

## 1. Application, Written form, Conclusion of Contract

- (1) These General Terms and Conditions of Sale ("the Terms") apply to all purchase and work supply contracts ("Contract") between Neugart GmbH, Kippenheim, Germany and our customer ("the Purchaser"). The Terms apply only if the Purchaser is an entrepreneur (Sec. 14 Civil Code), a legal person of public law or a public law special fund. These Terms apply exclusively; general terms and conditions of the Purchaser do not apply even if the Purchaser has expressly referred to them in his order.
- (2) The Terms apply as amended from time to time as a framework including for future purchase agreements with the same Purchaser without our having to refer to them again in each case. We will inform the Purchaser in that event without undue delay of changes to our Terms.
- (3) Individual agreements including trading clauses take priority over the Terms. As regards the content of such agreements, to the extent that they are not confirmed together with the Terms, a written contract or our written confirmation shall be decisive. International trading clauses are to be interpreted in case of doubt in accordance with the Incoterms of the International Chamber of Commerce in Paris (ICC) in the version valid at the time of the conclusion of the Contract.
- (4) References to the application of statutory provisions have only clarifying significance. Even without such clarification, the statutory provisions apply unless directly changed or explicitly excluded in these Terms.
- (5) Legally significant declarations and notices given by the Purchaser after the conclusion of the Contract (e.g. setting deadlines, objections, notices of defects, declarations of rescission or price reduction) require written form for their validity. Otherwise, text form (in particular fax or e-mail) is adequate to satisfy the requirement of written declarations whether specified by contract or statute.
- (6) Our offers are, unless otherwise stated, free and non-binding. This applies even if we have provided the Purchaser with catalogues, technical documentation (e. g. drawings, plans, calculations) product specifications, operating and assembly instructions or other documents – even in electronic form or through the internet – over which we reserve all ownership and copyright. The written order of the goods by the Purchaser is deemed to be a binding offer to conclude a contract which unless, otherwise provided, remains valid for at least 8 days. 7. On written order confirmation or delivery of the goods by us, a binding purchase Contract comes into force. This also applies if the order confirmation contains minor deviations or deviations usual in the trade from the order. Such deviations are deemed to be approved if and to the extent that the Purchaser does not object to them. Insofar as the order and the order confirmation correspond, the Purchaser has no right to object.

## 2. Delivery, Place of Performance, Passing of Risk

- (1) Unless otherwise agreed, the delivery is ex our works in Kippenheim which is also the place of performance for the delivery and any subsequent performance. The delivery will be made by the delivery method

chosen by us to the agreed address.

- (2) The dispatch of the goods is at the costs and risk (destruction, deterioration and delay) of the Purchaser. Unless otherwise agreed, we provide for transport insurance at the cost of the Purchaser (on the amount of the costs see Clause 4). If the dispatch is delayed on grounds for which we are not responsible the risk passes to the Purchaser at the time notice of readiness for dispatch is issued. The statutory passing of risk due to default of acceptance and other rights following for us from the default of acceptance (e. g. for reimbursement of storage costs or other additional expenditure) remain unaffected.

## 3. Delivery Date, Non-Availability of the Goods, Delay in Delivery

- (1) The delivery period will be agreed individually or stated by us in the order confirmation.
- (2) If we cannot comply with the binding delivery period on grounds for which we are not responsible (non-availability of the goods), we inform the Purchaser thereof without undue delay stating the reason for the delay and stating a new anticipated delivery period as the case may be. If the goods are no longer at all available or not available within the new delivery period, we are entitled to rescind the contract in whole or in part. In that case, we will return without undue delay to the Purchaser consideration already provided. Non-availability of the goods arises in particular if we have not received supplies in time from our suppliers, if neither we nor our suppliers are at fault or if we were not obliged to procure the supplies from the outset, as well as in cases of force majeure. The rights of the Purchaser in the event of delay in delivery remain unaffected.
- (3) The conditions of delay in delivery are determined according to the statutory provisions but in all cases written warning by the Purchaser is required. If we fall into delay in delivery, the Purchaser can demand lump sum compensation for the damage due to the delay. The lump sum compensation shall be for each completed calendar week of delay 0.5% of the net price (by its delivery value) of the goods delivered with delay, in total, however, at most 5%. We remain entitled to prove that the Purchaser has suffered no loss due to the delay or only a considerably lesser loss than the abovementioned lump sum figures. In addition, the Purchaser has, in the case of our delay in delivery, the rights according to the statutory provisions, i. e. to rescind the contract usually after the expiry of a reasonable period set by him without success.
- (4) Claims of the Purchaser for compensation in place of performance according to Clause 9 and our statutory rights in particular on the exclusion of the obligation to perform (e. g. because of impossibility) remain unaffected.

