

# General Terms and Conditions of Lucas Textilmaschinen GmbH, Berbisdorfer Straße 73, 09123 Einsiedel/Chemnitz, Germany

(as at August 2006)

## I. General

1. Lucas Textilmaschinen GmbH (hereinafter referred to as Supplier) shall deliver all its goods and services exclusively in accordance with the following General Terms and Conditions. They shall also apply to any future business with the Purchaser. The validity of any differing or supplementary terms and conditions of the Purchaser shall be ruled out. General purchase conditions of the Purchaser, which are different from these conditions, shall also not form part of the Contract even if the order is accepted. A contract comes into force - in the absence of a special agreement - with the written order confirmation of the Supplier.

2. The Supplier reserves title of ownership and copyrights with regard to samples, cost estimates, drawings and other information of a corporeal and incorporeal nature - also in electronic form; they must not be made accessible to a third party, copied or duplicated.

3. The information contained in catalogues, prospectuses, circulars, adverts, illustrations and price lists about the properties of the goods is not binding. It shall be binding only when it is referred to expressly in the contract.

## II. Down payments, right of retention, offsetting

1. If the Purchaser does not make the down payment on the contractually agreed due date, the Supplier shall be entitled to suspend the production of the goods ordered and to continue production only after receipt of the down payment. The delivery date shall be extended by the time during which the Purchaser delayed payment of the down payment.

2. The down payment of the Purchaser shall lapse if the Purchaser refuses to fulfil the contract or refuses to accept the goods, insofar as this is not attributable to the Supplier.

3. The Purchaser shall have the right to retain payments or offset them with counterclaims only insofar as his counterclaims are undisputed or have been determined in a final and binding manner.

## III. Delivery date, delivery delay

1. The delivery date results from the agreements between the contractual parties. Delivery dates or delivery periods indicated by the Supplier shall be only approximate, insofar as the deadlines have not been expressly agreed and indicated as binding delivery dates or delivery periods. The Supplier shall adhere to the latter under the condition that any commercial and technical queries between the contractual parties have been clarified and the Purchaser has fulfilled all his contractual obligations, such as sending the required samples and the necessary testing materials, providing the required official certificates or permits or having made a down payment. If this is not the case, the delivery date shall be extended accordingly. This shall not apply, insofar as the Supplier is responsible for the delay.

2. 6 weeks after a non-binding delivery date or a non-binding delivery period has passed, the Purchaser may request the Supplier in writing to deliver the goods. Once this request has been received, the Supplier is in default. If the Purchaser wishes to withdraw from the contract and/or demand compensation in lieu of performance, he must give the Supplier another appropriate period to deliver the goods after the expiry of the 6 weeks.

If the Supplier has not delivered by a binding delivery date or within a binding delivery period, the Supplier shall come into default as soon as the delivery date or the delivery period has been exceeded. The rights of the Purchaser shall then be determined in accordance with III. 3 to 8 of these General Terms and Conditions. If the Purchaser wishes to withdraw from the Contract and/or demand compensation in lieu of performance, he must give the Supplier another appropriate period to deliver the goods once he has come into default.

3. The delivery period is complied with if the delivery item has left the Supplier's factory or the Supplier reports that the goods are ready for dispatch before the delivery period has expired.

4. If the Supplier is in default due to force majeure, labour disputes or other events, which lie outside the sphere of influence of the Supplier, the delivery date shall be extended accordingly. The Supplier shall inform the Purchaser of the beginning and end of such circumstances as soon as possible.

5. If the Purchaser withdraws from the contract because it became impossible for the Supplier to perform the contract before the risk has passed on to the Purchaser, the Supplier shall be liable only to the extent of Section VII. 2.

6. If the Supplier comes into default and if the Purchaser suffers a loss as a result, the Supplier shall be liable for

the delivery delay only in accordance with Section VII. 2 of these General Terms and Conditions.

## IV. Passing of risk, acceptance

The risk shall pass to the Purchaser if the delivery item has left the factory and even if partial deliveries are made or if the Supplier has assumed other services such as dispatch, delivery or installation. The Purchaser may not refuse acceptance in case of minor defects.

## V. Reservation of title

1. The Supplier reserves the title of ownership with regard to the delivery item until receipt of all the payments under the supply contract.

2. The Supplier has the right to insure the delivery item at the expense of the Purchaser against theft, breakage, fire, water and other damage, insofar as there is no evidence that the Purchaser has concluded the insurance policy himself.

3. The Purchaser shall not dispose of the delivery item, pledge it or transfer ownership by way of security. With regard to distraint as well as seizures or other disposals by a third party, he shall inform the Supplier of this immediately.

4. In the event of behaviour by the Purchaser which is contrary to the terms of the Contract, in particular in the event of payment default, the Supplier shall have the right to take back the delivery item after sending a reminder and the Purchaser shall be obliged to return the latter.

5. The Supplier may only demand the return of the delivery item on the basis of reservation of title, if he has withdrawn from the contract.

6. The application to open bankruptcy proceedings shall give the Supplier the right to withdraw from the contract and to demand the immediate return of the delivery item.

