of commencement of the Guarantee Period.

6.4 In order to be able to avail himself on his rights under this Clause the Purchaser shall notify the Vendor in writing without delay of any defects that have appeared and shall give him every opportunity of inspecting and remedying them.

6.5 On receipt of such notifications the Vendor shall remedy the defect forthwith and, at his own expense. Save where the nature of the defect is such that it is appropriate to effect repairs on site, the Purchaser shall return to the Vendor any part in which a defect covered by this Clause has appeared, for repair or replacement by the Vendor, and in such case the delivery to the Purchaser of such part properly repaired or a part in replacement thereof shall be deemed to be a fulfillment by the Vendor of his obligations under this paragraph in respect of such defective part.

6.6 The Vendor's liability does not apply to defects arising out of materials provided, or out of a design stipulated by the Purchaser.

6.7 The Vendor's liability shall apply only to defects that appeared under the conditions of operation provided for by the Contract and under proper use. It does not cover defects due to causes arising after the risk in the Goods has passed in accordance with Clause 2. In particular it does not cover defects arising from the Purchaser's faulty maintenance or erection or from alterations carried out without the Vendor's consent in writing or from repairs carried out improperly by the Purchaser, nor does it cover normal deterioration.

6.8 It is expressly agreed that the Purchaser shall have no claim in respect of any loss or damage caused by the defect, including but not limited to damage to property, loss of production, loss of profit or any other consequential damage and indirect loss. Unless it is shown from the circumstances of the sale that the Vendor has been guilty of gross misconduct.

6.9 Gross misconduct does not comprise any and every lack of proper care or skill but means an act or omission on the part of the Vendor implying either a failure to pay due regard to serious consequences which a conscientious Contractor would normally foresee as likely to ensue or a deliberate disregard of any consequences of such act or omission.

7. SECURITY AND PRODUCT LIABILITY

7.1 If not otherwise stated, the delivery comprises such equipment for protection against the risk of danger or for compliance with legislation in the use of the Goods as are normally in use in the Vendor's country. Any responsibility that may arise on account of other protective or compliance equipment being prescribed in the Purchaser's country is exclusively carried by the Purchaser.

7.2 The Vendor shall be liable for personal injury only if it is proved that such injury was caused by negligence on the part of the Vendor or others for whom he is responsible. The Vendor shall not be liable for damage to property occurring whilst the Goods are in the possession of the Purchaser. Nor shall the Vendor be liable for damage to products manufactured by the Purchaser, or to other products of which the Purchaser's products form a part. Apart from these limitations the Vendor shall be liable for damage to property on the same conditions as for personal injury. The Vendor shall in no circumstances be liable for loss of production, loss of profit or any other consequential damage and indirect loss. To the extent the Vendor might incur product liability toward any third party, the Purchaser shall indemnify the Vendor as far as the Vendor's liability has been limited by the three preceding sub-paragraphs. If a claim for damage as described in this clause 6.2 is lodged by a third party against one of the parties, the latter shall forthwith inform the other party thereof. The Vendor and the Purchaser shall be mutually obliged to let themselves be summoned to the Court examining claims for Damages lodged against one of them on the basis of damage allegedly caused by the Goods. The contractual relationship between the Vendor and the Purchaser shall, however, be settled by arbitration according to Clause 10. The above limitations in the Vendor's liability shall not apply where the Vendor is shown to have been guilty of gross misconduct.

8. RELIEFS

8.1 The following shall be considered as cases of relief if they intervene after the formation of any Contract and impede its performance, industrial disputes and any other circumstances (e.g. fire, mobilisation, requisition embargo, currency restrictions, insurrection, shortage of transport, general shortage of materials and restrictions in use of power) when such other circumstances are beyond the control of the parties.

8.2 The party wishing to claim relief by reason of any of the said circumstances shall notify the other party in writing without delay on the intervention and on the cessation thereof.

8.3 The effects of the said circumstances so far as they affect the timely performance of their obligations by the parties are defined in Clauses 3 and 4. Save as provided in paragraph 3.4, 3.6 and 4.4, if by reason of any of the said circumstances the performance of the Contract within a reasonable time becomes impossible either party shall be entitled to terminate the Contract by notice in writing to the other party without requiring the consent of any Court.

9. LIMITATION OF DAMAGES

9.1 Where either party is liable in damages to the other, these shall not exceed the damage which the party in default could reasonably have foreseen at the time of the formation of Contract.

9.2 The party who sets up a breach of the Contract shall be under a duty to take all necessary measures to mitigate the loss which has occurred provided that he can do so without unreasonable inconvenience or cost. Should he fail to do so, the party guilty of the breach may claim a reduction in the damages.

10. RIGHTS AT TERMINATION

10.1 Termination of the Contract, from whatever cause arising, shall be without prejudice to the rights of the parties accrued under the Contract up to the time of termination.

11. ARBITRATION AND LAW APPLICABLE

11.1 Any dispute arising out of the Contract shall be finally settled, in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by one or more arbitrators designated in conformity with those Rules.

11.2 The Contract shall be governed by law of the Vendor's country

12. RETURN OF GOODS ORIGINALLY SHIPPED AGAINST SALES ORDER CONTRACT

12.1 In all circumstances G. LYBEROPOULOS S.A. reserve the right to refuse the return of goods which were originally shipped to any Customer against an agreed Sales Order Contract.

12.2 Any goods returned to G. LYBEROPOULOS S.A. which were originally shipped against a Sales Order Contract will incur a 25% handling charge to the customer if the reason for return is deemed to be outside the control of G. LYBEROPOULOS S.A. (i.e. wrong product ordered by the customer). The charge incurred will be 25% of the original value for the goods returned. Under all circumstances a minimum charge of Euro 1500 will be imposed.

13. CANCELLATION OF CONTRACT

In the event of the Customer purporting to cancel an order, G. LYBEROPOULOS S.A. if it wishes to accept such cancellation shall be entitled to charge the Customer a cancellation fee of up to ten per cent (10%) of the purchase price for stock items, or up to 100% of the purchase price for a bespoke system, in respect of costs and expenses incurred and other damages without prejudice to any right to claim further costs, expenses and damages howsoever arising.

14. PATENTS

If any goods to be supplied by G. LYBEROPOULOS S.A. are to be in accordance with the Customer's specifications or instructions the Customer will indemnify G. LYBEROPOULOS S.A. against all damages, penalties, costs and expenses to which G. LYBEROPOULOS S.A. may become liable or which G. LYBEROPOULOS S.A. may incur through complying with any such specifications or instructions, involving an infringement of Patent, Registered Design, or Trade.

15. FORCE MAJEURE

In case that the non-fulfilment of the term was evidently caused by force majeure (as understood by legal or insurance industry, ie. state intervention, war measures, etc.) and the Vendor immediately notifies the occurrence of the force majeure, the delivery term is proportionately prolonged. After force majeure ceases, both parties will agree on measures to fulfil the Contract.