## 4. Purchase price, Ancillary expenses, Due date

- (1) Unless otherwise provided in our order confirmation or individual agreements, our prices at the time of the conclusion of the Contract apply, in each case ex works plus statutory VAT and other public charges

(e.g. customs duties, fees). In addition, the Purchaser shall bear other ancillary expenses of the purchase e.g. packaging, shipping costs in each case. For national deliveries, insurance costs 1% of the value of the delivery, for foreign deliveries 3%.

- (2) The purchase price together with ancillary costs shall be due and payable without deduction within 14 days from the date of the invoice and delivery of the goods unless otherwise agreed or in favour of the Purchaser stated in the invoice (e.g. discount). We are entitled to deliver in each case, in whole or in part, only in return for payment in advance. We will declare such reservation at the latest with the order confirmation.
- (3) All payments shall be made by bank transfer in Euro to our bank account indicated in the invoice.

## 5. Delay in payment, Counterclaims, Risk of non payment

- (1) On expiry of the payment period according to Clause 4 (2) above, the Purchaser will be in delay. During the period of delay, the purchase price shall carry interest at the currently applicable statutory default interest rate (at the present time 8 percentage points above the base rate), further default damage claims being reserved. Our claim to commercial default interest pursuant to § 353 German Commercial Code ("HGB") remains unaffected.
- (2) The Purchaser is entitled to set-off and withholding rights only to the extent that his claim has been adjudicated with legal effect or is undisputed. In the case of defects in delivery, counterclaims of the Purchaser remain unaffected in particular according to Clause 8 (4).
- (3) If, after the conclusion of the contract it is evident that our contractual payment claims are at risk because of the Purchaser's inability to pay (e.g. by an application for the opening of insolvency proceedings or only temporary impediments to payment), we are entitled, according to the statutory provisions, to refuse the performance and – after setting a deadline as the case may be – to rescind the contract (Sec. 321 Civil Code). In the case of contracts for manufacturing nonfungible things (individualised products), we can declare rescission immediately. The statutory provisions on dispensing with a deadline remain unaffected.

## 6. Retention of title

- (1) We retain title to the goods until full payment of all claims under the Contract and an ongoing business relationship.
- (2) The goods subject to retention of title may neither be pledged to third parties nor transferred as security prior to full payment of the secured claims. The Purchaser must inform us without undue delay in writing if and the extent to which third parties seize the goods which are the subject of retention of title.
- (3) In case of conduct in breach of contract by the Purchaser, especially non-payment of the purchase price due, we will be entitled in accordance with the statutory regulations to rescind the contract and demand surrender of the good based on the retention of title. The demand for surrender does not contain a declaration of rescission at the same time. We are, in fact, entitled to demand the surrender of the goods

only and to reserve the right of rescission. If the Purchaser does not pay the purchase price due, we can exercise these rights only if we have previously set the Purchaser a reasonable period for payment without result or the setting of such a period may be dispensed with in accordance with the statutory provisions.

