

General Conditions of Sales and Delivery by LaVision BioTec GmbH, Bielefeld, Germany

September 2000

1 General terms

1.1 Our Conditions of Sales and Delivery apply to all offers, sales, deliveries, repairs and other services.

1.2 Deviations from these Conditions of Sales and Delivery are only effective if they have been agreed upon in writing.

1.3 We only accept our customer's contract terms if expressly agreed in writing. If this does not meet with our customer's approval, it must be stated expressly. We can withdraw our offer at any time in such an event.

2 Offers and Contracts

2.1 Our offers are subject to alteration and without prejudice. Supply contracts only become effective by the written confirmation of the seller.

2.2 The customer has been informed that the delivered equipment of LaVision BioTec are subject to export control by German Export Authorities. In the event of a re-export of the delivered equipment the customer is obliged to consider these regulations and that a license has been granted by that country.

3 Price and payment

3.1 Value added tax is not included in the price quoted and is additionally charged at the legal rate applicable at the time of invoicing.

3.2 For deliveries and invoices in Germany the following is considered: Quoted prices include packaging, transportation costs to end user and insurance. Quoted prices for deliveries outside Germany include packaging, delivery ex works, unless otherwise agreed upon in writing.

3.3 Payments shall take place without any form of rebate, deduction or compensation and shall be received by LaVision BioTec GmbH within 30 days of invoice date, unless otherwise agreed in writing. Whole or partial advance payment can be required in certain cases.

3.4 In the event that payment by a customer is overdue, we are entitled to charge interest in the mean time at a rate of 6% over the Euribor charged by the European Central Bank without any notice of default, unless the customer is able to prove that his delay in payment only caused minor loss. We reserve the right to claim any further damages thereby incurred.

3.5 Submittal of a complaint does not give rise to an entitlement to extend a payment deadline. Reductions or retention based on any such counter-claims is hereby expressly excluded, unless such counter-claims have been contractually agreed, are not disputed by us or have been confirmed by a court of law.

4 Delivery Time

4.1 Agreements of binding (fixed) delivery dates and delivery periods have to be agreed upon in writing. Delivery periods only commence after conclusion of the contract, but not before the customer has clarified and shipped all issues relevant to delivery and has completed all necessary preparations on his part.

4.2 Partial shipments are permitted.

4.3 On the occurrence of unexpected events outside of our control such as breakdowns, delays in the delivery of essential materials needed for performance of contract, a reasonable extension of the delivery period is hereby agreed. Both parties are entitled to withdraw from the contract if those disturbing events last longer than the originally warranted delivery time. In this case claims of the customer are expressly excluded.

5 Transfer of risk

5.1 Risk passes to the customer from the time the goods have been shipped ex works, unless a shipment free of charge has been agreed upon in writing. In this case the place of delivery is the place for transfer of risk.

6 Retention of title

6.1 We retain title to our goods and deliveries until all the payments from the sales contract or any other claims arising out of our business relationship have been received.

6.2 In the event of a resell of the conditional commodities the customer hereby transfers in advance all claims ensuing from any such resale to us.

6.3 We shall exempt items from retention of title at the buyer's request, if the effective securities which have been assigned to us are more than 20% higher than our claim.

7 Warranty

7.1 LaVision BioTec warrants correct function of the delivered goods for the period of twelve (12) months from the date of acceptance by the customer or from thirty (30) days after shipment by LaVision BioTec, whatever comes first. The warranty for optics and image intensifier is three (3) months from the date the goods have been delivered. During this period we will abolish all breakdowns caused by defective material or production defects free of charge.

7.2 In case of intervention by the operator, customer or any third party all warranty claims expire.

7.3 Damages caused by improper operation or handling, by improper installation as well as force majeure or other external forces are not covered by any warranty.

7.4 Warranty for defective material is limited to remedy the lack of conformity by repair or substitute delivery, whichever we deem most suitable. Should repair or substitute delivery not solve lack of conformity, the customer is entitled to declare the contract avoided or reduce the price.

8 Repair and Installation

For repair and installation services outside the warranty period the following is considered:

8.1 The customer has to make all necessary preparation for carrying out the repair or installation by LaVision BioTec.

8.2 In the event that no fixed price has been agreed, the customer will be charged for all repair and installation work according to the time, material and travelling expenses valid at that time.

9 Software

9.1 LaVision BioTec grants the customer a nonexclusive license to use the accompanying software program(s) (the "Software") and all necessary documentation relating to the contract. All other rights concerning the software and the documentation including copies and additional supplements remain the property of LaVision BioTec. The customer is not permitted to lease, rent, distribute or sublicense the Software or to use the Software in a time-sharing arrangement or in any other unauthorized manner.

9.2 The customer guarantees that neither the software nor any documentation will be passed to any third party without written agreement of LaVision BioTec.

10 Place of performance, place of jurisdiction

Choice of law

10.1 The place of performance for our deliveries and payment is the headquarters location of LaVision BioTec GmbH in Bielefeld.

10.2 The place of jurisdiction for all dispute relating to the meaning contract is solely Bielefeld. We are, however, entitled to make claims against the customer at his business location.

10.3 Our legal relations are governed solely by the laws of the Federal Republic of Germany. Reference to foreign legal systems are invalid. The application of the Vienna Convention on the International Sale of Goods (CISG) is excluded.

11 Liability, Force majeure

11.1 Other claims are hereby expressly excluded, in particular claims for damages based on delay, impossibility of performance, infringement of our obligation to substitute delivery or repairs, violation of contractual duties, negligence on conclusion of contract or product liability according to German Civil Law. This also applies to violations of technical standards which are issued after performance of the contract.

11.2 LaVision BioTec GmbH is liable for damages if guaranteed features are missing, or if we commit a fundamental breach of contract or if the damage caused is a result of an intentional or grossly negligent breach of contract by any of our statutory representatives or persons employed by LaVision BioTec GmbH in the performance of the contract.

11.3 Liability is limited to the amount of the order to be delivered, unless the customer proves higher damages.