## VI. Claims regarding defects and obligation to lodge a complaint

The Supplier shall provide a warranty for material defects and defects in title as follows. Additional claims are excluded except for the cases stated in Section VII:

### Material defects

1. The Purchaser is obliged to examine the delivery item on delivery and to undertake test processing. Obvious deficiencies shall be notified to the Supplier by the Purchaser immediately in writing no later than 14 days after receipt of the goods. Hidden defects shall be notified in writing to the Supplier no later than 14 days after they have been detected. Prompt posting of the notification shall be sufficient for compliance with the deadline. If notification is not made properly or not in due time, the assertion of claims for material defects and defects in title shall be ruled out. The Purchaser shall bear the full burden of proof for the defect itself, the time it was detected and the promptness of the notice of defects. The Supplier shall have the right with regard to each notice of defects to examine the delivery item about which the complaint is being made and the actual conditions of use.

2. The Supplier may decide whether to rework or replace those parts, which are shown to be defective as a result of circumstances prior to the passing of risk, free of charge. Parts, which are replaced, shall become the property of the Supplier.

3. The direct costs arising from the reworking or replacement delivery shall be borne by the Supplier - insofar as the complaint is shown to be justified - as well as the costs of the replacement part including dispatch.

4. The Purchaser has a right to withdraw from the contract as part of statutory provisions if the Supplier - taking account of the statutory exceptions - allows an appropriate period of time for the reworking or replacement delivery, which he has been granted as a result of a material defect, to elapse without success. In case of a minor defect, the Purchaser shall not have the right to withdraw, but only a right to reduce the contractual price (Minderung). The right to reduce the contractual price in other cases is excluded. Further claims, in particular claims for compensation, shall be determined by Section VII. 2 of these General Terms and Conditions.

5. The Supplier does not assume liability in particular in the following cases:  
Unsuitable or inappropriate use, incorrect installation or

putting into operation by the Purchaser or a third party, normal wear and tear, incorrect or negligent handling, incorrect maintenance, unsuitable production facilities, defective building works, unsuitable foundation soil, chemical, electro-chemical or electrical influences - insofar as the Supplier is not responsible for these.

6. If the Purchaser or a third party undertakes reworking inappropriately, there is no liability by the Supplier for the consequences of this. This shall also apply to alterations to the delivery item carried out without the prior consent of the Supplier.

## VII. Liability

1. If the delivery item cannot be used by the Purchaser in accordance with the contract through the fault of the Supplier as a result of non-performance or incorrect performance of proposals made and advice given before or after the conclusion of the contract or through the infringement of other contractual secondary obligations - in particular instructions for the operation and maintenance of the delivery item -, provisions of Sections VI and VII. 2 shall apply mutatis mutandis. Other claims of the Purchaser are excluded.

2. The Supplier shall only be liable for damage or loss, which have not occurred to the delivery item itself, in particular for lost profit, consequential harm caused by a defect (Mangelfolgeschäden), loss of production etc., - for whatever legal reason -

- in the event of intent
- in the event of gross negligence of the owner/executive bodies or managers of the company of the Supplier,
- in the event of culpable injury to life, body, health,
- for defects, which he maliciously concealed or whose absence he guaranteed,
- for defects in the delivery item, insofar as the Supplier is liable under the German Product Liability Act (Produkthaftungsgesetz) for injury to persons or material damage to items used for private purposes.

In the event of a culpable breach of essential contractual obligations, the Supplier shall also be liable in the event of gross negligence by employees that are no managers and in the event of slight negligence, in the latter case restricted to typical reasonably foreseeable contractual losses. Any other claims are excluded.

## VIII. Statute of limitations

Any claims by the Purchaser - based on whatever legal grounds - shall become invalid 12 months as of delivery.

## IX. Software use

Insofar as software is included in the goods supplied, the Purchaser shall be granted a non-exclusive right to use the software including the associated documentation. It shall be assigned for use on the delivery item intended for this purpose. Use of the software on more than one system is prohibited. The Purchaser may copy, revise, translate or convert the software from the object code into the source code only to the extent legally permitted (Sections 69 a et seq. German Copyright Act (UrhG)). The Purchaser undertakes not to remove or amend manufacturer information - in particular copyright notes - without the prior express consent of the Supplier.

Any other rights to the software and documentation including the copies shall remain with the Supplier or the software supplier. The granting of sub-licences is prohibited.

## X. Applicable law, severability clause, place of jurisdiction

1. The law of the Federal Republic of Germany governing legal relationships between German parties shall apply exclusively to all legal relationships between the Supplier and the Purchaser. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980) shall be ruled out.

2. If a provision of the contract and/or these General Terms and Conditions is ineffective in full or in part, the effectiveness of the remaining provisions shall remain unaffected. The parties undertake in this event to replace the ineffective stipulation with an effective stipulation, which is as close as possible to the economic purpose of the ineffective stipulation.

3. The sole place of jurisdiction for any disputes arising from the contractual relationship is the place of the registered office of the Supplier. However, the Supplier shall have the right to institute legal proceedings at the headquarters of the Purchaser.