- (4) The Purchaser is entitled to sell-on and/or process the goods which are subject to retention of title in the normal course of business. In that event, the following provisions apply in addition:
  - a) The retention of title extends also to products arising by processing, mixing or combination with our goods in their full value, we being deemed to be manufacturer. If in the course of processing, mixing or combination with goods of third party owners, their ownership survives, we acquire co-ownership in the proportion of the invoice values of the processed, mixed or combined goods. In addition, the same applies for the resulting product as for goods delivered subject to retention of title.
  - b) The claims against third parties arising from the sale of the goods or products are hereby assigned in full by the Purchaser to us as security. We accept this assignment. The obligations of the Purchaser under Clause 6 (2) also apply with regard to the assigned claims.
  - c) The Purchaser remains, with us, entitled to collect the claims. We undertake not to collect the claims as long as the Purchaser meets its payment obligations to us, does not fall into delay, no application for the opening of insolvency proceedings is made and no other deficiency in its capacity to perform arises. If that is, however, the case, we can demand that the Purchaser informs us of the assigned claims and of the debtors thereof, provides all data necessary for the collection of same, hands over the associated documents and notifies the debtors (third parties) of the assignment.
  - d) If the realisable value of the security exceeds our claims by more than 10%, we will, on request of the Purchaser in writing, release security at our choice.

## 7. Examination, Acceptance

- (1) The Purchaser is obligated to examine the goods without undue delay as to defects (including wrong and short delivery) in accordance with the statutory regulations (§§ 377, 381 HGB) and the provisions below and to pursue any suspicion of a defect with reasonable effort.
- (2) If a defect is established in the examination or later (including due to complaints of a customer of the Purchaser), we shall be notified thereof immediately in writing. Such notification will be deemed to be given immediately if made within two weeks.
- (3) Irrespective of the above obligation to examine the goods and give notice of defect, the Purchaser shall notify us of obvious defects in writing within two (2) weeks from delivery.
- (4) If the Purchaser fails to properly examine the goods and/or give notice of defects, the goods will be

deemed accepted with respect to the non-notified defect. In addition, this can result in compensation claims.

## 8. Purchaser's claims due to defects

- (1) The statutory provisions apply regarding the Purchaser's rights in case of defects in quality and in title (including incorrect or short delivery and improper assembly or defective assembly instructions) unless agreed otherwise hereinafter. The statutory special regulations in case of final delivery of the goods to a consumer remain unaffected in all cases (recourse to supplier, pursuant to §§ 478, 479 German Civil Code)
- (2) The basis for the liability for defects is above all the agreement on the quality of the goods. All product specifications which are subject matter of the individual purchase contract or published by us (in particular on the internet or in catalogues) are deemed to be agreements on the quality of the goods. We are not liable for public statements of third parties (e.g. advertising statements of suppliers). In addition, the question of defectiveness is to be assessed according to the statutory provisions. If in this connection the compliance with public law product requirements (including product or market related obligations of conduct) is decisive, only the provisions relevant for us in the Federal Republic of Germany are the criteria. Different product requirements abroad in particular the country of origin of the product are relied on only if this is expressly agreed in an individual case.
- (3) The Purchaser's claims for defects shall be conditional on the Purchaser having satisfied its obligations to examine the goods and notify any defects in accordance with Clause 7 above. Minor deviations in the delivery from the goods ordered, viewed or shown or described in catalogues or on our homepage or such deviations as are usual in the trade, do not constitute defects.
- (4) If the goods delivered are defective, we can choose whether to provide subsequent performance by rectifying the defect (rectification of defects) or by supplying goods without defects (delivery of a replacement). The right to refuse subsequent performance on the statutory conditions remains unaffected. We can make subsequent performance dependent on the Purchaser paying the purchase price due. The Purchaser is entitled to temporarily withhold part of the purchase price reasonable in relation to the defect.
- (5) The Purchaser is obliged to give us the necessary time and opportunity for subsequent performance in particular to provide us with the goods complained of for examination purposes. In the event of replacement delivery, the Purchaser is obliged to return the defective product in accordance with the statutory provisions. Subsequent performance contains neither the removal of the defective product nor its refitting if we were not originally obliged to perform the fitting. The place of performance of subsequent performance is our works in Kippenheim.
- (6) The expenses required for the purpose of the examination and subsequent performance, especially labour and material costs (not disassembly and reassembly,

travel and transport costs), shall be borne by us if a defect actually exists. If, however, the Purchaser's request for rectification of a defect proves to be unjustified, we may demand that the Purchaser reimburse us for the costs thereby incurred.

- (7) In urgent cases, e.g. in the case of danger to operating safety or the avoidance of disproportionate damage, the Purchaser can itself remedy the defect and demand from us reimbursement of the necessary expense. We are to be informed without undue delay if possible in advance of such remedying by the Purchaser itself. The right of remedying by the Purchaser itself does not arise if we would be entitled to refuse corresponding subsequent performance according to the statutory provisions.
- (8) If the subsequent performance has failed or if a reasonable period set by the Purchaser for the subsequent performance expires fruitlessly or is unnecessary according to the statutory provisions, the Purchaser may rescind the contract or reduce the purchase price. No right of rescission shall arise however where the defect is not material.
- (9) In deviation from § 438 (1) No. 3 German Civil Code, the general limitation period for claims arising from defects in quality or in title (warranty period) shall be one (1) year from delivery. After the expiry of the warranty period, defects claims are excluded. Special statutory regulations on limitation (in particular, §§ 438 (1) Nos. 1 and 2, (3), 479 German Civil Code) remain unaffected. Compensation claims under Clause 9 become statute-barred exclusively in accordance with the statutory provisions.
- (10) Claims of the Purchaser for damages or compensation for futile expenses shall arise in case of defects only in accordance with the above provisions in conjunction with Clause 9 and are otherwise excluded. We are not usually obliged vis-à-vis the Purchaser to investigate components fitted into the product by us. If, however, such an obligation arises because of the circumstances of the individual case, it shall not constitute a fundamental contractual obligation. We accept no liability for the manufacturing process of our suppliers.

## 9. Damages, Rescission

- (1) We shall be liable for damages in accordance with the statutory provisions unless otherwise provided below. In the case of breach of duty – no matter on what legal ground – we are liable in case of intent or gross negligence. In case of simple negligence, we shall be liable only
  - a) for damage due to injury to life, limb or health, and
  - b) for damage due to not insignificant violation of a material contractual obligation (an obligation whose satisfaction enables the proper performance of the contract in the first place and on whose satisfaction the contracting party regularly relies and may rely); in this case, however, the liability shall be limited to compensation for foreseeable damage typically incurred.
- (2) The above limitations on liability also apply in favour of our employees, staff members, representatives and agents. For claims under the Product Liability Act, the provisions of Clause 10 apply.

(3) The Purchaser may rescind or terminate the contract on the ground of a breach of a fundamental contractual obligation other than a defect only if we are responsible for such breach. The Purchaser's right of rescission in the case of delay in delivery by us according to Clause 3 (3) remains unaffected, including the statutory provision on the burden of proof. Otherwise, the statutory preconditions and legal consequences apply to the right of rescission.

## 10. Product liability

- (1) Our liability for defective products vis-à-vis third parties (including employees, staff members etc. of the Purchaser) shall be in accordance with the statutory provisions. The Purchaser can at most, in particular in the course of apportionment of liability between joint and severally liable parties, derive claims against us to the extent that we are liable externally and we have caused or jointly caused the defect with fault.
- (2) If the Purchaser is obliged to take risk prevention measures (e.g. product recall) because of defective products supplied by us, we will participate in the vouched costs expended by the Purchaser in accordance with the statutory provisions but at most to the extent that
  - a) we are obliged to prevent the danger and the defect in the product has been caused or jointly caused by us with fault;

- b) the Purchaser has informed us in advance of the nature and scope of the danger prevention measures including our share thereof – insofar as possible and reasonable and has given us an opportunity to comment, and
- c) the risk-prevention measures taken were legally and factually necessary taking account of all the circumstances of the case.

## 11. Choice of law, Place of jurisdiction

- (1) The laws of the Federal Republic of Germany shall apply to these Terms and to all legal relations between the parties, to the exclusion of uniform international law, especially the UN CISG. The preconditions and effects of the retention of title are governed by the law of the state where the property is located, insofar as the choice of law in favour of German law is inadmissible or invalid according thereto.
- (2) If the Purchaser is an entrepreneur, a legal person of public law or a public-law special fund, the exclusive – also international – place of jurisdiction for all disputes arising from the contractual relations shall be our place of business in Kippenheim, Germany. The same applies if the Purchaser is any other kind of business. We shall also be entitled in all cases, however, to file a lawsuit at place of performance of the delivery obligation according to Clause 2 (1) or any individual agreement with priority or at the Purchaser's place of general jurisdiction.

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